

DISCIPLINARY COMMITTEE DECISION COMPLAINT ABOUT STEVEN KING-TURNER 511

Confidential to parties

In accordance with:

Chartered Professional Engineers of New Zealand Act 2002

Chartered Professional Engineers of New Zealand Act and Rules (No 2) 2002

Engineering New Zealand Rules

Engineering New Zealand Disciplinary Regulations

Prepared by

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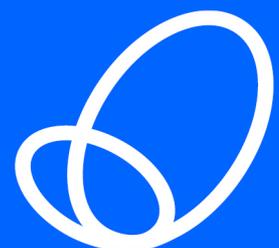
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Hamish Wilson, nominated by Consumer New Zealand

Anita Killeen, Barrister and Solicitor of the High Court of New Zealand

Members of the Disciplinary Committee

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engineering
new zealand
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EXECUTIVE SUMMARY

1. Steven King-Turner CMEngNZ CPEng, a structural engineer of AMK Limited, was engaged by a home building company (the client) to perform design and construction monitoring services on building work for the construction of a residential property (**the Property**) in the Tasman district.
2. Tasman District Council (**TDC**) raised concerns with Engineering New Zealand that Mr King-Turner monitored construction and signed a PS4 for the project, which did not have building consent.
3. The parties have accepted the Investigating Committee's finding of facts, that Mr King-Turner:
 - issued a PS4 before a building consent application had been lodged;
 - left the space on the PS4 where the building consent number should have been written blank, ignoring any duty to enquire whether the building consent was issued before issuing the PS4, and
 - overlooked his duty to check building consent had been granted before signing off on the completion of these building works.
4. The parties requested, and we accepted, that the complaint proceed straight to penalty.

DECISION

5. Having considered the matter the Disciplinary Committee has found that Mr King-Turner has departed from the behavior reasonably expected of a Chartered Professional Engineering and a Chartered Member of Engineering New Zealand.
6. The complaint is upheld.

BACKGROUND

COMPLAINT

7. The complaint relates to work performed by Mr King-Turner, which TDC became aware of while processing a building consent application for the Property.
8. On 20 November 2018 TDC complained to Engineering New Zealand that Mr King-Turner monitored construction and signed a PS4 for a project which did not have building consent.

ADJUDICATOR

9. Four aspects of the complaint were referred to an adjudicator for formal investigation. They were that Mr King-Turner:
 - a) conducted site inspections of the building work without a building consent
 - b) completed and signed a PS4 before building consent was formally accepted by TDC
 - c) failed to make enquiries to confirm building consent had been granted, before building works started, and
 - d) failed to alert either the owner or builder that they were acting illegally by starting construction without a building consent.
10. Having considered the circumstances, the Adjudicator decided that the aspect of the complaint that Mr King-Turner failed to alert either the owner or builder that they were acting illegally by starting construction without a building consent, was not serious enough to warrant further investigation and was therefore dismissed.
11. The remaining three aspects of the complaint were referred to an investigating committee for formal investigation.

INVESTIGATING COMMITTEE

12. The Investigating Committee did not consider that there were any grounds to dismiss the complaint, and, on 3 February 2020, determined that it should be referred to a disciplinary committee.

DISCIPLINARY COMMITTEE

13. The members of the Disciplinary Committee are:

Andrew McMenamin CMEngNZ CPEng

David Jennings CPEng FEngNZ IntPE(NZ)

Rachel Wright CMEngNZ CPEng IntPE(NZ)

Hamish Wilson, nominated by Consumer New Zealand

Anita Killeen, Barrister and Solicitor of the High Court of New Zealand

PROCEDURAL MATTERS

14. In mid-March 2020, Mr King-Turner and TDC confirmed they:
 - a) accepted the facts as set out in the Investigating Committee's decision, and that these constitute a ground of discipline; and
 - b) requested that the Disciplinary Committee dispense with an in-person hearing so that the complaint could proceed straight to penalty.

15. On 20 March 2020 the Chair of the Disciplinary Committee accepted the parties' request to dispense with a hearing of this matter. Annexed is a copy of the Investigating Committee's decision.

DISCUSSION

THE DISCIPLINARY COMMITTEE'S ROLE

16. Professional disciplinary processes primarily exist to protect the public, uphold professional standards, and maintain public confidence in the profession and its regulation. They do this by ensuring that members of the profession adhere to certain universal (or accepted) professional standards.¹
17. The role of the Disciplinary Committee in the disciplinary process is to consider whether Mr King-Turner has acted in accordance with accepted professional standards and, if not, whether there are grounds for disciplining him in accordance with the Chartered Professional Engineers of New Zealand Act 2002 and the Engineering New Zealand Rules and Disciplinary Regulations.

THE LEGAL TEST

18. The legal test to assess whether Mr King-Turner acted in accordance with acceptable professional standards is whether he acted in accordance with what a reasonable body of his peers would have done in the same situation.
19. The assessment of whether an engineer has acted in accordance with accepted standards may be informed by whether reasonable members of the public would "consider such an act or omission, if acceptable to the profession, were to lower the standard of that profession in the eyes of the public".²
20. If the evidence is that Mr King-Turner acted in accordance with accepted standards, then we will dismiss the complaint. If the evidence is that Mr King-Turner did not act in accordance with accepted standards, then we will uphold the complaint. If the behaviour meets the latter criterion, we must consider whether the conduct "falls seriously short of accepted conduct" before imposing a disciplinary sanction.³
21. This means that the matter for the Disciplinary Committee to decide in this case is whether the engineering services provided by Mr King-Turner, as agreed to by the parties, met the standard to be reasonably expected of a Chartered Professional Engineer and a Chartered Member of Engineering New Zealand.
22. Our approach to this question has been to consider the analysis and findings of the Investigating Committee as accepted by the parties, and the information that formed the basis of that decision.

ANALYSIS

23. We have considered the Investigating Committee's discussion contained in paragraphs 38 to 50 of their decision around the issuing of the PS4 without a building consent in paragraphs 51 to 56 of their decision. We agree with the Investigating Committee's reasons for referring this matter to a disciplinary committee.

¹ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC).

² *Robinson v RA* (10 July 2015, *Appeal Ruling #21*) Chartered Professional Engineers Council. Available at: <http://www.cpec.org.nz/appeal-rulings/appeal-21-10-july-2015-robinson-v-ra>.

³ *Ibid.*

Conducted a site inspection of the building work without a building consent

24. We accept the Investigating Committee's finding of fact that Mr King-Turner conducted a site inspection of the building work without a building consent.
25. We also agree with the findings of the Investigating Committee, that:

Construction should not occur without consent. This is a behaviour which should be deterred, given engineers play a vital role in maintaining the building consent process. It is important to uphold these standards where such practice is at risk of becoming common place.

Completed and signed a PS4 before building consent was formally accepted by TDC

26. We accept the Investigating Committee's finding of fact that Mr King-Turner issued a PS4 before a building consent application had been lodged.
27. We also agree with the findings of the Investigating Committee:

That a reasonable engineer should have checked whether building consent had been applied for and granted before issuing a PS4.

Failed to make enquiries to confirm building consent had been granted, before building works started

28. We accept the Investigating Committee's finding of fact that Mr King-Turner left the space on the PS4 where the building consent number should have been written blank, ignoring any duty to enquire whether the building consent was issued before issuing the PS4.
29. We agree with the findings of the Investigating Committee, that:

Mr King-Turner may have had good intentions, but overlooked his duty to check building consent had been granted before signing off on the completion of these building works. Mr King-Turner also missed the opportunity to enquire about the existence of a building consent by ignoring parts of the PS4, thereby inadequately filling it in.

30. The parties have accepted the Investigating Committee's decision to refer this matter to a disciplinary committee, and that the reasons for their decision constitute a ground of discipline.

DECISION OF THE DISCIPLINARY COMMITTEE

GROUNDS OF DISCIPLINE

31. The Disciplinary Committee may make an order for discipline against a Chartered Professional Engineer, or a member of Engineering New Zealand, if it is satisfied that the engineer has performed engineering services in a negligent or incompetent manner, or that the engineer has breached the Code of Ethical Conduct.
32. The Code of Ethical Conduct includes an obligation to act competently, which includes an obligation to undertake engineering activities in a careful and competent manner.⁴ It also includes an obligation not

⁴ Engineering New Zealand Code of Ethical Conduct, cl 4(a)(iii), and Chartered Professional Engineers of New Zealand Rules (No 2) 2002, r 42E(a)(iii).

to “knowingly permit other engineers for whose engineering activities you are responsible to undertake engineering activities in a manner that is not careful and competent”.⁵

33. A finding of negligence or incompetence is a more serious finding than a breach of the obligation to perform engineering services in a careful and competent manner. An engineer may breach the Code of Ethical Conduct requirement without meeting the threshold for negligence or incompetence.
34. To determine whether Mr King-Turner acted negligently or incompetently we refer to the decision of the Chartered Professional Engineers Council in *R v K*:⁶

The starting point is to consider what standard sets the benchmark for negligent or incompetent behaviour. We consider that incompetence is a more serious allegation than negligence. One can be negligent without being incompetent, but it is highly unlikely that someone who is incompetent is not also negligent.

35. Further, *Robinson v RA* states:⁷

Whether engineering services have been performed in an incompetent manner is a question of whether there has been a serious lack of competence (or deficit in the required skills) judged by the areas of competence which in this case are encapsulated by Rule 6 [of the Chartered Professional Engineers Rules (No 2) 2002 (the Rules)].

36. Chartered Professional Engineers are assessed against the 12 elements set out Rule 6 of the Rules to establish their competence, they are:

(a) comprehend, and apply his or her knowledge of, accepted principles underpinning—

(i) widely applied good practice for professional engineering; and

(ii) good practice for professional engineering that is specific to New Zealand; and

(b) define, investigate, and analyse complex engineering problems in accordance with good practice for professional engineering; and

(c) design or develop solutions to complex engineering problems in accordance with good practice for professional engineering; and

(d) exercise sound professional engineering judgement; and

(e) be responsible for making decisions on part or all of 1 or more complex engineering activities; and

(f) manage part or all of 1 or more complex engineering activities in accordance with good engineering management practice; and

(g) identify, assess, and manage engineering risk; and

(h) conduct his or her professional engineering activities to an ethical standard at least equivalent to the code of ethical conduct; and

⁵ Engineering New Zealand Code of Ethical Conduct, clause 4(b)(ii), and Chartered Professional Engineers of New Zealand Rules (No 2) 2002, r 42E(b)(ii).

⁶ *R v K*, Appeal Ruling 11/14, Chartered Professional Engineers Council at [36] and [38].

⁷ *Robinson v RA* (10 July 2015, Appeal Ruling #21) Chartered Professional Engineers Council at [40(c)].

(i) recognise the reasonably foreseeable social, cultural, and environmental effects of professional engineering activities generally; and

(j) communicate clearly to other engineers and others that he or she is likely to deal with in the course of his or her professional engineering activities; and

(k) maintain the currency of his or her professional engineering knowledge and skills.

DECISION

37. For the reasons set out in paragraphs 51 to 53 of the Investigating Committee's decision, which we agree with, we do not consider that the evidence in this case demonstrates a serious lack of competence or deficit in the skills required of a Chartered Professional Engineer. The shortcomings identified in Mr King-Turner's practice speak more to a lack of attention and failure to check whether all requirements had been met before issuing a PS4.
38. We consider this breach falls short of establishing negligence or incompetence. However, it does demonstrate a lack of due care and a failure by Mr King-Turner to meet his obligation under clause 4(a)(iii) to undertake engineering activities in a careful and competent manner.
39. On the balance of probabilities, we are satisfied evidentially that the grounds for discipline under section 21(1)(b) of Chartered Professional Engineers of New Zealand Act 2002 and regulation 17 of the Engineering New Zealand Disciplinary regulations have been met.
40. Having considered all the evidence, we have decided to uphold the complaint about Mr King-Turner.
41. Having found Mr King-Turner in breach of his obligations under the Code of Ethical Conduct, we need to determine what orders, if any, should be made against him.
42. There are a range of disciplinary actions available to the Disciplinary Committee as set out in section 22(1) of the Chartered Professional Engineers of New Zealand Act 2002. There are also a range of sanctions in respect of Mr King-Turner's membership with Engineering New Zealand under Engineering New Zealand's Disciplinary Regulation 17(3).

PENALTY

43. On 17 December 2020 our substantive decision was sent to the parties and they were invited to make submissions on penalties. Mr King-Turner provided his submissions on 28 January 2021. TDC provided submissions on behalf of TDC on 18 December 2020, and added to them on 22 February 2021, before the submission deadline.

MR KING-TURNER'S SUBMISSIONS

44. In January 2021, Mr King-Turner submitted out of all the penalties, censure was the only penalty which could be appropriate. He also submitted the District Court ruled he had breached section 40 of the Building Act 2004 and ordered he pay a fine, so the Disciplinary Committee could not order a fine under the section 22(3) exception of the of the CPEng Act, stating:

No fine may be imposed under subsection (1)(d) in relation to an act or omission that constitutes an offence for which the person has been convicted by a court.

TASMAN DISTRICT COUNCIL'S SUBMISSIONS

45. In December 2020 TDC submitted that a strong deterrent would be required to hold Mr King-Turner accountable and discourage him and others from repeating such practice in the future.
46. In January 2021 TDC said censure would be appropriate and a fine would have been if section 22(3) did not apply. TDC also mentioned Mr King-Turner had also filed an appeal against the District Court decision and they were awaiting the judgement from the High Court.
47. After the submission deadline on 5 March 2021 TDC notified Engineering New Zealand the High Court had issued its judgement⁸ on 2 March 2021. The High Court judgement overturned the District Court's ruling⁹ that Mr King-Turner breached section 40 of the Building Act 2004 when he issued the PS4 without checking for building consent; it also quashed the order for fine. TDC was of the opinion that in light of this ruling, the Disciplinary Committee should consider ordering a fine.
48. TDC's comments were provided to Mr King-Turner.

RELEVANT LAW

49. In *Roberts v A Professional Conduct Committee of the Nursing Council of New Zealand*¹⁰ the High Court outlined a number of principles to be applied by the Health Practitioners Disciplinary Tribunal in determining the appropriate penalty to impose in disciplinary proceedings. The High Court determined that a disciplinary penalty must:
 - a. protect the public (including through deterrence of other practitioners from engaging in similar conduct);
 - b. set and maintain professional standards;
 - c. where appropriate, rehabilitate the practitioner back to the profession;
 - d. be comparable with penalties imposed on practitioners in similar circumstances;
 - e. reflect the seriousness of the practitioner's conduct, in light of the range of penalties available;
 - f. be the least restrictive penalty that can reasonably be imposed in the circumstances; and
 - g. be fair, reasonable, and proportionate in the circumstances.
50. The High Court also stated that while penalty may have the effect of punishing a practitioner, punishment is not a necessary focus for the Tribunal in determining penalty.
51. The principles in *Roberts* are broadly applicable to our power to make disciplinary orders under section 22 of the Act and under the Engineering New Zealand Disciplinary Regulations and they are the principles we rely on when considering the appropriate penalty orders in this case.
52. The principles have general application to professional disciplinary proceedings in the light of the Supreme Court's decision in *Z v Dental Complaints Assessment Committee*.¹¹ In *Z*, the Supreme Court makes general statements about the purposes of professional disciplinary proceedings, noting such proceedings are designed to:

⁸ *Andrew Melvin King-Turner Ltd and Steven Geoffrey King-Turner v Tasman District Council* [2021] NZHC 343 at [49].

⁹ *Tasman District Council v King-Turner* [2020] NZDC 18062.

¹⁰ [2012] NZHC 3354.

¹¹ [2008] NZSC 55.

Ascertain whether a practitioner has met appropriate standards of conduct in the occupation concerned and what may be required to ensure that, in the public interest, such standards are met in the future. The protection of the public is the central focus.

53. This is consistent with *Roberts*, as *Roberts* lists public protection and the maintenance of professional standards as the foremost considerations relevant to penalty.
54. The Supreme Court in *Z v Dental Complaints Assessment Committee*¹² also states that while professional disciplinary proceedings are not intended to punish practitioners, they may have a punitive effect in practice. This is also consistent with the principles set out in *Roberts*, in that the penalty must be the least restrictive penalty and that punishment is not a necessary focus of a disciplinary penalty.
55. The reasoning underlying *Roberts*' focus on practitioner rehabilitation is less relevant to penalties under the Act in light of the fact that the removal or suspension of a Chartered Professional Engineer's registration does not prevent the individual practising as an engineer but does prevent use of the Chartered Professional Engineer title.
56. It is appropriate that disciplinary penalties mark the profession's condemnation of the relevant conduct, noting that to do otherwise would not be consistent with the purpose of the Act to establish the title of Chartered Professional Engineer as a mark of quality.¹³

DISCUSSION

57. The public places significant trust in engineers to self-regulate. As a professional, an engineer must take responsibility for being competent and acting ethically. The actions of an individual engineer also play an important role in the way in which the profession is viewed by the public.
58. We found Mr King-Turner departed from what could be expected of a reasonable engineer. That is, he has breached his obligation to undertake engineering activities in a careful and competent manner.
59. In our view, Mr King-Turner's actions, if condoned, would undermine the public's trust in the engineering profession and reduce the public confidence in the Chartered Professional Engineer title and membership with Engineering New Zealand.
60. Mr King-Turner's actions showed a lack of care; however, the departure from expected standards is at the lower end of the scale, and our orders need to reflect our view of the breach.

Registration and membership

61. In respect of orders relating to registration as a Chartered Professional Engineer, we may order:¹⁴
 - an engineer's registration be removed, and they may not apply for re-registration before the expiry of a specified period;
 - an engineer's registration be suspended for a period of no more than 12 months or until they meet specified conditions relating to the registration; or
 - the engineer be censured.

¹² Ibid.

¹³ Chartered Professional Engineers of New Zealand Act 2002, s 3.

¹⁴ Chartered Professional Engineers of New Zealand Act 2002, s 22.

62. In respect of orders relating to membership with Engineering New Zealand, we may order an Engineering New Zealand member be:¹⁵

- expelled from membership;
- suspended from membership for any period;
- suspended from membership until such time as the member has fulfilled requirements for professional development as have been specified by the Committee; or
- suspended from membership for a period of time if by a prescribed date, the member fails to fulfil requirements for professional development as has been specified by the Committee.

63. In *A v Professional Conduct Committee*¹⁶ the High Court said, in relation to a decision to cancel or suspend a professionals' registration, that four points could be expressly and a fifth implicitly derived from the authorities:

First, the primary purpose of cancelling or suspending registration is to protect the public, but that 'inevitably imports some punitive element.' Secondly, to cancel is more punitive than to suspend and the choice between the two turns on what is proportionate. Thirdly, to suspend implies the conclusion that cancellation would have been disproportionate. Fourthly, suspension is most apt where there is 'some condition affecting the practitioner's fitness to practise which may or may not be amendable to cure'. Fifthly, and perhaps only implicitly, suspension ought not to be imposed simply to punish.

64. In the decision of *Attorney-General v Institution of Professional Engineers New Zealand Incorporated and Reay*¹⁷ the High Court set out the standard the public expects when an engineer is a member of Engineering New Zealand:

[M]embership of a professional body, such as the Institution, can confer a status that signals trustworthiness to the public. This status reflects the value that society places upon the training and skill acquired by members and upon the Institution's ability to maintain the standards of its members through ongoing education, training and disciplinary processes.

65. The Court also went on to set out the public expectation of Engineering New Zealand's role in maintaining the standard of the profession:¹⁸

There is, however, a counterbalance to the public trust that is reposed in members of professional bodies such as the Institution. That counterbalance is the public expectation that the Institution will tightly regulate admission into its ranks and ensure members maintain high professional standards. The public expects that if a person is to be afforded the status of membership of the Institution, then those individuals will maintain professional standards and that those standards will be enforced by the Institution through, if necessary, disciplinary proceedings. If a professional body, such as the Institution, wishes to maintain that public trust, and the value associated with membership status, then it must act in accordance with this expectation.

¹⁵ IPENZ Disciplinary Regulations, reg 17(3)(a) – (d).

¹⁶ *A v Professional Conduct Committee* [2008] NZHC 1387 at [81].

¹⁷ [2018] NZHC 3211 at [52] and [55].

¹⁸ *Ibid* at [56].

66. We consider the Judge’s comments in *Reay* are equally applicable to the Registration Authority and its role in regulating Chartered Professional Engineers.
67. After considering the principles set out by the High Court in *Roberts* (above) we do not consider this case warrants the removal or suspension of Mr King-Turner’s registration as a Chartered Professional Engineer or Chartered Member of Engineering New Zealand. The primary purpose of cancelling or suspending registration is protection of the public. Although we have upheld this complaint, we do not consider Mr King-Turner’s practice poses a risk to the public such that we would need to remove or suspend him. Mr King-Turner has accepted his failings in this case and has described the actions he has taken to prevent similar failings from occurring in his personal practice and of his firm.
68. Although we accept Mr King-Turner’s actions did not result in any harm or damage, we recognise this is a serious matter. Producer statements play a critical part in establishing compliance with building safety standards and public trust in those systems.
69. We are also cognisant of previous Disciplinary Committee decisions. The most comparable recent decision is, in our view, that of *An Engineer* CPEng CMEngNZ, issued 18 October 2019.
70. In that matter, the respondent signed a PS1 for an inadequate design prepared by a junior engineer without checking it, prepared an amended design that was also inadequate. The parties agreed with the Investigating Committee’s report and an in-person hearing was unnecessary. The Disciplinary Committee decided the engineer should be censured, fined, and pay 50 percent of costs ordered; an anonymised version of both the Investigating Committee and Disciplinary Committee decisions published on Engineering New Zealand’s website, and a press release issued. The engineer’s name was permanently suppressed.
71. We have upheld the complaint against Mr King-Turner and wish to make clear that the profession does not condone Mr King-Turner’s actions. However, we have not identified any wide-ranging competency issues, and therefore consider censure to be the most proportionate penalty in the circumstances.

Fine

72. The Chartered Professional Engineers of New Zealand Act 2002 and the Engineering New Zealand Disciplinary Regulations state we may order that an engineer pay a fine up to a maximum of \$5,000.
73. Mr King-Turner’s conduct fell below the standard expected of a professional engineer but was towards the lower end of the scale when compared to other recent Disciplinary Committee decisions, for example *Joyce*¹⁹ and *Mulholland*.²⁰ We also considered there to be no life safety risks, no indication of a pattern of behaviour, and no significant concerns as to Mr King-Turner’s competence to undertake work as a Chartered Professional Engineer or member of Engineering New Zealand. Mr King-Turner has acknowledged there are lessons to be learned from this complaint and has described steps he has taken to share these lessons with his staff.
74. Mr King-Turner submitted a fine is not appropriate. TDC submitted that a fine should be considered but did not comment on its quantum.
75. We consider that a fine of \$1,000 is appropriate.

¹⁹ Disciplinary Committee decision – Waka Kotahi New Zealand Transport Agency v Joyce, dated 10 December 2019. Available at: https://www.engineeringnz.org/documents/679/Disciplinary_Committee_decision_on_complaint_against_David_Mulholland.pdf

²⁰ Disciplinary Committee decision – Whanganui District Council v Mulholland, dated 2 November 2020 and Own Motion Inquiry about Mulholland, dated 18 December 2019. Available at: https://www.engineeringnz.org/documents/558/Disciplinary_Committee_decision_NZTA_v_Joyce.pdf

Costs

76. We may order an engineer pay costs and expenses of, and incidental to, the inquiry by Engineering New Zealand and Registration Authority.²¹ We note the ordering of payment of costs is not in the nature of penalty.
77. When ordering costs, it is generally accepted the normal approach is to start with a 50% contribution.²² That, however, is a starting point and other factors may be considered to reduce or mitigate that portion. Those factors include any co-operation from or attendance at the hearing by the engineer, and consistency with the level of costs in previous decisions. The balance of costs after the orders must be met by the profession itself.²³
78. In respect of the medical profession, the Court in *Vatsyayann v PCC* said:²⁴

[P]rofessional groups should not be expected to bear all the costs of a disciplinary regime and that members of the profession who appeared on disciplinary charges should make a proper contribution towards the costs of the inquiry and a hearing; that costs are not punitive; that the practitioner's means, if known, are to be considered; that a practitioner has a right to defend [themselves] and should not be deterred by the risk of a costs order; and that in a general way 50% of reasonable costs is a guide to an appropriate costs order subject to a discretion to adjust upwards or downwards.

79. Further, in *O'Connor v Preliminary Proceedings Committee* the High Court stated:²⁵

It is a notorious fact that prosecutions in the hands of professional bodies, usually pursuant to statutory powers, are very costly and time consuming to those bodies and such knowledge is widespread within the professions so controlled. So as to alleviate the burden of the costs on the professional members as a whole the legislature had empowered the different bodies to impose orders for costs. They are nearly always substantial when the charges brought are successful and misconduct admitted, or found.

80. Neither party has made submissions on costs. We are cognisant of Mr King-Turner's cooperation with the investigation to date, and do not consider there are any compelling factors to warrant departure from the starting point of 50% of the costs incurred by Engineering New Zealand and the Registration Authority; being \$7,837.50.

Naming

81. In addition to notifying any orders made against an engineer on the register of Chartered Professional Engineers, the Registration Authority must notify the Registrar of Licensed Building Practitioners appointed under the Building Act 2004 of the order and the reasons for it and may publicly notify the order in any other way that it thinks fit.²⁶

²¹ Chartered Professional Engineers of New Zealand Act 2002, s 22(4) and IPENZ Disciplinary Regulations, reg 17(3)(g) respectively.

²² Including *Cooray v Preliminary Proceedings Committee HC Wellington AP 23/94*, 14 September 1995 per Doogue J.

²³ *PCC v Van Der Meer* 1019/Nur18/422P.

²⁴ [2012] NZHC 1138 at [34].

²⁵ *O'Connor v Preliminary Proceedings Committee HC Wellington AP 280/89*, 23 August 1990 at [13] per Jeffries J.

²⁶ Chartered Professional Engineers of New Zealand Act 2002, s 22(5).

82. In respect of membership with Engineering New Zealand, we may order the member be named, the order against the member be stated and the nature of the breach described in the official journal of the Institution or publicised in any other manner as may be prescribed by the Committee.²⁷
83. The Act does not prescribe factors we should consider when deciding whether to name an engineer. While we are mindful of the specific legislative test of “desirability” set out in the Health Practitioners Competence Assurance Act 2003, we are guided by the public interest factors considered by the medical profession when deciding whether to name a practitioner.²⁸ These include openness and transparency in disciplinary proceedings; accountability of the disciplinary process; public interest in knowing the identity of the practitioner; the importance of freedom of speech; unfairly impugning other practitioners; and that where an adverse disciplinary finding has been made, it is necessary for more weighty private interest factors (matters that may affect a family and their wellbeing, and rehabilitation of the practitioner) to be advanced to overcome the public interest factors for publication.²⁹
84. Naming is the starting point and will only be inappropriate in a limited number of circumstances where the engineer’s privacy outweighs the public interest. In *Y v Attorney-General*³⁰ the Court of Appeal explored the principles that should guide the suppression of the names of parties, witnesses, or particulars in the civil context. The starting point is the principle of open justice.³¹
85. The question is then, do the circumstances justify an exception to the principle of open justice. In a professional disciplinary context, a practitioner is “likely to find it difficult to advance anything that displaces the presumption in favour of disclosure”.³² This is because the practitioner’s existing and prospective clients have an interest in knowing details of the conduct, as this allows them to make an informed decision about the practitioner’s services.³³
86. Consistent with these precedents, the starting point is naming of engineers subject to a disciplinary order is the normal expectation. This is because public protection is at the heart of disciplinary processes, and naming supports openness, transparency, and accountability.
87. Mr King-Turner and TDC did not specifically address the subject of naming in their submissions.
88. We note Mr King-Turner was publicly named in the District and High Courts judgements that he was a party to.³⁴
89. We consider this matter is not comparable to that of *An Engineer CPEng CMEngNZ* when it comes to naming, in which the engineer’s name was permanently suppressed because that Disciplinary Committee had evidence before it that the publication of the name would cause extreme hardship. That case was also not publicly heard before the courts.
90. We would like to commend Mr King-Turner for taking steps to prevent a similar breach from occurring not only in his personal practice but in that of his firm.

²⁷ IPENZ Disciplinary Regulations, reg 17(5)(h).

²⁸ The presumption in s 95(2) of the Health Practitioners Competence Assurance Act 2003 is that a hearing shall be in public, but the Tribunal has discretion to grant name suppression. The test is whether it is “desirable” to prohibit publication of the name or any particulars of the affairs of the person in question and the Tribunal must consider both the interests of any person and the public interest.

²⁹ *Professional Conduct Committee of the Pharmacy Council of New Zealand v El-Fadil Kardaman* 100/Phar18/424P at [113] – [114].

³⁰ [2016] NZCA 474.

³¹ *Ibid* at [25].

³² *Ibid* at [32].

³³ *Ibid*.

³⁴ Above, n 12 and 13.

91. However, we consider the factors for suppression do not displace the high threshold, nor justify the fundamental principle towards naming, but would cause a significant departure from those fundamental principles mentioned above. Non-naming poses a risk that the public casts suspicion on another person that may cause undue hardship to that person.
92. We consider there is a strong public interest in support of naming. Specifically, for the fundamental principles: openness and transparency of the disciplinary proceedings, right of the public to know the failings in the circumstances of this matter, and accountability of the disciplinary process.
93. We are of the view it is important we keep the public informed and updated regarding the matter because Mr King-Turner's conduct has been heard before the District and High Courts judgements and named publicly in both.
94. We consider this decision will provide valuable learning for the profession, which restates the expected standard of engineers in their practice of signing and issuing producer statements.

SUMMARY OF ORDERS

95. In exercising our delegated powers, we order that:
 - a. Mr King-Turner is censured;
 - b. Mr King-Turner is fined \$1,000; and
 - c. Mr King-Turner is to pay \$7,837.50 towards the costs incurred by Engineering New Zealand and the Registration Authority in inquiring into his conduct (which is approximately 50% of their total costs).
96. In addition, the Registration Authority will:
 - a. notify the Registrar of Licensed Building Practitioners appointed under the Building Act 2004 of the order and the reasons for it; and
 - b. publish and name Mr King-Turner in our final decision and the Investigating Committee's decision of this complaint on its website, in a public press release and in any other communication it considers appropriate.



Andrew McMenemy CMEngNZ CPEng
Chair of Disciplinary Committee