



Subject	2014 Report on Third Party Review		
Status	Open		
Purpose	For Note		
From	Simon Monty QC & Sheleen McCormack		
History	Parent Committee	First Submitted	Revision Number
	N/A	11/02/2015	1

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1. Purpose

To note the Annual Report of the Independent Third Party Reviewer.

For Note

2. Terms of Reference

The Third Party Review Terms of Reference are set down in the General Rules & Investigations Rules and Professional Conduct Committee Rules.

3. Open

4. Contribution to the Board's Purpose and Objectives

In delivering the Act, ARB's objectives are to protect the users and potential users of architects' services, and support architects through regulation. Independent Third Party Review of Process ensures there is an open and transparent process for procedures followed by the Examination Appeals Panel and decisions of the Investigations Panel.

5. Key points

1. This is the fourth Annual Third Party Reviewer's Report to the Board and covers the period January to December 2014.

The two Third Party Reviewers for 2014 have been Simon Monty QC and Sheleen McCormack. Ms McCormack was appointed in February 2014 following the resignation of the second Reviewer, John Collins, in late 2012.

Terms of Reference

2. The Reviewer's task is to review decisions of the Board, its Committees and Panels, and express a view as to whether there were any flaws or inefficiencies in the process which led to those decisions.
3. It is particularly important to note that the Review procedure cannot be used to change, overturn or appeal decisions of the Board, or award compensation; these

remain matters for the courts. The Third Party Reviewer's terms of reference make it clear that we do not reconsider the decision reached, only whether the procedure set down by the Board has been followed and/or whether the procedure was appropriate and efficient. We not restricted in what we can consider, but we are particularly directed to consider whether the procedure was faulty or there were avoidable delays.

4. As the terms of reference make clear, we do not comment in our Reviews on the decision made by the Board, Committee or Panel, only whether the procedure adopted was in accordance with the Rules or guidelines of the Board or was inappropriate or inefficient. It is for the Board, Committee or Panel to decide whether to accept my comments and, as appropriate, the recommendations and, if the procedures were not in accordance with the Rules or guidelines laid down or there was some deficiency in the procedure, they may decide to reconsider the case (where it has power to do so) to ensure it had reached its decision correctly.
5. Our practice is to consider all the documents sent to us by the Board, which usually comprise the original complaint, all supporting documentation, and the Board's decision, and to produce a written Report within 4 weeks of receipt of the papers. We have no prior knowledge of the case before considering the papers. We act entirely independently of the Board and of each other. The Report is provided to the Registrar and to the applicant, and the Registrar lets the applicant know what action, if any, was taken as a result.

Applications

6. The Board received a total of five applications for Independent Review in 2014, of which one was rejected by the Registrar on the grounds that it was received out of time, did not identify any procedural flaws, and had already been reviewed twice before on the application of the other party. A comparison with previous years is set out in the table below.

<i>Year</i>	<i>Applications received</i>	<i>Applications rejected</i>	<i>Reviews undertaken</i>
2014	5	1	4
2013	9	1	8
2012	6	1	5
2011	10	1	9

7. In 2014, each reviewer undertook 2 reviews.

8. All four Reviews were of decisions of the Board's Investigations Panel, of which three were requested by former clients of architects about whom the complaints were made, and one was a request by an architect.
9. As in previous years, the requests for review raised a variety of issues, including:
 - Misunderstanding the nature of the complaint
 - Failure to take into account or ignoring representations and/or evidence submitted in support of the complaint
 - Bias in favour of the architect
 - Factual errors in the Decisions
 - Failure to give adequate reasons in the Decisions
 - Failure to reject weak or inconsistent evidence
 - Failure to reach a conclusion in relation to a particular complaint
 - Alleged deficiencies in the ARB's procedure
 - Delay

Outcomes

10. This section deals with the outcomes of the four reviews in 2014.
11. Three cases were requests for review by former clients of the architect about whom complaint was made.
12. In three of the four cases reviewed, no defect in process or procedure was identified.
13. However, in one case, it was found that the Panel had misinterpreted the complaint and thus had misdirected itself by failing to take into account evidence submitted by the complainant; the recommendation was that the Panel reconsider its decision.
14. In the case of the request for review by an architect of a decision of the Panel which followed a reconsideration of an earlier Panel decision in 2013, the reviewer concluded that there was no basis for the Panel's later decision to be reconsidered.
15. In one case, the reviewer recommended that the ARB may wish to consider redrafting the "Reasons" section of the Professional Standards Guidance Note "What is a 'case to answer'?" It should be made clear that the Panel's reasoning will be brief, but will aim to tell the parties in broad terms why a particular decision has been reached; that the Panel is not required to provide detailed reasons on every matter considered; and that where the Panel has resolved a particular factual dispute, the Panel will give reasons in broad terms for its conclusion.
16. In each case, the review was carried out within the required 4-week period.

Conclusions

17. Save for the one case in which a recommendation for reconsideration was made, we did not identify any flaws or inefficiencies in the process which led to the decisions, and where there was delay, it was minor and of no significance.
18. In all but one of the cases reviewed, neither the Board's procedures nor the Panel's decisions were tainted by any defect of process or procedure. In all cases, we concluded that the Board had conducted its investigations thoroughly had conducted its investigations thoroughly in a timely and efficient manner.
19. We would comment on three matters only.
20. First, contentions by applicants that the issues being considered by the Panel did not fully encapsulate the complaint being made. There was no substance to such contentions in three out of four of the 2014 reviews. Complaints are summarised by the ARB and that summary is agreed by the complainant before the complaint is referred to the Panel, and in any event the Panel has before it not only the agreed summary also the complaint itself.
21. Secondly, some complaints are far too general to found a recommendation for reconsideration on review. For example, a complaint that the procedure was defective and inappropriate without any particulars being given. In every review the reviewer will consider the practice and procedure overall, but it is impossible to give much weight to generalised complaints of this nature.
22. Thirdly, one case highlighted the need for the Panel to provide sufficient reasons in all cases. The focus of this becomes sharper in those cases where the facts between the complainant and the registrant are in serious dispute. It was suggested that this might be reduced by following the recommendation in that case, which is set out at paragraph 11 above to revise the Guidance on "What is a 'case to answer'?" This would also enhance transparency and aid consistency in outcomes.
23. The recommendations in relation to dealing with all allegations in the Final Decision and in relation to providing information will, we hope, be taken up in the future.
24. Two particular themes have emerged in 2013.
25. First, allegations of bias by the Panel in favour of the architect are being frequently made. In every case in which this has been raised, the allegations were unfounded. We have seen nothing in any Panel decision which indicated any actual or unconscious bias. It seems to us that the allegation of bias is made where the complainant does not agree with the Panel's conclusion. This cannot of itself be a ground for review.

26. Secondly, the Panel often has to deal with complaints where there are serious disputes of fact (and sometimes allegations of dishonesty). It seems to us that such disputes and allegations can only be resolved in the courts and not by means of the Board's procedures. Again, the substance of the review request in such cases is usually that the applicant does not accept the Panel's conclusion.
27. It remains to be seen whether this trend continues in 2014. It may be that the Board should consider giving guidance, applicable to applicants, architects and the Panel, in relation to these two matters.