



<b>Subject</b>	<b>Investigations Oversight Committee's Annual Report 2015-16</b>		
<b>Status</b>	<b>Open Session</b>		
<b>Purpose</b>	<b>For Note</b>		
<b>From</b>	<b>Chair of the Committee, Nabila Zulfiqar</b>		
<b>History</b>	<b>Parent Committee</b>	<b>First Submitted</b>	<b>Revision Number</b>
	IOC	14/7/2016	1

If you have any enquiries on this paper, please contact Simon Howard on [simon@arb.org.uk](mailto:simon@arb.org.uk) or 020 7580 5861

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### 1. Purpose

To note the activities of the Investigations Oversight Committee (IOC) from July 2015 to June 2016.

### 2. Terms of Reference

The Committee will submit an annual report to the Board on its work. Its Terms of Reference are attached to this report ([Annex A](#)).

### 3. Open

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

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

Architects: A robust and fair disciplinary procedure will maintain the reputation of the profession.

### 5. IOC Annual Report for 2015 - 2016.

#### Executive Summary

This is the third annual report of the IOC since its formation in January 2013. Under its Terms of Reference the role of the Committee is to keep under review ARB's processes for discharging its disciplinary statutory responsibilities fairly and efficiently.

The regulatory functions of ARB are generally operating efficiently and fairly, with no significant failings or risks to report to the Board. Key Performance Indicators (KPIs) are generally being met. There are areas in which reform would bring about improvements in performance and efficiency.

As reported 12 months ago, much of the reform envisaged is not possible until the outcome of the Periodic Review is known. While there may be more minor reforms available to streamline and strengthen the regime, it is impractical to proceed with these until the

legislative framework within which investigations are undertaken is known.

## 6. Key Points

### i. **Meetings, Committee membership and meeting attendees**

The Committee membership from July 2015 – May 2016 was:

Nabila Zulfiqar (Chair)  
Alex Wright  
Ros Levenson

The Committee membership from May 2016 onwards was:

Nabila Zulfiqar (Chair)  
Danna Walker  
Jagtar Singh

The Committee met three times since its last Report: on 7 October 2015, 5 February 2016 and 2 June 2016. All meetings were fully attended.

Nabila Zulfiqar also attended a meeting of the Investigations Pool in September 2015 as an observer. This enabled the IOC and Investigations Pool to learn more about each other's work and for the IOC to gain a greater understanding of how the investigation of cases is managed.

### ii. **Work Plan**

The Committee plans its annual work through an agreed work plan, setting out what needs to be discussed throughout the year. The current work plan, which is reviewed and updated throughout the year, is attached at [Annex B](#).

### iii. **Investigations Pool**

The Investigations Pool consists of three architects and four lay members, who are appointed by the Board under s14 of the Architects Act 1997. Their role is to consider allegations of unacceptable professional conduct and serious professional incompetence and decide whether an architect has a case to answer at the Professional Conduct Committee.

All members of the Investigations Pool were reappointed at the start of 2016. The IOC notes that further recruitment will commence at the end of 2016 to cover the loss of IP members whose terms expire in 2017. This will include the recruitment of an architect with Scottish expertise, an area of knowledge identified as being lacking within the current membership.

The IOC has noted that the performance of the Investigations Pool in the last 12 months has improved, with generally robust decisions being reached in accordance with its KPIs. The Investigations Pool performance is monitored at regular intervals not only in terms of timeliness, but by the result of Third Party Reviews of decisions and findings at the Professional Conduct Committee. During 2015, the Investigations Pool made a total of 72 decisions and took an average time of 11 weeks to make a decision. This was an improvement on 2014, when

the Investigations Pool made a total of 84 decisions and took an average time of 11.6 weeks to make a decision.

The Investigations Pool provides a report annually to the IOC on its work and performance. The IOC was reassured that the Investigations Pool had been provided with training sessions throughout the year on topics such as The Party Wall Act, framing allegations and architectural contracts. The Investigations Pool reviewed those decisions it made that were either referred back to it for further consideration, or those that resulted in a not guilty finding at the Professional Conduct Committee.

iv. **Professional Conduct Committee (PCC)**

The Professional Conduct Committee consists of three architects, three lay members and three legally qualified members nominated by the Law Society<sup>1</sup>. They are appointed by the Board under Schedule 1 of the Architects Act 1997. Their role is to decide whether architects are guilty of unacceptable professional conduct or serious professional incompetence and to impose disciplinary orders. They are functionally separate from the investigations process and do not take part the earlier stage of deciding whether an architect has a case to answer.

The PCC provides detailed reasons for all findings and sanctions and most referrals by Investigations Panels to the PCC do result in sanctions being imposed. It carefully weighs all the evidence, including hearing from witnesses. It should be noted that following a referral from the Investigations Panel to the PCC, further work is undertaken by ARB's solicitor to enable the case to be presented to the PCC. This may include obtaining witness statements and also receiving evidence from, or on behalf of, the registrant. A not guilty finding in a relatively small number of cases demonstrates the process is working fairly and transparently.

The IOC considered a PCC case which had resulted in a finding of no-case-to-answer. Such a conclusion is different from a finding of not guilty, as it infers that the case should not have been brought. On this occasion the IOC was satisfied that while mistakes in the investigation of the case had been made, there was little risk of future repetition.

v. **Costs**

The IOC receives considers costs information on all areas of ARB's disciplinary work. It has received adequate assurances that the costs incurred over the last 12 months have been proportionate and satisfactorily managed.

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<sup>1</sup> There are a further seven Board members appointed to the PCC under the Act, but do not take any part in its business.

vi. **5 Year Complaints Review**

The IOC identified an audit of all complaints investigated over the last five years as being an important learning tool for ARB and the profession.

The Committee considered that report at its June 2016 meeting and it is attached at **Annex C**. It will form the basis for discussion at both Board and IOC level as to how ARB might modify its approach in investigating serious misconduct and incompetent; as well as how it can best engage with the profession on matters of professional standards.

vii. **Key Performance Indicators**

One of the responsibilities of the IOC is to monitor ARB's performance against its KPIs.

The initial investigations stage, preparation of solicitor reports and listing of PCC hearings have generally been undertaken in line with agreed KPIs. The IOC has received sufficient assurance that those providing services on behalf of ARB are doing so competently and cost-efficiently.

A more detailed consideration of the suitability of ARB's KPIs relating to investigations will need to be undertaken once the structure of ARB's disciplinary processes have been assessed as part of the section 14 review.

The Board receives biannual information on the KPIs and performance of the IP and PCC. Up to date figures on how the Investigations Panels and Professional Conduct Committee is performing against its KPIs will be reported separately to the Board at its July 2016 meeting.

viii. **Code of Conduct**

The IOC was tasked by the Board to review the Architects Code of Conduct and Practice. Members of the IOC<sup>2</sup> have met three times, and considered the responses to two consultations on the Code.

The proposed changes to the Code will be separately reported to the July 2016 Board meeting.

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<sup>2</sup> Ros Levenson and Alex Wright continued their work on the Code in June 2016 after they had concluded their role on the IOC

## 7. Risk Implications

The main risks identified by the IOC are:

### The restricted membership of the Professional Conduct Committee.

Under the Act, the membership of the PCC is limited to three architects, three lay members and three Law Society nominees. This limited pool makes the listing of cases vulnerable to an increase in workload, member unavailability, and conflicts of interest. This risk is currently being managed through careful advance planning and flexibility of the use of PCC members. Longer term stability will be provided through legislative change.

### The lack of Scottish expertise on the Investigations Pool

There is currently no architect on the Investigations Pool that has particular expertise in Scottish matters. This risk is currently being managed by the use of external professional assistance when required, and additional member recruitment in the second half of 2016.

## 8. Resource Implications

The annual cost of the Investigations Oversight Committee is limited to the expenses of its members. For 2015-16, the expenses claimed were £3,452.

## 9. Communication

The Investigations Oversight Committee prepares an annual report for the Board to assist the Board in carrying out its oversight responsibilities. The annual report also gives the Board an opportunity to explore the IOC's work and identify any areas of concern.

## 10. Equality and Diversity Implications

Whilst the production of this Annual Report has no specific E&D implications, the specific work of the Committee takes into consideration the E&D implications during the formation and delivery of that work.

In particular, the IOC periodically considers the E&D information collected in relation to investigations, and uses this data to advise the Board on an appropriate communications strategy in this area of its work. An analysis of the previous five years of investigations will be required to help inform the communication strategy.

## ANNEX A

### Investigations Oversight Committee Terms of Reference

#### Purpose

The purpose of the Investigations Oversight Committee (the IOC) is to:

- keep under review the processes by which allegations of unacceptable professional conduct and serious professional incompetence against architects are investigated under sections 14(1) and (2) of the Architects Act 1997 (the Act); and
- assist the Board in discharging its responsibilities under the Act by providing assurance that
  - The investigations process is fair and transparent
  - The investigations process is operating efficiently, fairly and in accordance with relevant best practice
  - The investigations process is operating in accordance with all appropriate principles, including those on equality and diversity
  - Agreed performance indicators (which may include (without limit) timescales, budget and quality of decision making) are being observed, and that adequate data is available to enable the Board to obtain a true picture of the investigations process
- carry out any specific task as instructed by the Board

#### Specific Cases

Members of the IOC are not persons appointed in accordance with section 14(1) of the Act and the IOC has no responsibility for making decisions in specific cases. The IOC shall have such access to information relating to specific cases as it may require for the purpose of its functions.

#### Membership

The members of the IOC shall be appointed by the Board and shall consist of no fewer than three Board members comprising

- At least one elected member and
- At least two appointed members, one of whom shall be the Chair of the IOC

The secretary to the IOC shall be the Professional Standards Manager.

### Meetings and Procedures

- The IOC will meet not less than once a year.
- The Chair of the IOC may at any time by giving a minimum of fourteen days' notice call additional meetings where there appears to be good cause for doing so.
- The quorum of the IOC shall be two, with the Chair of the IOC having the casting vote in the event of any tied vote.
- Members of staff may attend all or part of the meetings at the request of the IOC.
- Members of the Investigations Pool may attend all or part of the meetings at the request of the IOC.
- Meetings of the IOC shall be minuted and the minutes submitted to the Board.
- The IOC shall submit an annual report to the Board on its work.
- The IOC may review, and where necessary recommend to the Board, amendments to, its Terms of Reference.

The IOC shall have no power to

- investigate any allegations relating to an architect; or
- consider the merits of any individual decided or current cases.

November 2015

**ANNEX B****Investigations Oversight Committee Workplan 2016**5 February (2pm)

Investigations Pool Annual Report  
 PCC Consent Orders review  
 Annual Report of Third Party Reviewer  
 Professional Conduct Committee update  
 Annual 2015 KPIs & costs  
 Legal challenge update  
 Periodic Review / DCLG update  
 Alternative Dispute Regulations

2 June (10am)

IOC Annual Report to the Board (to go to July Board meeting)  
 Half-year KPIs  
 Investigations Pool update  
 Professional Conduct Committee update  
 Costs update  
 Legal challenge update  
 Code of Conduct  
 Section 14 Review update  
 Business Plan 2017 planning

25 October (10am)

Professional Conduct Committee Chair attending meeting  
 Review Terms of Reference  
 Investigations Pool update  
 Costs update  
 Legal challenge update  
 Section 14 Review update  
 KPIs

IP Meeting Dates	2016 Board meeting dates
23 February	11 February
14 April	12 May
11 July	13 May (Development Day)
22 September	14 July
9 December	15 September
	24 November

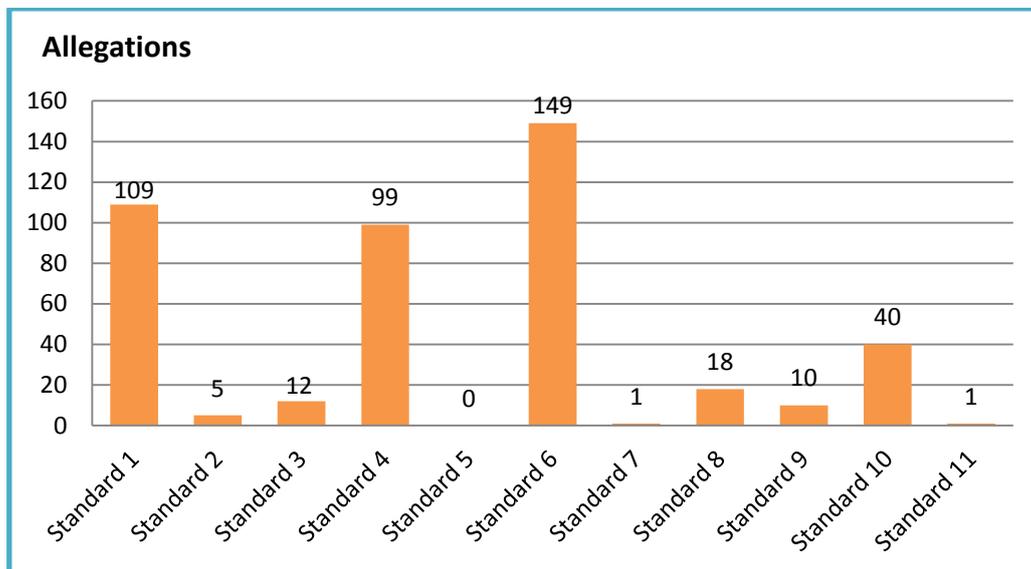
## ANNEX C

## Overview of the last five years of investigations

Between 2010 and 2015, 330 complaints were referred to the Investigations Committee/Panel (the Investigations Committee changed the Investigations Panel in 2013). Below is a summary of the ratio of complaints in respect of male/female together with a breakdown of age, the location of the respondent and where they qualified, the source from which the complaint has originated from, if appropriate the type of project relates to and finally, the most common allegations.

There is no breakdown with regards to whether the complaint is one of unacceptable professional conduct or serious professional conduct, as this is a distinction that is made by ARB's solicitor, post investigations stage.

Most common allegations – categorised by Standards of the Architects Code – Standards of Conduct and Practice



It is important to appreciate that the gathering of this data is not an exact science; often factual allegations won't readily apply to a standard of the Code, or they might cover various standards. This information should therefore be seen as nothing more than indicative of the *types* of complaints ARB receives about architects.

Standard 1 – Be honest and act with integrity

One of the most common complaints; generally allegations under this standard fall under two main areas:

- Dishonesty and/or
- Integrity

The most frequent allegation under this heading is that an architect deliberately provided misleading advice in order to secure a project. The majority of these types of allegation will generally fall away at the Investigations Panel stage, being that some evidence of the dishonesty is required. 33% of complaints contained this type of allegation.

Standard 2 – Be competent

This standard relates to not only an architect's own competence, but also expects an architect to ensure that the people they might engage to carry out work on their behalf are competent. It also refers to ensuring appropriate arrangements are in place in the event of an architect's incapacity to work. A relatively small number of complaints include an allegation under this standard, and in the last five years only 1.5% of all complaints.

Standard 3 – Promote your services honestly and responsibly

This standard covers advertising and ensuring that a business style is not misleading. This covers allegations such as potentially misleading company names, failing to ensure that the architectural work of a practice is under the control and management of an architect and failing to make clear to a client the identity of an architect at a practice. Between 2010 and 2015, 4% of complaints contained this type of allegation.

Standard 4 – Manage your business competently

Another common allegation, Standard 4 sets mainly deals with practice management and covers items such as

- Issuing adequate terms of engagement and setting out what should be included in those terms
- That any variations to the agreed contract should be recorded in writing

Although the Standard does also deal with other items, the above are the allegations most submitted to ARB with 30% of all IP referrals including an allegation under this standard.

Standard 5 – Consider the wider impact of your work

This standard concerns the consideration of the environmental impact. This Standard has not been relevant to any complaint received in the last five years.

Standard 6 – Carry out your work faithfully and conscientiously

The main complaints under this Standard are:

- Errors in the work carried out
- Delays and increasing costs
- Client not being kept informed
- Failing to act impartially (although this could also cross over with Standard 1)

45% of all complaints contain an allegation under this Standard. Most can be attributed to a lack of clear communication between an architect and their client throughout a project.

Standard 7 – Be trustworthy and look after your clients' money

This standard concerns keeping records of client money and holding a client account. It is rare that a complaint includes an allegation of this nature, with only one received during the last five years. This reflects that architects seldom hold client monies.

Standard 8 – Have appropriate insurance arrangements

This covers the need to maintain adequate and appropriate insurance for work carried out and

providing evidence to ARB when required. 5% of complaints contained this allegation; this would usually stem from a practice that had entered liquidation or on occasion, an architect carrying out private work without obtaining the appropriate insurance.

Standard 9 – Maintain the reputation of architects

This standard covers matters such as the management of professional finances and self-notification to the Registrar of director disqualification orders, failing to pay a judgment debt or of a criminal offence. Allegations referred under this standard would usually stem from the Registrar. The majority referred concerned the liquidation of a practice. The matter is only referred after careful consideration surrounding any such liquidation; it is not an automatic referral to the Investigations Panel.

Standard 10 – Deal with disputes or complaints appropriately

12% of complaints referred to IP contained this allegation. This extends from failing to deal with a complaint, to failing to have a written complaints procedure in place.

Standard 11 – Co-operate with regulatory requirements and investigations

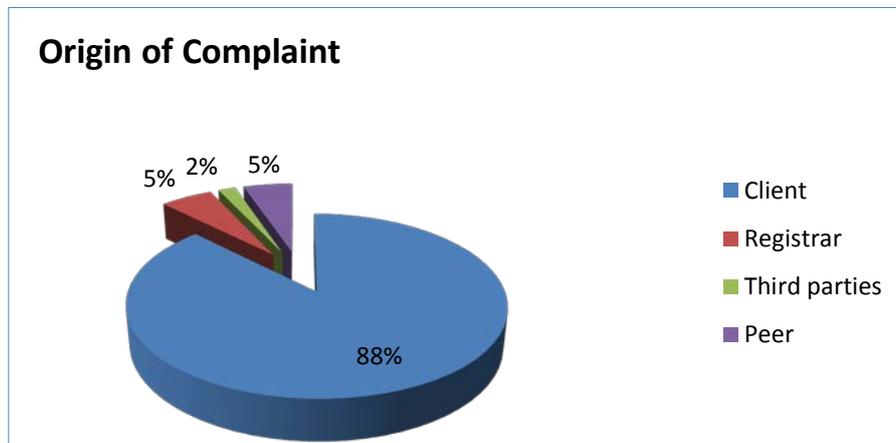
This concerns responding to ARB and ensuring co-operation within given timescales. Only one complaint as referred to the IP contained an allegation under this heading as we will always stress the importance of responding before any allegation of this nature is referred.

Standard 12 – Have respect for others

None of the complaints received included allegations under this heading.

### Origin of complaint

Complaints can originate from a number of sources. The following types of were identified in the last five years:



#### **Client complaint**

**Third party complaint.** An example being where the neighbour has appointed an architect; often these complaints are identified as being planning disputes at the outset but on occasion, there is an allegation that the architect has been dishonest in the information displayed on the plans. These kinds of complaints would usually only be progressed if the planning authority had found some discrepancy. This category also includes complaints received from contractors; those complaints would usually be that the architect has failed to act impartially while administering a contract.

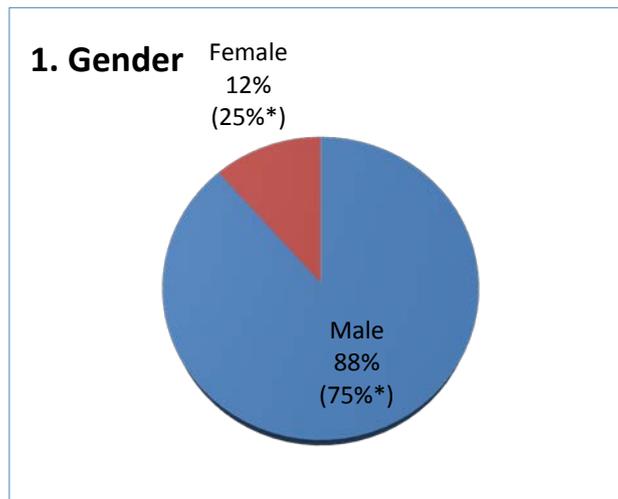
**Peer complaint.** Examples such as employees who have left the practice in dispute and have successfully obtained an Employment Tribunal ruling. A further allegation might be where an employee has left the practice and had inappropriately contacted on-going clients of the former practice in an effort to secure projects.

**Registrar complaint.** This is where the Registrar makes the referral to the Investigations Panel for reasons such as company liquidations, judgments debts, or failure to co-operate with the Board during the course of an investigation.

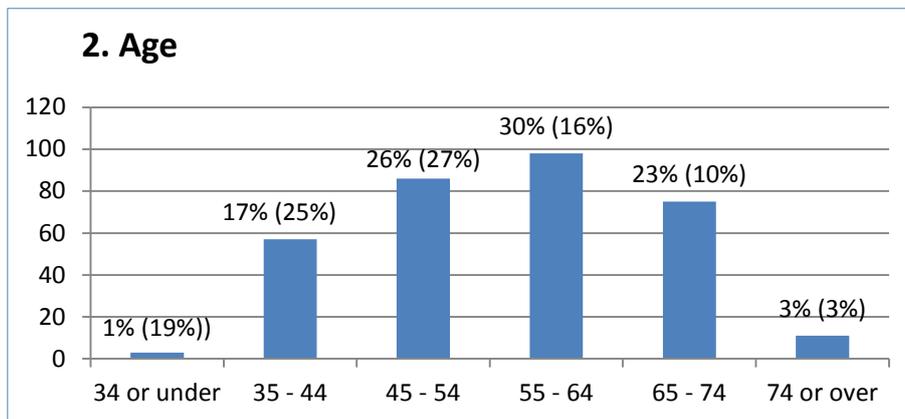
**General information:**

The graphs below show the breakdown of complaints by more general information including:

1. gender (this information concerns the architects who complaints were made about)
2. age
3. the UK region or country from which the complaint was made;
4. whether the complaint was concerning a sole practitioner
5. The final graph shows the country in which the architect being complained of qualified

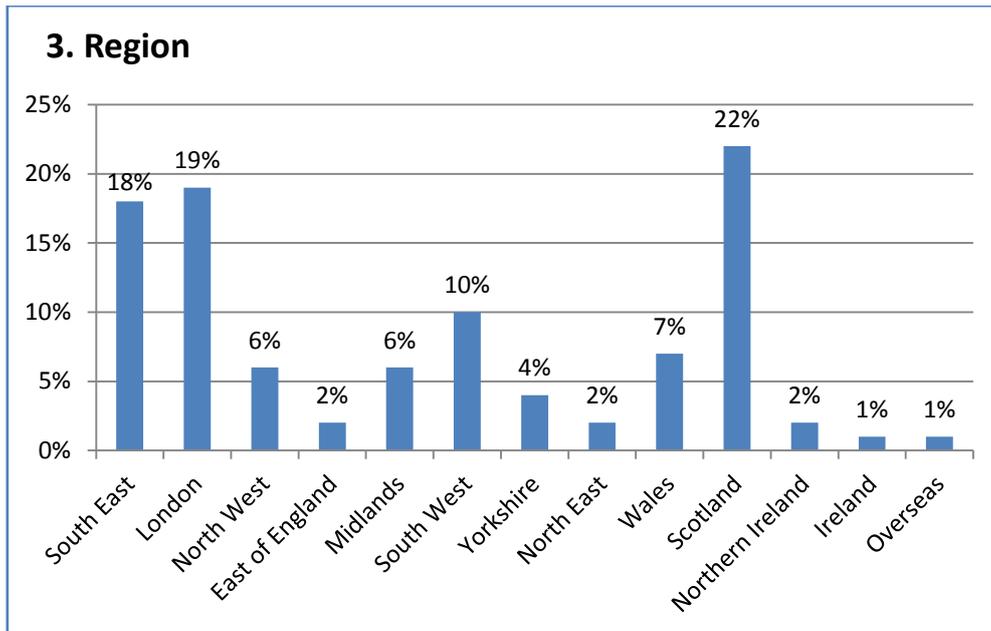


\*The figures in brackets shown in the chart above represent the percentage of males/females on the Register as of the end of 2014; representative of the period being reported on (2010 – 2015).

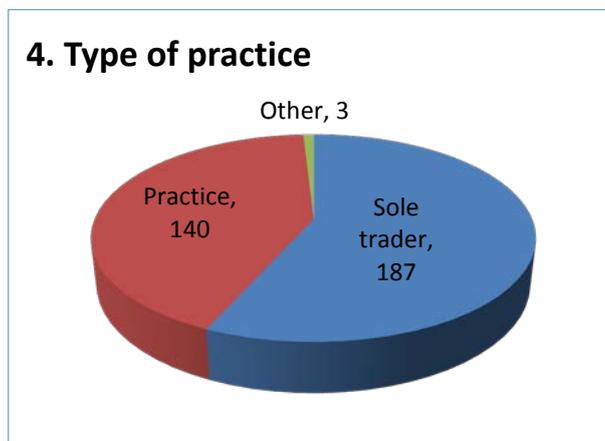


\*The figures in brackets shown in the chart above represent the percentage of the age range currently on the Register

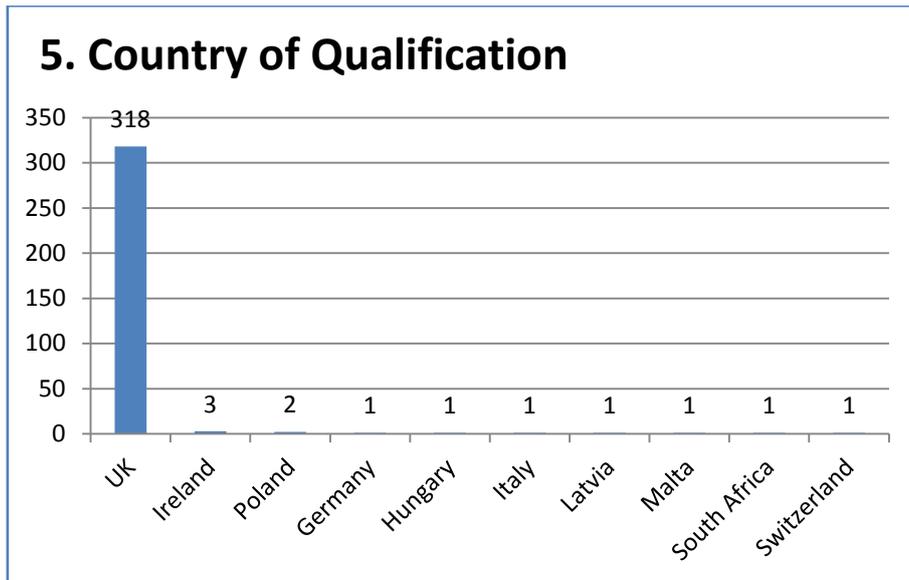
It can be seen that there is a disproportionately high risk of complaints against architects once they are in their 50s and beyond. The likelihood that more mature architects are more likely to be practising alone or in small practices is likely to be a relevant factor.



The above information demonstrates where the architect is located based on their registered address at the time of the complaint. Although the majority of complaints concern architects in Scotland, it is worth noting that 9% of the overall Register currently reside in Scotland. The above data is based on where the architect resides which is, in the majority of cases, comparative to where the project was carried out.



The 'other' referred to above includes complaints about lecturers and, complaints where the allegation is made about an individual where it is not necessarily concerning their practice as an architect. The data is based on being a limited company vs. a sole trader, although it is acknowledged that this is not always a true indicator of practice size.



It is notable that despite the increasing percentage of architect registering after qualifying overseas, complaints are almost exclusively about architects who have qualified through the UK route. This is likely to be related to the fact (see previous charts) that architects most vulnerable to complaints are sole traders, of 45+ years, which does not fit the likely demographic of registrants qualified abroad.