

# COMPLAINT UPHELD FOR PRODUCER STATEMENT NEGLIGENCE

This article appeared in Engineering Dimension in October 2015.

A complaint submitted to IPENZ in April outlines a Building Consent Authority's (BCA) concerns a Chartered Professional Engineer (CPEng) had issued producer statements without observing the work.

The BCA subsequently identified non-compliant matters relating to seven properties that had caused them to lose confidence in the engineer and to submit the complaint to the Registration Authority.

The engineer's counsel requested his client be excused from attending the disciplinary hearing on grounds of ill health, with submissions presented by his legal representative. Counsel indicated his client was prepared to acknowledge he'd made errors of judgment as set out in the complaint, and would voluntarily surrender his CPEng registration.

At the hearing, the Disciplinary Committee heard the complaint related to construction work on residential properties. The BCAs specific concerns were:

- The engineer issued producer statements on behalf of another engineer without inspecting the work, despite knowing the person had been removed from the BCA's register of authors
- The engineer's site notes were inadequate
- Foundations and blockwork approved by the engineer subsequently failed
- All properties concerned failed the BCA's inspections and, in some cases, were subject to a Notice to Fix (NTF)
- Design changes approved by the engineer were not adequately documented and notified to the BCA for approval of amendments to the relevant building consents.

The BCA provided evidence including copies of inspection reports and extensive photographic records relating to all seven properties.

The Committee said the engineer couldn't be considered to lack the competence required of a CPEng, as there was no evidence to suggest he didn't understand the technical issues associated with the construction work he inspected.

However, the Committee determined it was appropriate to censure the engineer for negligence (a lack of the diligence, skill or care expected of a reasonable CPEng).

Recognising the engineer's resignation from the CPEng Register, the Committee decided not to impose a fine. His IPENZ Membership was not suspended, as the Committee did not consider the engineer's actions were sufficiently serious to warrant this action.

The Committee determined the engineer should contribute to the costs of the investigation and hearing, set at \$1,000 (25 per cent of the costs incurred by the Registration Authority). Due to the engineer's co-operation throughout the process, the Committee reduced the payment from their original starting point of 50 per cent of total costs. In assessing costs, the Committee was mindful costs associated with disciplinary processes are a burden on the engineering profession and Chartered Professional Engineers should not be expected to be burdened with full costs when one of their number is disciplined.

After weighing up the issues of public interest and the need for an open and transparent disciplinary process against the interests of the engineer, the Committee ordered the engineer's name not be published, as this would amount to an undue public shaming.