

**Response to the
Architects Registration
Board (ARB)
Consultation on the
Architects Code
Standards of Conduct
and Practice 2010**

7 August 2015

ARB's consultation on the Code of Conduct and Practice

Ombudsman Services' (OS) response

1 Summary - About OS

Established in 2002, the Ombudsman Service Ltd (OS) is a not for profit private limited company which runs national, multi sectorial private sector ombudsman schemes for the telecommunications, energy, property (including sole provider to RICS and being one of the three redress schemes approved by DCLG for letting and managing agents), copyright licensing, the glass and glazing sectors, the Green Deal, the Asset Based Finance Association (ABFA), reallymoving.com, Which? Trusted Traders and POPLA (private parking).

We're an entirely independent, service-oriented organisation. Through the different services we run, we help our members to provide independent dispute resolution to their customers and each scheme is entirely funded by its members. Our aim is to raise public trust and confidence in the sectors we work with by providing effective independent redress when problems arise.

We now have around 9,200 participating companies. During the last year 2014-15 we received 215,968 initial contacts from complainants and resolved 62,806 complaints. The company currently employs more than 550 people in Warrington and has a turnover in excess of £27 million.

OS's complaints resolution service operates once a company's own complaints handling system has been exhausted, and we have the authority to determine a final resolution to each complaint. We have an enquiries department which handles primary contacts and where decisions on eligibility are taken. If a complaint is not for us, or has been brought to us too early, we signpost the consumer and offer assistance. Eligible complaints are then triaged. The simplest can be resolved quickly, usually by phone, and taking a maximum of three hours. Around 10% are dealt with in this way. For the

majority of complaints we collect and consider the evidence from both parties, reach a determination and seek agreement; about 55% are settled like this. The most complex cases require a more intensive investigation; they may require more information and lead to further discussion with the complainant and the company to achieve clarification. The outcome will be an OS Decision. Whatever process is followed there is always a right of appeal and escalation. An ombudsman can issue a final decision in any one of the processes where it is clear that there is no evidence that would require changes to the initial determination.

Our service is free to consumers and, with the exception of an annual subscription from Department of Energy and Climate Change (DECC) for the Green Deal, operates at no expense to the public purse. It is paid for by the participating companies under our jurisdiction by a combination of subscription and case fee on a 'polluter pays principle'. Participating companies do not exercise any financial or other control over the company. OS governance ensures that we are independent from the companies that fall under our jurisdiction.

2 Specific response to the questions

OS welcomes the opportunity to respond to the ARB's consultation of the current Code of Practice. The consultation sets out a number of questions and OS has answered each of those questions below:

Q1. Do you consider that there have been any developments post 2010 (for example, legislative, regulatory or professional) that require the Code of Conduct to be amended? If yes, please specify.

A1. There have been a number of developments since 2010 that makes this an opportune time for the ARB to review the Code of Conduct and take stock of best practice in terms of standards, regulation and redress. Some of those developments include:

- work that has been undertaken around ethical regulation and effective regulation in a range of sectors, for example, the financial and the press sectors;
- work that the Department for Communities and Local Government (DCLG) undertook earlier this year in looking at reviewing the Architects Act. OS

was invited and did provide information and advice to that work on standards, regulation and redress;

- Alternative Dispute Resolution (ADR) Directive that was implemented in the UK on 9 July 2015. This Directive brings into play the requirement on all member states to enable ADR coverage for all consumer contracts and services. The Directive also makes certain information requirements on businesses to provide to consumers with complaints about what independent redress provision is available in their sector and also whether they as a business sign up to use that redress or not (the idea is that consumers will increasingly make a much more informed choice about which companies products and services they use) – which will take effect in October 2015, and from January next year each European Union (EU) member state, redress providers and businesses will be required to work with the EU on-line portal for disputes concerning consumer complaints about on-line services and contracts;
- current Government’s approach to regulation means that for regulation to be acceptable it must be effective and provide value for money to business whilst empowering consumers and clients to be able to complain when things go wrong;
- Consumer Rights Act –that will be implemented in October 2015. This updates the existing consumer rights landscape and provides greater powers to enforcers if businesses and others breach those rights for consumers. Coupled with increased collaboration and working together across the consumer landscape this effectively means it has never been a better time to be a consumer with a complaint; and
- the work that the Department of Business, Innovation and Skills (BIS) is undertaking to fulfil the Government’s commitment to provide access to small businesses to a conciliation service to tackle issues of late payments and other complaints they have about their larger business clients.

Q2. Do you consider that the Code of Conduct in its present form is fit for purpose? If not, please specify why.

A2. The code is a good start but it is an opportune time to review it after it has been in place since 2010. There is a lot of detail in the code and it would benefit from extra supporting information – which we will comment on in answer to question 3 below.

The code currently includes rules of conduct for individual architects, but then goes into rules for the conduct of business and then brings into play ethical standards. We think it may be beneficial to divide this up, perhaps into separate documents or chapters, for example:

- rules of conduct expected of each individual architect;
- rules for the conduct of business – this may apply to sole practitioners right up to large international architects businesses; and.
- ethical standards.

Other professional bodies and regulators have in place high level principles or rules and then supporting information and guidance such as policy sheets and help sheets and certainly with regard to ethical standards a supporting conceptual framework. This approach has a number of advantages, for example ensuring that the high level principles or rules are not lost in too much information but equally professional members and firms can drill down into as much detail and information as they require to assist them meet and fulfil the principles or rules.

This approach would also allow the ARB to provide information and guidance around the landscape and roles and responsibilities of architects, RIBA and the ARB, focussing on what the ARB does and what not meeting the standards expected of architects actually means for architects in terms of possible investigation and disciplinary action.

Q3. Do you believe the Code would be improved upon with the addition of detailed supplementary guidance (similar to that already provided in respect of professional indemnity insurance)? If so, what guidance do you believe would be appropriate?

A3. As highlighted in the answer to Question 2 above we do think that providing more detailed information would be helpful certainly on some requirements like professional indemnity insurance. There is a balance to be struck here with providing the right level of additional information and not providing too much as to become daunting or overly time consuming for architects to read.

Certainly one area that we think would benefit from further information and policy direction from the ARB to architects is around complaints handling and the provision or access to independent redress for consumer and business clients.

The current code of conduct does refer to having to have a complaints handling procedure in place and dealing with complaints in a courteous way and there are timescales in the code for responding to complaints. However, there is then a general reference to, if appropriate, suggesting the use of ADR. A lot more could be said here, for example:

- does the ARB want to approve or promote certain ADR providers to its members? This may be sensible given that under the ADR Directive only ADR providers that have been approved by relevant Competent Authorities (such as the Chartered Institute of Trading Standards) will be considered

approved under the ADR Directive. OS has been approved, or is in the latter stages of securing approval, by relevant competent authorities for the ombudsman schemes that they operate;

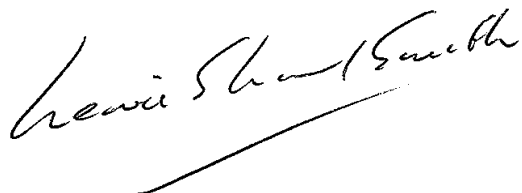
- does the ARB want to develop its policy on redress to say that if the complainant is a consumer client then redress should be free for them to use – i.e. an ombudsman scheme? The ADR Directive does not require that consumer redress is free for the consumer to use but it does refer to the redress being free or at a 'nominal cost'. The standard practice for most professions in the UK is to provide access to free consumer redress. This is certainly the case in the property, financial, legal and public sector services; and
- does the ARB want to specify or approve business to business redress provision? For example, providers that might operate options like mediation, conciliation and arbitration. The fact that BIS is currently looking at small business conciliation and consulting on a small business commissioner would mean that the ARB is fully engaging with current thinking.

Q4. Please give any further comments here

A4. OS is more than happy to discuss the points raised in this response with the ARB in more detail if that would be helpful. Along with providing a wide range of ombudsman schemes across a number of areas in the private sector, OS does have considerable experience of resolving complaints and providing redress in the land, property and construction sector.

Also, from the start of September 2015, OS will be providing business to business redress provision. This will include mediation, arbitration and adjudication. What this will mean is that OS will be able to offer professions and businesses a 'one stop shop' for all their redress requirements whether resolving consumer or business to business complaints.

Yours sincerely



Lewis Shand Smith
Chief Ombudsman
7 August 2015