



Subject	2014 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	14 May 2015	1

If you have any enquiries on this paper, please contact Simon Howard on 020 7580 5861

---

### 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. Risk Implications

Failure to deal with allegations of unacceptable professional conduct (UPC), serious professional incompetence (SPI) or issues arising from 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.

### 6. Key Points

- i. This is the fifth annual report of the PCC, and the first from me as Chair of the Committee. I hope that I will be able to follow the good work of my predecessor Alexandra Marks in providing the Board with useful information as to the business of the PCC during 2014.
- ii. The PCC made 31 decisions in 2014 (listed below this Report), with twenty one findings of unacceptable professional conduct of which two findings were joint findings with serious professional incompetence. There were no findings of serious

professional incompetence alone. Three architects were sanctioned by the PCC after being convicted of a criminal offence that was relevant to his practice as an architect, one architect was suspended after failing to pay a previously issued penalty order and seven architects were found not guilty of all the charges against them.

- iii. During the course of the year, the whole range of sanctions available to the PCC was employed at some stage. Five architects were erased from the Register, and five were suspended for periods of between six months and two years (the maximum permitted under the legislation). Six architects were issued with penalty orders – ranging from £1000 to £5000 (the latter comprising the maximum of £2500 for unacceptable professional conduct and £2500 for serious professional incompetence) – and eight were issued with a reprimand. There were no instances of a finding of unacceptable professional conduct being made where no sanction was imposed. One case was judicially reviewed by the High Court which upheld the PCC's decision.
- iv. The PCC sat for 48 days of hearings in 2014 compared to 47 days in 2013 (and to 31 days in 2012). This steady increase reflects not only the increasing complexity of cases coming before the PCC, but also the willingness of architects to robustly defend themselves against the allegations they face. After years of dealing with unrepresented respondents, there appears to have been a modest rise in the number of architects securing legal assistance at some stage in the proceedings. This is a welcome development, should it continue.
- v. There has been a notable increase in the number of not-guilty findings in recent years by the PCC, but this is not a development which should cause any undue concern. The current 'success' rate of ARB prosecutions is comparable with other regulators and the courts, and demonstrates that the PCC is more than a rubber-stamping committee of the Board, that robustly examines cases brought before it.
- vi. There can be numerous reasons why a case is unproved at a hearing, including the availability of previously unconsidered evidence, the development of a cogent defence by the architect, and a testing of conflicts of evidence and witnesses that were unavailable to the Investigations Panels. Of those seven not guilty findings in 2014, three were as a result of the facts being unproven, and four were because the PCC did not consider that the failings proven were, in the circumstances, sufficiently serious so as to warrant a disciplinary finding.
- vii. Neither I nor my colleagues have seen any evidence that inappropriate cases are being referred to the PCC, and while of course it is regrettable that those architects against whom no finding of UPC or SPI is made have had to go through such a stressful process, the profession should take comfort in the fact that any allegations they may face will be considered robustly and fairly.

- viii. As Chair of the Committee, I am alive to the rise in the number of cases and sitting days for the PCC, and the financial impact this has on the Board and the profession. We constantly seek to improve not only our own performance, but to streamline the processes by which cases are investigated for the sake of efficiency. At the PCC's Annual Review Day proposals were agreed to change the way in which ARB solicitors produce their reports and bundles, and to avoid disclosure of potentially prejudicial material, e.g. the Investigations Panel's decisions and reasoning in an attempt to focus the PCC's attention on the relevant and important matters in a case, and curtail the length of hearings.
- ix. There may be further changes to be made to the PCC's rules and procedures that would improve the effectiveness of the proceedings. Consideration may be given to the possibility of the ARB's Solicitor being entitled under the rules to make closing submissions which the PCC considers would assist it in its decision making. I understand that ARB staff will be commencing a review of how ARB fulfils its statutory obligations to investigate complaints following the outcome of the Periodic Review, and no doubt the PCC will be involved in making such suggestions at the appropriate time.
- x. Adjournments and cases going part-heard are a long standing problem that is not exclusive to ARB. Delays are unwelcome in terms of cost and impact on the parties, and hamper ARB's ability to act promptly in the public interest. In 2014 three cases went part-heard, meaning that an extra day was required at a later date to conclude proceedings; two cases were adjourned from their original hearing date at the request of the respondent. Decisions to adjourn are made by the Clerk, not by the PCC. While such delays are often unavoidable, taking proactive steps to encourage engagement from a respondent is usually the best way of minimising the risk of adjournments, or having the case part heard because of a change to the architect's defence.
- xi. 2014 saw the Board agree to the introduction of PCC Consent Orders, which will hopefully prove to be a useful tool in being able to dispose of appropriate cases efficiently. While the PCC supported the introduction of the scheme, such a power must be used carefully and with caution, so as not to undermine the statutory purpose of ARB. Expedience and cost should never take precedence over the public interest in dealing with cases transparently, and care must be taken to avoid any perception of deals being done behind closed doors.
- xii. Those who have read PCC decisions recently will notice that they are increasingly becoming longer and more detailed. Rather than this being a consequence of the Chairs' verbosity, more comprehensive decisions are being required to meet the expectation of the parties that there had been a comprehensive analysis of the evidence, and to protect ARB's position should there be a statutory appeal against the sanction imposed.
- xiii. The PCC regards any such appeals in a positive light and welcomes judicial scrutiny of its findings. In October 2013 the High Court considered a decision of the PCC to

issue an architect with a reprimand<sup>1</sup>. It was pleasing not only for the PCC decision to be upheld in full, but to hear that in the Judge's view that its conclusions had been clear and sensible. This serves not only as a commendation of the approach currently taken, but as an important reminder that providing sufficiently detailed reasoning is a crucial element in any decision.

- xiv. I have been particularly pleased to see members of the Board attending PCC hearings to see how they are conducted. While those attending may have differing views on the merits of the cases they have witnessed, hopefully all have appreciated the seriousness with which both PCC members and ARB staff treat such occasions, and that both the architect and any witnesses should be assured that they will have received a fair hearing. For those that have not yet had the opportunity to attend, I would urge you to do so; please be assured that any feedback Board members have on the proceedings generally will always be gratefully received.

#### List of PCC Hearings 2014

DATE	SUMMARY OF ALLEGATIONS	PENALTY
7-8 Jan	<b>UPC &amp; SPI:</b> failed adequately, or at all, prepare an appropriate contract between his client and the contractor.	£1000 penalty order
21 Jan	<b>UPC:</b> failed to provide terms of engagement; failed to adequately supervise.	Not guilty
22 Jan	<b>UPC:</b> failed to hold adequate insurance.	Reprimand
5 Feb	<b>UPC:</b> failed to carry out work without undue delay and failed to keep client informed.	Reprimand
24 Feb	<b>UPC:</b> failed to deal with a complaint from a third party appropriately; failed to co-operate with the ARB; failed to provide evidence of PII; failed to notify the ARB of a bankruptcy order.	Erasure
26 - 27 Feb	<b>UPC:</b> failed to carry out work with skill and care.	Not guilty
28 Feb	<b>UPC:</b> failed to carry out work with due skill and care.	Not guilty
17 March	<b>Criminal Conviction:</b> causing to be executed unauthorised works of alteration to a listed building (ss 7 & 9 Planning (Listed Buildings and Conservation Areas) Act 1990).	£1500 penalty order
18 March	Failure to pay penalty order.	1 year suspension

<sup>1</sup> Woodman Smith v Architects Registration Board [2014] EWHC 3639 (Admin)

Continuation of agenda item 13

21 March	<b>UPC:</b> failed to ensure professional finances were managed prudently.	Reprimand
24 March	<b>UPC:</b> failed to provide the complainant with written terms of engagement; failed to carry out his work faithfully and conscientiously and with due regard to relevant technical and professional standards; failed to preserve the security of up to £10,000 entrusted to him in the course of his practice; failed to maintain the reputation of architects and acted with a wilful disregard of his responsibilities or a lack of integrity in failing to inform the Board within 28 days that he had been made the subject of a bankruptcy order and failing to inform the Board within 28 days that he had failed to pay a judgment debt.	2 year suspension
29 Jan and 4 April	<b>UPC:</b> acted dishonestly in making statements to his client which he knew, or ought to have known, were misleading and/or discreditable to the profession, Failed to carry out work faithfully and conscientiously, failed to deal with complaints or disputes appropriately, failed to cooperate with the Board.	2 year suspension
7 - 11 April	<b>UPC &amp; SPI :</b> failed to adequately set out terms of contract in writing, failed to carry out work with due skill, care and diligence, failed to keep his client informed of the progress of works, failed to carry out work without undue delay, acted inconsistently with professional obligations in requesting a payment from a third party supplier.	1 year suspension
27 March and 8 May	<b>UPC:</b> failed to carry out professional work faithfully and conscientiously.	Reprimand
9 May	<b>Criminal Conviction:</b> conspiracy to cheat the Public Revenue.	Erasure
14-15 May	<b>UPC:</b> failed to enter into a written agreement with the client.	Reprimand
19-20 May	<b>UPC:</b> failed to adequately or at all explain to his client the effect of his terms of appointment and the Scottish Conditions of Appointment; acted in a conflict of interest situation by acting as both developer and architect and/ or failed to explain that conflict to his client or obtained their agreement to continue in this capacity; made misleading representations to his client regarding the requirements to change the boundaries; and trespassed on his clients land	6 month suspension

Continuation of agenda item 13

	and/ or removed boundary stakes that his client had installed without their consent.	
6 June	<b>UPC:</b> failed to keep client informed of costs.	Not guilty
16 - 17 June	<b>UPC:</b> failed to carry out work with due skill and care.	Erasure
28 July	<b>UPC:</b> failed to disclose to one or more clients that she or her company would be paid a referral fee when a preferred contractor was chosen by the client.	Not guilty
30 - 31 July	<b>(two cases heard together)</b> <b>Case one: UPC:</b> Failed to properly promote his services; failed to maintain insurance arrangements; failed to deal with complaints or disputes appropriately <b>Case two: UPC:</b> Failed to carry out his work with due skill, care and diligence.	£2500 penalty order  £2000 penalty order
3 - 4 Sept	<b>UPC &amp; SPI:</b> failed to provide written terms of engagement, failed to disclose in writing his business interest and/or failed to seek written confirmation from his client of her consent for him continuing to act; failed to carry out work with due skill, care and diligence.	£5000 penalty order
8 Sept	<b>UPC:</b> failed to act impartially in administering Joint Contract Tribunals (JCT) contract in his role as client, architect and contract administrator.	£1000 penalty order
15 Sept	<b>Criminal Conviction</b>	Erasure
17 Sept	<b>UPC:</b> failed to issue adequate terms of engagement; failed to maintain adequate insurance.	Reprimand
22 - 24 Sept	<b>UPC:</b> failed to set out terms of engagement in writing; failed to disclose the existence of, or potential conflict of interest; failed to ensure that the building developments complied with the Radon Protection Scheme and failed keep the client adequately informed about the issue; made misleading statements to HMRC relating to the availability of a practical completion certificate; failed to issue interim certificates at the appropriate time; submitted a planning application to the wrong authority.	£2000 penalty order

## Continuation of agenda item 13

16 Oct	<b>UPC:</b> failed to supervise architectural work, failed to ensure the work carried out by the practice on behalf of the complainant was under control and management of an architect, failed to ensure that the business style was not misleading/	Not guilty
16 Sept and 20 Oct	<b>UPC:</b> Failed to adequately set out terms of engagement; failed to carry out work faithfully and conscientiously; failed to adequately deal with a complaint.	Reprimand
22 Oct	<b>UPC:</b> failed to hold adequate insurance; failed to adequately set out terms of engagement.	Not guilty
27 Oct	<b>UPC:</b> failed to have adequate insurance; failed to deal with a complaint.	£1500 penalty order
1-2 Dec	<b>UPC:</b> failed to issue terms of engagement.	Reprimand

UPC = unacceptable professional conduct

SPI = serious professional incompetence

### 7. Resource Implications

None.

### 8. Communication

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

### 9 Equality and Diversity Implications

None identified.