

Open session

Board meeting: 15 February 2023

Agenda item: 6

Subject: Appeals Committee Rules, Procedures and Membership

Action: For decision

Purpose

The Building Safety Act amends the Architects Act 1997 to require ARB to establish a new Appeals Committee. At its meeting in July 2022 the Board considered proposals for the establishment of the Committee. ARB has consulted on draft Rules and changes to ARB's General Rules that would implement these proposals.

This document notes the outcomes of the consultation and asks the Board to approve the new Appeals Committee Rules, Procedures and Membership.

Recommendations

The Board is asked to approve the updated Rules and changes to the General Rules following the consultation. Our recommended updates are explained in paragraph 2.13.

The Board is also asked to agree to the publication of an external summary of the responses to the consultation.

Annexes


Annexe A - Consultation summary

Annexe B - Updated Appeals Committee Rules

Annexe C - Updated changes to ARB General Rules

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1. Open Session

2. Background and Key points

- 2.1. The Building Safety Act 2022 brought changes to the law requiring ARB to establish a new Appeals Committee. The new committee is intended to provide a non-judicial route of appeal to aggrieved persons.
- 2.2. The updated Architects Act 1997 means the Committee can consider appeals against:
 - a decision to refuse an individual's application for registration; or
 - a decision to remove or not re-enter someone onto the Register because the Board is not satisfied that they have gained sufficient recent practical experience or undertaken sufficient recent training.
- 2.3. From October to December 2022, ARB consulted on a set of proposed Rules, along with accompanying changes to ARB's General Rules, that would establish the new Committee.
- 2.4. The consultation received 48 unique responses and our analysis of these is set out in Annexe A below.
- 2.5. Most responses came from registered architects (46), including those who work as academics (3). Registrants therefore accounted for 96% of survey respondents. No students responded to the survey, and the only remaining category chosen was Other (2%). There were 10 responses made on behalf of organisations, which accounted for 21% of all responses to the survey. The majority of these were from architectural practices.
- 2.6. Due to the technical nature of this consultation, and the expectation that it will not apply to a large number of architects (unlike the CPD scheme, for example), we did not expect a large number of responses. We promoted it to all architects through ARB Insight and in other emails to registrants, and through our social media accounts.
- 2.7. The consultation included an overall opportunity to comment on our proposed Rules, along with specific questions on:
 - The status of the appellant while the appeal is being considered

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- The appeal fee
 - The inclusivity of the proposed Rules
 - Any further comments on the proposed Rules
- 2.8. There is a requirement for us to consult the Secretary of State on Rules for the composition of the Committee. We wrote formally to the Secretary of State in November asking for views and in January sent a follow up letter confirming proposed changes and our intention to recommend approval of these at the next Board meeting. Although we have not had a formal response, we have been in regular contact with officials and as the Rules have been designed to reflect government legislation, we are content to recommend to the Board that we proceed to implementation.
- 2.9. We are currently also consulting on our CPD scheme and several respondents focused their written responses on this rather than on the Appeals Committee. This is partly due to decisions under the CPD scheme being one of the ways in which someone may receive an initial decision that's appealable. We also think some respondents may have accidentally conflated the two consultations. Whilst we read all responses, our analysis is based only on responses that were relevant to the Appeals Committee in some way.
- 2.10. Although there were relatively few responses to this technical consultation, respondents expressed support for our proposals. On the particular areas of the consultation, we will consider the appeal fee as part of the annual fee setting process, evaluating whether it presents an unfair barrier to individuals making appeals. There were no significant concerns raised about the inclusivity of the proposals but we can review the functioning of the Committee once a substantial number of appeals have taken place.
- 2.11. Respondents raised concerns about the CPD scheme. We can consider these as part of the development of that scheme, separate to the establishment of an Appeals Committee. We anticipate many of the comments will be reproduced in the separate consultation on the CPD scheme, particularly those on the scheme needing to be flexible. When the CPD scheme is in place and we begin to make decisions as part of it, we will also reconsider any risk in an individual remaining registered pending the outcome of their appeal.
- 2.12. We therefore recommend finalising the proposed Rules that we consulted on, with two additional changes that we have identified separately to the consultation.
- 2.13. We have identified changes that would help to clarify the status of Committee members by reflecting developments to the status of ARB's workers. These changes will also mean a more efficient and transparent approach to membership of ARB's



Professional Conduct Committee and Appeals Committee. We see no risk in shared membership due to the two committees covering separate areas of decision-making. These updates can be found in Annexe B and Annexe C.

3. Resource Implications

- 3.1. Our expectations for resource implications have not changed since the proposals were first considered by the Board in July 2022.
 - 3.2. We currently receive a very low number of appeals each year. This may increase as it becomes easier for individuals to appeal.
 - 3.3. Under the proposed Rules, ARB will act as Appeals Secretary and its employees will work on screening and administrating the appeals.
 - 3.4. The Committee will require members and a Chair to hear and make decisions on any appeals. These members will be remunerated (for work undertaken) as with other ARB committees.
 - 3.5. Our proposed approach minimises the resource implications of the Committee. First, we propose to charge a fee to individuals when they appeal. This would aim to recover the costs of responding to the appeal. Under the proposed approach, some or all of the cost may be refunded if the appeal is successful. Our intention is that the Board will set and agree the fee as part of the 2023 budget and retention fee setting process. Our intention would be for the fees for this process to apply from late this year rather than 2023, so that the Committee can start to function fully.
 - 3.6. Second, we also propose to appoint committee members from existing ARB committees, such as the Professional Conduct Committee. This would reduce the resource costs in recruiting members.
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4. Risk implications

- 4.1. No new risks have emerged since the proposals were previously considered by the Board.
- 4.2. We are aware of risks in relation to recruitment of members to the new Committee given the low numbers of cases we expect it to consider. In our experience we may struggle to recruit new members to a committee and the best way to mitigate this risk is to use existing ARB committee members.

5. Communication

- 5.1. Following Board approval of the recommendations and review of the consultation summary, we will publish an external overview of the consultation results. This will be based on the summary in Annexe A. It will be published on Citizen Space, where the consultation was held, and on the consultation section of our website. It will also be communicated to all architects through ARB Insight.
- 5.2. We would aim to implement the Appeals Committee with effect from the Board meeting on 15 February 2023 and assuming a positive response from the Secretary of State. When the Committee is established, we will begin to inform architects as part of any decisions we make that are eligible for appeal.

6. Equality and Diversity implication

- 6.1. The proposed Appeals Committee must be accessible to those who appeal to it. The Appeals Secretary in consultation with a Chair of the Appeals Committee may make any reasonable adjustment to the procedure or requirements of these Rules where such adjustment is required to comply with a legal duty or where procedural fairness requires in the particular circumstances such an adjustment.
- 6.2. ARB included a question in the consultation giving respondents the opportunity to specify anything within the proposed Rules that could have an impact on ARB's commitment to equality, diversity, and inclusion, or have a positive or negative impact on anyone with particular protected characteristics.
- 6.3. Twelve respondents answered this question but there were no significant recurring themes raised that would impact the inclusivity our proposed Rules. Further information is included in the summary in the annex.
- 6.4. The scope of the Committee and the processes we propose would apply in the same way to all architects. We are not predicting high numbers of appeals and, as part of the Rules, we are proposing to draw membership from our Professional Conduct Committee. If the Appeals Committee meets more regularly and we need to recruit to it, we will ensure we place diversity at the heart of any recruitment campaign (as we are doing with other associate groups). We will also keep track of data about the characteristics of those who make complaints or are subject to them.



7. Recommendations

- 7.1. The Board is asked to approve the updated Rules and changes to the General Rules following the consultation. Our recommended updates are explained in paragraph 2.13.
- 7.2. The Board is also asked to agree to the publication of an external summary of the responses to the consultation.

ANNEX A - Consultation summary

Who responded

We received 48 unique responses to the consultation.

Most responses came from registered architects (46), including those who work as academics (3). Registrants therefore accounted for 96% of survey respondents. No students responded to the survey, and the only remaining category chosen was Other (2%). There were 10 responses made on behalf of organisations, which accounted for 21% of all responses to the survey. The majority of these were from architectural practices.

We received responses from all regions of England, as well as Scotland and Northern Ireland, but we did not receive any responses from Wales or the Republic of Ireland. The highest number of respondents (22) were based in London and the South East (46%). We also received a small number of responses from outside of the UK.

Status of the Appellant while the appeal is being considered

We asked respondents whether they agreed with our approach for how Appellants should be treated while their appeal is ongoing. Our aim was to balance the need to maintain standards on the Register with a recognition of the impact that a removal would have on an individual.


The proposed rules would mean that:

- For appeals against an initial decision involving an application for registration, the Appellant will remain unregistered pending the outcome of the appeal.
- For appeals against an initial decision to remove someone from the Register under the new competence (CPD) scheme, the Appellant will remain on the Register pending the outcome of the appeal.

Respondents expressed their opinion towards the principle through a closed multiple-choice scale, by selecting Strongly agree, Agree, Neither agree nor disagree, Disagree or Strongly disagree. Responses also had the opportunity to expand on their answer in a free-text box.

The majority of respondents (54%) strongly agreed or agreed with this proposed approach.

The ARB has a right to manage the appeals process in accordance with the law.
Academic (registered architect), London & South East



While this is a much higher proportion than the 19% who strongly disagreed or disagreed with the approach, a further 27% neither agreed nor disagreed with the proposed approach. There were no elaborated explanations as to why these respondents were neutral to our proposed approach.

It is only fair that an appellant is not sentenced or punished until found to be guilty. It is also only fair for someone to be entitled to call themselves an architect when they are fully approved to do so.

Registered architect, West Midlands

Appeal Fee

We asked respondents whether they agree with the approach to set a fee that must be paid by an individual before their appeal can be considered. This would be set annually by the Board, on a purely cost recovery basis, and stated on ARB's website.

This approach means that those using the service are paying for it, rather than it being added to the annual retention fee which would share the cost across all registered architects. We also proposed that the Appeals Committee may, if it considers that the Appellant has been substantially successful in the appeal, direct that ARB refund the appeal fee.


Respondents expressed their opinion towards the principle through a closed multiple-choice scale, by selecting Strongly agree, Agree, Neither agree nor disagree, Disagree or Strongly disagree. Responses also had the opportunity to expand on their answer in a free-text box.

Respondents who strongly agreed or agreed with the proposal accounted for 46% of responses in total. Thirty eight percent of respondents strongly disagreed or disagreed with the proposal and a further 17% of respondents neither agreed nor disagreed.

If an appellant is being investigated, they are already in a vulnerable position (financially or otherwise), and I do not believe it is right to kick those who may be down. We are a community and should first look to pick up those who fall.

Registered architect, West Midlands

Some respondents who disagreed with the proposed approach to the appeal fee questioned whether this would be a barrier to an average individual architect affording an appeal against an initial decision.



Spreading the fee amongst all architects incentivises ARB to minimise the overall cost, whereas individuals will have little voice to influence the cost which may run into thousands of pounds.

Registered architect, Scotland

When asked to expand on their answer, some respondents emphasised the importance of the level at which an appeal fee should be set. This was sometimes linked to the wider rising cost of living across the country as well as the annual retention fee. We will consider this as the Committee becomes established and as part of the Board's fee setting each year.

Inclusivity of the proposed rules

Respondents were asked to tell us about anything within the proposed rules that could have an impact on ARB's commitments to equality, diversity and inclusion, or have a positive or negative impact on anyone with particular protected characteristics. Respondents were given the opportunity to answer through a free-text response and we received 12 (25%) responses to this question.

It's a good approach, and demonstrates responsible approach by the organisation, for wider public.

Registered architect, North West

There were no significant recurring themes raised that would impact the inclusivity our proposed rules. Some respondents highlighted the importance of inclusivity often linked this to the development of ARB's CPD Scheme.

The industry is still lacking diversity. There's a lot of reasons why I believe that is and this is not the platform to discuss that. But it is something that needs to be addressed...

The additional pressure to complete this [CPD] on top of my caring requirements would have been possibly my undoing. Then to think I would have to pay for an appeal where I would not have had time to do the CPD.

Registered architect, London & South East

Some respondents used this opportunity to comment on the wider cost of being a part of the profession in the context of a cost of living crisis.

I resent the fact that as someone who spent over 7 years studying and qualifying that I am at the mercy of the ARB fee structure for which I receive no gain. The qualifications I have achieved and the work I carry out, should be what defines me as an Architect and not my ability to fork out for an ARB membership. The significant fee increases every year are unjustifiable and along with all the cost-of-living crisis will ultimately lead to people leaving the register and calling themselves something else.

Registered architect, South West

Further comments about the proposed rules

The final question gave respondents the opportunity to make any further comments about the proposed rules. 54% of respondents provided further comments.

It is unfortunate that such an arrangement has not existed previously and very important that it should be established as soon as possible. I am generally supportive of the current proposals.

Registered architect, West Midlands


Several respondents used this section to emphasise the view that the proposed rules will either not apply to registered architects working outside of the UK or will need to be cross-referenced with international regulations governing the profession.

Please insure that these rules do not apply to registered architects that do not work in the UK. It will be very difficult for us to comply and Brexit has already made things difficult for mobility between the EU and the UK.

Registered architect, Spain

The Rules the ARB help manage should be cross examined and checked again EU guidance and regulations as well as International law governing the profession.

Academic (registered architect), London & South East



Some respondents questioned why the appeal route would not be open to architects who have been removed from the Register or fined following a complaints procedure. This is because the scope of the Committee is set in legislation and does not include these cases.

Annex B - Updated Appeals Committee Rules

Additional new recommended changes are highlighted in red.

These Rules are made pursuant to section 21A, section 23 and paragraph 17B of Schedule 1 of the Architects Act 1997 (the “Act”)

1. Interpretation

1.1 In these Rules the words and phrases below shall, except where the contrary intention appears, have the following meanings:

“ARB” means the Architects Registration Board;

“Appeals Secretary” means the employee or employees of ARB designated from time to time by the Registrar to discharge the functions described in these Rules;

“the Board” has the same meaning as in Part I of the First Schedule of the Act;

“CPR” means the Civil Procedure Rules;

“Lay Person” means a person other than a Registered Person;

“Register” “Registrar” and “Registered Person” shall have the same meaning as in the Act;

“Registrant” means a person whose name is on the Register;

“the Appeals Committee” is the Committee established pursuant to section 1(2A) of the Act;

“Initial decision” means a decision by ARB that is appealable to the Appeals Committee;

“Appellant” means a person who has submitted an appeal to the Appeals Committee;

“Legally Qualified Person” means:

(a) a person who for the purposes of the Legal Services Act 2007 is an authorised person in relation to an activity that constitutes a reserved legal activity (within the meaning of that Act);

(b) a solicitor or barrister in Northern Ireland; or

(c) a solicitor or advocate in Scotland.



2. Composition of the Appeals Committee

- 2.1 The Board shall appoint the members of the Professional Conduct Committee to the Appeals Committee at any time, and shall designate the Chair of the Professional Conduct Committee as the Chair of the Appeals Committee.
- 2.2 Any person that ceases to be a member of the Professional Conduct Committee shall cease to be a member of the Appeals Committee.
- 2.3 The quorum of the Appeals Committee is three which must include at least one Legally Qualified Person, at least one Lay Person and at least one Registrant.
- 2.4 Decisions will be by majority and the Chair will have a casting vote.
- 2.5 The Appeals Secretary will be responsible for convening meetings of the Appeals Committee and for the composition of a quorate panel of the Appeals Committee in relation to any particular appeal.

3. Making an appeal

- 3.1 Appeals must be made in writing electronically and addressed to the Appeals Secretary at the address provided on the ARB website.
- 3.2 The notice of appeal must attach all the documents relied upon by the Appellant in support of the appeal.
- 3.3 An appeal may be considered only following payment to the ARB of the appeal fee set annually by the Board and stated on ARB's website.
- 3.4 Appeals must be made within 28 days of the sending of written notice of the initial decision by post and electronically but this period may be extended if the Appellant produces evidence to the satisfaction of the Appeals Secretary that notice was not received in time to appeal.
- 3.5 No further appeal may be made in respect of a decision which has already been the subject of an appeal whether pending, determined or withdrawn.
- 3.6 The notice of an initial decision will include summary reasons and state:
 - the time limit within which they can appeal;
 - the way in which an appeal can be made;

- information about how to submit supporting evidence.

4. Screening of the appeal

4.1 The Appeals Secretary:


- a) will promptly acknowledge receipt of the appeal and indicate whether or not the appeal appears to them to be both in time and within the jurisdiction of the Appeals Committee and, if not, provide brief reasons and
- b) will indicate whether the form and information within the appeal is sufficient to allow the appeal to proceed and, if it is not, invite the Appellant to expand or amend the appeal documentation within 14 days of such notice
- c) will in the absence of jurisdiction, give written notice rejecting the appeal
- d) in the event that the Appellant fails to deal promptly with issues raised under rule 4.1(b) above to the satisfaction of the Appeals Secretary, may give written notice rejecting the appeal
- e) will otherwise convene the Appeals Committee to consider the appeal within three months of the receipt of the appeal or the compliance with rule 4.1(b) if later.

5. Proceedings of the Appeal Committee

- 5.1 The Appeals Committee may meet in person or electronically and may reach decisions on the papers alone where it considers it fair and appropriate to do so.
- 5.2 The Appeals Committee may direct the Appeals Secretary to require the Appellant to produce such additional documents as it considers reasonable or direct any other action which would have been available to the maker of the initial decision.
- 5.3 Appellants will generally not be able to make oral representations to the Committee but the Committee may exceptionally permit such representations where the Committee considers it essential to secure a fair and proper process.

6. Status of the Appellant while the appeal is being considered

- 6.1 For appeals against an initial decision involving an application for registration, the Appellant will remain unregistered pending the outcome of the appeal.
- 6.2 For appeals against an initial decision involving a Registered Architect, the Appellant will remain on the Register pending the outcome of the appeal.

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- 6.3 The giving of notice of appeal does not extend any time limit in relation to any other step or action otherwise required of an Appellant.

7. Decisions

- 7.1 The Appeals Committee may make any decision that could have been made by the person who made the Initial decision.
- 7.2 The Appeals Secretary will send the Appellant written notice of the Appeals Committee's decision (the Decision Notice) within 7 days of the decision including:
- a) the date of the decision
 - b) summary reasons
 - c) notice that a person may appeal to the High Court or, in Scotland, to the Court of Session if they are aggrieved by a decision of the Appeals Committee under section 21A Architects Act 1997 on their appeal; and that such an appeal must be made not later than three months after the date on which notice of the decision concerned is served on the person.

8. Service of Decision Notice

- 8.1 The Decision Notice may be served by any of the methods referred to in CPR 7.5 and shall be deemed served on the second business day after completion of the relevant step under CPR 7.5(1) notwithstanding rule 8.1 service by post to an address outside the UK shall be deemed served on the fifth business day after completion of the relevant step under rule 7.5(1).

9. Withdrawal of appeals

- 9.1 An appellant may withdraw their appeal at any time by written notice to the Appeals Secretary and upon receipt of such notice the Appeals Secretary will confirm that the appeal has been withdrawn.

10. Refund of appeal Fee

- 10.1 The Appeals Committee may, if it considers that the appellant has been substantially successful in the appeal, direct that ARB refund the Appeal Fee.
- 10.2 In the event that an Appellant withdraws their appeal, no refund of the Appeal Fee will be made unless the Appeals Committee is satisfied both that a refund in whole or in part would be reasonable and that in the absence of a refund the Appellant would suffer financial or other hardship.



11. Adjustments


- 11.1 The Appeals Secretary in consultation with a Chair of the Appeals Committee may make any reasonable adjustment to the procedure or requirements of these Rules where such adjustment is required to comply with a legal duty or where procedural fairness requires in the particular circumstances such an adjustment.

Annex C - Updated ARB General Rules

Proposed changes that we consulted on are highlighted in green. Additional new recommended changes are highlighted in red.

Proposed changes to the rules in order to accommodate the new Appeals Committee

14. The Professional Conduct Committee, Appeals Committee and other Committees
 - 14.1 For the purposes of paragraph 17 of Part III of the First Schedule of the Act, the Board will appoint members of the Professional Conduct Committee for such terms as the Board may determine but may not appoint a person who is or has been a member of the Board.
 - 14.2 For the purposes of paragraph 17B of Part 2A of the First Schedule of the Act, the Board will appoint members of the Appeals Committee.
 - 14.3 For the purposes of paragraph 21 of Part III of the First Schedule of the Act, in respect of Committees established by the Board (excluding the Professional Conduct Committee and the Appeals Committee established by Statute):
 - a. the term of office of members appointed to a Committee shall be as determined by the Board for that Committee;
 - b. where a Board member ceases to be a member of the Board, they shall immediately cease to be a member of any Committee to which they have been appointed by the Board unless the Board decides to appoint them to the Committee as a non-Board member;
 - c. the Board shall appoint a Chair of each Committee from among its members to preside at meetings, unless the Board determines that the Committee may appoint its own Chair, and in the event of a tie, he or she shall have an additional casting vote;
 - d. save as otherwise provided by Statute or Rules, the quorum for any meeting of the Committee shall be not less than half the number of members of that Committee, but the Board may determine a greater quorum;
 - e. a casual appointment arising on the Committee shall be filled by the Board;
 - f. a Committee shall regulate its proceedings as far as possible in accordance with these Rules in respect of the smooth running of the meeting, voting and minutes,



save that reference to the Chair shall refer to the Chair of the Committee.
Committees shall determine the times, dates and place of their meetings;

g. every Committee established by the Board shall report its proceedings in writing to the Board;

h. a Board member may attend the meetings of any Committee of which they are not a member as an observer, provided their attendance is in the interests of furthering the Board's work and the Chair of the Committee is notified in advance. Observers shall have no right to speak at the meeting;

i. the Terms of Reference of each Committee shall be decided by the Board, and reviewed by both the relevant Committee and the Board as directed by the relevant Chair

14.4 In the event of a conflict between these Rules and the Professional Conduct Committee Rules, the Professional Conduct Committee Rules shall prevail.

14.5 In the event of a conflict between these Rules and the Appeals Committee Rules, the Appeals Committee Rules shall prevail.