

Professional Standards Guidance Note

Guidance on the Three Stages of a Hearing

This note has been issued by the Architects Registration Board (ARB) for the guidance of the Professional Conduct Committee (PCC) and to assist those appearing before it.

Hearings before the PCC consist of three stages¹

1. Consideration of the facts
2. Consideration of unacceptable professional conduct (UPC) and/ or serious professional incompetence (SPI)
3. Penalty

Allegation

An allegation comprises two elements which the PCC is required to consider sequentially:

- Whether the facts set out in the allegation are proven (i.e. proved or admitted)
- Whether the facts proven amount to UPC and/or SPI

If all or some of the facts are proven and these are found to amount to UPC or SPI, the allegation will be well founded.

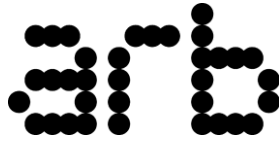
Burden of Proof/ Proving the Facts

- 1 The burden of proving the facts alleged is on the ARB. The Architect does not have to prove or disprove anything. The standard of proof is the civil standard (“balance of probabilities” i.e. more likely than not). This only applies to the findings of fact. **(Whether those facts found proven amount to UPC or SPI is not a matter which needs to be proved by evidence by the ARB but is a matter of judgement for the PCC).** This legal principle was established by the High Court in CRHP v GMC Biswas [2006] EWHC 464 (Admin).

UPC/SPI

- 2 The Board’s Solicitor will make submissions as to why any facts found proven amount to UPC and/or SPI. The Architect may also make submissions that any facts which have been proven do not amount to UPC and /or SPI. Whether or not they do

¹ A hearing dealing with an allegation where an Architect has been convicted of a criminal offence under s15 (1)(b) of the Architects Act 1997 will consist of two stages only (facts and sanction).



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amount to UPC and/or SPI is a matter for the judgment of the PCC having heard any argument/ submissions (as opposed to evidence) put before them.

Decision

While there is no general obligation in law to give separate decisions on findings of fact, in more complex cases it may be necessary to do so, as the Court of Appeal stated in Phipps v General Medical Council [2006] EWCA Civ 397

“every tribunal needs to ask itself the elementary questions: is what we have decided clear? Have we explained our decision and how we have reached it in such a way that the parties before us can understand clearly why they have won or they have lost?”

If in asking itself those questions the tribunal comes to the conclusion that in answering them it needs to explain the reasons for a particular finding or findings of fact that, in my judgement, is what they should do. Very grave outcomes are at stake. Respondents... are entitled to know in clear terms why such findings have been made.”

Disciplinary Orders

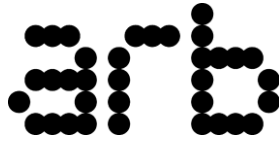
If an allegation is well founded, the PCC will consider the appropriate disciplinary order, if any, to impose. The disciplinary orders available to the PCC are: No Order; Reprimand; Penalty Order; (fine); Suspension and Erasure. (See Indicative Sanctions Guidance).

The PCC will be advised if there have been any previous findings of another PCC against the Architect. The Architect will have the opportunity to present mitigation to the PCC and hand up written and signed character references and other relevant documents, or call witnesses to provide character evidence.

PCC Approach

The PCC must act in a manner which makes clear that it is applying the sequential approach:

- First determining whether the facts alleged are proven
- If so, then using its judgement to determine whether the facts proven amount to UPC or SPI
- If so, hearing submissions on the question of penalty and then determining, what, if any, penalty to impose



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It is important that these three steps should be and be seen to be separate but that does not mean the PCC must retire three times in every case. Whether the PCC needs to retire at each and every stage of the process will depend upon the nature or complexity of the case.

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