

Architects Registration Board

Section 14 Review

Introduction

1. In March 2017 the Department for Communities and Local Government¹ (DCLG) issued its [Periodic Review](#) of architects regulation and the Architects Registration Board (ARB). That Review made recommendations for change, a number of which related to how ARB investigates allegations against architects.
2. ARB's statutory obligations are set out within [section 14 Architects Act 1997 \("the Act"\)](#). Section 14 holds that all allegations of unacceptable professional conduct (UPC) or serious professional incompetence (SPI) against architects must be investigated by persons appointed by the Board, and that when they are found to have a case to answer, they must be referred to the Professional Conduct Committee (PCC) for it to decide whether they are guilty.
3. Section 14 provides that ARB may make rules as to the procedures to be followed in its investigations. These rules are the Investigations and Professional Conduct Committee Rules ("the Rules").
4. The relevant recommendations of the Periodic Review were:

Recommendation 6: For the regulator to work with the sector to review, refresh and update all aspects of the guidance for complaints handling

Recommendation 7: Statutory test for complaints referral in the Architects Act to be updated and strengthened to reduce numbers referred

Recommendation 8: Architects Act to be amended to provide the regulator with the ability to issue minor sanctions to reduce the numbers referred to the PCC

Recommendation 9: The Regulator to consider the use of an in-house lawyer for all but the most serious complaints and/or specialist advice, to reduce costs

Recommendation 10: To review the composition and practice of the PCC in line with the principles developed through the call for evidence

5. In embarking on its own review, ARB notes that recommendations 7, 8 and 10 all require changes to the primary legislation, and so remain in the gift of Parliament rather than the Board. While ARB had initially delayed its own review to await and

¹ Now the Ministry of Housing, Communities and Local Government

assess the impact of legislative change, it then learnt that no such change was imminent and it would be appropriate to proceed. The ARB internal review would look at how all of ARB's own procedures could be improved (Recommendation 6), and whether to employ an in-house lawyer (Recommendation 9). Changes in these areas would not require an amendment to the Act.

6. In instructing the review, the following objectives² were agreed:

6.1 To review:

- Whether the current processes at the Investigations stage reflect best practice and can be improved
- The effectiveness of ARB's model for securing legal services, and particularly whether some of those services might be brought in-house
- Whether there remains a need for a Clerk to the PCC
- Whether all case preparation and presentation at the PCC must be carried out by a lawyer

6.2 To redraft the Rules to reflect legislative change and best practice

6.3 To review and rewrite ARB's guidance to reflect any changes brought about by this review

7. In carrying out this review, we decided to break down ARB's section 14 obligations into four stages of investigation, and report on them separately. The stages are:

7.1 **Stage 1 – Review**

Where an allegation of UPC or SPI is made, evidence is collected and reviewed by the staff team, and the scope of the allegations developed and put to the architect for response.

7.2 **Stage 2 – Investigations**

Where the evidence has been collated and the allegations formed, persons appointed by the Board (currently the Investigations Panel (IP)) will consider that evidence and decide whether the architect has a case to answer at the PCC.

7.3 **Stage 3 – Case preparation**

Following the referral of a case to the PCC, a report will be prepared for the PCC on the IP's behalf. This is the stage where external solicitors have been appointed, and will include the consideration of whether an in-house lawyer should be employed.

7.4 **Stage 4 – Professional Conduct Committee**

The PCC decides, at a public hearing, whether the architect is guilty of UPC and/or SPI in the way alleged by ARB. If it finds the architect guilty the PCC may then impose a disciplinary sanction.

² Investigations Oversight Committee, June 2017

Executive Summary

8. ARB has reviewed its procedures and processes for investigating allegations of UPC and SPI against architects.
9. It has found that while there may be opportunities for significant reform of its disciplinary procedures, such reform would require amendments to the Act. Whilst the review found that current arrangements remain fit for purpose, there are some modest changes that do not require a change to the law which would bring about improvements in performance and greater efficiency.
10. The Review finds that there could be a greater use of architectural expertise within the disciplinary process, which would improve the accuracy of investigations and mitigate the risk of loss of expertise within the ARB staff team.
11. The IP, while already performing well, could be further assisted by rule changes allowing for a greater flexibility in how decisions are reached, and by greater use of technology.
12. The review does not find that the employment of an in-house lawyer to fulfil ARB's professional conduct obligations would be beneficial in terms of efficiency or risk. The review does however find that the rules should be changed to allow greater flexibility in how cases are prepared, and provide for an opportunity for some cases to be prepared by ARB staff.
13. While most of the PCC proceedings and constitution are governed by statute and relevant laws, some potential improvements have been identified. The Review recommends that the requirement for a PCC Clerk be removed, with their responsibilities passed on to others. It also recommends that the Rules be changed to provide for enhanced case-management prior to the hearing, and to allow for each party to sum up its case after the conclusion of the evidence and before a decision is reached.

Consultation

14. Rather than seek views on proposed changes once they had been formulated, it was decided that ARB should consult widely in advance of the review commencing, so that opinions could be factored in to any possible amendments to the current scheme.
15. ARB therefore issued a pre-consultation document on 19 July 2017, which went out to the public, the profession, professional bodies, and those who are already involved in delivering the disciplinary proceedings.
16. Rather than asking the closed questions synonymous with usual ARB consultations, the pre-consultation simply sought views on how the current regime could be improved. We were particularly keen to hear from the professional bodies, some of whom had been critical of the current regulatory system ARB operates during their response to the Periodic Review.
17. The response rates at this initial stage were disappointing. The RIBA made no other submission over and above that issued to the Periodic Review in which said that they had improvements and suggestions. The response rate from the profession was also low, although this may be borne out of a lack of knowledge, or interest, in the intricacies of their regulator's disciplinary procedures. As expected those who deliver ARB's functions as part of their role (IP members, PCC members, appointed solicitors) were more forthcoming in their suggestions for change. The consultation responses are available at **Annex B**.
18. ARB staff also undertook their own exercise in gleaning best practice from similar organisations. Other regulators were visited and questioned on their own regimes, so that suggestions and ideas could be included as part of their own input into the review. The list of those organisations consulted with is at **Annex C**.

Stage 1 – Case Review

Background

19. Where a complaint is made to ARB about the conduct or competence of an architect, it is initially reviewed by a case officer (ARB staff). ARB has a published 'Standard of Acceptance' guidance document, which sets out the criteria a complaint must meet before it can be investigated further by ARB. The guidance states that the complaint must identify wrongdoing by an individual on the Register of Architects; it should be supported by credible evidence where appropriate; it must be an issue which falls within the regulatory remit of ARB; and it must be sufficiently serious that it may amount to UPC or SPI. Where the Standards of Acceptance are met, it is for the case-officer to distil the issues raised into a format that the architect can be asked to respond to. We do this through the framing of broad allegations, summarising the particular issues raised in the complaint.

Issues identified

Are the particulars of the complaint identified accurately and framed appropriately?

20. An issue identified during the Section 14 Review research was that there is no expert architectural input at the case review stage. This means that where the case contains complex architectural or technical issues, no architect will have had the opportunity to examine the basis of the allegations before they are referred to the IP for a decision. In practice, it was found that accuracy at this stage relies upon the experience and knowledge of ARB staff members, which in itself highlights a risk in terms of succession planning and resilience.
21. Feedback from relevant stakeholders was that when allegations are wrongly drafted this can result in delays at a later stage of investigation where the errors require correcting, or the risk that the missed issues are not properly investigated.
22. We understand the importance of robust and ongoing staff training in order to mitigate this risk; however, the Section 14 Review also highlighted the fact that the current procedures do not allow for expert assistance to be called in. A remedy to this problem would be to appoint a panel of architectural experts which ARB can call upon to advise on the framing of complicated or technical allegations. To protect the integrity of the later stages of investigation these experts would not be asked to provide an opinion on the merits of the allegation, but to advise on the accuracy of language, the evidence required, and to identify any important matters that may have been overlooked by the complainant and case-officer.
23. It is not anticipated that such expertise would be required often; this being the case then the additional costs and delays by adding in an additional stage would be limited, but worthwhile.

Recommendation 1: appoint expert architects to assist with the investigation of complaints about architects at all stages of the investigation process

Stage 2 – Investigation

Background

24. Where an allegation of UPC or SPI is made against a registered architect, persons appointed by the Board must decide whether that architect has a case to answer at the PCC. At present, the persons appointed by the Board are members of the P, who form Panels of three (one architect, two lay people) to consider the evidence and decide whether the architect has a case to answer. Under the Rules, the Panel must decide either that:
- 1) further investigation is required before a decision can be reached;
 - 2) no further action should be taken in respect of the allegation;
 - 3) the architect should be given advice as to their future conduct; or
 - 4) the case should be referred to the PCC by way of a solicitor's report
25. Before reaching a final decision, the Panel has to issue a preliminary decision to offer the parties the opportunity to comment on the provisional findings.
26. The KPI for the Investigations Panel to reach a final decision is 12 weeks. Of this, 8 weeks is allowed for the preliminary decision, and the remaining four weeks is for the parties to make further representations and for a final decision to be reached.
27. The Investigations Panels perform well against the 12 week KPI. In the last three years it has exceeded the benchmark of concluding more than 80% of cases within the allotted time.

Issues identified

Is the current investigations model fit for purpose?

28. A review was undertaken of other regulators with comparable investigation models, to see whether ARB's approach of using panels working remotely remained effective. There was no universal approach taken by all of the bodies. Some had one dedicated case examiner making referrals to the next stage, though most had a collective decision. Many investigative committees physically met to reach decisions, rather than the document/correspondence based approach of ARB.
29. This review did not find any other models that would provide any advantage to ARB. Cases involving architects tend to be technical and document led. Because of this, the papers need a considerable period of consideration before decisions can be properly reached; meetings would be an inefficient use of time and money and create bottlenecks of work.

30. Most tellingly, since the Investigations Pool was formed in 2013 and populated with appropriately experienced appointees, rather than Board members, its performance has been excellent both in terms of punctuality and robustness of decision making. The Investigations Pool regularly meets all of its Key Performance Indicators.

Recommendation 2: that the Investigations Panels should continue in their constitution and practice

Should preliminary decisions be issued before a case to answer is decided?

31. The Rules currently require the IP to release a preliminary decision on whether there is a case to answer, and give the parties to the case an opportunity to make representations on that provisional decision before it is finalised.
32. This step in the process takes four weeks (two weeks for the parties to prepare representations, two weeks for the Panel to consider any new information and come to a final decision). Bearing in mind that the whole investigation is expected to be concluded in 12 weeks, this four week period is significant.
33. Decisions of the IP are rarely changed at this stage. If the investigation has been undertaken properly before the case is referred to the Panel, there ought to be no new evidence in existence that might change the original view of whether there is a case to answer. In the last two years, just 6% of cases have involved a different outcome following representations at preliminary decision stage.
34. However there do remain instances where it is pragmatic for the IP to be able to provide a provisional view. This may be where the architect has not responded properly to the complaint (despite having an answer to the allegations), but whose mind is focussed by the impending referral to the PCC. It is also a useful tool to manage those complainants who wish to consistently add to their complaint as the investigation proceeds – they can be told that they will have a further opportunity at an appropriate stage.
35. On balance, and having canvassed the views of the IP members, it is recommended that flexibility is built in to the process: in some cases the IP may dispose of the matter without the need for further representations, while in others, where the Panel will be assisted by further information before coming to a final view, it may issue a preliminary determination.
36. This should lead - in some cases – to a shortened investigations stage and fewer delays – whilst leaving sufficient opportunities for further consideration where appropriate.

Recommendation 3: that the Rules be amended to give the IP the discretion of whether they will issue a preliminary or final decision. Guidance to be written which sets out the criteria that will be applied when using that discretion.

Stage 3 – Case Preparation

Background

37. Section 14(2) of the Act provides that where the IP has decided that an architect has a case to answer to one or more of the allegations, a report shall be prepared for the PCC. Under the Rules, the report must be prepared by a solicitor or barrister appointed by the ARB Registrar.
38. ARB currently has three legal firms appointed to prepare and present cases at the PCC, all of which were selected after an appropriate tendering exercise. One of those firms is Scottish, for while not required either in law or under ARB's rules, it is considered beneficial to have expertise in the different legal system that operates in Scotland.
39. The Periodic Review identified the use of external lawyers to prepare and present cases at the PCC as one of the areas that ARB should review.

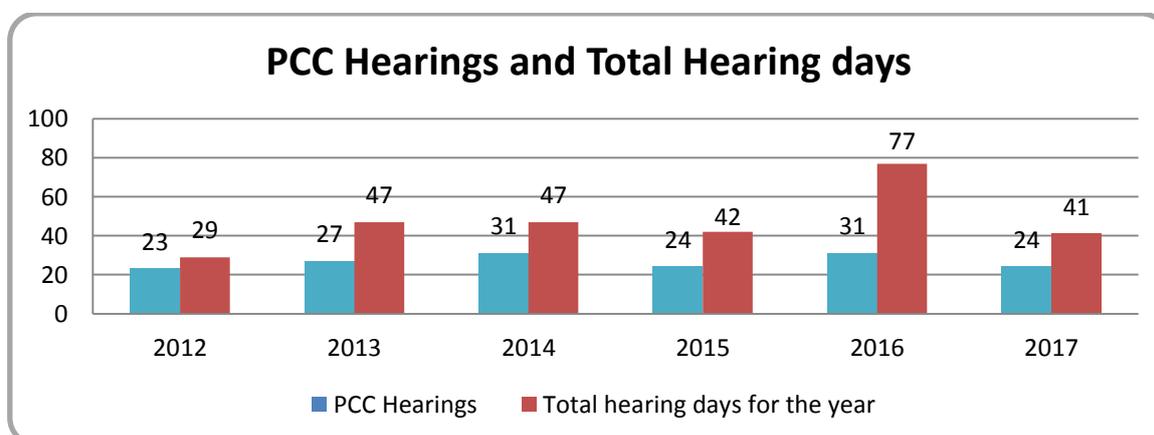
Issues identified

Should ARB employ an in-house lawyer to prepare and/or present reports to the PCC?

40. When coming to a decision as to whether an in-house lawyer would be an appropriate and effective approach, we have researched other models and considered the efficiency, effectiveness and cost of the current model in comparison with those elsewhere.

Workload

41. While the number of cases being referred to the PCC has increased by 50% since 2010, in the last five years the volume of work has remained relatively consistent. As with any demand led industry, workload will always be largely dependent on external drivers, and vulnerable to fluctuations.



42. Over the past three years:
- 56% of hearings lasted 1 day
 - 28% of hearings lasted between 1 and 3 days
 - 16% of hearings lasted more than 3 days

Costs

43. Arguably the most persuasive reason to move to a model of in-house legal resource is the potential cost-saving. ARB has an annual expenditure³ of £272,500 on external legal resource for PCC cases. If ARB was to appoint an in-house lawyer who was able to deal with all of the workload, paid at market rates, an annual saving of £224,900 could be expected. An in-house lawyer to prepare reports only (and have external advocacy) would result in an annual saving of £201,400.
44. When considering these potential savings, it is important to remember that while it may be theoretically possible for an in-house lawyer to deliver all of ARB's work, it would take an extraordinary coincidence of timing for this to be achieved. Cases do not generally arise consecutively, and the scheduling of PCC hearings is greatly affected by the availability of the numerous parties involved.
45. While it would still be possible to employ more than one lawyer and still achieve significant savings, the workload would not likely be sufficient to engage them on a full-time basis.

Approach by other regulators

46. As part of the review of this area of ARB's work, research was undertaken into how other regulators and comparable organisations undertake similar work.
- 20% of the organisations surveyed completed all investigation and advocacy in house.
 - 50% used a mixture of internal and external legal resource, often supporting peaks in activity and management of more complex cases.
 - 30% used only external legal firms when preparing and presenting cases to the PCC.

Options identified

47. The Review identified three possible options:

Option 1: Continue with external legal services

48. This option would maintain the status-quo. It is the low risk option. ARB's current solicitors are experienced and efficient, are experts in their field and can be expected to maintain best-practice. They offer ARB substantial assurance and flexibility. By

³ 2014-2017 inclusive

having a number of solicitors ARB is able to select the appropriate lawyer for the case, and contract manage performance issues. Demand led contracts put no lasting liability on ARB in relation to workload.

Risks	Benefits
High costs	Positive feedback from key stakeholders on ARB approach and quality of advocacy
Continued criticism from MHCLG and stakeholders for costs incurred	Lower risk of flawed cases leading to appeals
Administrative inefficiency in sending the case out for fresh consideration	Continued external scrutiny on quality and robustness of cases
Limited control over KPI achievement	Continued ability to “performance manage” through contract management
	Lawyers are experts in regulatory law and have experience in architectural matters

Option 2: Employ an in-house lawyer for case preparation

This option would mean the employment of an in-house lawyer to prepare the report for the PCC. This would involve collating the relevant information, taking witness statements, drafting allegations and providing expert advice on matters of law or evidence. Once the report is completed, it would be passed to external counsel to prepare for, and provide advocacy at the PCC hearing.

There would be significant cost advantages in this option; however it is unlikely that the workload would sustain a full-time position. It would also involve some repetition of work, as the external legal counsel would require time to review the case and prepare for the hearing.

- 49. An additional and significant risk at this stage would be the lack of external legal review until the case had been prepared for hearing. The ‘fresh view’ offered by external lawyers after referral mitigates the risk of inappropriate or flawed cases being progressed.

Risks	Benefits
Loss of independent scrutiny when case is referred from IP. May result in weak cases moving forwards.	Lower costs.
Higher costs for legal advocacy	Maintain independent scrutiny before taking case to a hearing.
Some inefficiencies identified in process not addressed	Performance management of advocates can be done through contract management
May result in loss of lawyers with detailed knowledge of architecture	Tighter control over KPI delivery
Could lead to performance management issues – much more difficult to deal with, particularly risky if affecting likelihood of appeal.	
Risks surrounding a lack of continued exposure to best practise	
Not enough work to sustain a full time position.	

Option 3: Employ an in-house lawyer to fulfil all of ARB’s requirements

50. This option would mean that an in-house solicitor is employed to prepare and present cases. It is highly unlikely, taking into account an employee’s leave, sickness, case-conflict and experience that expert external legal service would not still be required. While the level of that additional service is not possible to predict, it would inevitable reduce the potential saving.

51. This option is of significantly higher risk, in that its success would be wholly reliant on the quality of the in-house lawyer. ARB would be vulnerable to unavailability, under-performance and staff departure. As with option 2, it also does not offer any external legal scrutiny.

Risks	Benefits
Loss of independent scrutiny. Weak cases may be taken forward.	Large cost saving
Could lead to performance management issues – much more difficult to deal with, particularly risky where affecting risk of appeal.	Bring ARB in-line with work at other similar organisations
May result in loss of lawyers with detailed knowledge of architecture	Tighter control over KPI delivery through performance management
May be difficult recruiting quality legal resource at for the position and salary offered.	
May lose perception as fair regulator as separation of functions and independent scrutiny is lost.	
Erratic caseload may lead to periods of inactivity and a surplus of work	

Recommendation

52. It is the recommendation of this Review that Option 1 is taken. Unlike large regulators with large workloads, each case referred to the PCC represents a significant risk to ARB in terms of its public duty, organisational reputation, and risk of appeal.
53. While there are potentially significant savings, such economies are outweighed by the risk of a wrongly prepared investigation leading to a successful appeal or judicial review. The panel of solicitors engaged by ARB are efficient, skilled and experienced. If and when their performance falls below that as expected, then the contract can be ended with no liability to ARB. Tenders are periodically undertaken to ensure that ARB continues to secure competitive terms.
54. The public and the profession are entitled to expect that disciplinary cases are managed by ARB in the most robust and efficient way possible. The use of an in-house lawyer may not represent the high-quality, low risk option that ARB should follow.

Recommendation 4: That no in-house lawyer should be employed to prepare and/or present PCC reports

55. The Review did however identify a low-risk opportunity for savings. Under the Rules all reports for the PCC must be prepared and presented by a solicitor or barrister appointed by the Registrar. There are however some cases that are so straightforward that their preparation and presentation falls well within the expertise of ARB staff. An example of this might be a criminal conviction which has relevance to an architect's fitness to practice, or an uncontested allegation that would result in a Consent Order. A change to the Rules permitting (though not requiring) cases to be prepared by ARB staff would be an improvement to the procedure.
56. This change would represent a modest cost saving on a low-risk basis, and demonstrate ARB's willingness to be flexible in its approach for the sake of efficiency.

Recommendation 5: That under the Rules, ARB staff may prepare reports for the PCC

Stage 4 – Professional Conduct Committee

Background

57. When the ARB's solicitor has prepared the report on behalf of the IP, setting out why the architect may be guilty of UPC and/or SPI, that report is served on the architect and a PCC hearing scheduled.
58. The constitution of the PCC panel is set out in the Act. It must consist of one architect, one non-architect, and one person nominated by the Law Society (a solicitor). Under the PCC Rules, the PCC must also at all times be assisted by a legally qualified Clerk to the Committee. The legally qualified Law Society nominee will usually act as Chair at each PCC hearings.
59. The PCC will hear the case against the architect, and then the architect will have the opportunity to present their defence to the allegation(s). After considering whether the facts of the allegation are proved, the PCC, if necessary, will go on to consider whether those facts should amount to a disciplinary offence. If it does, a disciplinary sanction may be imposed.

Issues identified

Do PCC panels require the advice of a legal Clerk?

60. Our review found that having both a legally qualified Chair and a legally qualified Clerk is out of step with all other regulators' disciplinary procedures. Comparable organisations will either have a legally qualified Chair and have a staff member acting as Clerk; or alternatively have a legal assessor to assist a lay chairperson.
61. Under the terms of the Act, ARB must have a legally qualified Chair. The role of the Clerk is set out in the Rules, which can be varied by the Board. The responsibilities of the Clerk are set out in the Rules, and in guidance and through practice. They include:
 - Dealing with adjournment requests prior to the hearing;
 - Giving pre-trial directions to assist in the just, expeditious and economical disposal of the case;
 - Putting the charges to the Respondent at the hearing;
 - Swearing in witnesses;
 - Providing procedural advice to the Respondent, particularly when they are unrepresented;
 - Providing the PCC with procedural and legal advice;
 - Proofing the decision of the PCC before it is finalised;
 - Providing the PCC with updates on case-law and best practice at its Training Day
62. The annual cost of having a Clerk at each PCC hearing in 2017 was £70,000.

63. There is, no doubt, a benefit to having an experienced lawyer acting as Clerk at each hearing. There is however a doubt as to whether the current arrangements are a duplication of duties rather than a necessity, particularly as the Chair of the PCC is an experienced lawyer capable of making legal judgements.
64. By amending the PCC Rules, the responsibility for adjournments and pre-trial directions could be passed to the Chairperson. The remaining duties of the Clerk could be assumed by an ARB staff member. Presently all hearings are attended by an ARB staff member, but their duties are so light that their attendance is an inefficient use of resource.
65. There are risks surrounding the proposal to remove the role of the Clerk. Having the Chair involved in pre-trial directions will increase the risk of them being prejudiced to hear the case, in which event would lead to delays. However, this model works for comparable organisations as well as elsewhere in the legal system, so the risk is considered to be an acceptable one.
66. Furthermore, at present the legislation only permits three legally qualified Chairs to be appointed, so increasing their workload may lead to scheduling issues and delays. Some of the savings made by deleting the role would be lost by having to pay additional fees to the Chair. There would also be an additional staff resource requirement although we currently believe the additional duties can be addressed without an increase in headcount. It is also inevitable that having another experienced lawyer on hand to provide guidance in terms of the law and the decision reduces the risk of errors which may lead to appeals.
67. The review concludes that on balance, the requirement to have a Clerk to the Committee as the Rules currently require is disproportionate to the risk that the role mitigates. The responsibilities of the role could be assumed by the PCC Chairs and through existing staff arrangements, so a significant saving would be made. We know that this model functions well within other organisations and so we believe the risks can be mitigated effectively. This change would also send out the message that ARB is operating a lean and efficient disciplinary process.

Recommendation 6: That the PCC Rules are amended to remove the requirement for a Clerk, and transfer the necessary powers to the PCC Chair.

Are case management processes efficient and effective?

68. The Rules provide that ARB must serve the Solicitor's report on the respondent (architect) no later than 42 days prior to the PCC hearing. The respondent must then submit their defence no later than 14 days in advance of the hearing date. In practice this proves problematic, as it offers insufficient time to allow for case-management, particularly in respect of the length of the hearing. It is often only at this stage that ARB understands whether the architect plans to admit the allegations against them,

whether they plan to be present and/or represented and whether they plan to bring witnesses. This late notification causes a significant percentage of hearings going part-heard, and results in delays.

69. A remedy for this problem will be to allow more time between the receipt of the respondent's defence and the start of the hearing. This will allow for a case-management meeting to take place in an attempt to clarify the issues and facilitate a smoother running of proceedings.

70. In order not to penalise the respondent by cutting short the time he or she has to prepare their defence, the overall minimum time between serving the solicitor's report and the earliest date of the hearing should be extended from 42 to 49 days.

Recommendation 7: That the PCC Rules are amended to

i) extend the earliest date of hearing from 42 to 49 days

ii) extend the period for receiving the respondent's defence from 14 to 21 days prior to the hearing; and

iii) allow for the PCC Chair to require the parties to engage in a case-management meeting

Should the ARB solicitor be given the opportunity to make closing submissions at the conclusion of evidence?

71. The Rules govern the procedure by which a PCC hearing proceeds. Under the Rules, the ARB solicitor presents the case against the architect, after which the architect provides evidence in their defence, before making final submissions. The PCC will then reach a decision on whether the allegations are proved.

72. Under the current procedure, the ARB solicitor does not have any opportunity to respond to points raised during the architect's defence. Furthermore, as there is no opportunity for the PCC to hear closing submissions, it may be days (or in the case of part-heard hearings) many months, after the ARB case that the PCC will be tasked with reaching a decision.

73. This procedure is out of step with other regulators and judicial bodies, and has been criticised by both lawyers and the PCC members.

Recommendation 8: That the PCC Rules are amended to give the ARB and then the architect the opportunity to make closing submissions at the conclusion of the evidence

Annex A: List of Recommendations

Number	Stage	Recommendation
1	Review	Appoint expert architects to assist with the investigation of complaints about architects at all stages of the investigation process
2	Investigation	Investigations Panels should continue in their constitution and practice
3	Investigation	Investigations Rules should be amended to give the Investigations Panel the discretion of whether they will issue a preliminary or final decision. Guidance to be written which sets out the criteria that will be applied when using that discretion.
4	Case preparation	No in-house lawyer should be employed to prepare and/or present PCC reports
5	Case preparation	Rules should be amended to allow ARB staff to prepare reports for the PCC
6	PCC	Rules should be amended to remove the requirement for a Clerk, and transfer the necessary powers to the PCC Chair
7	PCC	Rules should be amended to i) extend the earliest date of hearing from 42 to 49 days ii) extend the period for receiving the respondent's defence from 14 to 21 days prior to the hearing; and iii) allow for the PCC Chair to require the parties to engage in a case-management meeting
8	PCC	Rules should be amended to give both the ARB and the architect the opportunity to make closing submissions at the conclusion of the evidence

Annex B: Consultation Responses

Responders:

Ref	Respondent
RW	PCC member
SW	Investigations Pool member
RIBA	Royal Institute of British Architects
JA	Architect
RT	Investigations Pool member
1. Do you think that ARB's current approach to investigating allegations against architects is effective and proportionate?	
RW	<p>Recent cases have highlighted some instances of shortcomings in the system, but there are recurring issues which come to mind:</p> <ol style="list-style-type: none"> 1. Failure to recognise there real 'mischief' alleged of the Architect within the complaint and to embody that in the accusation(s) he/she has to face. 2. Failure to capture that mischief in the wording of the accusation(s). Too many cases fall on this issue alone. However, I think the ARB prosecuting solicitors are getting better at this aspect. 3. Failure of parties, usually, though not exclusively nor surprisingly the Respondent, to keep to a timetable, adding stress and delay to proceedings.
SW	Yes – the current approach to investigating provides a prompt and effective resolution to complaints.
RIBA	Concerns have been raised about whether the ARB's approach to its disciplinary functions is sufficiently flexible, proportionate and risk-based. This approach has led to inconsistent and inappropriate sanctions being made by the ARB, some of which have been

	<p>successfully contested leading to substantial settlements against the ARB, creating excessive costs for the profession and therefore, ultimately, for consumers.</p> <p>In 2012, the ARB spent about £853k (31% of retention fees income) on its professional conduct function. Our understanding is that most of this cost was spent on obtaining external legal advice. With this resource it conducted 23 professional misconduct cases (at an average cost per case of £37,000), which resulted in only three architects being erased from the register. In the RIBA's opinion this is not cost effective or efficient regulation.</p> <p>The RIBA's view is that there is a strong case for a review of the operation of the ARB's disciplinary and prosecution process and in particular to consider whether:</p> <ul style="list-style-type: none"> a. It can be made more flexible and effective (e.g. by the greater use of agreed settlements); b. It can be made more fair (e.g. the ARB is sometimes slow to identify clearly the gravamen of the charge and unreasonably applies Rules 13 to revisit cases which have been dismissed); c. It can be used more effectively against those falsely purporting to be architects (including whether the powers and penalties in this area are sufficient); and d. Its costs can be reduced. <p>The RIBA would be happy to contribute to such a review with more detailed suggestions for improvement.</p>
JA	<p>The Regulator needs to do more to communicate what it regards as acceptable professional standards and should set up an enquiry facility to accurately answer detailed queries from architects. Initial Assessment of complaints should be more rigorous in ensuring the complaints to be addressed by the architect constitute actual bonafide complaints i.e. that they are clearly defined and supported by properly referenced evidence.</p> <p>The architect's response time following an initial ARB assessment should be longer than two weeks for a single straight forward complaint. Longer periods should be provided if there are multiple complaint elements and longer still if these are broad and undefined in nature, however, the latter should be considered as not representing a bonafide complaint. Smaller practices should also be given greater flexibility in recognition that the respondent is a fee earner engaged and responsible for work for existing clients which should not be adversely affected.</p>

Explanation and Justification of Standards Employed

I am circulated, by email, of the findings of PCC sittings. These represent a checklist of CPD topics and professional feedback generally. On one occasion recently, I noted from one such ARB press release an architect found falling below acceptable professional standards in their performance upon site 'supervision'. This struck me as odd as it was my understanding that 'supervision' was not a professional legal requirement as it denoted an obligation to provide a constant level of site management which an architect cannot be expected to supply.

On one occasion recently, I noted from one such ARB press release an architect found falling below acceptable professional standards in their performance upon site 'supervision'. This struck me as odd as it was my understanding that 'supervision' was not a professional legal requirement as it denoted an obligation to provide a constant level of site management which an architect cannot be expected to supply. I contacted the head of Professional Standards requesting direction upon if, or when, the law defining 'supervision' had changed such that this became an architect's professional duty. A correspondence took place and confirmation was received that the law had not changed but that there were additional circumstances to consider justifying the use of the term 'supervision'. The Head of Professional Standards stated he wanted to consider the facts in the cases raised in more detail and provide a more substantive response. I still await such a response which is now aged nearly 12 months. This experience leads me to suggest that ARB must play a more open role in keeping the profession advised as to what it regards, and what it does not regard, as an acceptable professional standard. When an architect takes the time and trouble to interact with the Regulator upon the detail of practice, particularly where it appears architects are being held to account to a standard higher than the law requires, it must fall upon it, as its own duty, to satisfactorily address and communicate answers to such queries and/or inconsistencies fully and accurately to show how such practice is lawful and how it would expect a professional duty to be delivered.

Depth of the Initial Assessment of a Complaint

I have been the recipient of two complaints from clients recently which they felt required the Regulator's attention. Both were poorly structured complaints arising initially from dissatisfaction with fee costs but then framed around other issues that they presumably felt had more credence as the fee accounts were clearly and correctly advised and rendered. This review provides a useful vehicle to feedback comments and concerns from this experience.

The first complaint was a client reaction against a County Court Money Claim against them for unpaid fees and the second, who was known to the first, joined in. They were both speculative and spurious complaints. It was clear to me that both complaints were groundless, lightweight in content and low in submission evidence. I was concerned that there appeared little checking undertaken within the initial investigation by ARB. The impression in both cases was that the complaints were assumed to have potential to be correct in their assertions and the architect had to answer all matters before any attention was to be given by the Regulator.

My experience suggests that to provide a clear and accurate response to any matter, spurious or otherwise, takes a considerable amount of time to research and evidence from project files. Much of this time could be saved by ARB focussing the complaint by ensuring all allegations are properly evidenced before progressing. In this way the architect's workload in response will be kept to only relevant matters and likewise the ARB panel workload will be similarly reduced. In both of the above cases the Investigations Manager's initial assessment listed 5 or more topics on each which were very broad and wide ranging supported only by minimal evidence documents that were rarely referenced in the complainant's text. This was felt an unreasonable burden to be taken by the architect requiring considerable coverage to address the wide context. ARB could, and should, do more at initial contact to ensure only complaints that are adequately assembled and supported progress to require the architect's response.

Timetable and Context

Upon receiving an invitation to respond to a complaint a timetable of two weeks to do so appears to be the norm. Unless a practice has considerable staffing resources this is far too short a period for anything other than a simple focussed complaint. A small practice, such as my own, has an existing workload that cannot simply be shelved.

In the first of the complaints, previously related, this 2 weeks coincided with time needed to progress the already commenced County Court case for non-payment of due fees. Discussions with the Investigations Manager led to advice to write in to the Regulator formally to request a 'stay' to the complaint pending the outcome of the running County Court case. The impression was given that this was not uncommon and the complainant would not be disadvantaged as their views were already under review within a parallel process. It was surprising, therefore, to receive a blunt rejection of the request to 'stay' the ARB process and only a small concessionary extension of a further 2 weeks. If, as related under the previous Initial Assessment heading, the heads of complaint are left unfocussed, wide and far ranging – 2 weeks, even 4 weeks, is no time at all when integrated with an existing workload.

	<p>I would suggest closer attention to the nature of the complaint and relating this to an appropriate time span is required. If there are 5 matters of a general un-specific nature then a week per matter appears to me a minimum period in order not to impact upon other clients. In addition, careful attention to the size of the practice implicated should also have a bearing upon the time allocated with small practices given the greatest flexibility.</p>
<p>2. Is the published guidance clear and accessible for those involved in the investigations process?</p>	
SW	<p>Yes – all aspects of the investigations process are made clear and understandable to all parties involved by the information available.</p>
<p>3. Do you have any suggestions as to how ARB’s current processes might be more fair, effective, economic or comprehensive?</p>	
SW	<p>I have seen cases where complainants have expressed difficulties in completing or recording their complaints within the standard complaints form and it is rare to see this being used in my experience. It is always desirable to encourage/ demand use of a standard complaints form to ensure that the information required to investigate a complaint that falls within ARB’s remit is received and to assist those who may be less able to provide the information required. I would therefore recommend ensuring that the complaints form is easy and effective to use.</p>
RT	<ol style="list-style-type: none"> 1. Investigation rules: 4b): maybe take out the option of appointing 5 investigations pool members for a case – can’t see why this would ever be necessary 2. For consistency, maybe state the remuneration arrangement for IP members – the arrangement for Inquiry Panel members is already set out at 5c) 3. Consider the benefit of establishing routine case dialogue/interaction between IP and ARB’s solicitor 4. It might be beneficial for ARB’s solicitor to attend part of the IP meeting for case reviews and exchanges

5. Consider letting the IP see comments from ARB's solicitor before the report goes to the PCC

6. Would it be beneficial if the PCC received a copy of the IP's views on the case?

7. Possible appointment of in-house lawyer: I share the views in the PCC Chair's Annual Report – poor legal representation will damage the process. External lawyers can be easily replaced if they underperform. This would be problematic if the solicitor was a member of staff.

Annex C: List of organisations researched

Association of Chartered Certified Accountants
Bar Standards Board
Chartered Institute of Personnel and Development
Farriers Registration Council
General Chiropractic Council
General Medical Council
General Optical Council
General Osteopathic Council
General Pharmaceutical Council
Nursing & Midwifery Council
Royal College of Veterinary Surgeons
Royal Institute of British Architects
Royal Institute of Chartered Surveyors
Social Care Wales
Solicitors Regulation Authority