



Subject Report of the Chair of the Professional Conduct Committee (PCC)
Purpose For Note
From Emma Boothroyd, Chair of the PCC

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1. Summary

To note the annual report of the Chair of the Professional Conduct Committee (PCC) for the period of December 2019 to December 2020.

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 tenth annual report of the PCC, and the second from me as Chair of the Committee. It covers the period from the start of December 2019 to the start of December 2020. Each year this report offers me the opportunity to highlight the main issues that the PCC has dealt with over the last 12 months, and provides the Board a chance to ask me any questions about the work of the Committee.

The role of the PCC

- ii. The PCC is currently made up of 11 active members: three architects, four lay members and four legally qualified Chairs. Each panel considering a case is made up of one architect, one lay person, and one legally qualified Chair. The Panel is assisted by a member of staff from the ARB, usually the Hearings Officer, who assists in the smooth running of the hearing.
- iii. The statutory role of the PCC, which is set out in the Architects Act, is to decide whether an architect is guilty of unacceptable professional conduct (UPC) and/or serious professional incompetence (SPI), and if so issue a sanction as appropriate.

- iv. PCC hearings are held in public and are adversarial in nature, just as in civil or criminal jurisdictions. ARB presents the case against the architect (or respondent, as they are referred to during the proceedings), and then the respondent – if denying the allegations – will present their defence.
- v. The PCC considers factual allegations made against an architect. If it decides that the facts of the allegation(s) are proved, then it goes on to consider whether those facts are serious enough to amount to UPC and/or SPI. If such a finding is made, then after considering any mitigation, it may (exceptionally) issue no sanction, impose a reprimand, a penalty order (of up to £2,500¹), a suspension (of up to two years), or order that the architect is permanently Erased from the Register of Architects.

PCC Membership

- vi. I was involved in the recruitment process to appoint six new members to the PCC in July and September, and am pleased that the Board agreed to expand the overall membership of the Committee from its original – and minimum – nine members. This increased membership will bring an additional challenge of ensuring a consistency of approach, but will offer greater resilience in terms of availability, of avoiding conflicts of interest, and in allowing more diverse panels to be formed.
- vii. Unfortunately to date we have been unsuccessful in finding an additional Scottish architect member, which is an important position because of the legal requirement for all Scottish cases to have such a member on the panel. We have only one, who must retire in September 2021, so the need for replacements is pressing, if not urgent. I understand that the Executive are taking steps both in the short and medium term to fill this post, but it remains of paramount importance that the individual is competent to carry out this important role. I look forward to being involved in that appointment process.
- viii. This year we said goodbye to four longstanding colleagues: Julian Weinberg, Paul Housego, Judy Carr and Stephen Neale. All have served the profession and the public admirably on the PCC for the last decade, and I know that I owe them thanks for the guidance they offered me when starting this role. I am sure that those of us who remain on the Committee will be able to share our own experience with our new colleagues in a similar way, while remaining open to the fresh perspectives they will bring to the group. We have begun that process by involving our new colleagues in shadowing hearings and I and my colleagues have provided support and guidance and offered to assist when they begin sitting. The feedback from the new members is that they have found shadowing helpful and they are keen to begin.

Virtual Hearings

- ix. No review of 2020 could be complete without reference to the global pandemic. The restrictions have of course had a significant impact on the logistics of being able to hold physical meetings, and indeed there has only been one ‘live’ PCC hearing since March. During the initial lockdown in March I and the other legally qualified

¹ Any monies raised by fines at the PCC is sent to HM Treasury, not kept by ARB

members met with the Director of Regulation to risk-assess the scheduled cases, and see whether any would be suitable to be carried out by video-link. At that time we were somewhat ignorant at the possibilities technology such as Zoom could provide, and I am delighted to say that since that meeting the PCC has managed to successfully conclude fourteen cases by this format. This could not have been possible without the patience and skill of the ARB investigations team, and particularly the Hearings Officer.

- x. Virtual hearings have offered benefits not only in terms of cost, efficiency, accessibility and security, but in my view have mitigated the stress and inconvenience caused to architects and witnesses involved in the proceedings. That said, while they have been a resounding success during this time when being in the same room as each other has been an impossibility, there will remain a future need for some cases to be heard 'in person'. Some scenarios do not lend themselves to consideration by screen, and some participants may be disadvantaged by being forced to use technology. My advice would be that the post-pandemic regulatory world should be able to provide for both physical and virtual hearings, depending on the needs of the case and those involved in it. They must be decisions made on a case by case basis and sensitive to the needs of the individuals. Virtual hearings have ensured that the regulatory work of the ARB has been able to continue which is clearly in the public interest. All of the legally qualified chairs and colleagues are mindful of the need to be balance the public interest with fairness and not to adopt a "default" position for virtual or in person hearings.

Cases and Statistics

- xi. The PCC made 28 decisions in the 12 months prior to this report (listed in [Appendix A](#) to this Report). Three of those cases were dealt with by way of a consent order between the ARB and the architect. There were three not guilty findings, including one case a change in the position in advance of the hearing led ARB to offer no evidence in support of the allegation, so the PCC had to conclude that the architect had no case to answer. There was a case where despite there being a criminal conviction that was relevance to the architect's fitness to practice, the circumstances led to the Committee concluding that no disciplinary sanction was appropriate.
- xii. We have considered a higher than usual number of very serious cases resulting in erasure from the Register. The failings in these cases include dishonesty, discrimination, contractual incompetence, financial impropriety, and a disregard for the safety of clients. While these cases all share the same element of seriousness to the point of incompatibility with being an architect, they represent a diverse range of shortcomings. Similarly with the remaining cases that did not result in erasure, there is no overall theme that can be derived from those failings - other than they tend to go to an architect's conduct, rather than an inability to carry out the technical aspects of their engagements competently.
- xiii. At the time of writing, there have no appeals against any decisions of the PCC during this time period.

- xiv. This is also the first full year of the Legally Qualified Chair role being in operation. I am grateful to my colleagues who brought a wealth of experience to this role and I am confident that the new members are equally up to the task. It is a challenging combined role and is not replicated in many other regulatory jurisdictions. The Executive have ensured that cases are well presented by advocates who undertake this work regularly. I think this has contributed in part to the success of this role.

Professional Conduct Review

- xv. I have considered the conclusions of the Professional Conduct Review, and agree with the recommendations where they relate to the work of the PCC. While the PCC has not experienced any adverse issues in dealing with the current Rules, a streamlining and simplification of those Rules should always be welcomed to aid all of those who have to deal with them.
- xvi. I am led to understand that the role of any new oversight committee would not include a responsibility to review the substance of PCC decisions. This is important. The PCC's independence from the Board is crucial to its validity, and for an external body to reconsider decisions of an independent tribunal without having access to all of the evidence would be problematic, both reputationally and legally. I do agree that there will be opportunities to review decision making across the process more generally to encourage consistency and clarity, and would be happy to be involved with that in any way I can. The PCC, I believe, will be an important consultee of any proposed changes to the way in which proceedings will be governed.

PCC Development

- xvii. Board members will be aware of the ongoing legal debate as to the employment status of PCC members, being that we are regarded as independent contractors rather than workers for employment law purposes. This means that there is an assumption that we are all competent to carry out our roles without the need for development or training.
- xviii. Despite that, the Board will want continued assurance that all those on the PCC are carrying out their important roles with competence. At present this effected through a feedback loop after each hearing, where those involved can comment on the performance of other members, logistics and relevant protagonists in the proceedings. This way, issues can be dealt with swiftly and without having to wait for annual performance reviews to be arranged.
- xix. I do however believe that there is space for a more formalised periodic performance review where issues and opportunities can be delved into in a little more depth. I will be discussing with the Executive the most appropriate vehicle for carrying out this process, within the strictures of the current legal landscape. The Executive is supportive of the PCC both in terms of enabling it to carry out its function but also is alive to the need for the PCC to be independent. I am therefore confident that this is something that can be worked out to ensure that PCC members are supported to

learn and develop within their roles.

- xx. In addition to this, all PCC members value the annual review day, primarily as one of the rare opportunities we have to meet with all of our colleagues. Legally qualified members will of course never sit with each other, so it is an excellent opportunity for us to share experiences and ideas, to encourage clear and consistent decision making. We also receive helpful updates on current issues within the profession, which allows us to take decisions which pay due regard to the context in which architects are currently operating. This is scheduled to take place virtually in January 2021 but I am ever hopeful that an in-person day can be arranged later in the year. I consider that this is an event that benefits from a face to face environment.

- xxi. As always, I and my colleagues would welcome any Board members wishing to observe a hearing as a member of the public; I am sure the experience would be particularly useful for those who have not experienced such tribunal proceedings before. Virtual hearings make observation particularly simple and discreet.

Appendix A

List of PCC Decisions December 2019- November 2020

Key: UPC – unacceptable professional conduct
 SPI – serious professional incompetence

Date	Summary of Allegation	Penalty
2-5 December 2019	UPC: Failed to provide adequate terms of engagement contrary to standard 4.4 of the Architects Code.	Reprimand
6-10 January 2020	UPC: <ul style="list-style-type: none"> • Failed to provide terms of engagement • Failed to manage a conflict of interest appropriately; • Acted dishonestly and/or without integrity by using client monies for his own benefit; • Failed to return money for goods/services not delivered; • Failed to have adequate and appropriate professional indemnity insurance in place; • Failed to provide an effective service and/or work to fit the brief in a timely manner; • Failed to adequately manage the project; • Failed to communicate adequately; • Failed to manage his business appropriately and/or report the liquidation of his company to ARB 	Erasure
20-22 January 2020	UPC: <ul style="list-style-type: none"> • Failed adequately to ensure that the build was carried out in accordance with the approved planning permission and/or listed building consent; • Provided inaccurate information on a retrospective planning application. 	Not Guilty
3-6 February 2020	UPC: Dishonestly posted false reviews online	Erasure

Continuation of agenda item 25

<p>10-11 February 2020</p>	<p>UPC:</p> <ul style="list-style-type: none"> • Failed to carry out work without undue delay; • Did not keep their client informed about the progress of the work; • Did not deal with a complaint about their professional work appropriately; • Knowingly used client money to pay a third party and/or a personal debt; • Did not cooperate fully and promptly with their Regulator; • Did not report the liquidation of his company to ARB, • Failed to hold adequate and appropriate insurance; • Dishonestly accepted funds from their client for work which was not undertaken; 	<p>Erasure</p>
<p>25-28 February 2020</p>	<p>SPI:</p> <ul style="list-style-type: none"> • Carried out a flawed tender process; • Provided and used an inappropriate contract for the building work; • Failed to administer the building contract competently. <p>UPC:</p> <ul style="list-style-type: none"> • Oversaw a regime of substantial and regular cash payments to the contractor; • Failed to act impartially and independently in respect of contract administration 	<p>Erasure</p>
<p>3 March 2020</p>	<p>UPC:</p> <ul style="list-style-type: none"> • Produced drawings that were inaccurate and lacked adequate detail. 	<p>Reprimand</p>
<p>6 March 2020</p>	<p>UPC:</p> <ul style="list-style-type: none"> • Failed to provide terms of engagement; • Produced inadequate designs and drawings; • Failed to deal with a complaint about their professional work appropriately; • Failed to have adequate and appropriate professional indemnity insurance 	<p>12 month suspension</p>

Continuation of agenda item 25

26-28 November 2019 and 9-11 March 2020	UPC: <ul style="list-style-type: none"> Failed to manage costs and valuations appropriately; Issued a Practical Completion Certificate when it was not appropriate to do so 	6 month suspension
23 March 2020	SPI: <ul style="list-style-type: none"> Design failures in respect of a swimming pool 	No case to answer
26 March 2020	UPC: <ul style="list-style-type: none"> Failed to provide adequate terms of engagement; Failed to carry out work in accordance with the terms of engagement; Failed to deal with a complaint and/or dispute appropriately. 	£1000 penalty order
11 May 2020	Criminal Conviction for theft and attempting to pervert the course of justice	No sanction
12-13 May 2020	SPI: Incompetent planning drawings	Penalty order £1,500
16-18 June 2020	UPC: <ul style="list-style-type: none"> Failed to provide client with adequate advice in relation to planning; Undue delay 	Penalty order £2000
29 June 2020	UPC: Failure to provide adequate terms of engagement	Reprimand
27-28 July 2020	UPC: <ul style="list-style-type: none"> Did not appropriately manage a conflict of interest; Failed to supervise and/or ensure that work was carried out in accordance with Health and Safety Regulations; Failure to pay judgment debts 	2 year suspension

Continuation of agenda item 25

12-13 August 2020	UPC: Made an inappropriate post on social media	Erasure
7-9 September 2020	UPC : <ul style="list-style-type: none"> failed to provide with adequate terms of engagement; failed to deal adequately with a complaint; failed to co-operate fully and promptly with ARB. 	Penalty Order £1,500
10 September 2020	UPC:Failed to notify ARB of a criminal conviction	Not guilty
14-16 September 2020	UPC: Sought to prevent a client from making a complaint to ARB	Penalty Order £500
18 September 2020	Criminal conviction: breach of a restraining order contrary to the Protection from Harassment Act 1997.	Erasure
17-21 August 2020 and 24 September 2020	UPC: <ul style="list-style-type: none"> Certified properties that were not in conformity with Building Regulations in respect of the minimum requirements of fire resistance, or built in accordance with drawings approved by Building Control. 	Erasure
30 September 2020	UPC: <ul style="list-style-type: none"> Failed to adequately inspect construction works; Failed to co-operate fully and promptly with ARB; Sought to prevent a complaint being made to ARB 	1 Year suspension
27 October 2020	UPC: <ul style="list-style-type: none"> Undue delays; Failed to deal with a complaint about their professional work appropriately; Failed to co-operate fully and promptly with ARB 	Penalty Order £1250
30 October 2020	UPC: failed to provide adequate terms of engagement	Reprimand

Continuation of agenda item 25

12 November 2020	UPC: Knowingly certified works that they had no involvement with	Penalty Order £2,500
2-4 September and 23 November 2020	UPC: Undue delay	Penalty Order £1500
3-4 December 2020	UPC: Failure to have adequate professional indemnity insurance	Reprimand