



Architects Registration Board

Consultation on proposed amendments to the Investigations and Professional Conduct Committee Rule

Responders:

Code	Name/Organisation
RR	Rosemary Rollason, PCC Clerk
FB	Fiona Barnett, PCC Clerk
ACA	Brian Waters/Richard Harrison, Association of Consultant Architects

1. Do you think that the proposed changes to the Rules improve ARB's regulatory process?		ARB Staff comments
RR	Overall yes.	
FB	Generally, yes.	
ACA	1. The introduction of an expert advisor is welcomed on the basis that the accused architect is currently potentially not sufficiently represented by an investigations panel with potentially only one qualified architect and two lay people. The risk is that one architect (as would be relevant in a minimum sized panel of 3) can be, either insufficiently experienced, or 'biased' or overruled by argument by the other panel members.	1. The advisor is there neither to represent the architect nor to take part in the decision making process.
	2. The proposed "Presenter" definition should include the description "Is selected by the Registrar on the basis of competence to be appointed for the role".	2. Such a requirement is implied of all appointments; there is no need to include it in a rule.
	3. The role of the "Inquirer" in relation to "The Investigations Panel" and "The Reviewer" needs to be explained or clarified. As is it is not clear what is intended.	3. Agreed that the Terms of Reference for the Inquirer will need to be set out, but not in the rules.

2. Are there other changes to the disciplinary process that could be made that are not proposed? If so, what?		ARB Staff comments
FB	1. The option for a PCC to carry out a review hearing following a suspension would be beneficial in some cases, although this would require a change to the primary legislation.	1. Changes to primary legislation outside the scope of this consultation.
ACA	1. A progress and relationship diagram is essential explaining clearly what is the proposed.	1. Agreed. New guidance will be published following the conclusion of the rules changes.
	2. The potential for changes in evidence between making a preliminary investigatory report, a final investigatory report and finally a solicitor's report can result in onerous time and cost liabilities on the respondent. The Investigations Panel should not be able accept changes in evidence at each stage in the procedure as this undermines the basis of the case in question.	2. If the proposal is that the Investigations Panel and/or the PCC is unable to consider new evidence after the commencement of an investigation, then it should be firmly rejected. It would not be in the interests of justice.

3. Will any of the proposed changes have an impact on anyone with protected characteristics? If so, in what way?		ARB Staff comments
RR	I do not believe so.	
FB	No	
ACA	Do not understand the question. “Protected characteristics” requires defining.	Protected characteristics are defined by the Equality Act 2010

4. Do you think the removal of the Clerk to the PCC is an appropriate and proportionate change?	ARB Staff comments
<p>RR</p> <p>1. I think the issue is what replaces the Clerk (a role which is similar to the role of “legal assessor” in other regulatory schemes). The existence of the role has several benefits in my view. A legal assessor:</p> <ul style="list-style-type: none"> - is independent of the hearing panel and gives independent legal advice, in public and upon which the parties have the opportunity to comment; - is able to provide a channel of communication between the panel and the parties; - is able to assist an unrepresented respondent with the hearing procedure; - can assist with, or undertake on behalf of the hearing panel, the drafting of decisions. <p>The above is not to say that most of these functions cannot be undertaken by a legally qualified Chair, and a number of bodies do use such a model.</p>	<p>1. It is envisaged that the duties of the Clerk are assumed by the legally qualified Chair of the PCC, and an ARB hearings officer (staff).</p>

	<p>2. I understand the ARB’s intention is to have legally qualified Chairs. However, the proposed changes to the Rules do not appear to expressly require that the panel Chair is legally qualified. In addition, under the changes, the new role of “presenter” does not require a legal qualification. It therefore appears that under the proposed changes, the ARB’s hearing process could operate with no legal input at all – even if that is not intended to be the case in practice. In my view, that could raise a concern with the profession and wider public about the appearance of the legal robustness and fairness of the process. It might also be a concern in relation to quality assuring the Panels’ written determinations.</p>	<p>2. The Architects Act requires that the PCC Chairs are legally qualified.</p>
	<p>3. On a practical level, one can never predict what kind of challenges might arise in any given case. I would suggest that consideration could be given to retaining a discretionary option to appoint a Legal Assessor to a case if the circumstances so require.</p>	<p>3. This possibility was discussed at the Board meeting in July, and at length by the IOC.</p> <p>It was considered that if the role of the Clerk was required, then the Clerk should remain on all cases. Deciding when a Clerk should or should not be appointed would lead to additional complications.</p> <p>If the Board is minded to allow for a Clerk to be appointed then this would only require a simple rule amendment.</p>

<p>FB</p>	<p>1. Yes, given that the Chairs are legally qualified; however it could be beneficial to retain the option of using a clerk, only, for example, for a lengthy or complex case.</p>	<p>1. See above comment.</p>
	<p>2. Rules will need to be clear about when/how the LQC is expected to give advice (for example, see below, section 6 The General Medical Council (Legal Assessors and Legally Qualified Persons) Rules Order of Council 2015)</p> <p><u><i>Advice of legally qualified persons</i></u> <i>6. Where, at hearing of a Tribunal, a legal assessor has not been appointed under paragraph 7(1B) of Schedule 4 to the Act, and the Chair as a legally qualified person advises the Tribunal on any question of law as to evidence or procedure, the Chair shall—</i> <i>(a) so advise in the presence of every party, or person representing a party, in attendance at the hearing; or</i> <i>(b) if the advice is tendered after the Tribunal has begun to deliberate on any decision during the course of the proceedings, include the advice so given in the Tribunal decision, unless the Chair considers it necessary to advise in the presence of every party, or person representing a party, in attendance at the hearing</i></p>	<p>2. This is a valid point, but can be dealt with by a PCC guidance note.</p>

ACA	<p>1. Not sure because the role and duties of the Clerk were not defined except in as much as the proposed deleted clause describes it.</p>	
	<p>2. If there is no independent record of the hearings this would be detrimental to the work of the PCC and if deleted, there should be another means of independent recording to replace the role.</p>	<p>2. Proceedings are electronically recorded. The removal of the Clerk will have no impact on the recording of the proceedings.</p>

3. Please provide any further comments you wish to make	ARB Staff comments	
ACA	1. There should be no charge for a copy or transcript of the hearing to be made available to the Respondent.	1. A recording of the proceedings is provided free of charge, as is a written copy of the decision. If the respondent wants a written version of the entire proceedings, it is unclear why that cost should be borne by the profession.
	2. Notwithstanding proposed time limits to submit documents, there should be no time limits on a respondent during the course of a Panel Hearing to respond fully to the claim.	2. There is nothing in the rules concerning time-limits during the hearing. All PCC Chairs have a responsibility to ensure that the hearing proceeds fairly but efficiently.
	3. The Architects Code states “If you are in doubt as to how to act in a particular situation, you should seek independent professional or legal advice.” Where such advice is taken by an architect as Respondents, it should not be used in any way by the Panel as relevant to the case and certainly not a basis for reprimand, censure or discipline.	3. Not relevant to this consultation.
	4. The PCC should be required to observe the longstanding principle of client/lawyer privilege for all parties involved. Such disclosure is likely to lead to prejudiced decisions.	4. Legal professional privilege applies at the PCC in the same way as it applies elsewhere.

RR	A small drafting point – I suggest the word “partake” in Rule 11 should be replaced with “participate”	Agreed, and change proposed.
----	--	------------------------------