

ARB's response to the call for evidence on architects' regulation

Part One – the case for architects’ regulation

ARB believes that architects in the UK should be regulated.

An analysis of the case for the statutory regulation of architects should consider the advantages and disadvantages of regulation both from the perspective of the consumer interest and the wider public interest.

This analysis should be guided by the regulatory principles that:

- a) regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent; and
- b) regulatory activities should be targeted only at cases in which action is needed.¹

The consumer interest in statutory regulation

Architects are highly skilled professionals whose technical expertise is relied upon by clients to design, lead and manage construction projects.

Many consumers, particularly private individuals, are likely to be “one-off” or very occasional users of architects. Consequently, in many cases there is likely to be an asymmetry of information between architects and their clients: consumers will often not have the expertise to assess the technical competence and quality of service provided by their architect.

It is therefore of considerable benefit to the public to have available the choice of instructing a regulated architect with accredited qualifications who is subject to a code of conduct. Statutory regulation provides reassurance to consumers that the risks associated with their building project will be properly managed by a competent architect with appropriate professional indemnity insurance cover. These risks are potentially serious for the consumer, including:

- i) the building not complying with building regulations or other applicable requirements/quality standards;
- ii) delays to the build causing financial loss;

¹ Legislative and Regulatory Reform Act 2006, section 21(2) (ARB is not currently required to have regard to these principles, but endorses them).

- iii) design defects requiring costly rectification; and
- iv) inadequate professional indemnity insurance, limiting the ability of clients to obtain compensation when things go wrong.

Without statutory regulation, the main protection for consumers would be to rely on competitive pressures in the market and general consumer protection legislation to exclude architects providing a poor quality service from the market. ARB's view (as outlined in Part 2 of this response) is that regulation by a professional body would provide insufficient consumer protection. A lack of appropriate regulation would involve significant risks for consumers as outlined above, particularly where they are "one-off" users of architects and may not have the specialist expertise necessary to make judgments about the competence and quality of service provided by architects.

Maintaining a register is also an important element in providing consumer choice from a pool of accredited and appropriately qualified individuals.

The availability of a register of qualified persons, who meet the standards set by an independent regulator, provides assurance to the users of architects' services that the individuals they choose are competent to practise.

The wider public interest in statutory regulation

There is a clear public interest in buildings being safe and in the built environment being properly designed and constructed. Statutory regulation ensures that where new buildings are commissioned or existing buildings altered, there is a regulated and accredited group of professionals available with the appropriate technical expertise to ensure the safety of the built environment. In addition, prescribing robust mandatory minimum standards in qualifications ensures that technical standards are maintained.

Statutory regulation therefore helps to maintain public confidence in the qualifications, experience, competence and integrity of registered architects.

In the context of the EU harmonisation of professional qualifications, statutory regulation gives credibility to UK registered architects. It should be noted that most EU member states have statutory regulation of architects, and many have reservation of architectural activities.

An independent statutory regulator distinct from professional bodies is able to enforce mandatory minimum standards applicable to all UK architects, in a proportionate and cost-

effective way. The current level of the Annual Retention Fee of £105 (see further below) is such that regulation has little or no distorting impact on the market. This leaves individual architects free to decide whether to join a professional body and access the additional benefits of membership.

In the absence of statutory regulation it may be that membership of a professional body would become virtually compulsory, and the higher costs associated with such membership may have a more tangible distorting effect on the market. This may result in increased barriers to entry to the profession.

ARB is able to balance the interests of various stakeholder groups, including the professional bodies, consumers and higher education institutions that provide prescribed qualifications when making independent regulatory decisions in the public interest.

ARB has also developed significant technical expertise in relation to the prescription of architectural qualifications and in relation to the mutual recognition of qualifications within the EU. This expertise has been used to support government policy and ensure the UK's obligations under EU legislation are met.

Removing statutory regulation, and in particular the code of conduct, is likely to result in lower standards of conduct and therefore more disputes between architects and their clients, which may be pursued through the civil justice system. This would increase costs for consumers, architects and the court system.

Disadvantages of Regulation

The perceived disadvantages of statutory regulation are the costs and administrative burdens placed on architects.

The costs and administrative burdens of the current regulatory regime are relatively modest and proportionate to the risks which regulation seeks to address. For the reasons given above, it is difficult to see how the same functions could be carried out more efficiently or effectively by alternative means, although ARB is committed to evaluating its approach and continuously seeks to identify improvements.

If statutory regulation were to be removed, a number of ARB's functions would still need to be provided by an alternative organisation (such as the Competent Authority function for the purposes of EU legislation). In this scenario, it is likely that standard setting functions would then also have to be performed by professional bodies, which would have a different balance of objectives to a regulator, resulting in increased costs to the profession. Any additional financial burden on the profession could lead to barriers to economic growth.

Regulation of Title

The existing regulatory framework is based on the regulation of the title.

Regulation of the title architect is paramount to consumer choice, allowing potential users of architects to differentiate between architects and non-architects. Without regulation of title any individual or practice would be free to use the title architect, regardless of qualifications or experience.

The importance of the Register to the public (and the profession) is demonstrated by the fact that the online Register is searched nearly 29,000 times every month².

Regulation of Function

ARB is aware of the position in the rest of Europe regarding the regulation of function, but is mindful that this is currently an area of debate. Within this context, the Government may wish to consider whether it would be of public benefit to restrict certain activities within the construction industry to architects and other regulated professionals.

² Average monthly searches at www.architects-register.org.uk March 2013-March 2014

Part Two – Different forms of Regulation and Delivery Models

Independent Regulation

Separating the role of regulation from representation allows both elements to be delivered without there being (or giving the perception of there being) a conflict of interest. It allows the professional body and independent regulator to provide a distinct but complementary service to the profession and the public respectively. This is the model more recently provided by Parliament for most of the major professions in the UK, e.g. pharmacists and solicitors.

As outlined above, the interests of the various stakeholders are not always aligned. Independent regulation enables ARB to balance competing views and reach independent regulatory policy decisions in the public interest.

The risk of duplication of functions should be avoided by having an appropriately balanced relationship between the regulator and professional bodies, with clear boundaries defined as to their respective remits.

The function of the independent regulator is to enforce mandatory minimum standards, leaving individual architects free to choose whether to access the additional benefits of membership of a professional body, at an additional cost.

Scope for improvements in the current system

Having reviewed the current regulatory framework, ARB considers that some changes to the current legislation could be introduced to support the more efficient and effective delivery of the Act in the future, in terms of:-

- i) the entry to and administration of the Register;
- ii) transparency of information to the public;
- iii) ensuring that governance arrangements of ARB remain fit for purpose; and
- iv) providing proportionate tools to deal with conduct matters.

ARB also believes that further reform should be considered in terms of:-

- i) the way in which the legislation provides protection to the public from those who misuse the title architect; and
- ii) allowing for a more flexible approach to dealing with disputes between architects and their clients.

ARB would welcome the opportunity to discuss such proposals with Government in more detail as part of the review process.

The functions that should be undertaken by a statutory regulator

ARB considers that it is appropriate for the following functions³ to be undertaken by a statutory regulator:-

- Keeping a UK register of architects and determining who should be on that register
- Prescribing or recognising the qualifications needed to become an architect
- Making sure that only people on the register offer their services as an architect
- Ensuring that architects meet an agreed code of conduct and standard of practice to safeguard consumer protection
- Investigating allegations about architect work-standards, conduct or competence through an agreed complaints procedure and disciplinary mechanism
- Acting as UK's competent authority for architects to facilitate movement of architects within Europe

These functions are the minimum expected of a statutory regulator. The Law Commission recently recommended that the key statutory functions of a regulator are to establish and

³ Wording as described in the DCLG's call for evidence

maintain a register of professionals; to determine professional and educational standards; and to undertake investigations as to registrants' fitness to practise.⁴

⁴ Regulation of Health and Social Care Professionals, Law Commission Report No 345

Part Three: The current model of regulation

Performance

ARB's own assessment is that it is effective in delivering the existing regulatory arrangements. However, it is not complacent and evaluates its performance on an ongoing basis to identify potential improvements and efficiencies, some of which are highlighted below.

Under the current model of regulation, the ARB is designated as the statutory body established to register and regulate the profession of architects. It is independent of both Government and the profession and is charged with delivering the responsibilities set out in the Architects Act 1997.

In recent years, the Act has been extended which has meant that ARB has been required to formally take on the role of Competent Authority. This has particular responsibilities under the terms of the Mutual Recognition of Professional Qualifications Directive [36/2005/EC].

ARB's has identified two objectives which underpin and support ARB's delivery of the Act:

- i) protecting users and potential users of architects' services; and
- ii) supporting architects through regulation.

In addition and in recent years, ARB has embraced Government expectations, including the digital by default policy, the transparency agenda, recruitment guidelines, spending controls and requirements set out in the Treasury's Financial Reporting Manual. It has also continued to comply with the relevant requirements under the Freedom of Information Act 2000 and has implemented responsibilities under the Equality Act 2010.

ARB is a risk-based regulator. Our approach is founded on the better regulation principles that regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent; and that regulatory activities should be targeted only at cases in which action is needed. ARB is also guided by the principles of the Regulators' Code, issued by the Better Regulatory Delivery Office.

ARB considers that it performs well when measured against appropriate benchmarks: its performance in relation to its objectives is evaluated below.

How has ARB delivered on its objectives?

1. By setting standards for entry to the Register

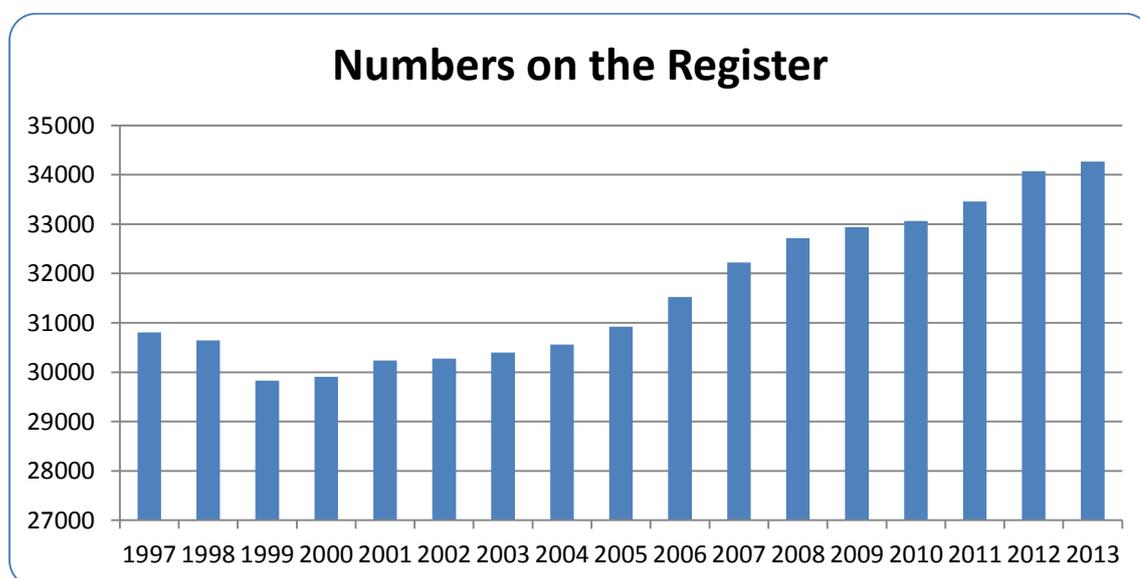
- ARB sets the standards for those qualifications that allow entry to the Register, by ensuring that university qualifications and practical training experience are appropriately robust to provide the necessary skills to be a competent architect in the UK and the EU.
- Such competencies include, as part of rigorous minimum standards, skills relating to the public good - including sustainability, accessibility and health and safety.
- In 2009/2010, ARB led a review of the Criteria for the Prescription of Qualifications. This led to the criteria becoming the core of the Quality Assurance Agency's Subject Benchmark Statement for Architecture, as well as continuing to be co-ordinated with the RIBA as its validation criteria.
- ARB adopts a risk based approach to its work on the prescription of qualifications, committing to constant efficiencies in order to minimise the regulatory burden on the universities and the profession. By doing so, this innovative process has continued to ensure that the appropriate standards are being met whilst at the same time reducing the cost of managing the process. This has enabled ARB to keep the retention fee low and to divert resources to its other areas of responsibility within the organisation.
- ARB currently prescribes 132 qualifications from 50 schools of architecture, and undertakes around 50 annual visits to universities, to provide advice and support to students about the responsibilities of being a registered professional upon completion of their training. The number of institutions that ARB deals with is increasing steadily on an annual basis.
- ARB's process for prescribing qualifications has been recognised as an example of good practice by the Higher Education Better Regulation Review Group.

2. By maintaining an accurate, accessible Register

- Any register of architects is only as useful to the public as its accessibility and accuracy. ARB prides itself on the reliability of the information within the Register in order to build public confidence. Architects are encouraged to make their own changes to the Register for approval, so as to reduce the level of administration involved. Updates to the Register are carried out on a daily basis and are made

available on-line every 30 minutes. This guarantees that the information being seen by users is accurate and up-to-date.

- ARB provides an on-line Register which is accessible 24 hours a day. The public can search for an architect by name, address and general location. In 2012, the 'Search the Register' function was enhanced to include more accurate area searches and to provide access through to architects' own websites. This enables the public to obtain more information about an individual on the Register where that individual chooses to make it available.
- The importance of this Register to the public is demonstrated by almost 29,000 searches of it every month⁵ - a figure which continues to rise.
- The size of the Register has increased steadily since 1997 despite adverse external influences such as the changing economic climate. This demonstrates that there is a growing interest in registering as an architect and that the title architect is important to providers of architectural services from a business perspective, otherwise numbers would fall. The importance attached to the regulated title architect by providers indicates that it is also an important consideration for consumers in selecting a provider. This underlines the public interest in the enforcement of robust minimum standards for architects.



- EU qualified architects now account for around 10% of the Register (compared with 2% in 2002). This illustrates the increasing trend of cross-border provision, supporting EU trade and economic growth.

⁵ Average monthly searches at www.architects-register.org.uk March 2013-March 2014

- ARB is also obliged as a Competent Authority to issue the necessary certificates to enable architects to practise elsewhere in the EU, again supporting EU trade and economic growth. 83 such certificates were issued in 2013. These certificates are low cost and the process is self-funding.

3. **By promoting robust minimum professional standards**

- ARB has a statutory duty to produce the Architects Code of Conduct and Practice which sets out the standards that are expected of architects as professionals. The Code is updated periodically following review and consultation.
- The ARB website provides extensive technical resources for architects and students. ARB publishes guidance to both consumers and architects on a regular basis, and works in conjunction with the professional bodies to deliver seminars on best practice.
- In excess of 800⁶ queries are handled annually from both architects and users of architects' services regarding matters of professional practice, such as complying with the provisions of the Code of Conduct, how to avoid disputes and the appropriate type of insurance required.
- In addition to this provision of advice ARB has considered 421 formal complaints, leading to 195 full investigations into allegations of unacceptable professional conduct and serious professional incompetence, and held 66 Professional Conduct Committee (PCC) hearings in public. In 2012-2013 the average time it took for a case to conclude at the PCC was 72 weeks, comparable with the average of the health regulators of 80 weeks⁷.
- ARB has in place a robust system for dealing with complaints about architects. Like all other regulators, ARB has seen a large increase of work in this area, with its number of disciplinary hearings rising by 69% in the last three years⁸. Issues considered by the PCC in the last three years include serious matters such as dishonesty, convictions for fraud and breaches of Health & Safety legislation, and inappropriate use of client money.
- ARB evaluates its processes continually to identify opportunities for improvement and efficiencies. A number of initiatives, such as the introduction of PCC Consent

⁶ Average figure 2011-2013

⁷ Report of the Professional Standards Authority 2012-2013 (median average)

⁸ 2010 – 16 Professional Conduct Committee hearings; 2013 – 27 PCC hearings

Orders, are under consideration to ensure ARB's statutory responsibilities are delivered as efficiently and fairly as possible. In addition, ARB has identified areas where legislative change may offer opportunities for some streamlining of the disciplinary process.

- In 2008 ARB introduced an innovative Independent Third-Party Review mechanism, to provide the opportunity for parties to have ARB decisions reconsidered by an independent party without having to incur the cost of seeking a judicial review at the High Court.
- ARB has not been subject to any successful High Court appeals or Judicial Reviews of decisions it has made. This demonstrates the robust and fair systems ARB has put in place to undertake investigations in a way that is compliant with human rights legislation and regulatory best practice.
- ARB has strived to adopt a risk-based, right-touch⁹ approach to regulation, sufficiently flexible to react to the trends and demands within the profession and public expectations. For example:
 - i) When evidence emerged that there was no significant problem with the professional indemnity insurance cover held by architects, ARB changed its monitoring regime so as to reduce the administrative impact on the profession;
 - ii) When there was evidence that its traditional methods for investigating complaints were no longer sufficient to cope with the increase in workload or expectations of parties, the Board acted swiftly to overhaul the system and appoint those with greater expertise and capacity;
 - iii) Before it was accepted best practice, ARB moved to a wholly appointed and independent Professional Conduct Committee to maintain separation between those that create policy and those that adjudicate on it.

4. By protecting the public from those who misuse the title 'architect'

- Over the last three years ARB has undertaken 940 investigations into misuse of the title architect as a breach of section 20 Architects Act 1997. All have been successfully concluded, either by way of agreement or prosecution. 12 cases have been successfully prosecuted in the Magistrates' Courts, with no unsuccessful

⁹ Better Regulation Executive, 2000. Five principles of good regulation being transparency, accountability, targeting, consistency and proportionality

prosecutions. Often as a result of the investigation and correspondence, the relevant individuals/businesses cease to misuse the title, avoiding the need for prosecution.

- Widespread use of the internet creates significant challenges in enforcement. ARB takes a proportionate approach to investigations and prosecution, balancing legal costs (which must ultimately be borne by the profession) against the importance of retaining a public deterrent to those considering misusing the title 'architect'.
- ARB accepts that any attempt to eradicate misuse of the title architect is unlikely to be effective where the focus is purely on investigations and where appropriate punishing offenders through the courts. ARB therefore takes a proactive approach to encouraging those looking for the services of an architect to check the online Register of Architects, rather than leaving themselves vulnerable to those who misrepresent themselves as architects, particularly on the internet. This has been done by a number of steps, including:
 - Encouraging architects to link their own websites to the online Register, an innovative solution to raising its profile on search engines;
 - Using social-network tools to promote the existence of the Register;
 - Attending relevant consumer events to highlight the significance of the Register of Architects; and
 - Building relationships with other organisations who have assisted in raising awareness of the Register through sign-posting and no-cost advertising.
- ARB is committed to providing consumers with the opportunity of making an informed choice when considering using an architect. The frequency of the use of the online Register suggests that this choice is being widely used.
- This is an area in which the wording of the current legislation appears to be insufficiently robust to achieve its intention, as the Architects Act regulates only the specific term 'architect(s)'. ARB has evidence that the public is unable to differentiate between architects and those that offer architectural services, which undermines the very purpose of regulation of title. A widening of the terminology in the statute, together with a more punitive penalty scale, would increase the ability of ARB to be able to regulate the title effectively in the public interest, and so enhance public choice.

5. **By supporting and delivering EU legislation**

- Through its role as the UK's competent authority for architects and working with appropriate EU partners, ARB plays a part in enabling appropriately qualified architects to offer their services both in the UK and across the EU, which in turn contributes to the improvement of trade within the EU and supports economic growth. ARB has provided technical advice and feedback in relation to the development trade agreements where the registration of architects may be impacted upon.
- As part of its role as the UK's competent authority for architects, ARB successfully manages the process by which UK qualifications are notified to the European Commission, and ensures that notified qualifications from other EU Member States meet the relevant minimum requirements set out under the Qualifications Directive. ARB has made important contributions to the development of the notification process over recent years, and the European Commission, as well as other Member States look to ARB for advice in this area.
- ARB consistently delivers in terms of the administrative cooperation needed to ensure the Qualifications Directive operates smoothly. ARB also works closely with and exchanges best practice with European stakeholders such as the European Network of Competent Authorities for Architects (ENACA) and the Architects Council of Europe (ACE). ARB has worked with many competent authorities, sharing information and best practice in order to facilitate the movement of appropriately qualified professionals across European borders.
- The UK is required to undertake the above so that it continues to comply with EU legislation. ARB undertakes these responsibilities effectively and efficiently, using the technical expertise available within the organisation.

6. **By being transparent and embracing best practice**

ARB is committed to increasing transparency. It has worked extensively over recent years to achieve the following:

- conducting the majority of the Board's business in public; publishing the Board's agenda, papers and minutes on ARB's website;
- publishing of an electronic Annual Report containing an overview of ARB's activities and its annual financial statements;

- making efficient and appropriate use of social media tools to support its role and increase awareness of the Register;
- making available an accessible, up-to-date, user-friendly website¹⁰;
- producing bi-annual reports on key activities, trends and performance indicators made publicly available to ensure its activities are transparent, accountable and target-driven;
- publishing Board members' and Registrar's expenses, along with Board member biographies and a Register of Interests; and
- meeting Government expectations, including the publication of all ARB payments in excess of £500, recruitment guidelines and spending controls.

ARB is also committed to being a forward looking organisation which looks to maintain and improve confidence in its services, by:

- issuing cost-effective and regular email updates to the profession;
- having regular meetings with key stakeholders to gather feedback and keep up to date with external developments;
- having an Internal Audit function delivered by an external provider;
- having a clear consultation policy in line with the Government's consultation principles;
- aspiring to always be digital by default and encouraging a 'self-serve' approach; and
- routinely gathering feedback to inform our cycle of continuous improvement.

¹⁰ Nearly 20,000 visitors each month to www.arb.org.uk (2014 figures)

Additional information the Review Panel may wish to refer to when considering ARB's performance can be found in the following documents:

[ARB Purpose and Objectives](#)

[ARB Priorities](#)

[2014 Business Plan](#)

[Report against the 2013 Business Plan](#)

[2012 Annual Report](#)

[Accountability information](#)

[Risk Management Strategy](#)

Delivering value for money

ARB is committed to delivering value for money, and is constantly looking for ways in which to keep its registration fee as low as possible through efficiencies and a flexible approach to service delivery, while at the same time maintaining the quality of the service that it offers.

Despite significant external pressures, more legislative responsibilities, an increase in complaints against architects, VAT and rates changes, since 2009 the actual operational costs have only increased by 2.3%. There has been no increase in the overall staff headcount at ARB since it took over from ARCUK in 1997.

A comparison with other statutory and professional regulators demonstrates the annual fee for architects of £105 is less than most other professionals will pay.

Organisation	Annual Fee ¹¹
GCC (chiropractors)	£800
GDC (dentists)	£576
GMC (doctors)	£390
SRA (solicitors)	£384
GOsC (osteopaths)	£320
RCVS (vets)	£299
GOC (opticians)	£290
GPS (pharmacists)	£240
FRC (farriers)	£160
ARB (architects)	£105
NMC (nurses)	£100
HCPC (health professionals)	£80

This has been achieved through a continued drive for efficiencies (such as investment in technology to enhance usability, self-service and deliver longer-term savings). In doing so ARB has provided flexibility in the way that it delivers its services, allowing access to them from around the world at any time of the day.

Minimising the financial implications for the profession is a key factor in ARB's regulatory decision making, as demonstrated in 2011 and 2012 when it reduced and then froze the

¹¹ Annual retention amounts due for individual registrants in full time practice. Some organisations set varying fees dependant on registrants' circumstances.

annual retention fee. ARB recognised the difficult financial circumstances being faced by architects at that time, while remaining alert to the requirements to properly deliver its statutory responsibilities.

Summary

The evidence set out above demonstrates that:

Regulation of architects is important, and brings benefit to both the public and the profession

Regulation of the title architect is a proportionate and effective way of providing public choice

Established best practice is that statutory regulation should be delivered by a body independent of the profession, with a separate and defined role to that of professional bodies

There are opportunities for material improvements to the existing regulatory framework through modifications to the existing legislation

ARB is an effective, efficient organisation that provides quality of service and value for money