

## Professional Conduct Committee Rules

1. These Rules were made by the Board on **DATE** under Section 23 and Part II of the First Schedule to the Architects Act 1997. They came into force on **DATE** and replace the Rules made by the Board on **DATE**.

### Interpretation

2. In these Rules the following words and phrases shall, except where the contrary intention appears, have the meanings assigned to them below:

"the Act" means the Architects Act 1997;

"Board" means the Architects Registration Board;

"Charge" means the charge of unacceptable professional conduct, serious professional incompetence or of conviction of a criminal offence other than an offence which has no material relevance to fitness to practise as an architect, in a report of the Board's Solicitor;

"Clerk to the Professional Conduct Committee" is a barrister or solicitor of that title appointed by the Registrar;

"**Consent Order**" means the final order made when a Consent Order Panel has decided to approve a Proposed Consent Order.

"**Form A**" means the form of a Proposed Consent Order and a Consent order, as appended to these Rules.

"**Hearing Panel**" means the members of the Professional Conduct Committee designated by the Chairman under Rule 5.a.(i) to consider a Charge against a Respondent at a Professional Conduct Committee hearing.

"**Proposed Consent Order**" means a document in "Form A" which sets out terms upon which the Board's Solicitor proposes that a Charge which is the subject of a report to the Professional Conduct Committee may be settled with the consent of the Respondent, and must include:

- (i) a statement as to the facts;
- (ii) a statement as to the act or acts of unacceptable professional conduct or serious professional incompetence, or details of or the conviction which has material relevance to fitness to practise as an architect;
- (iii) the terms of any disciplinary order to be imposed and the reasons therefor
- (iv) confirmation that the Respondent has been offered the opportunity to argue his case at a hearing before a Hearing Panel, but does not wish to do so

"**Consent Order Panel**" means the three members of the Professional Conduct Committee designated by the Chairman under Rule 5.a.(ii) to consider a Proposed Consent Order

“Respondent” is a Registered Person charged before the Professional Conduct Committee with being guilty of unacceptable professional conduct and/or serious professional incompetence or with having been convicted of a criminal offence other than an offence which has no material relevance to their fitness to practise as an architect, or their legal representative;

“Investigations Panel” has the same meaning as under the Investigations Rules;

“Professional Conduct Committee” means the Committee of that name appointed under Part II of the First Schedule to the Act or the members of that Committee designated under Rule 4 of these Rules;

“Chairman” is a person elected by the Professional Conduct Committee under Part II of the First Schedule to the Architects Act 1997;

“Register” means Part 1 of the Register of Architects established under the Act. It excludes any architect who is registered in Part 2 of the Register or in the list of visiting EEA architects;

“Registered Person” is a person whose name is on Part 1 of the Register;

“the Registrar” is the person appointed by the Board as the Registrar of Architects;

“the Board’s Solicitor” is a barrister, advocate or solicitor of that title appointed by the Registrar.

3. The Interpretation Act 1978 shall apply to these Rules as if they were an Act of Parliament.

#### **The Professional Conduct Committee**

4.

- a. Members of the Professional Conduct Committee shall hold office for three years, which term may be renewed. Any Board member of the Professional Conduct Committee who ceases to be a member of the Board shall thereupon cease to be a member of the Committee.
- b. The Board may, in accordance with such rates of allowances as it may from time to time fix, pay attendance fees to and reimburse the members of the Professional Conduct Committee for any travelling and subsistence expenses they have incurred in respect of attendance at meetings of the Committee.

#### **Action upon receiving a report**

5.

- a. Upon receiving a report the Chairman of the Professional Conduct Committee shall designate:

- (i) three or more members of the Professional Conduct Committee as a Hearing Panel to consider the Charge at a hearing. If the Chairman of the Committee does not designate himself or herself, he or she shall appoint one of the members to act as the Chairman for the purpose of the hearing. A further report shall be dealt with by the members designated in relation to the previous report;
- (ii) **[three]** further members of the Professional Conduct Committee as a Consent Order Panel to consider any Proposed Consent Order in relation to that Charge
- b. No member of the Professional Conduct Committee who was a member of the Investigations Pool when it considered the conduct of a Registered Person shall be designated either as a member of a Hearing Panel or as a member of a Consent Order Panel to consider a Charge against that person arising out of the consideration by the Investigations Pool.
- c. No member of the Professional Conduct Committee appointed to a Consent Order Panel to consider a Proposed Consent Order shall be designated to a Hearing Panel to consider the same matter at a hearing.
- d. If at any time the Chairman of the Professional Conduct Committee is of opinion that it is for any reason impracticable for the hearing of a Charge to be completed by the members designated the Chairman may designate further members to hear that Charge afresh. This is subject to paragraph c.
- e. If a Charge is re-heard pursuant to the previous paragraph, any of the members originally designated may be designated again.
- f. The Clerk to the Professional Conduct Committee shall at all times attend upon a Hearing Panel when sitting in the presence of the Respondent or his or her legal representative and shall provide the Hearing Panel with such advice concerning matters of law, practice and procedure (including the powers of the Hearing Panel) as it may request or he or she deems necessary. Any such advice given to the a Hearing Panel shall be in public in the presence of the parties or if given not in the presence of all of the parties shall be communicated to all of the parties as soon as practicable thereafter.

#### **Notice of the hearing**

- 6.
- a. Not less than 42 days before the date of first hearing of a Charge by the Hearing Panel written notice of the date, time and place of the hearing shall be served upon the Respondent. Such notice shall be accompanied by:
- i. a copy of the report; and
  - ii. a copy of these Rules
- b. In the case of a Charge arising out of a complaint a copy of the notice shall be sent to the person who made the complaint informing him that he or she may attend the hearing.
- c. The provision of any further report shall be in accordance with directions made under Rule 10

### **Respondent's response**

7. Within 14 days of receipt of the notice referred to in the previous Rule the Respondent shall give to the Board's Solicitor written notice of whether he or she intends to appear at the hearing and, if he or she is to be legally represented, the name and address of his or her legal representative and brief particulars of any defence.
8. If the Respondent intends to plead not guilty then not less than 14 days before the date set for the hearing the Respondent shall serve upon the Board's Solicitor:
  - a. particulars of the defence;
  - b. a copy of any written statement or other document or plan that he or she intends to adduce in evidence at the hearing;
  - c. the name and address of any witness whom he or she intends to call in person before the Hearing Panel and a summary of what that witness is expected to say.

Such notice may be given by being sent by letter addressed to the Board's Solicitor at the registered offices of the Board or at any other address given for this purpose in the notice served under Rule 6 of these Rules.

### **Adjournment**

9.
  - a. The Hearing Panel (or the Clerk to the Professional Conduct Committee on a day prior to the relevant hearing) may adjourn any hearing at any time if they consider that it is appropriate to do so. Written notice of the date, time and place of the adjourned hearing shall be served upon the Respondent.
  - b. If a copy of the notice of the original hearing was sent to a person who made a complaint a copy of the notice of the adjourned hearing shall be sent to that person also.

### **Pre-trial directions**

10. At the request of the Board's Solicitor or a Respondent or at his or her own volition the Clerk to the Professional Conduct Committee may give such interlocutory directions for the just, expeditious and economical disposal of the case as the Clerk sees fit, so, however, that the effects of the directions are not contrary to the Act or unfair to the Respondent.

### **Non-appearance of the Respondent**

11.
  - a. If the Respondent fails to appear in person or by his or her legal representative at a hearing or adjourned hearing of a Charge the Hearing Panel may, if satisfied that the Respondent has been given an adequate opportunity to appear before the Hearing Panel to argue his or her case and has provided no sufficient reason for non-attendance, hear the case in the Respondent's absence.

- b. If the Hearing Panel considers the charge(s) proved in the Respondent's absence it may exercise its powers under Section 15 of the Act.
- c. A notice under this Rule or under Rules 6 or 8 of these Rules may be served by being sent by post to the Respondent's regular business address (that is, to the address entered in the Register in accordance with Section 3 of the Act), or to the address of his or her legal representative.
- d. At any time within 28 days of the sending of notice of the decision of the Hearing Panel a Respondent who has neither attended nor been represented at the hearing of his or her case may apply to the Professional Conduct Committee for a rehearing by a sworn statement or affirmation setting out the facts and exhibiting medical or other evidence upon which he or she wishes to rely. If the Professional Conduct Committee is satisfied that the Registered Person has not had in the circumstances an adequate opportunity to appear before the Hearing Panel to argue his or her case and that it is just to do so, it may direct a re-hearing upon such terms as it thinks appropriate. The Chairman of the Committee shall designate three members to hear the Charge(s) none of whom had conducted the previous hearing, or been part of a Hearing Panel in relation to the case. Any decision of the Hearing Panel shall stand until a new hearing is convened.

#### **Evidence and proof**

- 12.
  - a. The Hearing Panel shall not be bound by the judicial rules of evidence but may receive such oral, documentary and other evidence as appears to it to be relevant to the case, provided that the Hearing Panel shall not receive evidence that would not be admissible in a court of law if it would be unjust to the Respondent so to do.
  - b. Neither party shall, without the consent of the other or the permission of the Hearing Panel, call a witness or adduce evidence that was not referred to in a notice served on the other before the hearing in accordance with these Rules.
  - c. Subject to the provisions of any enactment or rule of law, the evidence of a witness in person shall be given on oath.
  - d. In determining whether a charge of unacceptable professional conduct or serious professional incompetence has been proved the Hearing Panel shall take into account any failure by the Respondent to comply with any provision of the Code of Professional Conduct and Practice issued by the Board under Section 13 of the Act.
  - e. The burden of proving a charge shall lie upon the Board's Solicitor. The Hearing Panel shall apply the civil standard of proof.

#### **Variations of these Rules**

- 13.
  - a. Provided that the proceedings are fair to the Respondent and not contrary to the Act:
    - i. no objection shall be upheld to any technical fault in the charge or the proceedings; and

- ii. the Hearing Panel may vary any provision of Rules 14-16 of these Rules.
- b. The Hearing Panel may permit the amendment of a Charge, but if such an amendment is permitted and the Respondent has been materially misled he or she shall be entitled to an adjournment.

#### **Joinder**

- 14. Except where it appears to it that it would not be in the interests of justice to do so, the Hearing Panel may hear Charges against two or more Respondents at the same time and two or more Charges against a Registered Person at the same time.

#### **Plea**

- 15.
  - a. The proceedings shall begin by the Respondent, if present, being asked whether he or she pleads guilty or not guilty to the Charge.
  - b. If the Respondent is not legally represented he or she may first be asked whether he or she admits all or any of the facts alleged in the report.

#### **Order of proceedings on a plea of not guilty etc.**

- 16.
  - a. This Rule prescribes the order of proceedings upon a plea of not guilty or if the Hearing Panel is proceeding under Rule 10 of these Rules in the absence of the Respondent and his or her legal representative.
  - b. The hearing shall begin by the Board's Solicitor outlining the case against the Respondent and calling any witness in person and producing any other evidence.
  - c. After the evidence against the Respondent has been called the Respondent shall be entitled to submit that he or she has no case to answer. The Board's Solicitor shall be entitled to respond to such a submission. If such a submission is upheld the Hearing Panel shall dismiss the Charge. If it is not, the proceedings shall continue as set out below.
  - d. The Respondent shall then be entitled to call any witness, give evidence on his or her own behalf and adduce any other evidence.
  - e. The Board's Solicitor shall then be entitled to call witnesses and adduce evidence in rebuttal of any part of the defence case.
  - f. After calling any witness in person and adducing any evidence the Respondent may address the Hearing Panel.

- g. Any witness called in person by a party may be cross-examined by the other party and, if cross-examined, re-examined by the party calling him.
- h. The Hearing Panel shall, as soon as practicable after the conclusion of the hearing, announce whether it finds the Respondent guilty or not guilty.

#### **Procedures on a plea of guilty and after a finding of guilt**

17.

- a. Upon a plea of guilty the Board's Solicitor shall inform the Hearing Panel of the case against the Respondent in accordance with his or her instructions.
- b. Upon a finding of guilt or a plea of guilty the Board's Solicitor shall inform the Hearing Panel and the Respondent of any circumstances known, whether adverse or favourable to the Respondent, that might be relevant to any order which the Hearing Panel might make under the Act or if appropriate that there are no such circumstances.
- c. If on a plea of guilty the Respondent's version of the facts is in the opinion of the Hearing Panel significantly different from that presented by the Board's Solicitor the Chairman shall invite the parties to call evidence to resolve the issue.
- d. The Respondent shall be entitled to address the Hearing Panel in mitigation of penalty and for this purpose may call witnesses and adduce evidence.
- e. The Board's Solicitor shall be entitled to respond to an address in mitigation and to cross-examine any witness called in person in mitigation only:
  - i. at the request of the Hearing Panel;
  - ii. in order to correct any contested statement of fact; or
  - iii. on the subject of the Hearing Panel's powers.
- f. The Hearing Panel shall thereupon consider whether and, if so, how to exercise its powers under Section 15 of the Act and shall announce any penalty or other order as soon as practicable thereafter.
- g. The Hearing Panel may at any time prior to the provision of the information referred to in sub-paragraph 17(b) above (but not subsequently) permit further representations to be made in relation to its findings and may thereafter reconsider its findings if exceptionally the Hearing Panel considers that such representations could not have been made earlier and that it is necessary and appropriate to do so in the interests of justice.

## **Public hearing**

18.

- a. A hearing of the Professional Conduct Committee shall be conducted in public unless, in the interests of justice or for other reason specified in Article 6 of the European Convention of Human Rights and Fundamental Freedoms, the Committee directs that all or part of the hearing shall be conducted in private.
- b. An application that all or part of a hearing shall be conducted in private shall be heard in private.
- c. If the Hearing Panel makes a direction that a hearing shall be conducted in private the direction shall be strictly confined to so much of the hearing as is necessary for the reason referred to in paragraph a. of this Rule.

## **Recording**

19. A recording shall be made of the proceedings before a **Hearing Panel** and a transcript of such recording shall be provided to the Respondent upon his or her written request and on receipt of the costs thereof.

## **Reasons**

20. The Hearing Panel shall provide the Respondent with written reasons for its decisions as soon as practicable after the hearing.

## **Consent Orders**

21. At any time after a report has been served upon the Respondent in accordance with Rule 6 but not less than 42 days before the date fixed for the hearing of the Charge, the Board's Solicitor may serve on the Respondent a Proposed Consent Order in Form A setting out terms upon which it is proposed that the case may be settled with the consent of the Respondent.

22. The Respondent may within 14 days of the date when the Proposed Consent Order was sent to him or her (subject to any extension of time agreed in writing by the Board's Solicitor), confirm in writing to the Board's Solicitor:

- a. that the Respondent accepts the matters set out in the Proposed Consent Order and agrees to the terms of disciplinary order, if any, therein; and
- b. that he or she does not require the opportunity to argue his or her case at a hearing before the Professional Conduct Committee.

23. Where the Respondent does not confirm his or her consent to the Proposed Consent Order in accordance with Rule 22, the Proposed Consent Order will be regarded as

withdrawn and the case must proceed to be considered at a hearing in accordance with the procedure in Rules 8-20.

24. Where the Respondent has given the consent referred to in Rule 22, the Board's Solicitor must refer the Proposed Consent Order to the Consent Order Panel.

25. The Consent Order Panel must make such arrangements as it considers appropriate to decide whether to approve or reject the Proposed Consent Order, provided that:

- i. such arrangements must not involve a hearing in the presence of the parties;
- ii. such arrangements need not require the members of the Consent Order Panel to deliberate in each other's presence, unless they consider it necessary to do so;
- iii. the Consent Order Panel must consider and reach its decision in relation to the Proposed Consent Order within 14 days of receipt.

26. In deciding whether to approve or reject the Proposed Consent Order the Consent Order Panel must have regard to its powers under Section 15 of the Act and the public interest.

27. The decision of the Consent Order Panel is to be by majority vote.

28. Where a majority of the Consent Order Panel does not approve the Proposed Consent Order, it will be regarded as rejected and will not be effective.

29. As soon as reasonably practicable after reaching its decision the Consent Order Panel must inform the Board's Solicitor and the Respondent of its decision in writing.

30. Where Rule 23 (Proposed Consent Order not consented to by the Respondent) or Rule 28 (Proposed Consent Order rejected by the Consent Order Panel) apply the Charge must proceed to be considered by a Hearing Panel at a hearing, in accordance with the provisions of Rules 8 to 20 of these Rules.

31. Where Rule 23 or Rule 28 apply, the terms of the Proposed Consent Order and any discussions relating to it between the Board's Solicitor and the Respondent shall remain confidential and shall not be made known to the Hearing Panel designated to hear the Charge under Rule 5a(i), nor to any subsequent hearing panel appointed to hear the Charge unless the Respondent chooses to bring it to its attention

32. A Consent Order, including any disciplinary order made, will be published in accordance with the Board's usual arrangements for publication, unless the Consent Order Panel expressly determines otherwise.

## **Equality Statement**

The Architects Registration Board (ARB) is an inclusive organisation. We actively promote equality of opportunity for everybody who has dealings with us.

Any of the Investigations Rules and Professional Conduct Committee Rules may be varied if one of the parties is unable to comply with it due to their race, gender, disability, religion, belief system, sexual orientation or age, and it is in the interests of justice to do so.

FOR CONSULTATION PURPOSES ONLY