



Draft

Investigations and Professional Conduct Committee Rules

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Investigations rules

Introduction

1. These Rules were made by the Board on [DATE] under Section 23 and Part III of the First Schedule to the Architects Act 1997. They came into force on [DATE] and subject to Rule 25 replace the Rules made by the Board on 29 November 2018.

Interpretation

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

“the Act” means the Architects Act 1997;

“ARB” means the Architects Registration Board;

“the Board” means persons designated under Part I of the First Schedule of the Act;

“the Case Presenter” is a person appointed by the Registrar to present a Charge to the Professional Conduct Committee on behalf of ARB;

“Charge” is a charge to be heard before the Professional Conduct Committee of unacceptable professional conduct or serious unprofessional incompetence or that the Registered Person has been convicted of a relevant criminal offence;

“Expert Advisor” means a person instructed by the Registrar to provide expert advice considered relevant to any investigation;

“Investigations Panel” means the panel of Investigation Pool Members designated under Rule 7;

“Investigations Pool Member” means a person appointed by the Board under section 14(1) of the Act;

“Inquirer” means a person appointed by the Registrar, drawn from a Panel of persons constituted by the Registrar to undertake investigations on behalf of the Investigations Panel;

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

“Register” means the Register of Architects established under the Act;

“Registered Person” is a person whose name is on the Register;

“the Registrar” is the person appointed by the Board as the Registrar of Architects;

“relevant criminal offence” means a criminal offence which has a material relevance to the fitness of a Registered Person to practise as an architect;

“the Investigations Officer” is the employee of ARB appointed by the Registrar to act in that role;

“a referrer” is a person who refers a matter to the Registrar for the purposes of section 14(1) of the Act;

“Third Party Review” is a review further to a notice under rule 17(b);

“Third Party Reviewer” means a person or firm independent of ARB instructed by the Registrar in order to conduct a Third Party Review;

3. The Interpretation Act 1978 applies to these Rules as if they were an Act of Parliament.

Investigations Pool Members

4. The Board shall appoint a minimum of six persons under section 14(1) of the Act to be Investigations Pool Members.

5. Investigations Pool Members shall:

- a) include both Registered and Lay persons; and
- b) not include members of the Board or the Professional Conduct Committee.

Preliminary Investigation

6. Where matters are brought to the attention of the Registrar, whether by a referrer or otherwise, that there may be concerns as to unacceptable professional conduct by a Registered Person and/or the serious professional incompetence of a Registered Person, the Registrar:

- a) may carry out such preliminary investigations as in his or her opinion are appropriate for the purposes of section 14(1) of the Act;
- b) may obtain such advice as the Registrar sees fit;
- c) shall inform the relevant Registered Person of the matters brought to the attention of the Registrar under this rule and offer him or her an opportunity to comment before any referral is made to an Investigations Panel; and
- d) where appropriate and after taking into account any investigation, advice and comments from the Registered Person, make a referral to an Investigations Panel.

Action by the Investigation Panel

7. Where the Registrar has referred a matter to an Investigations Panel, the Investigations Officer shall:

- a) designate three Investigations Pool Members to form the Investigations Panel;

- b) ensure that the Investigations Panel consists of one Registered Person and two Lay persons; and
- c) designate one of its number to act as its Chair.

8. Where the Registrar has referred a matter to an Investigations Panel, its role is to decide further to section 14(2) of the Act, taking into account the public interest and whether the evidence provides a realistic prospect of the Charge being upheld, whether there is a case to answer.

9. If the Investigations Panel considers that investigation or advice, additional to that sought under rule 6, is required it shall give directions to this effect to the Registrar including, where appropriate, for instructions to be given on its behalf to an Inquirer or an Expert Advisor.

10. Before carrying out its consideration under rule 15, the Investigations Panel may, if it considers it appropriate:

- a) invite written representations from the Registered Person;
- b) invite written representations from the referrer, if any,

and in so doing may indicate whether or not it is minded to refer the matter to the Professional Conduct Committee.

11. Investigations Panels shall not receive oral representations or evidence unless exceptionally it is necessary in the interests of justice to do so.

12. The decisions of an Investigations Panel:

- a) shall be by majority;
- b) may be taken by electronic means and if so, it will not be required for members of the Panel to deliberate in each other's presence unless Panel members consider it necessary to do so.

Request for evidence

13. The Investigations Panel, an Inquirer or the Registrar may make a request for information and evidence (including for an inspection of such at the Registered Person's business premises) and the Registered Person shall comply with all such reasonable requests.

14. This requirement shall not apply to any information in relation to which the Registered Person is entitled to legal professional privilege or the disclosure of which would give rise to a breach of the law.

Decision

15. The Investigations Panel once it has concluded its investigations in relation to a matter, shall consider whether there is a case to answer and proceed under rule 16 or 17.

16. a) Where the Investigations Panel is minded to decide that there is a case to answer and to refer the matter to the Professional Conduct Committee, it shall

- i) ask a Case Presenter to prepare a draft report to the Professional Conduct Committee;
- ii) then, subject to (b) below and any amendments it wishes to make to the report, make the referral, by way of the report, copied to the Registered Person.

b) Where a Case Presenter forms the view that the matter should be considered further by the Investigations Panel on account of new evidence or for some other reason, the Case Presenter shall write with this request, copied to the Registered Person who shall have an opportunity to comment before the Investigations Panel carries out any further consideration under rule 15.

17. a) Where the Investigations Panel is minded to decide that there is no case to answer, it:

- i) may give advice as to the Registered Person's future conduct or competence;
- ii) shall notify the Registered Person and the referrer, if any, in writing as to the decision it is minded to make, including any advice; and

b) Where, further to rules 19 and 20, there is no request for a Third Party Review or no Third Party Reviewer has been instructed, the Investigations Panel shall finalise its decision and notify the Registered Person and the referrer, if any, to this effect.

Third Party Review

18. Where a referrer, if any, or the Registered Person has received a notice under rule 17(a)(ii) that the Investigations Panel is minded to decide that there is no case to answer and is dissatisfied with the process whereby it formed that view, that person may request a Third Party Review of that process.

19. Such a request must be made in writing to the Investigations Officer within 30 days of the date of receipt of the written notification under Rule 17(a)(ii), whereupon the Registrar shall consider whether to instruct a Third Party Reviewer.

20. The Registrar shall instruct a Third Party Reviewer where:

- a) the request clearly identifies the alleged deficiencies in the process; and

- b) it seems to the Registrar that these may, if upheld, reasonably lead to the Investigations Panel deciding to refer the matter to the Professional Conduct Committee.

21. The Third Party Reviewer shall submit a report to the Registrar, who shall send it to the Investigations Panel, the Registered Person and the referrer, if any.

22. The Investigations Panel, on receipt of the report, shall consider its content and give further consideration to the matter under Rule 15.

- a) Where the Investigations Panel carries out such further consideration and is minded to decide that there is a case to answer, it shall ask a Case Presenter to draft a report under rule 16(a)(i).
- b) Where the Investigations Panel carries out such further consideration and it remains of the view that there is no case to answer, and that no further action is to be taken, it shall finalise its decision and give its reasons in writing to the Registrar, the Registered Person and referrer, if any.

Action in respect of a criminal conviction

23. If it appears to the Registrar that a Registered Person has been convicted of a relevant criminal offence:

- a) where necessary, the Registrar shall carry out an investigation into the relevant facts;
- b) the Registrar shall refer the matter to the Professional Conduct Committee by way of a report from a Case Presenter, copied to the Registered Person.

Reports to the Professional Conduct Committee

24. A report to the Professional Conduct Committee shall contain:

- a) the Charge;
- b) a copy of any written statement or other document or plan that it is intended will be adduced against the Registered Person;
- c) the name of any witness whom it is intended to call in person before the Committee and a summary of what that witness is expected to say; and
- d) where the Charge relates to a relevant criminal offence, a certificate or other evidence of the conviction.

Transitional Provision

25. These Rules do not apply to relevant criminal offences that come to the attention of the Registrar or allegations of unacceptable professional conduct or serious professional incompetence

made before the date on which these Rules come into force and those matters will be subject to the Investigation Rules made on 29 November 2018, as if they had not been revoked.

Professional Conduct Committee Rules

Introduction

1. These Rules were made by the Board on [DATE] under Section 23 and Part II of the First Schedule to the Architects Act 1997. They came into force on [DATE] and replace the Rules made by the Board on 29 November 2018.

Interpretation

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

“the Act” means the Architects Act 1997;

“ARB” means the Architects Registration Board;

“the Board” means persons designated under Part I of the First Schedule of the Act;

“Case Presenter” is a person appointed by the Registrar to present a Charge to the Professional Conduct Committee on behalf of ARB;

“Charge” is a charge to be heard before the Professional Conduct Committee of unacceptable professional conduct or serious unprofessional incompetence or that the Registered Person has been convicted of a relevant criminal offence;

‘Consent Order’ means a document which sets out terms upon which the Case Presenter proposes that a Charge which is the subject of a report to the Professional Conduct Committee may be settled with the consent of the Registered Person.

"Consent Order Panel" means the three members of the Professional Conduct Committee designated by the Chair under Rule 4(c) to consider the settlement of a Charge with the consent of a Registered Person;

“Disciplinary Order” means a disciplinary order made by the Professional Conduct Committee under section 15(1) of the Act;

"Hearing Panel" means the members of the Professional Conduct Committee designated by the Chair under Rule 4(a) to consider a Charge against a Registered Person at a hearing;

“Investigations Panel” means the panel of Investigation Pool Members designated under Rule 7 of the Investigations Rules;

“Investigation Rules” means the rules of that name made by the ARB on [INSERT] and in force on [INSERT];

“Professional Conduct Committee” means the Committee of that name appointed under Part II of the First Schedule to the Act or, where a Hearing Panel has been designated under Rule 4(a) or 4(c), that Panel;

“referrer” is a person who refers a matter to the Registrar for the purposes of section 14(1) of the Act’;

“Register” means the Register of Architects established under the Act;

“Registered Person” is a person whose name is on the Register;

“Registrar” is the person appointed by the Board as the Registrar of Architects;

“relevant criminal offence” means a criminal offence which has a material relevance to the fitness of a Registered Person to practise as an architect.

3. The Interpretation Act 1978 shall apply to these Rules as if they were an Act of Parliament.

Action upon receiving a report

4. Upon receiving a report from the Investigations Panel under Rule 16(a)(ii) or the Registrar under Rule 23(b) of the Investigation Rules, the Chair of the Professional Conduct Committee shall subject to Rules 5 and 6, designate:

- a) three members of the Professional Conduct Committee as a Hearing Panel to consider the Charge;
- b) a Chair for the purposes of the proceedings before the Hearing Panel (which may be him or herself unless unavailable or it is otherwise appropriate for another member of the Committee to act as Chair for these purposes);
- c) if needed, three further but different members of the Professional Conduct Committee as a Consent Order Panel to consider any proposed Consent Order in relation to that Charge.

5. No member of the Professional Conduct Committee who was a member of an Investigations Panel when it considered the conduct or competence of a Registered Person shall be designated either as a member of a Hearing Panel or as a member of a Consent Order Panel to consider a Charge against that person arising out of the consideration by that Investigations Panel.

6. No member of the Professional Conduct Committee appointed to a Consent Order Panel to consider a proposed Consent Order shall be designated to a Hearing Panel to consider the same matter at a hearing.

Notice of the hearing

7. Not less than 49 days before the date set for the hearing of a Charge by the Hearing Panel, a written notice of the date, time and venue of the hearing shall be served upon the Registered Person or his or her legal representative (and for these purposes “venue” may include audio or video conferencing facilities).
8. A shorter period of notice than that specified in Rule 7 may be given where the Registered Person consents or the Chair of the Hearing Panel or Chair of the Professional Conduct Committee (if different) considers it reasonable in the public interest.
9. Such notice shall be accompanied by:
 - a) the Charge;
 - b) a copy of the report from the Investigations Panel to the Professional Conduct Committee;
 - c) a copy of any written statement or other document or plan that the Case Presenter intends to adduce in evidence at the hearing; and
 - d) the name of any witness whom the Case Presenter intends to call in person at the hearing, including any expert witness, and a summary of what that witness is expected to say.

Registered Person’s response

10. Within 21 days of receipt of the notice referred to in Rule 7 the Registered Person shall give to the Case Presenter written notice:
 - a) of whether he or she intends to appear at the hearing;
 - b) if he or she is to be legally represented, the name and address of his or her legal representative; and
 - c) brief particulars of any defence.
11. If the Registered Person intends to deny the Charge then not less than 21 days before the date set for the hearing he or she shall serve upon the Case Presenter a notice which contains:
 - a) particulars of the defence;
 - b) a copy of any written statement or other document or plan that he or she intends to adduce in evidence at the hearing; and
 - c) the name of any witness whom he or she intends to call in person at the hearing, including any expert witness, and a summary of what that witness is expected to say.

12. Such notice may be given by being sent either by post or electronically, addressed to the Case Presenter at the registered offices of ARB or at any other address given for this purpose in the notice served under Rule 7 of these Rules.

Adjournment

13. The Hearing Panel, the Chair of the Hearing Panel, or Chair of the Professional Conduct Committee (if different) on any day prior to the relevant hearing may adjourn any hearing at any time if they consider that it is appropriate to do so.

14. Written notice of the date, time and venue of the adjourned hearing shall be served upon the Registered Person and if a copy of the notice of the original hearing was sent to a referrer, a copy of the notice of the adjourned hearing shall be sent to that person also.

Case Management directions

15. At the request of the Case Presenter or a Registered Person or of his or her own volition, the Chair of the Hearing Panel or of the Professional Conduct Committee (if different) may give such directions as are in the interests of justice and as they see fit. These may include directions as to

- a) participation in a case management meeting;
- b) any other directions for the conduct of the hearing.

Expert evidence

16. The Registered Person or the Case Presenter may apply to the Chair of the Hearing Panel for permission to adduce expert evidence, which shall be restricted to that which is reasonably required to resolve the proceedings.

17. The Chair may give directions with regard to the provision of a written report by any expert witness, any evidence in reply and the giving of oral evidence.

Proceeding in the absence of the Registered Person

18. If the Registered Person fails to appear in person or by his or her legal representative at a hearing of a Charge the Hearing Panel may, if satisfied that the Registered Person has been served with notice of the hearing or all reasonable efforts have been made to serve the notice of the hearing, hear the case in the Registered Person's absence.

Evidence and proof

19. The Hearing Panel may admit any evidence it considers fair and relevant to the case before it, whether or not such evidence would be admissible in a court of law.

20. Neither the Registered Person or the Case Presenter shall, without the permission of the Hearing Panel, call a witness or adduce evidence that was not referred to in a notice served on the other before the hearing in accordance with these Rules.

21. In determining whether a charge of unacceptable professional conduct or serious professional incompetence has been proved, the Hearing Panel shall take into account any failure by the Registered Person to comply with any provision of the Code of Professional Conduct and Practice issued by the Board under Section 13 of the Act.

22. The burden of proving a relevant fact shall lie upon the Case Presenter.

23. The Hearing Panel shall apply the civil standard of proof to any findings of fact.

Joinder

24. Except where it appears to it that it would not be in the interests of justice to do so, the Hearing Panel may hear Charges against two or more Registered Persons at the same time and two or more Charges against a Registered Person at the same time.

Order of proceedings at hearings of the Professional Conduct Committee

25. Subject to Rule 28 the procedure at a substantive hearing is to be as provided for in this rule.

a) The Chair of the Hearing Panel shall:

(A) require the Registered Person's name and registration number to be confirmed by the Registered Person, where the Registered Person is present; or

(B) require the Case Presenter to confirm the Registered Person's name and registration number, where paragraph (i) does not apply.

b) The Hearing Panel shall hear and consider any preliminary legal arguments.

c) The Chair shall ask for the Charge to be read out and inquire whether the Registered Person wishes to make any admissions.

d) Where facts have been admitted, the Chair of the Hearing Panel shall announce that such facts have been found proved.

e) Where facts remain in dispute, the Case Presenter is to open the case and may adduce evidence and call witnesses in support of it.

f) The Registered Person's case is then to be opened, and the Registered Person may adduce evidence and call witnesses in support of it.

g) Following the conclusion of the evidence, the Case Presenter followed by the Registered Person shall be invited to make closing submissions.

h) The Hearing Panel shall, after consideration of all the evidence and submissions made:

(A) consider and announce its findings of fact and give reasons for that decision;

(B) after hearing further submissions and evidence if appropriate, the Hearing Panel shall then decide and announce whether it finds the Registered Person guilty of unacceptable professional conduct and/or serious professional incompetence and/or a conviction of a relevant criminal offence.

i) Following the announcement of that decision the Hearing Panel may receive further evidence and hear any further submissions from the Case Presenter and the Registered Person as to the appropriate disciplinary order, if any, to be imposed.

j) The Hearing Panel shall, having considered any further evidence and any further submissions made under Rule 25(i), announce its decision as to the disciplinary order (if any) to be imposed, giving reasons for its decision.

26. Where it appears to the Hearing Panel at any time during the hearing, either upon the application of the Case Presenter or the Registered Person, or of its own volition, that

a) the particulars of the Charge or the grounds upon which it is based and which have been notified under Rule 9, should be amended; and

b) the amendment can be made without injustice,

it may, after hearing from the Case Presenter and Registered Person, and taking legal advice, amend those particulars or those grounds in appropriate terms.

27. At any stage before making its decision as to the imposition of a disciplinary order, the Hearing Panel may adjourn for further information or evidence to assist it in exercising its functions.

Departure from these Rules

28. Provided that the proceedings are fair to the Registered Person and it is in the interests of justice to do so:

a) no objection shall be upheld to any technical fault in the proceedings;

b) the Hearing Panel may depart from any provision of Rule 25 of these Rules.

Witnesses

29. Witnesses shall be required to take an oath, or to affirm, before giving oral evidence at a hearing.

30. Subject to Rule 31, witnesses:

a) shall first be examined by the party calling them;

b) may then be cross-examined by the opposing party;

c) may then be re-examined by the party calling them; and

d) may at any time be questioned by the Hearing Panel.

e) Any further questioning of the witnesses by the parties shall be at the discretion of the Chair of the Hearing Panel.

31. Subject to legal advice, and upon hearing representations from the Case Presenter and the Registered Person, the Hearing Panel may adopt such measures as it considers appropriate to enable it to receive evidence from a witness.

Public hearing

32. Subject to Rules 33 and 34, hearings of the Professional Conduct Committee shall be held in public.

33. The Hearing Panel may determine that the public shall be excluded from the proceedings or any part of the proceedings, where they consider that the circumstances of the case outweigh the public interest in holding the hearing in public.

34. An application that all or part of a hearing should be conducted in private shall be heard in private.

Recording

35. An audio recording shall be made of the proceedings of a Hearing Panel and a copy or transcript of such recording shall be provided to the Registered Person as soon as reasonably practicable, upon his or her written request and on receipt of the costs thereof.

Reasons

36. The Hearing Panel shall provide the Registered Person with written reasons for its decisions as soon as practicable after the hearing.

Consent Orders

37. At any time after a report has been served upon the Registered Person but not less than 42 days before the date fixed for a hearing of the Charge, unless otherwise agreed between the Registered Person and ARB, the Case Presenter may serve on the Registered Person a proposed Consent Order setting out terms upon which it is proposed that the case may be concluded with the consent of the Registered Person.

38. The Registered Person may within 14 days of the date when the proposed Consent Order was sent to him or her (subject to any extension of time agreed between the Registered Person and ARB), confirm in writing to the Case Presenter that the Registered Person accepts the matters set out in the proposed Consent Order and agrees to the terms of the disciplinary order, if any, therein.

39. Where the Registered Person does not confirm within 14 days his or her consent to the proposed Consent Order in accordance with Rule 38, the proposed Consent Order will be regarded as withdrawn and the case must proceed to be considered at a hearing.

40. Where the Registered Person has given the consent referred to in Rule 38, the Case Presenter must refer the proposed Consent Order to the Consent Order Panel.

41. The Consent Order Panel must make such arrangements as it considers appropriate to decide whether to approve or reject the proposed Consent Order, provided that:

- a) such arrangements must not involve a hearing in the presence of the parties;
- b) such arrangements need not require the members of the Consent Order Panel to deliberate in each other's presence, unless they consider it necessary to do so;
- c) the Consent Order Panel must consider and reach its decision in relation to the proposed Consent Order within 21 days of receipt.

42. As soon as reasonably practicable after reaching its decision the Consent Order Panel must inform ARB and the Registered Person of its decision in writing.

43. Where a proposed Consent Order is not consented to by the Registered Person or not approved by the Consent Order Panel, the Charge must proceed to be considered by a Hearing Panel at a hearing.

44. Where a proposed Consent Order has not been agreed or approved, any discussions relating to it between the Case Presenter and the Registered Person shall remain confidential and shall not be made known to any Hearing Panel designated to hear the Charge, unless the Registered Person chooses to bring it to its attention.

Publicity

45. The Professional Conduct Committee shall, in such manner as it considers appropriate:

- a) where there has been an adverse finding, instruct that the name of the Registered Person be published with a description of the conduct, incompetence or relevant criminal offence and nature of any disciplinary order or Consent Order;
- b) where it does not uphold a Charge of unacceptable professional conduct or serious professional incompetence, and if so asked by the Registered Person, it shall instruct that a statement of fact to this effect, be published.

Transitional Provision

46. These Rules do not apply to proceedings in respect of which a report has been made to the Professional Conduct Committee by the Investigations Panel or Registrar before the date on which these Rules come into force and those proceedings will be subject to the Professional Conduct Rules made on 29 November 2018, as if they had not been revoked.



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