



Subject Review of Investigations Processes
Purpose For Note
From Simon Howard, Director of Regulation

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1. Summary

To commission an external review of ARB's investigations processes to provide assurance to the Board that they are fit for purpose.

2. Recommendations

It is recommended that the Board note the external review of ARB's investigations processes, and the Executive plan to deliver the recommended reforms throughout 2021

3. Open Session

4. Contribution to the Board's Purpose and Objectives

In delivering the Act, ARB's objectives are:

Protect the users and potential users of architects' services by ensuring investigations into the competence and conduct of architects are undertaken effectively.

Support architects through regulation by maintaining the collective reputation of the profession.

5. Background

- i. The Board's powers in regard to investigating the professional conduct and competence of architects are set out in Sections 14-18 of the Architects Act 1997. Section 14(6) provides the Board with the power to make rules to govern the procedures for carrying out these investigations, a power which has been used to make the Investigations Rules and Professional Conduct Committee Rules ("the Rules").
- ii. The Rules have been reviewed on a number of occasions, most recently in 2016 to introduce the power to dispose of cases by consent, and in 2018 to remove the Clerk from the Professional Conduct Committee process.
- iii. The Rules had not had the benefit of an external review since ARB's lawyers, Russell Cooke LLP, undertook an evaluation of their effectiveness in 2014, and

made a number of recommendations as to how the process could be modernised. While a number of those recommendations were put in place, the majority of them required a change to the primary legislation by Government, which has not been forthcoming in the intervening period. The Audit Committee has been kept informed of progress throughout.

Board involvement

- iv. The Board needs to be assured that the investigation process is working in a way that maintains the confidence of the public and the profession. It is central to an effective regulatory process that when things go wrong, the users of architects' services can complain to the Regulator and feel that the process of investigation is fair, consistent, effective and transparent.
- v. While the Board has no involvement in the investigation of any individual cases against architects, it does hold ultimate responsibility for the outcomes (whatever those might be) of the professional conduct process.
- vi. The Board previously sought that assurance through its Investigations Oversight Committee (IOC). The role of the IOC was to interrogate the data surrounding ARB's investigations, and regularly report back to the Board on matters of risk and opportunities for change. The IOC was disbanded in 2018, so it is important that the Board can continue to maintain assurance over this area of its work.
- vii. Best regulatory practice continues to develop, and as a smaller organisation ARB does not want to fall behind the curve. There will always be opportunities to carry out investigations more thoroughly, more quickly, more safely, or more efficiently.

The Review

- viii. In March 2020 the Board decided to commission a review of ARB's current investigatory processes, procedures and rules. The Review was to include:
 - An examination of the Rules, to identify any anomalies, discrepancies or lacunae;
 - Any proposals to change the Rules;
 - Recommendations for improvements or additions to existing or new guidance, practice notes and procedure documents;
 - Recommendations as to how best practise can be learned from other regulators and applied to ARB within the limitations of the Architects Act;
 - Advice to the Board on appropriate metrics and key performance indicators, and how best they can be reported and managed.

The Reviewer

- ix. Sheleen McCormack was appointed to carry out the review. Ms McCormack is an experienced barrister and the Director of Professional Standards at the General Osteopathic Council. She has chaired a number of fitness to practice panels for healthcare regulators and is a former independent reviewer of ARB's investigations and examination appeals decisions.

The Report

- x. The Reviewer's report is at **Appendix A**. The report does not identify any serious concerns about the functioning of ARB's investigatory procedures, but identifies a number of areas which may benefit from a refreshed approach. In particular she recommends that the rules by which the Investigations Panels and Professional Conduct Committee operate would benefit from a rewrite, and that there would be a benefit to establishing a group or committee to review regulatory decisions on an ongoing basis.
- xi. The advice of the Reviewer in respect of appropriate metrics and key performance indicators will be fed into the discussion the Board will be having in the coming months about how best ARB's performance and impact can be measured.
- xii. The Executive has considered the report and generally agrees with the conclusions reached. A table extracting the recommendations with Executive commentary is at **Appendix B**. In addition to this, the Executive has analysed the resources required to implement the recommendations, and set out a plan for doing so at **Appendix C**.

6. Resource implications

The cost of the legal advice in drafting new rules was anticipated and a sum has been set aside in the 2021 budget. The remainder of the recommendations will require staff time and expertise, and the Senior Leadership Group is currently preparing a plan for that human resource to be made available without an adverse impact on the core work of the departments or other projects.

7. Risk Implications

While the report does not identify any high risk areas that require immediate attention, disciplinary investigations in general are a higher-risk area of ARB's business. In the longer term it is important that best practice is maintained, so those areas for improvement do not descend into issues that require urgent reform.

8. Communication

ARB is committed to ensuring that it has an efficient and effective process for dealing with allegations about architects.

9. Equality and Diversity Implications

The report did not identify any areas in which ARB's investigations may be discriminatory.

10. Further Actions

As detailed in **Appendix C**.