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| Subject | 2015 Report of the Chair of the Professional Conduct Committee |                 |                 |
| Status  | Open Session                                                   |                 |                 |
| Purpose | For Note                                                       |                 |                 |
| From    | Julian Weinberg                                                |                 |                 |
| History | Parent Committee                                               | First Submitted | Revision Number |
|         | PCC                                                            | 13 May 2016     | 1               |

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### 1. Purpose

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

### For Note

### 2. Terms of Reference

The PCC is a standing Committee of the Architects Registration Board (ARB), pursuant to Schedule 1, Part II of the Architects Act 1997.

### 3. Open

### 4. Contribution to the Board's Purpose and Objectives

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.

### 5. Key Points

- i. This is the sixth annual report of the PCC, and the second from me as Chair of the Committee. Like most of my colleagues, my current period of appointment will expire in September 2016, and subject to new appointments there will be a fresh Committee for the next three years.
- ii. As I am advised that this will be the first Board meeting for a number of new Board members, it may be helpful for me to set out 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 members<sup>1</sup>: 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 act 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 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. I and my colleagues would welcome any Board members wishing to attend a hearing as an observer, which I am sure would be particularly useful for those who have not experienced PCC a hearing before.

### Statistics

- ix. The PCC made 25 decisions in 2015 (listed below this Report), with 15 findings of unacceptable professional conduct and one of serious professional incompetence. The remaining decisions related to the imposition of a sanction following a relevant criminal offence, and the erasure of two architects who had failed to pay a penalty order previously imposed by the PCC.
- x. In four cases the PCC found the architect was either not guilty, or had no-case-to-answer. This is largely comparable with previous years, and should cause the Board

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<sup>1</sup> 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.

no alarm. When a finding of no-case-to-answer is reached then it is only proper that full consideration is given by ARB as to whether the proceedings should have been brought in the first place, although factors such as new evidence and witness reliability always bring a degree of uncertainty. In my experience, there have not been cases referred to the PCC that clearly ought not to have been.

- xi. During the course of the year, the whole range of sanctions available to the PCC was employed at some stage. Four architects were erased from the Register, and two were suspended for periods six months and one year respectively. Eight architects were issued with penalty orders – ranging from £500 to £4000 (the latter as a result of findings of both unacceptable professional conduct and serious professional incompetence) – and seven were issued with a reprimand. There were no instances where a finding of unacceptable professional conduct or serious professional incompetence was made but where no sanction was imposed. One decision of the PCC was appealed to the High Court, and we currently await the outcome of those proceedings.
- xii. 2015 saw the Consent Order process being further established, with two cases being disposed of without the need for a hearing. In both of those cases, once guilt had been admitted, then the appropriate sanction was obvious to all parties. In cases such as these then the option to dispose of the case by agreement is for the benefit of all concerned.
- 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. 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. In 2015 five cases went ‘part heard’, which is a statistic open to improvement. In 2016 we have begun to start cases half an hour earlier, in attempt to make the most of the time available and mitigate the risk of proceedings over-running.

#### Looking forward

- xiv. It is somewhat frustrating to have to reflect on the fact that 12 months on from my last report to the Board, the proposed changes to the PCC rules and procedures that would improve efficiencies still await the conclusion of the Periodic Review. While none of these changes are crucial to the work of the Committee, there are minor and substantial modifications that could be made to facilitate the smooth running of proceedings. There are also statutory amendments, such as an increase in the membership of the Committee, which would mitigate the ever present risks of unavailability or conflicts of interest that could lead to significant delays.
- xv. I and my colleagues are observing with interest the current review of the Architects Code of Conduct and Practice. One of the more interesting areas, and one which has exercised this Committee on numerous occasions, is the extent to which events in an architect’s personal life can impact on his or her professional standing.

- xvi. The courts have for some time held that a professional person can be held to account for actions in their private life where those actions are likely to have an adverse impact on public confidence in the profession. While each case will inevitably turn on its own facts and individual circumstances, I think it is an important proposed addition to the Code to explain to architects that their behaviour outside the workplace may have consequences for their professional standing.
  
- xvii. This is particularly pertinent in those situations where an architect has been convicted of a criminal offence. If that offence has material relevance to an architect's fitness to practice, then the PCC is legally obliged to consider whether a disciplinary sanction should be imposed. At the forefront of the Committee members' minds will not be to punish the architect for a second time, but whether a further sanction is required to protect the public or uphold the reputation of the profession.
  
- xviii. Finally the term of appointment for eight of the nine PCC members comes to an end in September 2016. While some may be reapplying through the open recruitment process, three of my colleagues – Donal Hutchinson, Linda Read and Barbara Saunders, will not. All three have provided outstanding performance over the last decade or so, and I know that I, my fellow PCC members and particularly the Professional Standards team at ARB, will sorely miss their experience.

## List of PCC Hearings 2015

| DATE                                                | SUMMARY OF ALLEGATIONS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | PENALTY                  |
|-----------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|
| 9 January 2015                                      | UPC: failed to undertake work without undue delay                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Not guilty               |
| 29 January 2015                                     | UPC: failed to identify that the height of the existing loft was insufficient to provide appropriate clearance at the top of the proposed staircase; failed to discuss with the complainant the requirements for clearance at the top of the staircase; failed to inform the complainant that the available head room in the loft would be less than 2000mm; failed to determine whether the complainant was content to proceed with a loft where the headroom would be insufficient                       | No case to answer        |
| 29 January 2015                                     | Non-payment of PCC penalty order                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Erasure                  |
| 6 March 2015                                        | UPC: failed to perform appropriate and accurate duties for the obtaining of planning permission for a property renovation; failed to respond promptly and/or appropriately to a complaint and/or dispute about his professional work                                                                                                                                                                                                                                                                       | £2000 penalty order      |
| 30 March 2015                                       | Criminal conviction                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Erasure by Consent Order |
| 18 May 2015                                         | UPC: failed to hold adequate and appropriate insurance                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Reprimand                |
| 21 May 2015                                         | UPC: received a police caution in respect of a common assault                                                                                                                                                                                                                                                                                                                                                                                                                                              | £500 penalty order       |
| 1 June 2015                                         | UPC: failed to provide adequate terms of engagement                                                                                                                                                                                                                                                                                                                                                                                                                                                        | £2200 penalty order      |
| 2 June 2015                                         | Criminal conviction                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Reprimand                |
| 5 June 2015                                         | UPC: failed to carry out work faithfully and conscientiously, failed to provide an effective and efficient service to his client, failed to deal with his client's complaint                                                                                                                                                                                                                                                                                                                               | Reprimand                |
| 20 – 24 April, 29 April (chambers) and 16 June 2015 | UPC: specified a heating system that was unsuitable and inadequate for the property; failed to adequately specify and design the heating system; failed to adequately specify the slate flooring; failed to ensure the protection of flooring during ongoing works; certified defective work in respect of the flooring; failed adequately to explain and discuss or obtain permission for all variations to the contract; failed to ensure cost savings were applied to the contract in a reasonable time | £1500 penalty order      |

Continuation of agenda item 13

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|--------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| 9, 10 & 17<br>June 2015*             | UPC: Facilitated, permitted or acquiesced in the issue of a final Architects certificate without fully inspecting and/or approving the works and/or when he knew there were outstanding matters; made representations which were inaccurate misleading and untrue, failed to respond adequately or at all to a complaint about his professional work                                                                                                                                                                                                                                                                                                                                                                                  | £1500 penalty order |
| 9, 10 & 17<br>June 2015*             | UPC: signed and issued a Final Architects Certificate without fully inspecting and/or approving the works, failed to respond adequately or at all to a complaint about his professional work                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Reprimand           |
| 15 & 16 April<br>and<br>19 June 2015 | UPC: failed to adequately or at all set out terms of engagement in writing; failed to recognise and/or declare a conflict of interest when he advised he complainants that he could provide all of the building services alongside his architectural services; failed to provide monthly updates on costs as agreed; failed to provide full reconciliation and projection in relation to costs in or around December 2012, failed to provide any such budget review/costs comparison; failed to monitor costs and/or report on overspending and as a result, allowed costs to excessively exceed the estimate; failed to respond to the complainant's complaint in a timely manner; failed to cooperate with the ARB's investigations | £2500 penalty order |
| 23 & 24 June<br>and 10 July 2015     | UPC: made representations which he knew, or ought to have known, to be inaccurate, misleading and unfair to others, and in so doing he failed to act with integrity and avoid any actions or situations inconsistent with his professional obligations; He failed to take any, or adequate, steps to ensure that the representations made in a letter were accurate in all, or any, respects; disclosed confidential information without the prior consent of his client's personal representatives, and in so doing failed to maintain client confidentiality                                                                                                                                                                        | £1250 penalty order |
| 30 April and<br>20 July 2015         | Criminal conviction                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Erasure             |
| 11 – 13<br>August 2015               | UPC: failed to adequately set out written terms of engagement, failed to properly communicate with clients, failed to promptly inform the complainants that the building contractor had withdrawn from the project, failed to provide estimates for the cost of the build in line with the complainants budget, failed to adequately progress the building warrant, failed to provide the complainants with planning permission documents promptly, failed to deal with invoices without undue delay, redacted the date of a delayed                                                                                                                                                                                                  | 1 year suspension   |

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|-------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|
|                                           | invoice , failed to develop an action plan and estimated timetable for the work although it had been requested, failed to ensure that the already delayed building work started in 2012, failed to deal with a complaint appropriately                                                                                                     |                              |
| 14 August 2015                            | UPC and SPI: failed to keep clients informed of any issue which may significantly affect the quality and/or cost of the proposed project, and/or specifically failed to notify the clients that the figures quoted were not an estimate for the full build costs of the project and would only cover the cost of the square metre increase | £4000 penalty order          |
| 7 September 2015                          | UPC: submitted a building warrant application which contravened planning permission                                                                                                                                                                                                                                                        | No case to answer            |
| 7 – 8 October 2015                        | UPC: Failed to prepare and provide a copy of the contract in a timely manner, provided incorrect advice, failed to make clear the contracting parties                                                                                                                                                                                      | Not guilty                   |
| 26 October 2015                           | UPC: Failed to issue adequate terms of engagement; failed to adequately deal with a complaint                                                                                                                                                                                                                                              | Reprimand (by Consent Order) |
| 9 November 2015                           | Non-payment of penalty order                                                                                                                                                                                                                                                                                                               | Erasure                      |
| 16 November 2015                          | UPC: failure to provide terms of engagement; failure to keep updated of costs                                                                                                                                                                                                                                                              | Reprimand                    |
| 2 December 2015                           | UPC: failed to prepare accurate drawings; failed to visit site prior to submitting a planning application; failed to deal with a dispute appropriately and sought to blame the complainant for his own failings & SPI: failed to prepare accurate drawings                                                                                 | Reprimand                    |
| 25 & 25 September and 7 & 8 December 2015 | UPC: failed to ensure that works were completed in accordance with the contract drawings, and agreed deviations from the contract without the client's prior approval; failed to ensure the building works were carried out to a satisfactory standard                                                                                     | 6 month suspension           |

UPC = unacceptable professional conduct

SPI = serious professional incompetence

## 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. Resource Implications**

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

**8. Communication**

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

**9 Equality and Diversity Implications**

None arising from this report.