



Subject 2017 Report of the Chair of the Professional Conduct Committee
Purpose For Note
From Julian Weinberg, Chair of the PCC

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1. Summary

To note the annual report of the Chair of the Professional Conduct Committee (PCC).

2. Open Session

3. Contribution to the Board's Purpose and Objectives

In delivering the Act, ARB's objectives are:

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.

4. Key Points

- i. This is the eighth annual report of the PCC, and the fourth from me as Chair of the Committee.
- ii. I am advised that all of the current Board members have a reasonable wealth of experience at being on the ARB Board, so I will not outline the role and purpose of the PCC in any great detail.
- iii. I will however stress once again the importance the Committee places on its independence from ARB, and while of course as its Chair I am accountable for its overall performance, individual decisions must be taken without fear nor favour of Board influence.
- iv. I am told that most Board members have now attended a PCC hearing, or at least part of one. For those that have I hope that you have found the experience enlightening, and I and my colleagues are always open to any feedback you might have on the proceedings. Those that have not yet attended are of course welcome to do so.

Statistics

- v. The PCC made 18 decisions in 2017 (listed in [Annex A](#) to this Report), of which 14 resulted in findings of unacceptable professional conduct. There were no findings of serious professional incompetence.
- vi. In two cases the PCC found the architect was not guilty of the allegation(s), which is a similar proportion to previous years. The PCC decided that one architect had no case to answer to the allegation, and in another case gave permission for the case to be withdrawn because of an unrecoverable health condition.
- vii. During the course of the year the whole range of sanctions available to the PCC was employed at some stage. Three architects were issued with a reprimand; three with a penalty order, and three were suspended from the Register. Five architects were erased from the Register. Of those five, two architects had originally been issued with a Penalty Order but had failed to pay. In those circumstances, section 16(4) Architects Act provides that the PCC can impose a suspension order or erasure order as a replacement sanction.
- viii. There were no statutory appeals against any sanctions imposed by the PCC in 2017.

Concluding hearings

- ix. Concluding cases within the allotted time remains the PCC's greatest challenge. Cases going 'part-heard' are in no one's interest; not least the architect involved who will be understandably seeking a swift resolution to what is invariably a stressful and unpleasant experience. In 2017 five cases went 'part-heard' and had to be reconvened at a later date; this problem has continued into 2018.
- x. I have met with both ARB staff and the Investigations Oversight Committee to discuss potential solutions. While it is unrealistic to expect to be able to predict all eventualities that might arise during a hearing that will cause delays, I am pleased to see that steps are being taken to mitigate the risks of over-running. I understand that changes are being made to the way in which cases are scheduled, and I note that the proposed changes to the Professional Conduct Committee rules are designed to give additional time and powers for effective case-management.
- xi. Nevertheless, it is a trend across all regulators that hearings are going on longer, with developments in case law making the proceedings more complex than ever before. With such complexities come a greater risk of judicial review and appeals, and I make no apology for the fact that the PCC will take as much time as is necessary to ensure that its decisions are fair, reasoned and robust. We would be doing a disservice to both ARB and the architects who appear before us if we did not.

Unrepresented Respondents

- xii. One of the topics I have discussed with the IOC is the frequency of architects appearing before us at the PCC without legal representation. In the last five years approximately half of architects have been unrepresented.
- xiii. I am reassured and unsurprised that there is little notable difference in the outcome of PCC cases between those architects who have legal representation and those who do not. The only significant statistical difference is that hearings take longer where an architect has the benefit of legal assistance.
- xiv. I and my fellow PCC Chairs are well experienced at dealing with unrepresented respondents; however there is little doubt in my view that it would be better for all concerned if architects had the benefit of legal assistance. I know that ARB signposts those involved in the disciplinary process to where they might find lawyers willing to assist them for free, but it would be helpful if either insurers or representative bodies could offer more help in this area.

Section 14 Review

- xv. I and my colleagues have been consulted on the Section 14 Review, particularly in those areas that affect our work on the PCC.
- xvi. Some of the recommendations of the Review are unarguably sensible. The lack of an opportunity for the ARB solicitor to make final submissions at the conclusion of the evidence does put him or her at a disadvantage, and does not help the PCC in reaching our conclusions. Similarly I welcome any mechanism within the rules which would allow a PCC Chair to take a more active approach in case-management, particularly prior to the hearing.
- xvii. The proposal to remove the position of Clerk is a less obvious advantage; however on balance, in my view, probably the correct decision to make. I and my fellow Committee members have always been assisted by highly capable Clerks, but their continued existence alongside legally qualified chairs is in truth some way apart from modern regulatory practice. It is important that their influence in and around the edges of the hearing is not underestimated, and it would be a failing if it were not to be adequately replaced by some other measure – such as a dedicated ARB hearings officer. By way of reassurance, both I and my two Legal Chair colleagues have extensive experience of both acting as Legal Assessors and Legally Qualified Chairs with other regulators and we are confident that we can carry out the role effectively without the assistance of a Clerk.

PCC Development

- xviii. The PCC held its annual review day in December 2017. At that day the Committee reviewed the last 12 months' cases as a whole, and shared experiences of those things that went well and those that could have gone better. Although feedback is provided to the ARB staff after each hearing, it also provides an opportunity for

more general points to be raised in relation to issues and procedures.

- xix. The main source of discussion at the review day was appropriate case-management, and what can be done to ensure that solicitors' reports accurately capture the gravamen of the allegation about the architect.

- xx. The current membership of the PCC is an experienced one. Four of us will soon be entering into our eighth – and sadly – last year of membership, and the four newest members will be finishing their first three year term. I am confident that by the time my term ends next year, those newer members will be sufficiently experienced that they will ensure that the transition period of fresh faces onto the PCC will be a smooth one.

5. Resource Implications

None. The work of the PCC is factored into the annual budget.

6. Risk Implications

A failure to deal with allegations of unacceptable professional conduct, serious professional incompetence, or issues arising from criminal convictions risks harm both to users of architects' services and the reputation of the profession. Further risks are judicial reviews and statutory appeals against decisions and penalties imposed.

7. Communication

Details of PCC cases where a guilty finding has been reached are displayed on ARB's website, and reported via the e-bulletin.

8. Equality and Diversity Implications

All PCC members have periodic training, including on the importance and significance of Equality & Diversity issues, which can be of particular significance in the tribunal environment. In December 2017 the entire PCC had training on unconscious bias.

E&D information is collected about those architects who appear before the Professional Conduct Committee. That data shows that there is a higher than expected number of men and older people appearing at the PCC in comparison to their representation on the Register. There is nothing notable about the data in relation to the remaining protected characteristics.

List of PCC Decisions 2017- Annex A

DATE ¹	SUMMARY OF ALLEGATIONS	DECISION
1 March	UPC: failed to enter into a written agreement with his client prior to undertaking any professional work.	Reprimand
3 March	UPC: failed to pay a judgment debt; failed to disclose a conflict of interest	Erasure
13 March	UPC: Certified work that had not been constructed in accordance with the agreed plans	No case to answer
13 March	UPC: dishonestly certified tests that had not been carried out	Erasure
20 March	UPC: failed to undertake an adequate site survey	Not guilty
23 June	UPC: Used language to a client which was unprofessional, derogatory and racially motivated	No decision ²
26 June	UPC: failed to ensure that their professional finances were managed responsibly; subject to a Director Disqualification Order	12 month suspension
26 June	UPC: failed to provide adequate terms of engagement; failed to have a written procedure for complaints handling	Erasure ³
27 July	UPC: Failed to set out terms of engagement in writing	Reprimand
2 August	UPC: Prepared and published a report on the condition of a property without the knowledge or consent of its owner	Not guilty
13 September	UPC: Failed to inform the client, adequately or at all, that additional fees were being incurred on an hourly rate and accumulating during the production of revised sketch proposals	Erasure ⁴

¹ The date of decision only. The hearing may have taken place over a number of days

² Case withdrawn on grounds of ill-health

³ The original sanction was a Penalty Order, which was replaced with an Erasure Order after a failure to pay

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13 September	UPC: Allowed works to take place without obtaining Building Control permission	12 month suspension
18 September	UPC: failed to provide adequate terms of engagement	Reprimand
26 September	UPC: Failed to produce a design that was fit for purpose. Failed to adequately communicate changes to the agreed design.	£1000 penalty order
6 October	UPC: Inappropriately restricted his client's right to make a claim against him; failed to advise his client adequately as to the limitation of liability; made representations to his client which were inaccurate and misleading.	£1000 penalty order
19 October	UPC: Failed to provide an effective and efficient service to his client; failed to deal with a complaint appropriately; failed to act with integrity in relation to a refund of monies.	2 year suspension
3 November	Criminal conviction - possessing criminal property	Erasure
7 December	UPC: Provided incorrect architectural advice to a client	£1000 penalty order

UPC = unacceptable professional conduct