



**Subject** Investigations Oversight Committee's Annual Report 2017-18  
**Purpose** For Note  
**From** Chair of the Committee, Ros Levenson

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## 1. Summary

To note the activities of the Investigations Oversight Committee (IOC) from July 2017 to June 2018.

## 2. Open

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. Executive Summary

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 remain areas in which reform would bring about improvements in performance and efficiency.

### Terms of Reference

- ii. This is the fifth annual report of the IOC since its formation in January 2013. Under its Terms of Reference (**Annex A**) the role of the Committee is to keep under review ARB's processes for discharging its statutory disciplinary responsibilities fairly and efficiently.

### Meetings, Committee membership

- iii. The Committee membership  
Ros Levenson (Chair)  
Danna Walker  
James Grierson

The Committee has met three times since its last report to the Board: on 2 November 2017, 27 February 2018 and 8 June 2018.

The Terms of Reference for the Committee will be reviewed at its next meeting.

iv. **Investigations Pool**

The Investigations Pool consists of at least 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. There are currently three architects and five lay members. This is an appropriate number for the volume of the work.

v. Five members of the Pool will reach the end of their current appointment in December. While they will be entitled to reapply for a place on the Pool<sup>1</sup>, there will be an open recruitment exercise taking place in the autumn.

vi. IOC members periodically observe Investigations Pool meetings and see the minutes of all its meetings. The IOC is satisfied that those meetings are conducted appropriately and as far as been observed, investigations are undertaken thoroughly.

vii. The IOC has noted that the performance of the Investigations Pool in the last 12 months against its KPIs has continued to be high, with 83% of cases concluded with the 12 week benchmark in 2017 (and 76% mid-way through 2018). The target is 80% 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 2017, the Investigations Pool made a total of 57 decisions and took an average<sup>2</sup> time of 11 weeks to make a decision.

viii. The IOC however notes that the online portal, used by IP members to access and consider cases, has still not been introduced despite being planned for 2017. Its introduction will allow for greater use of paperless working, cutting down not only on the expense of delivering hard-copy papers to Panel members, but also reducing the risk of future data breaches by allowing confidential information outside of the control of ARB.

**Professional Conduct Committee (PCC)**

ix. The PCC consists of three architects, three lay members and three legally qualified members nominated by the Law Society<sup>3</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

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<sup>1</sup> Up to the maximum period of eight years as detailed in ARB's appointment policy

<sup>2</sup> Mean average of time taken for IP decisions in 2017

<sup>3</sup> There are a further seven Board members appointed to the PCC under the Act, but do not take any part in its business.

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.

- x. The PCC makes its decisions independently of the Board; that independence is crucial to its credibility in the eyes of both the profession and the public. The IOC nevertheless considers all the PCC decisions - not only so it can assess the performance of those undertaking investigations on behalf of ARB, but so that it can identify areas of learning and improvement that it might disseminate to the profession via the Board.
- xi. The IOC has not identified any concerns about the function of the PCC in terms of the quality of its decisions. It has met with the Chair of the PCC and no concerns were raised as to the conduct or performance of the PCC members. A key area of risk identified is the amount of cases which go part-heard, which is addressed in the section below.

#### Key Performance Indicators

- xii. One of the responsibilities of the IOC is to monitor ARB's performance against its KPIs.
- xiii. The initial investigations stage, preparation of solicitor reports and completion 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.
- xiv. The Committee requested an additional KPI for performance to be reported against – the total time taken for a case to be concluded from the date of receipt through to the conclusion of the PCC hearing. This Indicator is illuminating as it will highlight those areas of the process that create delays.
- xv. This KPI is now reported at each meeting, and in June 2018 it showed that only 50% of cases had met the performance target (which is 56 weeks). While the IOC was satisfied that there were justifiable grounds for delay in all of the cases that did not meet the target, a forensic examination of the reasons highlighted the need for better case-management throughout the PCC process. Too many cases are adjourned or go 'part-heard', and when this happens the ensuing delays are often considerable.
- xvi. While this issue is not on unique to ARB, it does have a detrimental impact on both the parties to the case and the reputation of the organisation. It is not in the public interest to have decisions on professional conduct and competence delayed.
- xvii. The Committee identified two steps that could, while not eradicating the problem, at least assist in mitigating the risk and impact. The first is that often these delays are caused by unprepared architects, either requesting adjournments on the day of the hearing or arriving with previously unseen evidence. While this approach may

be symptomatic of the calibre of architects that are referred to the PCC, more robust guidance as to the importance of preparing properly and the consequences of failing to do so may reduce the rates of non-co-operation.

- xviii. The second step is one that is included in the Section 14 Review list of recommendations. This is to give the PCC Chairs additional powers and responsibility to case-manage the proceedings, not only during the hearing but in the crucial weeks leading up to the case being heard. This, it is anticipated, will lead to a more cohesive disciplinary process and reduce the risks as set out above.

#### **Third Party Review**

- xix. The Third Party Review facility is open to parties involved in a complaint where the Investigations Panel decides that the architect concerned does not have a case to answer at the PCC. Third Party Review does not revisit the original decision, but looks at whether the process was properly and correctly followed. There are two independent Third Party Reviewers.
- xx. The IOC considers the findings of all Third Party Reviews, and received an annual report from the Reviewers at its June meeting. The reviewers reported that of the five reviews that they had undertaken, in four cases they found no defects in the process or procedure. In one case the Reviewer had found that there were some allegations that had not been considered by the Investigations Panel, and so the case should be referred back for further investigation.
- xxi. The report concluded that ARB had conducted all of its investigations thoroughly in a timely and efficient manner. The reviewers did have suggestions as to how the investigations procedure could be improved, and the IOC received assurance that those recommendations have been acted upon by ARB staff.

#### **Section 14 Review**

- xxii. Much of the IOC's work in the last 12 months has been focussed on ARB's Section 14 Review. This is an internal review of how ARB investigates allegations of unacceptable professional conduct and serious professional incompetence. It has received presentations from staff, considered consultation responses, and met with the Chair of the Professional Conduct Committee. The IOC was particularly keen to seek his views so it could understand the risks involved in removing the Clerk from the PCC process and engaging an 'in-house' solicitor to prepare and/or present PCC cases.
- xxiii. The IOC was supportive of the proposals for change put to the Board at its May meeting, and pleased to see they were agreed in principle. The Committee will continue to monitor the progress of the Review.

## **5. Resource Implications**

The annual cost of the Investigations Oversight Committee is limited to the expenses of its members. For 2016-17, the expenses claimed were £1,889.

## 6. Risk Implications

The IOC continues to monitor the effectiveness of ARB's investigations into architects' conduct and competence; there are serious reputational and financial risks in respect of potential failures.

The individual risks are covered in the key points.

## 7. 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.

## 8. Equality and Diversity Implications

How ARB deals with matters of Equality & Diversity within its investigations has been a central theme to the IOC's work in the last year. The IOC has considered all of the E&D data ARB holds in relation to this area of its work, and while that information is far from complete, it has not identified any particular areas of concern. It has noted that there is a disproportionate amount of men, older people, and architects from Scotland being referred to the PCC. The Committee has directed that ARB's regulatory communications be tailored in a way that might better reach these parts of the profession.

The IOC will also consider the Equality Assessments undertaken as part of the consultation process on the Section 14 Review.

## 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