

Review of Professional Standards – Phase One

The Act	The Architects Act 1997
The ARB	The Architects Registration Board
The IP and PCC Rules	Investigations Rules and Professional Conduct Committee Rules 2019
Architects Code: Standards of Conduct and Practice	Architects Code
IP	The Investigations Panel
PCC	The Professional Conduct Committee

1. I have been commissioned to undertake an external review into the ARB's current investigatory processes, procedures and rules. The review has been separated into three phases. The first part (or phase) of the review focusses on the following:
 - An examination of the IPCC Rules, to identify, amongst other matters, any anomalies, discrepancies or lacunae;
 - Any proposals to change the IPCC Rules

Context and Introduction

2. By way of background, a periodic review was conducted by the Department for Communities and Local Government (DCLG) with the report published in March 2017. In essence, the DCLG recommended that statutory regulation of architects should continue as '*light touch*' regulation.
3. The DCLG made a series of recommendations intended to enable, if implemented, the ARB's procedures to be more streamlined, timely and proportionate to the severity of the complaint received while also identifying

opportunities to improve transparency and demonstrating the fairness of the processes.¹

4. Broadly, the emphasis of the DCLG review was on sifting out, through a triage process, complaints that did not fall within the ARB's statutory remit. In tandem with this, the review explored different ways where a complaint could be concluded without referral to a hearing before the Professional Conduct Committee.
5. A number of the recommendations made would have required amendments to primary legislation. For example, a revision of the statutory test for referral in the Act (currently the 'case to answer') to a '*sufficient prospects of success*' test which would enable '*inappropriate*' complaints to be disposed of quickly whilst focussing on the strength of the evidence of the complaint and aligning this to the public interest test.
6. The DCLG's review recognised the importance of ensuring the expectations of complainants aligned with what was within the ARB's remit to deal with. It concluded that to improve and streamline case handling, the ARB should work with the sector to review, refresh and update all aspects of the guidance for potential complainants.
7. The reference to 'light touch' within the DCLG report has much in common with the 'right touch' regulatory approach espoused by the Professional Standards Authority for Health and Social Care (PSA). In summary, the PSA oversees the ten statutory bodies that regulate health professionals in the United Kingdom and social care in England. Right-touch regulation means understanding the problem before jumping to the solution. The primary aim is to ensure that the level of regulation is proportionate to the level of risk to the public. It does this by building upon the principles of good regulation, identified by the Better Regulation Executive.²

¹ The full report can be accessed on the following link:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/604822/CM9383 - PRR - Architects Registration Board Final Web .pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/604822/CM9383_-_PRR_-_Architects_Registration_Board_Final_Web_.pdf)

² There are eight elements that sit at the heart of *Right-touch regulation*:

- Identify the problem before the solution
- Quantify and qualify the risks
- Get as close to the problem as possible
- Focus on the outcome
- Use regulation only when necessary
- Keep it simple
- Check for unintended consequences
- Review and respond to change

8. The principles of right-touch regulation provide a useful lens through which to review the current investigation and adjudication processes and procedures of the ARB.
9. The DHSC consulted on proposals for the reform of professional regulation from 31 October 2017 to 23 January 2018. Promoting professionalism, reforming regulation, set out high level principles for reform with the aim of making professional regulation faster, simpler and more responsive to the needs of patients, professionals, the public and employers. These reforms are currently being taken forward with the timetable for change being delayed because of the Covid-19 pandemic. However, model rules are in the early stages of development with an overriding objective as a core principle. It is expected that these model rules will be clear around grounds of action, thresholds, tests and processes in language that everyone will understand.
10. Transparency is a vital aspect of any complaint handling procedure. Drawing on the above reform proposals, in reviewing the ARB's current rules, two key areas form the basis of review at the pre-hearing stage:
 - How the ARB decides which cases to investigate and which to reject (known as the standard of acceptance or threshold)
 - Whether the ARB can maximise 'consensual disposal' of cases safely and transparently without the need to refer to a hearing before the Professional Conduct Committee
11. In short, a satisfactory solution to the second bullet point is curtailed by primary legislation. Section 14(2) of the Act provides that '*where persons investigating a case under subsection (1) find that a registered person has a case to answer, they shall report their finding to the Professional Conduct Committee*'. The trigger for referral to a final hearing is the IP determining there is a case to answer. There are various mechanisms employed in the rules to 'work around' this provision, for example, IP Rule 13 refers to any decision of the IP as '*provisional*' until the report to the PCC has been made. This is not ideal and runs counter to the principle of finality of proceedings. However, it serves the wider pragmatic purpose of ensuring only those cases where there is a real prospect of success progress to a hearing. For this reason, I would suggest that a similar provision to this is retained in future amendments to the rules. However, without changes to the Act, there is little scope for further development of consensual disposal pre PCC.
12. As to the first bullet point, I would suggest any amended rules make provision for threshold criteria and provide at least an outline of the means of investigation. This would increase transparency and accountability in ARB investigation processes. Although the ARB currently publishes guidance on its standards of acceptance, this would provide a sounder legal basis for this procedure.

Existing good practice in the 2019 Rules

13. As part of the review of the rules, I have been asked to identify areas of existing good practice within the current procedures. Multiple examples of good practice are weaved throughout the current rules: from the IP being able to consider a case 'remotely', express provisions for case management and consensual disposal, through to increased flexibility afforded to the PCC enabling it to set its own procedures at a hearing so long as the procedure adopted is just and fair. I therefore identify additional areas below that are particular to the ARB:

- a. *Inquirers (IP rule 5)* – when used appropriately, inquirers have the potential to contribute to improving the quality and efficiency of fitness to practise investigations at the ARB through the provision of specialist architectural input to the professional standards team through a variety of ways including, assisting with the gathering and analysing of information and identifying gaps in information /evidence. The ARB has also published guidance filling in the detail of how inquirers work in practice.
- b. *Third party review (IP rule 16)* – is a mechanism for the complainant and the registrant architect to seek a review of the process by which the IP reached its decision. The ARB has published easily accessible guidance on how this process works, including the time limit for submitting a request for a review. The mechanism for a third party review, whilst not enabling the complainant to challenge the judgement of the IP, provides a dissatisfied complainant with a practical, efficient alternative to a judicial review. It is also a useful secondary resource to the ARB through the potential to identify relevant learning and incremental improvements that can feed into continuous improvements in case handling.
- c. *Reconsideration (IP rule 13 – 15)* – prompt and efficient discharge of cases is in the best interests of registrants and the wider public and 'ping ponging' of cases back and forth is to be avoided. However, it is also in the public interest to enable the IP to reconsider a decision in the light of new information, including the presenter's opinion on the assembled evidence. This ensures only those cases where there is a real prospect of success progress to final hearing. It has the additional benefits of reducing delay, increasing flexibility and reducing expenses. The provisions, as currently drafted, suffer from unnecessary narrative and are overly prescriptive (a recurring theme within the rules) and would benefit from being more streamlined.

Proposals to change the 2019 Rules

14. ARB is keen to explore mechanisms to increase learning from its fitness to practise procedures. Complaint handling procedures (also referred to as fitness to practise processes) have become increasingly complex, legalistic and adversarial, which, amongst other things, has been detrimental to the development of a learning culture within the profession. The language within the 1997 Act reflects the influence of criminal law on the development of professional regulation systems at the time of its enactment which encourages an adversarial approach. It is only in the preceding 10 years that professional regulators have moved away from the criminal standard of proof in disciplinary hearings.³

15. As a corollary to this, rule 19 of the IP Rules makes provision for the written representations to be sought from the complainant before the IP reaches a final decision. Inviting written representations from the complainant is good practice as sharing the registrant's response with the complainant can enable the early resolution of some complaints and helps the IP establish an accurate record of events. Indeed, case law has clarified that the IP should not take into account a registrant's submissions unless the complainant has had an opportunity to respond to it.⁴ Sharing the registrant's response with the complainant would more usefully be achieved before the IP gives a case preliminary consideration to provide the complainant with an opportunity to have sight of the registrant's representations and make comments as appropriate. It would enable the IP to have all representations before reaching its decision. This would also have the advantage of streamlining the process while minimising delay.

16. The fitness to practise process does not exist to hold a full inquiry into all aspects of a case as referred by a complainant. It is directed at an individual's fitness to practise at the time of the hearing. This does involve findings of fact but these may not address the full situation, particularly where a number of different individuals are involved in the same alleged events. The particulars of the allegation before the PCC may not therefore reflect all the concerns initially raised and will only cover the matters where there are regulatory concerns. The purpose of the fitness to practise process and hearings may not always be fully appreciated or accepted by those making complaints or acting as witnesses, who may have wider concerns. A simple, yet effective modification to processes and procedures that would highlight this distinction could be effected by a move away from terminology of complaint and complainant to make it clearer that regulation is not about resolving disputes

³ The Solicitors Disciplinary Tribunal (SDT) being the last of the legal disciplinary bodies to amend the standard of proof applied during professional misconduct proceedings to that of the civil standard in 2019.

⁴ *Henshall v General Medical Council & Ors* [2005] EWCA Civ 1520 (13 December 2005)

or individual redress through professional negligence. In its place complaint could be replaced with 'concern' and the complainant referred to as the 'Referrer' or similar terminology. This could be part of a wider programme of modernisation.

17. Section 14 of the Act refers to a registered person being '*guilty of*' unacceptable professional conduct (UPC) or serious professional incompetence (SPI). This language finds echo within the IPCC Rules 2019, clearly demonstrating the influence of criminal law on proceedings. By way of example, after a case has been referred to a hearing by the Investigating Panel, the rules make reference to a '*charge*' against the '*Respondent*' with rule 11 of the PCC Rules providing for '*pre-trial*' directions. This represents a disconnect from the language of most of the provisions of the IP rules where the architect is referred to as the '*registered person*' until there is an inexplicable shift in Rule 15 to '*respondent*' and then, confusingly, thereafter both terms are adopted interchangeably. The interpretation provisions within Rule 2 of the IP Rules do not define '*respondent*', which is not defined until Rule 2 of the PCC Rules. The Act only refers to a registered person. An approach consistent with the Act is to be preferred.
18. Rule 15 (d) of the PCC Rules requires the PCC to determine whether the charge of UPC or SPI '*has been proved*'. This appears out of step with case law where it is well established that the issue of whether a registrant has been guilty of UPC/SPI is a matter of judgement for the Committee, rather than an issue of proof.⁵ Any amendment to the Rules should distinguish the fact finding stage of the hearing from UPC or SPI.
19. Another key aim of reform is to simplify, streamline and modernise the rules which in turn would make the system more efficient and quicker for all participants. Stripping from PCC Rule 11 the reference to '*just, expeditious*' and transposing this into an overriding objective to act in the public interest would set the tone and intention for amended Rules. Equally, providing for more generic case directions in PCC Rule 11, 12 and 13 would afford a framework for proper case management and flexibility tailored to the individual features of a case without being overly prescriptive as the current provisions are.
20. For ease of exposition, proposed changes to the IP and PCC Rules are set out within the box below. For the purposes of this review, I have been asked to confine proposed amendments that would not require changes to primary legislation given the current focus of government. I would be happy to do so at a future time if required.

⁵ CHRE v GMC and Dr Biswas [2006] EWHC 464 (Admin)

Proposal	Current provisions	Potential Hurdle	Advantages
Threshold criteria	<p>None, but the ARB operates a standards of acceptance and publishes guidance</p> <p>Introduce a triage test 'of reasonable grounds for investigating'</p>	<p>Would require resources as rule change and consultation. However, as an alternative, there may be scope to provide more context or explanation alongside existing guidance (which I will deal with in phase 2 of this review)</p>	<p>Increase transparency around triage and investigation. Would help in providing an appropriate balance between autonomy and accountability and assurance</p> <p>Clearer division in decision making. Those tasked with determining how to dispose of the case on completion of the investigation should not have been involved in the investigation.</p>
<p>Case Examiners to replace IP</p> <p>Case Examiners able to make decisions (including issuing advice) at the end of the investigation stage, without having to proceed to a full hearing,.</p>	The IP is a quorum of 3 and make decisions without meeting	Would require a rule change	Modernise and streamline the process, increased flexibility with potential financial savings
Virtual hearings/meetings	None	Changes to Rules require public consultation	Flexibility in disposal of cases, increased transparency, efficiency and would reduce risk of legal challenge.

<p>Consistent Nomenclature within IP and PCC Rules</p>	<p>Legalistic, inherently adversarial/combatative. Terminology within primary legislation refers to a registrant being 'guilty' however, PCC rules reflect language used in criminal trials which is not necessary and not reflective of modern regulation</p>	<p>Changes to rules require public consultation</p>	<p>Emphasis on moving to a more inquisitorial approach of the PCC and not legalistic/ adversarial this can be detrimental to the development of a learning culture and consensual disposal of cases</p>
<p>Streamline and simplify rules generally and add an overriding objective</p>	<p>Legalistic and convoluted rules. Examples: Rules 11 - 13 of the PCC rules are repetitive, unnecessarily convoluted and prescriptive</p> <p>PCC Rule 9 could be streamlined and provision made for the registrant's representations to be shared with complainant prior to the IP / Case Examiner considering the case</p> <p>IP Rules 13 -15: reconsideration provisions could be streamlined and made less prescriptive within the rules providing greater flexibility with detail contained in guidance</p>	<p>Changes to rules require public consultation</p>	<p>Would support a more inclusive, flexible, modern approach to professional regulation and make rules more accessible</p>
<p>Streamline service requirements</p>	<p>PCC Rule 6 require at least 49 days' notice of hearing to be served on registered person with not less than 35 days' notice required for service of documents. Equally,</p>	<p>Changes to rules require consultation</p>	<p>Increase efficiency, streamline process, more accessible.</p>

	<p>convoluted, tiered response required from defence.</p> <p>Move towards standard case directions for every case referred</p>		
<p>Give PCC the power to issue advice where no UPC / SPI is found</p>	<p>None.</p> <p>Obiter dicta comments of Mr Justice Irwin in <i>Spencer v General Osteopathic Council</i>⁶ at paragraph 25 of the judgment:</p> <p><i>'there is nothing to prevent the PCC from giving advice to a practitioner where allegations have been made out which constitute a breach of the Code of Practice (or indeed the Standard of Proficiency) but where neither professional incompetence nor "unacceptable professional conduct" is made out.'</i></p>	<p>Could be effected without a rule change.</p> <p>Would require a period of public consultation and changes to ARB guidance documents</p>	<p>Issuing advice would not be a disciplinary order and would therefore not be recorded on the register. Rather the purpose would be to mitigate the risk of future breaches of the standards, and would uphold standards within the profession while encouraging a learning culture</p>

⁶ [2012] EWHC 3147 (Admin)

Review of Professional Standards – Phase Two

21. This is the second phase of the review which focusses on:

- Recommendations for improvements or additions to existing or new guidance, practice notes and procedure documents;
- Recommendations as to how best practice can be learned from other regulators and applied to ARB within the limitations of the Architects Act;

Pre - Investigating Panel

22. One of the key areas identified in Phase 1 of this review was the pre-hearing stage and, in particular, how the ARB decides which cases to investigate and which to reject (known as the standard of acceptance). As regulators are increasingly delegating decisions to 'lower levels', the processes for closing concerns/complaints at the earlier stages of an investigation is an emerging area that requires particular scrutiny to ensure cases are closed consistently and appropriately. It is vital that the process ensures that important concerns are not missed and there are appropriate mechanisms put in place to ensure closer scrutiny of these decisions. This is an area where the Professional Standards Authority has found there to be a particular lack of clarity and transparency, which in turn represents the potential for cases to be closed where there is a risk to the public.

Guidance on standard of acceptance for allegations

23. It represents good practice that the Standard of Acceptance make reference to the Architects Code and specific reference is made to the Standard of acceptance not being '*a barrier*' to complaints being raised about registrants. I would suggest sharpening that connection by inserting an electronic link to click on within the document which would take the reader to the Architects Code.

24. However, key parts of the Standard of Acceptance may not be easy to follow for anyone with little knowledge of professional regulatory processes. For example: within the guidance it provides for the requirement that allegations must be made in writing, under this heading the language shifts to referencing that '*the complaint*' should be made in writing. This is confusing. Another example is the paragraph on criminal offences which seems out of place and 'tagged' on at the end of the document without providing context to the complainant or the Standard of Acceptance. This paragraph requires further contextual development to enable complainants to understand its relevance to the Standard of Acceptance.

25. I therefore suggest that there is value in reviewing the clarity of language and layout to ensure that both the document as a whole and the Standard of Acceptance is accessible to members of the public and potential complainants.

26. In addition, point 4 of the Standard of Acceptance states as follows:

'The evidence provided must be credible in respect of the allegation as a whole, in that the nature of the facts alleged must suggest that the actions of the Architect fall below the standards of the Code of Conduct and Practice. Credible evidence will vary from case to case, but evidence is more likely to be regarded as credible if it provides a coherent, logical and reasonable explanation of the events in question, particularly if it is supported by other evidence.'

27. The above passage conflates the requirement for 'credible' evidence to support an allegation, with the nature of the facts i.e. the concerns made by the Complainant which must disclose alleged actions falling short of the Architects Code. Consideration should therefore be given to amending the language around this to make this distinction clearer.

What happens when you complain to ARB

28. This is a key, outward facing document which exhibits many existing areas of good practice such as: signposting to other organisations; accessibility in tone and layout, written in the first person; the complaints stages supported with a diagram which sets out an overview of the procedure. However, the guidance as a whole, could benefit from a refresh to integrate the Standard of Acceptance and to reference advice at the IP stage within the diagram. There could also be a link in the document to the online complaint form.

IP Guidance

29. The IP has a range of specific, well developed, guidance notes it can use when considering how to decide on the outcome of a case referred to it. However, the IP's role and function is performed in private. It would help to ensure the procedure around the IP's decision making is more fully understood if there was outward facing information available around this process (i.e. that the IP meet remotely and not in each other's presence) that explains and expands upon the provisions within the IPCC Rules. This in turn would enhance transparency and confidence in the IP's procedures.

Post Investigating Panel

30. As an overall comment, the guidance notes would benefit from refreshing generally and consideration should be given to adding a version control and date for review. In addition, it would improve clarity and consistency and avoid repetition in multiple documents, if some of the guidance notes were

amalgamated into one, overarching document. For example, proceeding in a respondent's absence and non-appearance at the PCC could form one document or may usefully be consolidated into either one document dealing with preliminary matters or form part of a larger guidance document for the PCC.

Guidance on proceeding in a respondent's absence

31. The Guidance on proceeding in a respondent's absence would benefit from not only a review to take account of recent developments on case law⁷ but an additional section should be developed to assist the PCC around the parameters of Rule 14(d) of the PCC Rules.
32. Rule 14(d) is an unusual and convoluted provision around a respondent's ability to request a '*rehearing*' of their case where they have not had '*adequate opportunity*' to '*argue*' their case. Developing guidance in this area to assist the PCC would not only improve transparency and consistency in the PCC's decision making but would also demonstrate the fairness of the PCC's processes.

PCC Sanctions Guidance

33. The Sanctions guidance is a key document in professional conduct and is a central link in maintaining a connection between the Architects Code and its fitness to practise functions. The guidance could therefore be more closely aligned to the Architects Code. Further suggestions for improvements are set out in detail below.

Mitigating and Aggravating factors

34. When considering the issue of sanction, the PCC must first evaluate the aggravating and mitigating factors and balance them against each other. This balancing exercise should be carried out **before** the PCC begin the process of working through the available sanctions and making the decision as to which sanction is appropriate. It is suggested that this sequential approach in the PCC decision making (which would be consistent with how the sanctions are presently set out in the guidance in ascending order of seriousness) is reflected within the guidance. This means that paragraphs on the mitigating and aggravating factors should therefore appear earlier within the guidance before the paragraphs detailing each sanction available to the PCC.
35. Currently, the aggravating and mitigating factors are set out within the Sanctions guidance as a list. It would therefore be useful to include an explanation for the PCC to not only evaluate both the aggravating and mitigating circumstances but also to pay careful regard to the weight that has

⁷ General Medical Council v Adeogba; General Medical Council v Visvardis [2016]

been given to both aggravating and mitigating factors in demonstrating the proportionality of any sanction it determines to impose.

Dishonesty

36. The Sanctions guidance would benefit from explicitly addressing dishonesty in more detail, thereby demonstrating the more nuanced approach that should be undertaken by the PCC in its decision making where a case involves dishonesty. Dishonest conduct can take various forms; '*some criminal, some not; some destroying trust instantly, others merely undermining it to a greater or lesser extent.*'⁸ The advice should also guide the PCC to differentiate between the broad spectrum of dishonesty.

Testimonials and References

37. When considering references and testimonials, the PCC should consider how recent they are, whether the individuals who provided the references are aware of the allegations against the architect and further, whether they are aware that their letters will be put to the PCC in mitigation. The paragraph in the Sanctions guidance should also state that it is not appropriate for the PCC to draw negative inferences from an absence of references or testimonials.

The PCC's Approach

38. It would reflect good practice for the inclusion in this paragraph around the requirement for the PCC to 'test' their proposed sanction by explaining why the next, more severe, sanction is not appropriate or proportionate.

Suspension

39. The PCC can impose a suspension for a maximum period of 2 years. The PCC may therefore impose a sanction for any period that does exceed this maximum. As the length of the suspension imposed requires separate consideration by the PCC, an additional paragraph should be included within the Sanctions guidance dealing specifically with the length of the suspension the PCC decide to impose together with the factors that may be relevant to determining the length of the suspension.

Insight and remediation

40. The paragraph of the Sanctions guidance on insight and remediation should be developed generally to include a section on cultural differences and language. For example, where English is a second language, this could result in a loss of subtlety or of appropriate emphasis by the witness when providing evidence.

⁸ Mr Justice Kerr in *Lusinga v Nursing and Midwifery Council* [2017] at paragraphs 103 and 104

Consent Order Guidance

41. Appropriate consensual disposal is a cost-effective tool enabling cases to be concluded in a timely manner. Consensual disposal also has the potential to encourage registrants to engage in the process and develop insight.
42. The process also needs to be fully transparent in order to maintain public confidence. The current Consent Order guidance is lacking in detail and could be clearer. For example, it would be helpful to know what documents the Consent Order panel are provided with to assist them in reaching a decision, and whether written submissions are made by the ARB and the Architect. In this regard, are reasons for the initial recommendation part of the bundle provided to the panel? Consideration should therefore be given to developing factors or criteria that may assist the Consent Order panel in determining whether the case is appropriate to be dealt with under this process.
43. In addition, Rule 28 of the PCC Rules enables the Consent Order panel to '*make such arrangements*' it considers '*appropriate*' to approve or reject the consent order. Sub paragraph (ii) of Rule 28 provides that such arrangements need not require the panel to deliberate in each other's presence, unless they consider it necessary to do so. The guidance should therefore provide appropriate detail, clarity and safeguards on the scope of this provision.
44. The recommendations arising from the Lessons Learnt Review into the NMC's handling of concerns about midwives' fitness to practise at the Furness General Hospital, emphasised the importance of the Complainant's voice in fitness to practise proceedings. There is no reference to seeking the Complainant's views (or informing them of this proposal) to dispose of the case by way of consent within the current guidance. This is a material omission. It is recommended that the Complainant should be informed of the proposed consent and their views sought. If the response of the Complainant is going to be sought, then it has to be given proper weight and I would suggest that this too should be emphasised in the enhanced guidance document.

Guidance for Chairs of the Professional Conduct Committee

45. This guidance represents a really good initiative and draws on good practice from elsewhere in professional regulation while adapting this guidance to make it fit for purpose within the ARB's statutory scheme. Further suggested improvements could include:
 - references in each paragraph to the relevant Rule and/or guidance document
 - developing a one page 'checklist' for Chairs which would also act as a condensed aid memoire at the hearing
 - additional paragraphs around providing legal advice and managing unrepresented registrants

Recommendations for new guidance and procedure documents

46. Both the ARB witness information guidance and online visual guide are well developed and accessible. However, I am unclear as to whether all participants are provided with an opportunity to provide feedback on the process. Developing a feedback loop would assist in providing an objective measure of the effectiveness of the witness guidance and support and information provided to Registrants.

Pre – hearing Case Management Guidance

47. Rule 11 – 13 of the PCC Rules make express provision for case management pre-hearing. As recommended in phase 1 of this review, enabling generic standard case directions would afford a framework for proper case management and flexibility tailored to the individual features of a case. In the absence of a rule change, this could be effectively achieved through enhancing the current guidance on holding case management meetings. This guidance could set out standard directions applicable to all cases referred by the IP. Standard directions could include: the exchange of evidence, expert witnesses, hearing bundles, witness attendance, admissions, special measures for vulnerable witnesses and the hearing timetable, where applicable.

48. The chief advantage of standard case directions would be their general application to all referred cases obviating the need for case management meetings which would then only be necessary in more complex, multi-factorial cases. If implemented, the introduction of standard directions would streamline the process while avoiding expense and the consequent delay necessitated by the need to arrange a case management meeting in accordance with the relevant PCC Rules.

Quality Assurance

49. ARB should consider the introduction of a 'Quality Management Assurance Framework' as a mechanism for providing greater assurance to the Board around the activities of professional conduct department. This would be one of the two initiatives proposed within this report that would support the recommendation for regular internal quality assurance of decisions made by decision-makers at all levels of the FTP process as suggested by the Department for Communities and Local Government (DCLG) within its review.

50. Essentially, a Quality Management Assurance Framework would assist in answering a key question: whether all those involved in professional conduct are doing the right things, in the right way, at the right time. This could encompass key quality objectives and guidance for staff encompassing: keeping all parties up to date regularly; monitoring of compliance with key performance targets and prompt taking of remedial action and identification of any thematic issues.

51. A second initiative I would recommend would be for ARB to establish a decision review group which could improve the quality and consistency of decision-making of IP decisions to close without referral together with outcomes at final hearings before the PCC. A review group could review cases in order to obtain learning that may be used to make further improvements. (Draft terms of reference for this group are provided at **Annexe A**).

Review of Professional Standards – Phase Three

52. The third part of the review focusses on the following:

- *Advice to the Board on appropriate metrics and key performance indicators, and how best they can be reported and managed.*

53. The ARB is keen to explore a proportionate and effective way to report to the Board that concerns are managed transparently and fairly and are progressed effectively and in a timely way. However, I am mindful that an overly burdensome approach to performance management can be counter-productive being both wasteful of time and resources.

54. Essentially, the Board need adequate and regular assurance that ARB's processes for examining and investigating cases are fair, proportionate with cases dealt with as quickly as is consistent with the fair resolution of the case at each stage in the process.

55. The development of an appropriate mechanism through which performance in complaint handling can be evaluated can also be used to identify and evaluate ways of improving practice while providing assurance to senior management and the Board, stakeholders and the public that concerns are being adequately managed, progressed and concluded.

56. It also relevant to note that the Professional Standards Authority is developing a consultation paper to examine different approaches to performance assessment, including how outcomes are reported, to identify different options. A consultation is planned for this autumn /early spring 2021. At the time of writing, this consultation had not yet commenced.

57. Regarding current reporting practice to the Board, I have been provided with the January 2020 report on statistics and trends. This paper reports separately on each statutory area, with activities within professional conduct covered within 'Maintaining the Standards of Conduct and Practice of Architects'. In summary this provides an overview of outcomes at the different decision making stages of the complaints process spanning the number of formal complaints received on a yearly basis; the number of cases concluded

without referral; the number of IP decisions issued together with outcomes through to PCC cases and hearing days together with outcomes. There is a separate report prepared by the Chair of the PCC which provides further detailed information on the work of the PCC covering hearing length and adjournments and individual outcomes in final hearings.

58. In addition, there is a separate business report produced for the Board in which performance is reported on the different areas of the ARB's work, with key performance indicators presented within Section E. A traffic light rating is employed and acts as a visual indicator of performance, with green indicating the KPI has been met and red where the KPI falls outside the target by more than 20%. The KPIs for the complaints process are set out as a long list with traffic light colours next to them, displaying either red, amber or green against each target. There is an additional column beside each KPI which enables some context and explanation around performance against each measure.
59. A delay in the timely progression and resolution of complaints is capable of adversely affecting the ARB's key objectives and it is also unfair to expect registrants, complainants and other witnesses to endure lengthy delays in the progression of cases.⁹ Set within this context, the ARB's KPIs currently cover timeframes against each stage in the complaints handling process as well as the overall end to end timeframe for concluding cases. Broadly, these measures capture the essential targets regarding timeliness one would expect should be provided to the Board.
60. It is crucial for performance against key targets to be reported to the Board at sufficient intervals so that potential concerns can be identified, and prompt remedial action taken. Regular reporting to the Board will also enable early identification of any thematic issues. I am told these statistics were traditionally reported to the Board twice a year, but that ARB will be moving to an 'every Board meeting' model. I would endorse this approach.
61. Axiomatic to the oversight role of the Board detailed at paragraph 9 of this report, is the necessity to also have an understanding of 'real time' complaint handling information covering active case progression. For example: complaints received, complaints closed and referred to the IP, cases closed by the IP through to cases referred to the PCC but not listed, cases concluded, over each reporting period.

⁹ The Gosport Independent Panel Report identified a need for efficient and timely resolution of fitness to practise issues

62. This would provide a comprehensive and accurate picture of current FtP performance in addition to the information at paragraphs 6 and 7 of this report. It would also enable the Board and Executive to horizon scan potential emerging issues, for example: a potential 'backlog' of cases being considered by the PCC. This information could be charted within a graph, together with explanatory key comments beside each reporting period over a 12 month period so the Board could see 'at a glance' progress made over the year. I suggest consideration is given to the following information being provided to the Board at every meeting:

During the relevant reporting period:
Complaints received
Complaints closed under the standard of acceptance
Cases awaiting consideration by the IP
Cases considered by the IP
Cases closed by the IP (with and without advice)
Number of cases referred to the PCC
Number of cases listed but not heard
Number of Cases concluded
Cases adjourned or postponed

63. In assessing quality and performance, it is useful to develop a principles-based framework as a lens through which to self-assess performance which can be measured by the Board through verifiable means against key measurables and time scales and in doing so, to provide assurances.

64. The following draft framework has been developed drawing on the ARB's six core values, the Better Regulation Task Force, Principles of Good Regulation drawing on a range of evidence for each principle together with the Professional Standards Authority Standards of Good Regulation.¹⁰

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<https://webarchive.nationalarchives.gov.uk/20100407173247/http://archive.cabinetoffice.gov.uk/brc/upload/assets/www.brc.gov.uk/principlesleaflet.pdf> ;
<https://www.professionalstandards.org.uk/publications/detail/standards-of-good-regulation-2019>

Principle	Evidence
Accountable	<ul style="list-style-type: none"> • Regular reporting to the Board, Decision Review (or a Concerns Oversight Panel) • Appeals • Recommendations from Third Party Reviews
Consistent	<ul style="list-style-type: none"> • Appropriate, up-to-date internal and external guidance to support case managers and independent decision makers (IP, PCC) to reach a fair decision that protects the public at each stage of the process • Programme of internal reviews and external reviews • Decision review group oversight of IP and PCC decisions
Transparent	<ul style="list-style-type: none"> • Publication of final outcomes in accordance with a publication policy • Dissemination of learning from decisions • Engagement with the profession to develop a learning culture through social media and webinars • Published end to end targets
Targeted	<ul style="list-style-type: none"> • Active case management and assessments • Modern, just and flexible rules and procedures • Appropriate application of standards of acceptance • Outcomes in final hearings /

	consensual disposal ¹¹ cases support the key objectives underpinning the ARB's work ¹²
Proportionate	<ul style="list-style-type: none"> • Built in internal case reviews • threshold/standard of acceptance applied appropriately • flexible and efficient case management which is cost efficient and effective
Agile	<ul style="list-style-type: none"> • timely and efficient progress, closure and adjudication of cases

65. In Phase 2 of this review, I recommended the development of quality objectives within a quality assurance framework to be overseen by a Decision Review Group. The Decision Group could provide a separate, composite report on its work to the Board on a yearly basis and should have a terms of reference with an internal quality framework spanning: witness and hearings feedback, drafting adequate particulars, properly reasoned decisions and quantitative measures for timely progress and closure of cases, hearings concluding within time with a low PCC hearing adjournments.

66. This internal quality assurance could encompass all the policies, standards, systems and processes directed at fulfilling and enhancing the ARB's statutory role in relation to complaints handling and protection of title matters.

(suggested) Key Quality Measures	Internal Target
Acknowledge receipt of initial complaint / concern	Within 5 working days
Keep all parties up to date	Every 4 weeks
Notify parties of IP decision	Within 2 working days

Sheleen McCormack, Barrister

8 November 2020

¹¹ Nascent reference is made to 'accepted' disposal within reform of healthcare regulation proposals

¹² These are:

Protect the users and potential users of architects' services
Support architects through regulation

Annexe A

Draft Terms of Reference for a Decision Review Group

Decision Review Group – Terms of Reference

Introduction

- 1 The purpose of DRG is to provide quality assurance, gain learning and bring continuous improvement by monitoring the investigations panel and professional conduct decision making process.
- 2 The DRG is a staff group. Meetings are chaired by (or a delegate in their absence).

Role and function of the Decision Review Group

- 3 The DRG will:
 - 3.1 monitor the reasoning or decisions of the Investigations Panel and Professional Conduct Committees to ensure the proper discharge of the ARB's investigation and adjudication functions, making recommendations as necessary;
 - 3.2 review any decisions of concluded adjudication and investigations (including those closed under the standards of acceptance) referred for discussion by members of the DRG where a concern has been raised about a decision and reasoning; making recommendations as necessary;
 - 3.3 identify learning opportunities for panellists and ensure that feedback is provided;
 - 3.4 identify training opportunities for panel members both individually and collectively derived from decisions discussed by the group;
 - 3.5 identify and act upon any areas where there is a need for operational guidance or where the existing guidance may require updating;
 - 3.6 identify any learning and/or training opportunities for ARB staff and and case presenters, both individually and collectively, derived from decisions discussed by the group; making recommendations as necessary;
 - 3.7 Identify areas where Board policy may require review or revision.

4 Objectives

- 4.1 Improve IP and PCC decision making and reasons
- 4.2 Ensure a proactive approach to learning
- 4.3 Achieve a consistent and high-quality output

4.4 Disseminate learning to the profession

Membership

- 5 The DRG will be chaired by the (I suggest the Director of Regulation)
- 6 Other members of the group will include:
- 7 A member of the Professional Standards team will act as group secretary.

Meetings, minutes and service arrangements

- 8 The DRG shall have a scheduled meeting every ... months with additional meetings as required.
- 9 Meetings consider formal papers comprising IP decision, PCC determination and any other documents, such as transcripts or skeleton arguments, where relevant.
- 10 Papers are prepared by the Professional Standards department and will be circulated to the group electronically at least one week before the meeting.
- 11 Papers will be anonymised before distribution, including the removal of the names of the panellists.
- 12 Action points are recorded by the Group Secretary and will identify which team or member is responsible for actions to ensure they are allocated and followed up. Action points arising from the meeting will be issued to members of the Group within working days. Progress against outstanding action points is reviewed at the start of every meeting.
- 13 Where matters require further discussion outside of the regular meeting (for example by exchange of emails or telephone calls/conferences) members will liaise to agree the most appropriate mechanism for seeking views depending on the issue.
- 14 Minutes will be taken by the Group Secretary with agreements and actions noted. The notes will be circulated for information within ten working days of the meeting.
- 15 Feedback from the Group will be recorded and monitored for trends and learning by the Professional Standards team and actioned as appropriate.
- 17 The Decision Review Group will be accountable to the Registrar who will report on its activities where appropriate to the Board and...

Proposed draft review criteria for final hearing decisions:

	The Hearing
1	Was the hearing process conducted in accordance with the Architects Act and the relevant procedural Rules
2	Was the hearing procedure operated fairly in relation to all parties
3	Were any diversity issues identified and adequately addressed?
4	Was questioning of the witnesses (by the representatives and/ or the PCC) appropriate?
5	Were any vulnerable witnesses dealt with appropriately?
6	Was ARB Guidance:
	- referred to?
	- followed?
7	Did the PCC's final decision [at whatever stage] protect the public?
8	Were the issues of public interest addressed in the PCC's decision
9	Were or are there any areas of concern about the management of the hearing not identified elsewhere, such as concluding the hearing within the allocated time, issues of potential conflict or other preliminary issues?
	The Determination
10	Was the written determination adequate, including (but not limited to) in the following respects:
	Was the decision at each relevant stage clear?
	Was the decision in plain language and accessible?
	Was the decision a stand -alone document?
	Did the decision address the relevant audiences?

	Were any relevant legal tests accurately set out?
	Was legal advice provided by the Chair referred to?
	Was ARB guidance followed and referred to?
	Additional comments
11	Did the reasons given for each decision explain clearly what the PCC decided and why?

Proposed draft review criteria for IP decisions:

1. Whether the IP had sufficient information available to make the decision
2. Whether the gathering of information/evidence by the professional standards team was appropriate and proportionate to adequately address the concerns raised
3. Whether the particulars of allegation adequately addressed the concern and/or evidence / information within the bundle
4. Whether the IP should have adjourned for any necessary further investigation
5. Whether the Architects Code were referred to
6. Whether relevant procedural requirements were complied with, including providing the Registrant with a suitable opportunity to make representations and the Complainant with an opportunity to comment on the Registrant's representations
7. Whether the decision accorded with the ARB's published guidance
8. Whether the decision made adequately protected the public AND the public interest
9. Whether the decision adequately addressed all the allegations / aspects of the complaint / evidence within the bundle
10. Adequacy of the reasons - Whether there were any inadequacies in the written decisions, including: a). whether the reasons are sufficient given the stage at which the concern/complaint had reached? b). do the reasons of the IP refer to the appropriate legal test/relevant case law?
11. Any equality or diversity concerns.