



Subject 2016 Report of the Chair of the Professional Conduct Committee
Purpose For Note
From Julian Weinberg, Chair of the PCC

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1. Summary

To note the annual report of the Chair of the Professional Conduct Committee (PCC).

2. Open Session

3. Contribution to the Board's Purpose and Objectives

In delivering the Act, ARB's objectives are:

Consumers: will have confidence in ARB's process for investigating and adjudicating on a complaint about an architect's conduct or competence.

Architects: A robust and fair disciplinary procedure will maintain the reputation of the profession and the ARB as its regulator.

4. Key Points

- i. This is the seventh annual report of the PCC, and the third from me as Chair of the Committee.
- ii. As I am advised that this will once again be the first Board meeting for a number of new Board members, it may be helpful for me to recap the role of the PCC, and how it delivers its statutory duties.

The role of the PCC

- iii. The PCC is made up of nine active members¹: three architects, three lay members and three legally qualified persons nominated by the Law Society. Each panel considering a case is made up of one architect, one lay person, and one legally qualified person who acts as Chair. The Panel is assisted by a Clerk, who is an independent lawyer who provides advice on legal and procedural matters.
- iv. The PCC undertakes periodic training, keeps up to date on best practice, and

¹ While there are also Board members who nominally sit on the PCC, because of the perception of bias they are not permitted to take an active role in the Committee's work.

annually reviews its decisions and procedures.

- v. The Committee places great importance on its independence from ARB, and robustly tests all of the cases brought before it. It is not a rubber-stamping committee of the Board.
- vi. The PCC considers factual allegations made against an architect. If it decides that the facts of the allegation(s) are proved, then it goes on to consider whether those facts are serious enough to amount to either unacceptable professional conduct or serious professional incompetence. If such a finding is made, then after considering any mitigation, it may (exceptionally) take no action, impose a reprimand, a penalty order (of up to £2,500), a suspension (of up to two years), or order that the architect is permanently erased from the Register of Architects.
- vii. When reaching its decisions, great care is taken over the reasons given, which are provided in writing. This is not only an important element of fairness to the parties involved, and to keep the organisation as safe as possible from costly legal appeals, but it also provides an opportunity for the PCC to include salutary messages that might benefit the whole profession. The PCC therefore welcomes the widespread distribution of its decisions not for the purposes of name-and-shame, but to educate the profession as to avoidable pitfalls.
- viii. As always, I and my colleagues would welcome any Board members wishing to attend a hearing as an observer; I am sure the experience would be particularly useful for those who have not experienced a PCC hearing before.

Statistics

- ix. The PCC made 34 decisions in 2016 (listed in [Annex A](#) to this Report), with 27 findings of unacceptable professional conduct, one of serious professional incompetence, and one of both. The remaining decision related to the imposition of a sanction following a relevant criminal offence (assault).
- x. In three cases the PCC found the architect was not guilty of the allegation(s), which is a slightly lower proportion than in previous years.
- xi. During the course of the year, the whole range of sanctions available to the PCC was employed at some stage. In three cases no disciplinary sanction was required, and eight architects were issued with a reprimand. Eleven architects were issued with penalty orders (fines) ranging from £500 to £2500. Seven architects were suspended, and two architects erased, from the Register of Architects.
- xii. One decision of the PCC to erase an architect after he was convicted of a criminal offence (benefit fraud), which had elements of dishonesty, was upheld by the High Court on appeal.
- xiii. The increasing length of cases, as previously reported, has continued, and it has

been a real challenge to ensure that proceedings are completed within the time allotted. The PCC sat for 77 days, up by some 80% from 2015. This has led to a drop in cases being listed and heard within the Board's agreed Key Performance Indicator of 16 weeks, and the availability of such a limited pool of PCC members will come under increasing pressure if this increase continues unabated.

- xiv. While it is important that cases are disposed of efficiently, this cannot be to the detriment of a case being properly presented, the architect given every opportunity to provide a defence to all the points raised, and for a thorough and robust consideration of the evidence and issues. One area that did improve though was fewer cases were left part-heard, partly as a result of better planning as to the potential length of proceedings.
- xv. The number of adjournments is also down. This may in part be to do with a change in how architects are informed of the PCC arrangements, but also aided by recent High Court guidance to regulators that they can be more robust in proceeding in the absence of a respondent when the interests of justice demand it.

PCC Membership

- xvi. The membership of the PCC was renewed in September 2016, and apart from being reappointed myself, I was pleased to see that the appointment of four of my existing colleagues was renewed. There is now a good balance between those experienced in the workings of architectural regulation and those who are bringing a fresh pair of eyes to proceedings.
- xvii. The new members attended an induction and training day, and also had the opportunity to meet the rest of the Committee at the annual PCC Review day in November.
- xviii. The newly introduced appointments policy will mean that the experienced of us on the Committee will now be serving our final term, resulting in a satisfactory 'rolling programme' of recruitment which will avoid a wholly new and inexperienced PCC being in place.

Periodic Review

- xix. I am pleased to see the conclusion of the Department of Communities and Local Government's review into architect regulation. The proposal to introduce the possibility of issuing statutory reprimands without the need for a public hearing appears to be a sensible one, as is the possibility of changing the test for referral to the PCC to include some assessment of the strength of evidence.
- xx. It would be regrettable if the opportunity to increase the membership of the PCC is not taken. A continued increase in the workload of the Committee as the Register expands will eventually take its toll on the availability of PCC members to hear cases within a reasonable period of time. If the Board has any influence in persuading DCLG of the importance of this step, I would urge it to do so.

- xxi. It is not, of course, for the PCC to tell ARB how to manage its own caseload. I would however issue a word of caution in relation to the expectation within the Review that legal costs might be capped with the introduction of an in-house lawyer, and that only the most serious of cases should require legal advice.
- xxii. In my experience conduct cases, which are brought for the protection of the public and reputation of the profession, can turn on the competence by which they are prepared and presented. While costs and efficiency must always be a factor, with such important elements at stake it would be concerning if the high professional standards displayed in most of the cases brought before us were to be sacrificed purely on a matter of costs. The Board will no doubt be aware that a poorly prepared case will also increase the risk of costly and damaging judicial appeals.

PCC Development

- xxiii. The PCC held its annual review day in December 2016. At that day the Committee reviews the last 12 months' cases as a whole, and shares experiences of those things that went well and those that could have gone better. Although feedback is provided to the ARB Executive after each hearing, it also provides an opportunity for more general points to be raised in relation to issues and procedures.
- xxiv. One of the ideas suggested (and subsequently adopted) was a change to the format of PCC decisions. Now the decision opens with the result of the case, with reasons to follow, rather than vice-versa. This updated approach reflects accepted best practice, and is more user-friendly to the reader.

5. Resource Implications

None. The work of the PCC is factored into the annual budget.

6. Risk Implications

A failure to deal with allegations of unacceptable professional conduct, serious professional incompetence, or issues arising from criminal convictions risks harm both to users of architects' services and the reputation of the profession. Further risks are judicial reviews and statutory appeals against decisions and penalties imposed.

7. Communication

Details of PCC cases where a guilty finding has been reached are displayed on ARB's website, and reported via the e-bulletin.

8. Equality and Diversity Implications

All PCC members have periodic training, including on the importance and significance of Equality & Diversity issues, which can be of particular significance in the tribunal environment.

Annex A
List of PCC Decisions 2016

DATE²	SUMMARY OF ALLEGATIONS	PENALTY
15 January 2016	UPC: acted without integrity and/or in a manner inconsistent with his professional obligations in failing to advise his clients of the consequences of entering into a fixed payment schedule and failed to act with integrity and/or faithfully and conscientiously and with due regard to relevant technical and professional standards in the administration of a contract	£2500 penalty order
21 January 2016	UPC: failed to provide the client with adequate terms of engagement; claimed retrospective fees without prior approval from the client	Reprimand
27 January 2016	UPC: breached client confidentiality	Not guilty
1 February 2016	UPC: failed to keep client informed of the cost of the works as contained in the contract and misled the complainant as to the costs position; provided misleading advice	£2500 penalty order
26 February 2016	UPC: Failed to set out terms of engagement in writing; charged VAT to her client when she was not VAT registered; undertook work as an architect without having in place adequate and appropriate professional indemnity insurance; and declared to the ARB that she held professional indemnity insurance when she did not	£500 penalty order
2 March 2016	UPC: failed to enter a written agreement with his client prior to undertaking any professional work; failed to carry out work without undue delay	Reprimand
24 March 2016	UPC- failed adequately, or at all, to ensure that the business style of the practice in which he was the sole registered architect was not misleading; failed to ensure that the architectural work carried out by the practice under the control and management of a registered architect; failed to ensure that the Complainant was aware of the identity of the registered architect at the practice; and failed to ensure that the Complainant was aware that other persons carrying out architectural work on the project were not registered architects.	Reprimand

² The date of decision only. The hearing may have taken place over a number of days

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5 April 2016	UPC: the architect made statements which brought himself and the profession into disrepute, contrary to Standard 9.2 of the Code	No Order
7 April 2016	UPC: failed to maintain adequate and appropriate PII	2 year suspension
27 April 2016	UPC & SPI: Failed to carry out work faithfully, conscientiously and with skill and care; failed adequately or at all to provide the client with relevant information and advice, failed adequately or at all to deal with a complaint or dispute about professional work	6 month suspension
4 May 2016	UPC: Failed to issue adequate terms of engagement; failed to respond appropriately to a client complaint	No Disciplinary Order
11 May 2016	UPC: failed to provide terms of engagement; failed to disclose a conflict of interest	Reprimand
17 May 2016	UPC: failed to control the cost of the project	£2000 penalty order
25 May 2016	UPC: Failed to provide terms of engagement before undertaking professional work	£1000 penalty order
9 June 2016	UPC: Failed to hold adequate and appropriate insurance in respect of his practice; provided misleading information	2 year suspension
6 July 2016	Criminal Conviction - assault by beating contrary to section 39 of the Criminal Justice Act 1988	Reprimand
21 July 2016	UPC: Failed to provide adequate terms of engagement; failed to adhere to the terms agreed at the outset, failed to carry out work without delay; failed to communicate adequately with the complainant; withheld drawings until the Complainant had agreed to new terms and conditions, and issued inaccurate and/or unjustified invoices	£2000 penalty order
27 July 2016	UPC: failed to provide adequate terms of engagement; failed to adequately keep the complainant informed as to progress despite being instructed to carry out additional supervision of the project	£1250 penalty order
29 July 2016	UPC: lack of skill and care; failure to provide written terms re party wall surveyor; and failure to disclose a conflict of interest	Not guilty

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23 August 2016	UPC: failed to control the costs of the project; failed to ensure the building works were carried out to an acceptable standard and in accordance with the contract; failed to instruct the contractor to rectify the defects and damage; failed to issue sufficient notes of site visits; carried out inadequate defect inspections and issued a practical completion certificate despite significant outstanding defects	1 year suspension
23 August 2016	UPC: failed to control the costs of the project; failed to ensure the building works were carried out to an acceptable standard and in accordance with the contract; failed to instruct the contractor to rectify the defects and damage; failed to issue sufficient notes of site visits	1 year suspension
25 August 2016	UPC: failed to submit a compliant building regulations application for a material change of use; failed to comply with the terms and implementation of a planning permission to the basement ground floor flat; failed to ensure that the original works were correctly completed to the required standards for a residential conversion; failed to supervise the contractor on site	18 month suspension
30 August 2016	UPC: Overvalued the works, provided an explanation concerning the removal of a downstand beam which was unsatisfactory, inaccurate and misleading	Reprimand
17 October 2016	UPC: knowingly allowed unauthorised copies of files to be stored on his practice premises and to be accessed by staff, and failed to put processes in place to prevent them being used in a planning application	£2500 penalty order
17 October 2016	UPC: knowingly took copies of his former employer's files to which he wasn't entitled	3 month suspension
24 and 25 October 2016	SPI: failed to carry out an accurate survey; produced drawings which were inadequate and misleading; failed to comply with the clients' instructions	No sanction
27 October 2016	UPC: failed to act with integrity in that, contrary to his service agreement he undertook work for a client independently of his employer	Not guilty

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1 November 2016	UPC: Failed to complete a planning permission application in relation to a development in a prompt and timely manner; withdrew the application for planning permission without the consent of his client; failed to advise his client that he had withdrawn planning permission; failed to safeguard his client's monies by placing a refund that he had received from the Council into his personal current account	Erasure
3 November 2016	UPC: Failed to inform the client, adequately or at all, that additional fees were being incurred on an hourly rate and accumulating during the production of revised sketch proposals	£2000 penalty order
8 November 2016	UPC: failed upon reasonable demand to refund an overpayment to his client; failed to ensure that the website of the practice promoted his professional services in a truthful and responsible manner; acted without integrity by inappropriately suggesting that he would only return the money overpaid to him if his client agreed to withdraw the complaint to ARB; he failed to account, or has delayed in accounting, to his client in respect of monies she had overpaid to him; failed to co-operate fully and promptly with ARB's enquiries	Erasure
16 November 2016	UPC: Failed to adequately inspect the works, or ensure that the works were adequately inspected, prior to the final certificate being issued, in particular failed to ensure that the ongoing dispute regarding faulty pumps had been resolved; made a statement that was dishonest or misleading	£2500 penalty order
6 December 2016	UPC: Failed to enter into an appropriate written agreement with the client; failed to have a written procedure for complaints handling	£500 penalty order
23 December 2016	UPC: failed to ensure the architectural work carried out by the practice was under the control and management of a registered architect; failed to ensure that the complainant was aware of the identity of the registered architect dealing with the project	Reprimand

UPC = unacceptable professional conduct

SPI = serious professional incompetence