

Subject Employment of an in-house lawyer
Purpose For Decision
From Simon Howard, Head of Professional Standards

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1. Summary

For the Board to decide whether to employ an in-house lawyer to provide legal services in relation to disciplinary proceedings which are currently outsourced.

2. Recommendations

It is recommended that the Board:

- i. Does not employ an in-house lawyer;
- ii. Reconsiders the matter as part of the Section 14 Review

3. Open Session

4. Contribution to the Board's Purpose and Objectives

In delivering the Act, ARB's objectives are:

Protect the users and potential users of architects' services, and supporting architects through regulation.

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. Background

- i. Recommendation 9 of the Department of Communities and Local Government's (DCLG) Periodic Review of ARB states that:

In light of the reduced and less adversarial approach to, complaints, the Regulator should consider use of an in-house lawyer for legal casework wherever possible in addressing disciplinary cases.

- ii. DCLG subsequently indicated that as part of the timetable for delivering the recommendations of the Review, ARB was expected to have considered the business case for employing an in-house lawyer by September 2017.

- iii. ARB currently procures external legal services in relation to a number of discrete areas of its work:

Professional Conduct Committee (PCC)

- iv. Under ARB's rules, where the Investigations Panel decides that an architect has a case to answer, a report will be prepared by a solicitor or barrister instructed by ARB. This report will include:

- 1) the factual allegations
- 2) a chronology of the case
- 3) a summary of the case against the architect
- 4) preparation of witness statements
- 5) submissions on unacceptable professional conduct/serious professional incompetence
- 6) commentary on any relevant legal issues

The solicitor will then proceed to undertake the advocacy at a PCC hearing, including

- 1) presentation of the case
- 2) cross-examination of witnesses
- 3) responding to requests for submissions on any applications/legal matters

ARB currently instructs three firms of solicitors, who were appointed following an open tender exercise.

The annual cost in this area is estimated at £310,000, but wholly dependent on case-load.

Misuse of title prosecutions

- v. Where ARB has evidence that an individual or practice is using the title 'architect' whilst unregistered, and it considers that it is in the public interest to proceed with a prosecution, it will instruct solicitors to issue a summons to the relevant Magistrates' Court. The solicitor's duties include

- 1) legal advice as to prospects of success
- 2) pre-trial correspondence
- 3) the collation of evidence, including the taking of witness statements
- 4) submission of summons to court
- 5) advocacy at court (nationally)
- 6) instruction of third-parties
- 7) post trial matters, including collection of costs

ARB currently instructs one firm in relation to this area of work, which was appointed following an open tender exercise.

The annual cost in this area is estimated at £60,000¹, again based on demand.

Other legal services

- vi. ARB also requires legal advice in relation to a number of disparate issues relating to its running, and the delivery of its various statutory functions.

Such areas include:

- 1) Constitutional / legislative advice
- 2) Human Resources/Employment
- 3) Appeals/Judicial Reviews
- 4) EU law
- 5) Data protection
- 6) Tax/property/financial matters

ARB currently instructs one firm in relation to this area of work. Historically the annual cost has been some £130,000.

Potential employment

- vii. ARB could employ one qualified solicitor or barrister experienced in preparing and presenting professional conduct cases for a regulatory body.
- viii. On assessment of current workload, the new role would be limited to undertaking the PCC work. It is not envisaged that any new employee would have either the capacity or the expertise to provide the required legal services in other areas.
- ix. It is anticipated that the solicitor would have sufficient working hours to undertake half of the current PCC caseload. This could potentially result in savings of some £75,000 (see Section 6).

Section 14 Review and legislative change

- x. ARB is currently a root and branch review of how it fulfils its statutory obligations to investigate allegations of unacceptable professional conduct and serious professional incompetence (the Section 14 Review). The initial results of that Review are planned to be brought to the Board for its consideration in early 2018. The Review will cover many of the elements that would be relevant to the workload and practice of an in-house lawyer.
- xi. In addition to this, DCLG are currently working on the legislative changes recommended by the Periodic Review. These changes include a more stringent test for a case to be referred to the PCC, and an additional power for the Investigations

¹ Some of those costs may be recoverable. In 2016 £11,000 was recovered.

Panel to issue statutory reprimands. Either of these legislative changes – if implemented – could lead to a significant reduction in the number and nature of cases being referred to the PCC.

- xii. The net result of the section 14 Review and the legislative change could be that the requirements for legal services, particularly in relation to PCC cases, are very different to the current position.
- xiii. It follows that it would be prudent for the Board to defer making a decision until the outcomes of these reviews are known.

6. Resource implications

In light of the recommendation to defer this decision no detailed financial analysis has been undertaken, but on a bare financial analysis of the current position, the employment of any in-house lawyer could produce annual savings in the region of some £75,000. This is based on the assumption that one full time employee could undertake half of the PCC casework.

7. Risk Implications

There are always significant risks surrounding the preparation and presentation of Professional Conduct Committee cases, which are subject to statutory appeal and have substantial financial and reputational implications. A detailed risk analysis will need to be undertaken to understand the potential pros and cons of relying on an internal resource rather than expert external legal advice.

The recommendation is to allow the Section 14 Review to produce a new model for investigating complaints, and at that point consider what resources are required to deliver those obligations effectively. This would be the appropriate stage to undertake a full risk analysis. To make a decision now will risk employing the wrong level or type of resource for future needs.

The recommended approach was discussed and agreed by the Investigations Oversight Committee at its meeting in June 2017.

8. Communication

ARB is committed to deliver its obligations to investigate allegations about architects effectively, efficiently and thoroughly. It will continue to look at all of its processes and resources to ensure that they are proportionate and fit for purpose.

9. Equality and Diversity Implications

There will be Quality and Diversity implications if and when the Board decide to engage any new employee.

10. Further Actions

The employment of an in-house lawyer will be considered as part of the Section 14 Review, which will take into account best practice, workload, risks and the view of key stakeholders. The initial results of that Review are planned to be brought to the Board as recommendations in early 2018.