



Subject Report of the Chair of the Professional Conduct Committee (PCC)
Purpose For Note
From Emma Boothroyd, Chair of the PCC

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1. Summary

To note the annual report of the Chair of the Professional Conduct Committee (PCC). This report covers the period 2018 and 2019.

2. Open Session

3. Contribution to the Board's Purpose and Objectives

In delivering the Act, ARB's objectives are:

Consumers: will have confidence in ARB's process for investigating and adjudicating on a complaint about an architect's conduct or competence.

Architects: A robust and fair disciplinary procedure will maintain the reputation of the profession and the ARB as its regulator.

4. Key Points

- i. This is the ninth annual report of the PCC, and the first from me as Chair of the Committee. It covers 2018 and the first ten months of 2019. Normally this paper is delivered earlier in the year, but for understandable reasons the Board's agendas at meetings this year have been fully committed to other business.
- ii. As this will be my first presentation to the Board, and the first you will have received from a PCC Chair, it may be helpful for me to set out the role of the PCC and how it delivers its statutory duties.

The role of the PCC

- iii. The PCC is currently made up of nine active members: three architects, three lay members and three legally qualified Chairs. Each panel considering a case is made up of one architect, one lay person, and one legally qualified Chair. The Panel is assisted by a member of staff from the ARB, usually the Hearings Officer, who assists in the

smooth running of the hearing.

- iv. The statutory role of the PCC, which is set out in the Architects Act, is to decide whether an architect is guilty of unacceptable professional conduct (UPC) and/or serious professional incompetence (SPI), and if so issue a sanction as appropriate.
- v. PCC hearings are held in public and are adversarial in nature, just as in civil or criminal jurisdictions. ARB presents the case against the architect (or respondent, as they are referred to during the proceedings), and then the respondent – if denying the allegations – will present their defence.
- vi. The PCC considers factual allegations made against an architect. If it decides that the facts of the allegation(s) are proved, then it goes on to consider whether those facts are serious enough to amount to UPC and/or SPI. If such a finding is made, then after considering any mitigation, it may (exceptionally) issue no sanction, impose a reprimand, a penalty order (of up to £2,500¹), a suspension (of up to two years), or order that the architect is permanently Erased from the Register of Architects.
- vii. When reaching our decisions great care is taken over the reasons given, which we endeavour to give at the hearing rather than making the parties await the outcome at a later date. The importance of our decisions being logical and clear cannot be over emphasised. Not only is there an important element of fairness so that the parties involved understand the rationale as to the decision, but we are alive to the risk that the reasoning may be subject to further judicial scrutiny if the sanction imposed is appealed. As far as we are able to we will try and include salutary messages that might benefit the whole profession. The PCC therefore welcomes the widespread distribution of its decisions not for the purposes of name-and-shame, but to educate the profession as to avoidable pitfalls.
- viii. The Committee places great importance on its independence from ARB, and robustly tests all of the cases brought before it. It is not a rubber-stamping committee of the Board, and that is reflected in the consistent number of not-guilty outcomes at the PCC every year.

Statistics 2018

- ix. The PCC made 22 decisions in 2018 (listed in [Annex A](#) to this Report), with 17 findings of unacceptable professional conduct. Five cases were dealt with by way of a consent order between the ARB and the architect.
- x. In one case there was a finding of both serious professional incompetence and unacceptable professional conduct. In that case it was found that the architect provided a seriously incompetent design in relation to the gable wall of the complainant's house and that he failed to respond adequately to communications regarding an issue with his professional work.

¹ Any monies raised by fines at the PCC is sent to HM Treasury, not kept by ARB

- xi. In two cases in 2018 the PCC found the architect was not guilty of the allegation(s), which is a similar proportion to previous years. There was one case in which there was found to be no case to answer, which is the same as the previous year.
- xii. One decision to erase an architect followed a finding that his criminal conviction was material to his fitness to practise as an architect. While the conviction for a sexual offence was not directly related to his practise, the PCC was alive to the importance of maintaining the collective reputation of the profession.
- xiii. During the course of the year, the whole range of sanctions available to the PCC was employed at some stage. Ten architects were issued with a reprimand; two architects were issued with penalty orders (fines) ranging from £1250 to £2500; three architects were suspended; and four architects erased from the Register of Architects.
- xiv. Two PCC decisions in 2018 were subject to appeals to the High Court and the Court of Sessions. One appeal was settled by way of consent; the other appeal was dismissed and the decision of the PCC upheld.

Statistics – 2019

- xv. The PCC made 12 decisions in 2019 between January and October (listed in [Annex B](#) to this Report), with 11 findings of unacceptable professional conduct, and none of serious professional incompetence. Four of the cases were dealt with by way of a consent order between the architect and the ARB.
- xvi. In one case the PCC found the architect was not guilty of the allegation, and there were no decisions resulting in a no case to answer finding.
- xvii. During the course of the year, the whole range of sanctions available to the PCC was employed. In four cases architects were issued with a reprimand. Five architects were issued with penalty orders ranging from £1000 to £2500. One architect was suspended, and one architect erased from the Register of Architects.
- xviii PCC decision numbers were lower during 2019 due to the absence of a constituted Board following the introduction of the Statutory Instrument in January 2019. The collateral effect of this was that the PCC membership was terminated until the reappointment of its members in April 2019.

Hearing length

- xix. The increasing length of cases, as previously reported, has continued, and it is sometimes a challenge to ensure that proceedings are completed within the time allotted. The average duration of a PCC hearing is now 2.3 days, up from 1.9 during 2017. While it is important that cases are disposed of efficiently, this cannot be to the detriment of a case being properly presented, the architect given every

opportunity to provide a defence to all the points raised, and for a thorough and robust consideration of the evidence and issues. The increase in hearing length and consequent demand on the time of PCC members inevitably brings the challenge of obtaining sufficient availability of such a limited pool of PCC members. The January 2019 amendments to the Architects Act removed the restriction on the number of members who may sit on the PCC. The workload demand will therefore be considered when the ARB recruits new PCC members in 2020, to ensure sufficient numbers to hear cases expeditiously.

Hearing adjournments

- xx. One area that improved across 2018-19 is the rate at which hearings were adjourned. In 2018 ARB saw seven adjournments (this includes cases which were unable to commence and cases which began but were unable to conclude within the time allotted.) In 2019 ARB has seen only two adjournments. This has been partly due to better planning as to the potential length of proceedings and partly due to increased efforts to deal with preliminary issues in advance of hearings where possible. This may also in part be to do with changes in how architects are informed of the PCC arrangements, but also aided by recent High Court guidance to regulators that they can be more robust in proceeding in the absence of a respondent when the interests of justice demand it.

Consent orders

- xxi. In 2018 and 2019 we have seen more cases dealt with by way of consent. Nine cases in total resulted in a consent order.
- xxii. The benefit of consent orders is that they resolve cases effectively and expeditiously, minimising the stress and cost to the parties involved. It is important, however, that consent orders are only used in appropriate cases (that is, where the architect accepts the facts of the case and that the allegation amounts to UPC or SPI) and that the proportionate and appropriate outcome is reached. This ensures ARB's public protection role is not compromised. Consent orders are published in the same way as hearing outcomes.
- xxiii. The final decision of whether a case can be resolved by consent will always rest with the PCC and only after proper scrutiny has been applied to the facts and proposed sanction. It is important to avoid any perception that deals are being done between the regulator and the regulated person 'behind closed doors.' Two proposed orders have this year been rejected on the basis that the PCC considered that the suggested sanction did not accurately reflect the gravity of the admitted failings. Rather than this being a shortcoming in the consent regime, it in fact demonstrates the determination of the PCC to maintain the credibility of the regulatory framework.

PCC Membership

- xxiv. The membership of the PCC was renewed in April 2019 for an additional 18 months, and apart from being appointed as a legally qualified member myself, I was pleased to see the reappointment of my existing colleagues. The current PCC members are

experienced in the workings of regulation and the architectural environment.

- xxv. Some of my colleagues will be coming to the end of their PCC tenure in September 2020 and so a recruitment exercise will be undertaken following the outcome of ARB's governance review. My understanding is that as part of that review ARB will determine the most effective way of reviewing the performance of PCC members on an ongoing basis. Until the governance review is complete all PCC members are invited to provide peer feedback following each hearing and I encourage further reflection on an ongoing basis, in relation not only to the performance of the Committee, but also of ARB staff, facilities, advocacy and the quality of the documentation provided.

PCC Development

- xxvi. The PCC holds an annual review day towards the end of each calendar year. At each meeting the Committee reviews the last 12 months' cases as a whole, and shared experiences of those things that went well and those that could have gone better. It also receives periodic training and an update on the latest relevant case-law and regulatory developments. It also provides an opportunity for more general points to be discussed in relation to issues and policies.
- xxvii. As always, I and my colleagues would welcome any Board members wishing to observe a hearing as a member of the public; I am sure the experience would be particularly useful for those who have not experienced such tribunal proceedings before.

5. Resource Implications

Due to the period between January and April 2019 where the PCC was unable to sit, we are now dealing with a small backlog of cases at the PCC stage. We expect this will have a short-term implication on resource required in 2020 to clear the backlog.

Over the coming months we will be exploring opportunities to move the PCC to more electronic ways of working. This should reduce paper usage and improve resilience in respect of GDPR risks.

6. Risk Implications

A failure to deal with allegations of unacceptable professional conduct, serious professional incompetence, or issues arising from criminal convictions risks harm both to users of architects' services and the reputation of the profession. Further risks are judicial reviews and statutory appeals against decisions and penalties imposed.

7. Communication

Details of guilty findings at the PCC are displayed on ARB's website, and reported via the e-bulletin and press releases.

8. Equality and Diversity Implications

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All PCC members have periodic training, including on the importance and significance of Equality & Diversity issues, which can be of particular significance in the tribunal environment. In December 2017 the entire PCC had training on unconscious bias.

E&D information is periodically published about those architects who appear before the Professional Conduct Committee. That data shows that there is a higher than expected number of men and older people appearing at the PCC in comparison to their representation on the Register. There is nothing notable about the data in relation to the remaining protected characteristics.

Annex A
List of PCC Decisions 2018

DATE	SUMMARY OF ALLEGATIONS	PENALTY
11-12 January 2018	SPI: failed to adequately advise the client that planning permission was required	Not Guilty
6-8 February 2018	UPC: Failed to have a complaints procedure in place	Reprimand
5-6 April 2018	UPC: failed to communicate adequately with his client; terminated the contract without informing his client	6 Month Suspension
23-24 April 2018	UPC: failed to undertake work without undue delay; failed to cooperate with the ARB with regard to a complaint about his professional work; failed to enter into a written agreement with his client; made representations to his client which were untrue, inaccurate and misleading; failed to hold adequate insurance; failed to ensure he had a complaints procedure in place; failed to produce drawings sufficient for the client's purposes; failed to produce drawings within a reasonable time frame	Erasure
5 October 2017, 12-13 February 2018, 16 March 2018, 30 March 2018	UPC: failed to respond to the ARB's correspondence	Reprimand
14-16 May 2018	UPC: Failed to provide adequate terms of engagement; Failed to provide accurate drawings, measurements and plans in accordance with the requirements of the brief and Building Regulations; Failed to carry out	2 year Suspension

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	agreed architectural services after being paid; Failed to pass on his client's money to London Building Control/Thames Water or arrange a refund; Failed to communicate with his client effectively and/or deal with a complaint about his professional work in a timely manner; Failed to ensure that he had adequate and appropriate insurance to meet his client's claims; Failed to deal promptly and openly with his regulator in relation to his insurance position.	
7 June 2018	UPC: failed to disclose to ARB that he had been a director of a company that was the subject of a winding up order dated 12 January 2011	Reprimand
12 June 2018	UPC: was disqualified from acting as a company director as of 12 September 2016; failed to report to the ARB that he was the director of a company which was wound up and that he was disqualified from acting as a company director.	2 year suspension
12 June 2019	UPC: did not enter into a written agreement with the client which adequately covered the terms of engagement contrary to standard 4.4 of the Architects Code	Reprimand
2 July 2019	UPC: Failed to manage a conflict, or potential conflict of interest adequately.	No Case to Answer
6 July 2018	UPC: Failed to communicate adequately. Failed to adequately deal with a complaint	Reprimand
17 July 2018	UPC: Issued interim certificates when it was not proper for him to have done so	Not Guilty
1-2 August 2018	UPC: Failed to issue adequate terms of	Reprimand

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	engagement	
16 August 2018	UPC: Failed to issue adequate terms of engagement	Reprimand
17 August 2018	UPC: Failure to safeguard client records and knowingly copying confidential records onto a personal storage device	Reprimand
20 September 2018	Criminal Conviction for exposure	Erasure
27 Sept-2 Oct 2018	UPC: charged inappropriately for dealing with a complaint	Erasure
10, 11, 12 July and 23 October 2018	UPC: failed to provide adequate terms of engagement and to keep her client informed of the progress of the works and any delays.	Reprimand
30 October- 1 November 2018	SPI: provided a seriously incompetent design in relation to the gable wall. UPC: failed to respond adequately to communications regarding an issue with his professional work.	Erasure
8 November 2018 (consent order)	UPC: failed adequately, or at all, to prepare tender documentation and/or carry out a competitive tender process; failed adequately to communicate with his client; and failed to deal with a complaint adequately and/or promptly.	£1250 Penalty Order
7 August 2018 and 13 to 16 November 2018	UPC: Failed to carry out work without undue delay; did not return documents and/or property to which his client was entitled and failed to adequately engage in the handover process; did not make appropriate arrangements to manage the project in his absence; did not deal with a complaint appropriately in that he did not produce a copy of his complaints procedure upon request; failed to co-operate with his regulator with regard to a complaint about his	£2,500 Penalty Order

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	professional work.	
21 December 2018 (consent order)	UPC: Failed to enter into a written agreement with the client which adequately covered the terms of engagement contrary to standard 4.4 of the Architects Code.	Reprimand

Annex B
List of PCC Decisions 2019

DATE	SUMMARY OF ALLEGATIONS	PENALTY
14-17 January 2019	UPC: failed to issue adequate terms of engagement	Reprimand
28-30 January 2019	UPC: Acted dishonestly in signing off properties as being practically complete when they were not	Erasure
2 May 2019	UPC: Failed to avoid actions or situations which were inconsistent with his professional obligations, in that in seeking to recover unpaid fees he sought to recover disproportionate costs which he ought to have known he could not justify.	Reprimand
20 May 2019 (Consent order)	UPC: Failed to provide to his client with terms of engagement prior to undertaking any professional work, failed to deal with a complaint adequately, or at all and failed adequately, or at all, to put in place effective procedures for supervising less qualified technical staff and/or for the administration of written terms of engagement.	£1,000 Penalty Order
17-18 June 2019	UPC: Failed to complete the service that he was contracted to provide.	Reprimand
3 September 2019 (Consent order)	UPC: Did not enter into a written agreement with the client which adequately covered the terms of engagement as set out in Standard 4.4 of the Architects Code; failed to communicate effectively with the client in that he submitted an amended application to the local planning authority without agreeing the content with the	£1,000 Penalty Order

	client.	
2-3 September 2019	UPC: Failed to enter into a written agreement with the client which adequately covered the terms of engagement as set out in standard 4.4 of the Architects Code; Failed to carry out an adequate tender process; Failed to carry out work in relation to Building Regulations with due skill and care in that he failed to provide adequate detail in Building Regulations drawings; Failed to undertake his role as Contract Administrator competently.	12 month suspension
20 September 2019 (Consent order)	UPC: Failed to submit an accurate planning application; failed to deal appropriately with a complaint; failed to enter into a written agreement with her client which adequately covered the terms of engagement contrary to standard 4.4 of the Architects Code.	£1,000 Penalty Order
27 September 2019 (Consent order)	UPC: Failed to enter into a written agreement with his client which adequately covered the terms of engagement contrary to standard 4.4 of the Architects Code.	Reprimand
3 and 4 October 2019	UPC: Failed to ensure that the architectural work was under the control and management of one or more architects contrary to standards 3.4 and 4.1 of the Architects Code.	£2,500 Penalty Order
6-8 August and 7 October 2019	UPC: Failed to manage a conflict, or potential conflict of interest adequately, or at all; failed adequately, or at all, to ensure the build was carried out in accordance with planning permission; and failed adequately, or at all, to deal with a dispute about his professional work in an appropriate manner.	£1,500 Penalty Order
28-29 October 2019	UPC: Failed to inform her insurers of a notifiable incident in a timely manner which resulted in a withdrawal of cover.	Not Guilty

UPC = unacceptable professional conduct

SPI = serious professional incompetence

Consent Order= This is where the Architect accepts the facts and matters set out and consents to the Consent Order Panel of the Professional Conduct Committee making a disciplinary order against him or her in the terms set out and confirms that he/she has been offered the opportunity to appear before a Hearing Panel of the Professional Conduct Committee to present his case, but does not wish to do so.