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| Subject | Code of Conduct Review | | |
| Status | Open | | |
| Purpose | For Decision | | |
| From | Simon Howard, Professional Standards Manager | | |
| History | Parent Committee | First Submitted | Revision Number |
| | IOC | 14/07/2016 | 1 |

If you have any enquiries on this paper, please Simon Howard at simonh@arb.org.uk

1. Purpose

To issue a new Architects Code of Conduct and Practice

2. Recommendations

It is recommended that the Board:

- i. agrees the proposed changes to the Code of Conduct highlighted in [Annex A](#); and
- ii. publishes a new Code of Conduct online

3. Terms of Reference

Section 13 (1) Architects Act 1997 provides that the Board shall issue a code laying down standards of professional conduct and practice expected of registered persons.

Section 13(2) Architects Act 1997 provides that the Board shall keep the code under review and vary its provisions whenever it considers it appropriate to do so.

4. Open/Confidential

Open Session

5. Contribution to the Board's Purpose and Objectives

In delivering the Act, ARB's objectives are:

Protect the users and potential users of architects' services by providing a clear code setting out what they can expect of an architect, thereby generating confidence in the profession.

Support architects through regulation by providing a clear framework of expected standards of conduct and competence in their professional lives.

6. Key Points

Background

- i. The Architects Code: Standards of Conduct and Practice is a key ARB document, setting out the 12 standards of conduct and competence expected of architects. It is guidance: while it can be taken into account in the course of disciplinary proceedings, a failure to comply with any of the provisions of the Code will not of itself amount to misconduct.
- ii. Paragraph 5 of The Regulators Code¹ provides that Regulators should ensure that clear information, guidance and advice are available to help those they regulate meet their responsibilities. It further says that the advice or guidance should not impose unnecessary burdens.
- iii. The Code was last reviewed in 2009, and a new version was published in 2010.
- iv. In May 2015 an initial consultation was launched, seeking views on whether a new Code of Conduct was required. While there was a healthy response to the consultation, there was no real consensus as to how the Code should be revised.
- v. At its meeting in September 2015 the Board decided that there was merit in a detailed review of the Code being undertaken by the Investigations Oversight Committee (IOC), and for it to recommend any changes it considered appropriate.
- vi. A review of the 2010 Code was undertaken by staff and members of the Investigations Oversight Committee (IOC). That review included a detailed assessment of all the consultation responses, and a consideration of the content, language and style of the Code.
- vii. While the review found the 2010 Code to be largely fit for purpose, it did recommend a number of changes to improve the document. Some of these changes were suggested by the consultees. A number of the proposed amendments were required as a result of changes in laws and regulations, while others were aimed at tightening the drafting of the Code.
- viii. At its meeting of February 2016, the Board provisionally agreed to the recommended changes, subject to a consultation period. That consultation produced nineteen responses.
- ix. The members of the IOC have considered all of the responses carefully, and recommend a number of revisions to the originally proposed amendments. In line with ARB's Code of Practice for Consultations, the consultation responses are discussed below. The responses in full are available at [Annex C](#).

¹ ARB is not bound by the Regulators Code, but has agreed to pay regard to it when making decisions

- x. The proposed changes to the Code are highlighted as tracked changes at [Annex A](#). The most significant changes have explanatory comment. There is a 'clean' version of the Code at [Annex B](#).

Significant issues arising from the consultation

The use of obligatory wording

- xi. It was proposed to include the use of the word 'must' in the Code where the relevant standard reflected a legal duty, and to use the term 'should' where the duty could be affected by exceptional circumstances. Responses to the consultation queried whether legal obligations could be defined through the Code. Legal advice suggested that the division between 'must' and 'should' in this context should have a more secure statutory foundation.
- xii. The IOC considered that the potential for confusion outweighed the benefits of including obligatory language, and so unless a particular legal requirement was specified, 'musts' should once again be replaced with 'shoulds'.

The prohibition of settlements preventing a client raising a complaint with ARB

- xiii. The proposed revision to the Code was to prevent any architect from entering into an agreement which would prevent a party from raising matters of professional conduct or competence with ARB. The key change was that architects (or their insurers) would no longer be able to restrict a client from complaining to ARB as part of a settlement agreement.
- xiv. Both the Royal Institute of Architects in Scotland (RIAS) and ARB's own insurance advisers counselled against this amendment, saying that it was not in the best interests of architects, their insurers, or the client involved in the dispute.
- xv. The IOC considered these submissions carefully, but remain of the view that it cannot be in the public interest to allow architects to take steps to avoid investigations into their conduct or competence. It would undermine ARB's ability to protect the public and maintain the reputation of the profession. As a secondary consideration it would also be out of step with the responsibilities imposed on comparable professionals.

Reference to the Equality Act 2010

- xvi. Some consultees queried why there was reference to the Equality Act 2010 through Standard 12, when the Code makes clear elsewhere that it does not repeat legal obligations.

You should treat everyone fairly. You must act in compliance with your legal obligations. You must not discriminate because of age, disability, gender

reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, or sexual orientation.

The IOC acknowledged the force of this argument, but considers that ARB's Public Sector Equality Duty² places duties on ARB to promote equality. This duty permits ARB, in its view, to distinguish the provisions of the Equality Act from other legislation. The IOC did however amend the wording of the proposed standard after considering legal advice on the accuracy of language.

Private lives of architects

- xvii.** There was a considerable adverse reaction to the explanation that the Code also covers conduct in architects' private lives where it may affect their fitness to practise. This additional explanation is in the Introduction to the Code, and reads:

The Code also covers your private life where your conduct may affect your fitness to practise as an architect

- xviii.** The IOC was quite clear that the Code can and does apply to private lives in such circumstances. The established case law³ in this area is clear, and to omit an explanation of the position would be remiss. That explanation should be extended to make clear that where conduct impinges on public confidence in the reputation of the profession, then it is covered by the Code of Conduct.

Environmental responsibilities

- xix.** There were a number of responses to the proposed standard in the code covering environmental responsibilities.

5.1 Where appropriate, you should advise your client how best to conserve and enhance the quality of the environment and its natural resources

Some consultees considered this expectation too onerous; others too lenient. The IOC appreciated that it may not be possible to draft a standard that has universal agreement, but bearing in mind ARB's duties to uphold minimum standards, considered that the proposed wording is the correct one.

Drafting suggestions

- xx.** There were a number of drafting and stylistic suggestions offered by consultees. All were gratefully received; some were accepted, some not.

² The Public Sector Equality Duty requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations between different people when carrying out their activities.

³ Roylance v General Medical Council [1999]: the conduct of a professional outside of their profession may amount to misconduct if it was sufficiently serious or immoral, and it affects the public reputation of and public confidence in the profession.

Distribution

- xxi. ARB has previously provided all registrants with a hard copy of any new code published, but it is recommended this approach is modified with the greater emergence of digital communication.
- xxii. The cost of drafting and printing a new code is relatively modest; however there would be a substantial cost if it is considered necessary to provide a hard copy to all architects on the Register. This sum would likely to be in the region of £45,000.
- xxiii. Most comparable regulators no longer provide a hard copy of their code of conduct but instead make it available online. They do however make considerable effort to ensure that registrants are aware of any changes. It is recommended that while hard-copies should be available on request, the revised Code is issued online and via email.
- xxiv. It is proposed to send a pdf of the new Code to all those architects we hold an email address for, which is in excess of 95% of the Register. The remaining architects would receive a letter advising them that they should familiarise themselves with new Code, available on ARB's website.

7. Risk Implications

The potential advantages and disadvantages of issuing a new code were discussed by the Board at its September 2015 meeting. The main risk of maintaining the status quo is having a code which is no longer fit for purpose; however the risk of changing an effective code is a potential increase in the regulatory burden for the profession.

The IOC considers that the proposed changes to the standards are proportionate and the minimum required in order to have a Code which is fit for purpose.

8. Resource Implications

There is a base cost for designing and publishing a Code, even with a limited print run. The cost of printing, publishing and distributing a new Code will likely to be in the region of £6,000.

It is not proposed to send a new copy of the Code to all architects. The postage and printing costs would be considerable, and likely to be in the region of £45,000.

9. Communication

An ongoing area of interest within the profession and the public, the Code provides a public statement of the standards expected of architects. Regular reviews of the Code ensure that it reflects current issues and concerns.

10. Growth Duty Considerations

The Growth Duty provides that any regulatory actions must be proportionate and only taken when needed. ARB considers that a new Code is required to allow for legislative changes and developments in regulation and the profession, and this requirement outweighs the burden on business of having to deal with changing information.

11. Equality and Diversity Implications

The Code sets out the standards and behaviours expected of architects, and so will naturally have Equality and Diversity implications. These implications were considered by the IOC as part of the review.

It is proposed that Standard 12 of the Code is kept, despite it being a legal obligation (which the Code would not normally cover). The review group considers that ARB's duty to promote equality provides a sound reason for this legal obligation to be an exception, and its inclusion demonstrates the importance the Board places on fairness for those using, and being subject to, the Code.

Hard copies of any new Code will be available on request, and consideration will be given to making different print or language versions available.

The Architects Code: Standards of Professional Conduct and Practice

As an architect you are expected to:

1. Be honest and act with integrity
2. Be competent
3. Promote your services honestly and responsibly
4. Manage your business competently
5. Consider the wider impact of your work
6. Carry out your work faithfully and conscientiously
7. Be trustworthy and look after your clients' money properly
8. Have appropriate insurance arrangements
9. Maintain the reputation of architects
10. Deal with disputes or complaints appropriately
11. Co-operate with regulatory requirements and investigations
12. Have respect for others

Introduction

Section 13 of the Architects Act 1997 (“the Act”) requires the Architects Registration Board (“~~the Board~~ ARB”) to issue a Code laying down the standards of professional conduct and practice expected of persons registered as architects under the Act.

Comment [SH1]: ‘Board’ changed to ‘ARB’ to reflect organisational style

This is that Code. Any failure to comply with the provisions of this Code is not of itself to be taken as constituting unacceptable professional conduct or serious professional incompetence, but it shall be taken into account in any disciplinary proceedings before ~~the Board’s~~ ARB’s Professional Conduct Committee.

You are expected to be guided in your professional conduct and professional work by the spirit of the Code as well as by its express terms. The Code also covers your private life where your conduct may affect your fitness to practise as an architect, or public confidence in the profession.

The fact that a course of conduct is not specifically referred to in the Code does not mean that it cannot form the basis of disciplinary proceedings. Each case is judged on its facts, and there may be circumstances in which unacceptable professional conduct or serious professional incompetence is found even where there has been no clear breach of the express terms of the Code.

Not every shortcoming, or failure to meet the Standards expected by the Code, will necessarily give rise to disciplinary proceedings.

A disciplinary order may be made against you if you are convicted of a criminal offence ~~other than where that offence~~ that has ~~no~~ material relevance to your fitness to practise as an architect.

Standard 1

Honesty and Integrity

1.1 You are expected at all times to act with honesty and integrity and to avoid any actions or situations which are inconsistent with your professional obligations. This standard underpins the Code and will be taken to be required in any consideration of your conduct under any of the other standards.

1.2 You should not make any statement which is contrary to your professional opinion or which you know to be misleading, unfair to others or discreditable to the profession.

1.3 Where a conflict of interest arises you are expected to disclose it in writing and manage it to the satisfaction of all affected parties. You should seek written confirmation that all parties involved give their informed consent to your continuing to act. Where this consent is not received you should cease acting for one or more of the parties.

1.4 Where you make or receive any payment or other inducement for the introduction or referral of work, you should disclose the arrangement to the client or prospective client at the outset.

Standard 2 Competence

2.1 You are expected to be competent to carry out the professional work you undertake to do, and if you engage others to do that work ~~they you~~ should ensure that they are be competent and adequately supervised.

2.2 You are expected to make appropriate arrangements for your professional work in the event of incapacity, death, absence from, or inability to, work.

2.3 You are expected to ensure that the necessary communication skills and local knowledge are available to you to discharge your responsibilities.

2.4 You are expected to keep your knowledge and skills relevant to your professional work up to date and be aware of the content of any guidelines issued by ~~the Board~~ARB from time to time.

Standard 3

Honest promotion of your services

3.1 You are expected to promote your professional services in a truthful and responsible manner.

3.2 In advertising and promoting your professional services you should comply with the codes and principles applying to advertising generally. These include those of the Advertising Standards Authority or any other body having oversight of advertising standards in various media.

3.3 The business style of a practice should not be misleading.

3.4 If you are a principal in a practice you are expected to ensure that all architectural work is under the control and management of one or more architects, and that their names are made known to clients and any relevant third party.

3.5 You should notify your client promptly of any change in the identity of the architect responsible for the work.

Comment [SH2]: Former standard 3.4 separated for clarity

Standard 4

Competent management of your business

4.1 You are expected to have effective systems in place to ensure that your practice is run professionally and that projects are regularly monitored and reviewed.

4.2 You should ensure that you are able to provide adequate professional, financial and technical resources when entering into a contract and throughout its duration. You should also, where appropriate, ensure you have sufficient suitably qualified and supervised staff to provide an effective and efficient service to clients.

4.3 You should ensure that adequate security is in place to safeguard both paper and electronic records for your clients, taking full account of data protection legislation, and that clients' confidential information is safeguarded.

4.4 You are expected to ensure that before you undertake any professional work you have entered into a written agreement with the client which adequately covers:

- the contracting parties;
- the scope of the work;
- the fee or method of calculating it;
- who will be responsible for what ;
- any constraints or limitations on the responsibilities of the parties;
- the provisions for suspension or termination of the agreement, including any legal rights of cancellation;
- a statement that you have adequate and appropriate insurance cover as specified by ~~the Board~~ARB;
- the existence of any Alternative Dispute Resolution schemes that the contract is subject to and how they might be accessed;
- your complaints-handling procedure (see Standard 10), including details of any special arrangements for resolving disputes (e.g. arbitration) that you have a complaints-handling procedure available on request;
- that you are registered with the Architects Registration Board and that you are subject to this Code.

4.5 Any agreed variations to the written agreement should be recorded in writing.

~~4.6 You are expected to ensure that your client agreements record that you are registered with the Architects Registration Board and that you are subject to this Code; and that the client can refer a complaint to the Board if your conduct or competence appears to fall short of the standards in the Code.~~

~~4.7 You should make clear to the client the extent to which any of your~~

Comment [SH3]: Changes to reflect the legal requirements of The Consumer Contracts Regulations and The Alternative Dispute Resolution Regulations

Comment [SH4]: Standard now incorporated into Standard 4.4

Comment [SH5]: Standard now incorporated into Standard 4.4

~~architectural services are being subcontracted.~~

~~4.8 At the end of a contract (if requested) or otherwise upon reasonable demand you should promptly return to a client any papers, plans or property to which the client is legally entitled.~~

~~4.6 Upon reasonable demand you should promptly return to a client any papers, plans or property to which they are legally entitled.~~

Standard 5

Considering the wider impact of your work

~~5.1 Whilst your primary responsibility is to your clients, you should take into account the environmental impact of your professional activities.~~

5.1 Where appropriate, you should advise your client how best to conserve and enhance the quality of the environment and its natural resources

Standard 6

You should carry out your professional work ~~faithfully and~~ conscientiously and with due regard to relevant technical and professional standards

Comment [SH6]: Superfluous wording

6.1 You are expected to carry out your work ~~promptly and~~ with skill and care and in accordance with the terms of your engagement.

Comment [SH7]: Repetitious with 6.2

6.2 You should carry out your professional work without undue delay and, so far as is reasonably practicable, in accordance with any time-scale and cost limits agreed with your client.

6.3 You are expected to keep your client informed of the progress of work you undertaken on their behalf and of any issue which may significantly affect its quality or cost.

6.4 You should, when acting between parties or giving advice, exercise impartial and independent professional judgment. ~~If you are to act as both architect and contractor you should make it clear in writing that your advice will no longer be impartial.~~

Comment [SH8]: Repetitious with 1.3

Standard 7

Trustworthiness and safeguarding clients' money

7.1 You are expected to keep proper records of all money held by you which belongs to a client or other third party, and to account for it at all times.

7.2 You should keep such money in a designated interest-bearing bank account, called a "client account" which is separate from any personal or business account.

7.3 You are expected to instruct the bank in writing and ensure that all money in the client account is held as clients' money, and that the bank cannot combine it with any other account, or exercise any right of set-off or counterclaim against it.

7.4 You should ensure that money is not withdrawn from a client account to make a payment unless it is made to or on behalf of a client on the client's specific written instructions.

7.5 Unless otherwise agreed by the client, you should arrange for any interest (or other benefit) accruing from a client account to be paid to the client.

Standard 8

Insurance arrangements

8.1 You are expected to have adequate and appropriate professional indemnity insurance cover for you, your practice and your employees. You should ensure that your insurance is remains adequate to meet a claim, ~~whenever it is made~~. You are expected to maintain a minimum level of cover, including run-off cover, in accordance with ~~the Board's~~ARB's guidance.

8.2 The need for cover extends to professional work undertaken outside your main practice or employment.

8.3 If you are an employed architect you should, as far as possible, ensure that insurance cover and/ or other appropriate indemnity arrangements are provided by your employer.

8.4 When requested, you are expected to provide ARB with evidence that you have ~~met the standards expected of this Standard~~ professional indemnity insurance in accordance with this Standard. ~~such form as the Board may require.~~

Standard 9

Maintaining the reputation of architects

9.1 You should ensure that your professional finances are managed responsibly.

9.2 You are expected to conduct yourself in a way which does not bring either yourself or the profession into disrepute. If you find yourself in a position where you know that you have fallen short of these standards, or that your conduct could reflect badly on the profession, you are expected to report the matter to the Board ARB. ~~For example, you~~ should notify the Registrar within 28 days if, for example, you:

- are convicted of a criminal offence;
- are made the subject of a court order disqualifying you from acting as a company director;
- are made the subject of a Bankruptcy Order, Debt Relief Order or Bankruptcy Restriction Order;
- have given a director disqualification undertaking or Bankruptcy Restriction undertaking;
- are a director of a company which is wound up or placed in administration or a CVA (other than for amalgamation or reconstruction purposes);
- make an accommodation with creditors (including a voluntary arrangement);
- fail to pay a judgment debt.

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~~The above are examples of acts which may be examined in order to ascertain whether they disclose a wilful disregard of your responsibilities or a lack of integrity, however this list is not exhaustive.~~

Comment [SH9]: Additional text considered unnecessary for a Code

9.3 In appropriate circumstances, you should report to the Board ARB and/or other public authority another architect whose conduct falls significantly short of the expected standards. If you are in doubt as to whether such a report is required, you should consult the Board ARB for guidance.

9.4 Standard 9.3 may not apply to the contents of privileged information given to you when acting as an arbitrator, adjudicator, mediator, conciliator or expert witness.

~~9.5 You should not enter into any contract (other than in a settlement of a dispute) the terms of which would prevent any party from reporting an apparent breach of the Code to the Board.~~

9.5 You should not enter into any agreement the terms of which would prevent any party from reporting an apparent breach of the Code to ARB.

Comment [SH10]: Standard amended to reflect that it is not in the public interest for an architect to be able to enter into an agreement whereby his or her conduct or competence cannot be investigated

~~9.6 If you are subject to an investigation by the Board you are expected to use~~

| ~~your best endeavours to assist in that investigation.~~

Standard 10

Deal with disputes or complaints appropriately

10.1 You are expected to have a written procedure for ~~prompt and courteous~~the handling of complaints which will be in accordance with the Code and published guidance. ~~provide this to clients. This should include the name of the architect who will respond to complaints.~~

10.2 Complaints should be handled courteously and promptly at every stage, and as far as practicable in accordance with the following time scales:

- a) an acknowledgement within 10 working days from the receipt of a complaint; and
- b) a response addressing the issues raised in the initial letter of complaint within 30 working days from its receipt.

10.3 If appropriate, you should encourage alternative methods of dispute resolution, such as mediation or conciliation.

Standard 11

Co-operation with regulatory requirements and investigations

| 11.1 You are expected to co-operate fully and promptly with [the BoardARB](#), and within any specified timescale, if it asks you to provide information which it needs to carry out its statutory duties, including evidence that you are complying with these Standards.

| 11.2 You should notify [the BoardARB](#) promptly and in writing of any changes in the details held about you on the Register, including your address. Under the Act, architects who do not tell [the BoardARB](#) of a change of address may be removed from the Register.

Standard 12
Respect for others

12.1 You should treat everyone fairly. ~~You must act and in line with the law in compliance with your legal obligations.~~ You ~~should~~ must not discriminate because of ~~age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, or sexual orientation.~~ disability, age, gender, sexual orientation, ethnicity, or any other inappropriate consideration.

Comment [SH11]: Amended to reflect the protected characteristics within The Equality Act 2010

The whole of this document is the Code of Conduct pursuant to Section 13 of the Architects Act 1997

A Interpretation & Definitions

B Legal Proceedings

C Leaflets and Advice

A Interpretation & Definitions

This Code is issued by the Architects Registration Board in accordance with Section 13 of the Architects Act 1997.

Throughout this Code:

- Architect has the meaning given to it by the Architects Act 1997.
- Principal is the architect in control and management of all the architectural work pursuant to section 20(3) Architects Act 1997
- Bank may also mean a similar institution.
- Client means the person or body to whom the architect agrees to supply services or goods.
- ~~Board~~ ARB means the Architects Registration Board.
- Registrar means the Registrar of the Architects Registration Board.
- Professional Conduct Committee means the Professional Conduct Committee of the Board.
- Disciplinary Proceedings means proceedings taken in accordance with the Architects Act 1997.
- A word in the singular shall be taken as including the plural; and a word in the plural shall be taken as including the singular, unless otherwise specified.

The following sections provide guidance on ~~the Board's~~ ARB's approach to complaints which are made in the context of court proceedings or arbitrations. It is not part of the Code.

- Throughout this document:
 - 'must' is used where the duty is compulsory by law;
 - 'should' is used where the duty would not apply in all situations and where there are exceptional circumstances outside your control that could affect whether, or how, you can comply with the guidance.

General Guidance

B Legal Proceedings

1 Parallel Proceedings

The BoardARB may suspend an investigation pending the outcome of civil or criminal proceedings where this is necessary in the interests of justice.

2 Civil or Tribunal Proceedings

It will not automatically lead to disciplinary proceedings if a civil action is successfully brought against you. However, the facts giving rise to a civil suit may result in disciplinary proceedings if they disclose serious professional incompetence or unacceptable professional conduct.

Conduct resulting in proceedings against you relating to your employment of others, whether based on unfair dismissal, disability, age, gender, sexual orientation, ethnicity, race discrimination or otherwise, may amount to unacceptable professional conduct, and judicial findings may be evidence in the disciplinary process.

3 Criminal Proceedings

The BoardARB does not determine whether or not a criminal offence has been committed and **the BoardARB** will not assume the responsibilities allocated to the criminal justice system.

If you are acquitted by a court of a criminal charge you may nonetheless be still subject to disciplinary proceedings arising from the same factual circumstances.

Criminal Convictions

A criminal conviction may be materially relevant to your fitness to practise, if, for example (this list is not exclusive):

- a) it constitutes an offence under the Architects Act 1997 or other legislation directly affecting architects;
- b) it arises directly out of your professional activities;
- c) it constitutes an offence of dishonesty;
- d) it otherwise calls into question your integrity.

Leaflets and Advice

The BoardARB does not give legal advice, nor does it become involved in the settlement of disputes. **The BoardARB** does publish a range of information leaflets about different aspects of its work. If you are in doubt as to how to act in a particular situation, you should seek independent professional or legal advice.

You are expected to observe this Code wherever in the world you work. In a country where there are accepted standards of professional conduct for architects, you are expected to (and, if registered there, you should) also conduct yourself according to that country's codes and ethical standards.

Advice on the appointment of Architects, including the appointment of expert witnesses or advisers in the case of disputes, can be obtained from the Royal Institute of British Architects, the Royal Incorporation of Architects in Scotland, the Royal Society of Ulster Architects, the Royal Society of Architects in Wales, the Association of Consultant Architects, or other relevant professional organisation.

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5. Consider the wider impact of your work
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You are expected to be guided in your professional conduct and professional work by the spirit of the Code as well as by its express terms. The Code also covers your private life where your conduct may affect your fitness to practise as an architect, or public confidence in the profession.

The fact that a course of conduct is not specifically referred to in the Code does not mean that it cannot form the basis of disciplinary proceedings. Each case is judged on its facts, and there may be circumstances in which unacceptable professional conduct or serious professional incompetence is found even where there has been no clear breach of the express terms of the Code.

Not every shortcoming, or failure to meet the Standards expected by the Code, will necessarily give rise to disciplinary proceedings.

A disciplinary order may be made against you if you are convicted of a criminal offence that has material relevance to your fitness to practise as an architect.

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1.2 You should not make any statement which is contrary to your professional opinion or which you know to be misleading, unfair to others or discreditable to the profession.

1.3 Where a conflict of interest arises you are expected to disclose it in writing and manage it to the satisfaction of all affected parties. You should seek written confirmation that all parties involved give their informed consent to your continuing to act. Where this consent is not received you should cease acting for one or more of the parties.

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Competence

2.1 You are expected to be competent to carry out the professional work you undertake to do, and if you engage others to do that work they should be competent and adequately supervised.

2.2 You are expected to make appropriate arrangements for your professional work in the event of incapacity, death, absence from, or inability to, work.

2.3 You are expected to ensure that the necessary communication skills and local knowledge are available to you to discharge your responsibilities.

2.4 You are expected to keep your knowledge and skills relevant to your professional work up to date and be aware of the content of any guidelines issued by ARB from time to time.

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3.1 You are expected to promote your professional services in a truthful and responsible manner.

3.2 In advertising and promoting your professional services you should comply with the codes and principles applying to advertising generally. These include those of the Advertising Standards Authority or any other body having oversight of advertising standards in various media.

3.3 The business style of a practice should not be misleading.

3.4 If you are a principal in a practice you are expected to ensure that all architectural work is under the control and management of one or more architects, and that their names are made known to clients and any relevant third party.

3.5 You should notify your client promptly of any change in the identity of the architect responsible for the work.

Standard 4

Competent management of your business

4.1 You are expected to have effective systems in place to ensure that your practice is run professionally and that projects are regularly monitored and reviewed.

4.2 You should ensure that you are able to provide adequate professional, financial and technical resources when entering into a contract and throughout its duration. You should also, where appropriate, ensure you have sufficient suitably qualified and supervised staff to provide an effective and efficient service to clients.

4.3 You should ensure that adequate security is in place to safeguard both paper and electronic records for your clients, taking full account of data protection legislation, and that clients' confidential information is safeguarded.

4.4 You are expected to ensure that before you undertake any professional work you have entered into a written agreement with the client which adequately covers:

- the contracting parties;
- the scope of the work;
- the fee or method of calculating it;
- who will be responsible for what ;
- any constraints or limitations on the responsibilities of the parties;
- the provisions for suspension or termination of the agreement, including any legal rights of cancellation;
- a statement that you have adequate and appropriate insurance cover as specified by ARB;
- the existence of any Alternative Dispute Resolution schemes that the contract is subject to and how they might be accessed;
- that you have a complaints-handling procedure available on request;
- that you are registered with the Architects Registration Board and that you are subject to this Code.

4.5 Any agreed variations to the written agreement should be recorded in writing.

4.6 Upon reasonable demand you should promptly return to a client any papers, plans or property to which they are legally entitled.

Standard 5

Considering the wider impact of your work

5.1 Where appropriate, you should advise your client how best to conserve and enhance the quality of the environment and its natural resources

Standard 6

You should carry out your professional work conscientiously and with due regard to relevant technical and professional standards

6.1 You are expected to carry out your work with skill and care and in accordance with the terms of your engagement.

6.2 You should carry out your professional work without undue delay and, so far as is reasonably practicable, in accordance with any time-scale and cost limits agreed with your client.

6.3 You are expected to keep your client informed of the progress of work you undertake on their behalf and of any issue which may significantly affect its quality or cost.

6.4 You should, when acting between parties or giving advice, exercise impartial and independent professional judgment.

Standard 7

Trustworthiness and safeguarding clients' money

7.1 You are expected to keep proper records of all money held by you which belongs to a client or other third party, and to account for it at all times.

7.2 You should keep such money in a designated interest-bearing bank account, called a "client account" which is separate from any personal or business account.

7.3 You are expected to instruct the bank in writing and ensure that all money in the client account is held as clients' money, and that the bank cannot combine it with any other account, or exercise any right of set-off or counterclaim against it.

7.4 You should ensure that money is not withdrawn from a client account to make a payment unless it is made to or on behalf of a client on the client's specific written instructions.

7.5 Unless otherwise agreed by the client, you should arrange for any interest (or other benefit) accruing from a client account to be paid to the client.

Standard 8

Insurance arrangements

8.1 You are expected to have adequate and appropriate professional indemnity insurance cover for you, your practice and your employees. You should ensure that your insurance remains adequate to meet a claim. You are expected to maintain a minimum level of cover, including run-off cover, in accordance with ARB's guidance.

8.2 The need for cover extends to professional work undertaken outside your main practice or employment.

8.3 If you are an employed architect you should, as far as possible, ensure that insurance cover and/ or other appropriate indemnity arrangements are provided by your employer.

8.4 When requested, you are expected to provide ARB with evidence that you have professional indemnity insurance in accordance with this Standard.

Standard 9

Maintaining the reputation of architects

9.1 You should ensure that your professional finances are managed responsibly.

9.2 You are expected to conduct yourself in a way which does not bring either yourself or the profession into disrepute. If you find yourself in a position where you know that you have fallen short of these standards, or that your conduct could reflect badly on the profession, you are expected to report the matter to ARB. You should notify the Registrar within 28 days if, for example, you:

- are convicted of a criminal offence;
- are made the subject of a court order disqualifying you from acting as a company director;
- are made the subject of a Bankruptcy Order, Debt Relief Order or Bankruptcy Restriction Order;
- have given a director disqualification undertaking or Bankruptcy Restriction undertaking;
- are a director of a company which is wound up or placed in administration or a CVA (other than for amalgamation or reconstruction purposes);
- make an accommodation with creditors (including a voluntary arrangement);
- fail to pay a judgment debt.

9.3 In appropriate circumstances, you should report to ARB and/or other public authority another architect whose conduct falls significantly short of the expected standards. If you are in doubt as to whether such a report is required, you should consult ARB for guidance.

9.4 Standard 9.3 may not apply to the contents of privileged information given to you when acting as an arbitrator, adjudicator, mediator, conciliator or expert witness.

9.5 You should not enter into any agreement the terms of which would prevent any party from reporting an apparent breach of the Code to ARB.

Standard 10

Deal with disputes or complaints appropriately

10.1 You are expected to have a written procedure for the handling of complaints which will be in accordance with the Code and published guidance.

10.2 Complaints should be handled courteously and promptly at every stage, and as far as practicable in accordance with the following time scales:

- a) an acknowledgement within 10 working days from the receipt of a complaint; and
- b) a response addressing the issues raised in the initial letter of complaint within 30 working days from its receipt.

10.3 If appropriate, you should encourage alternative methods of dispute resolution, such as mediation or conciliation.

Standard 11

Co-operation with regulatory requirements and investigations

11.1 You are expected to co-operate fully and promptly with ARB, and within any specified timescale, if it asks you to provide information which it needs to carry out its statutory duties, including evidence that you are complying with these Standards.

11.2 You should notify ARB promptly and in writing of any changes in the details held about you on the Register, including your address. Under the Act, architects who do not tell ARB of a change of address may be removed from the Register.

Standard 12**Respect for others**

12.1 You should treat everyone fairly. You must act in compliance with your legal obligations. You must not discriminate because of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, or sexual orientation.

The whole of this document is the Code of Conduct pursuant to Section 13 of the Architects Act 1997

A Interpretation & Definitions

B Legal Proceedings

C Leaflets and Advice

A Interpretation & Definitions

This Code is issued by the Architects Registration Board in accordance with Section 13 of the Architects Act 1997.

Throughout this Code:

- Architect has the meaning given to it by the Architects Act 1997.
- Principal is the architect in control and management of all the architectural work pursuant to section 20(3) Architects Act 1997
- Bank may also mean a similar institution.
- Client means the person or body to whom the architect agrees to supply services or goods.
- ARB means the Architects Registration Board.
- Registrar means the Registrar of the Architects Registration Board.
- Professional Conduct Committee means the Professional Conduct Committee of the Board.
- Disciplinary Proceedings means proceedings taken in accordance with the Architects Act 1997.
- A word in the singular shall be taken as including the plural; and a word in the plural shall be taken as including the singular, unless otherwise specified.

The following sections provide guidance on ARB's approach to complaints which are made in the context of court proceedings or arbitrations. It is not part of the Code.

- Throughout this document:
 - 'must' is used where the duty is compulsory by law;
 - 'should' is used where the duty would not apply in all situations and where there are exceptional circumstances outside your control that could affect whether, or how, you can comply with the guidance.

General Guidance

B Legal Proceedings

1 Parallel Proceedings

ARB may suspend an investigation pending the outcome of civil or criminal proceedings where this is necessary in the interests of justice.

2 Civil or Tribunal Proceedings

It will not automatically lead to disciplinary proceedings if a civil action is successfully brought against you. However, the facts giving rise to a civil suit may result in disciplinary proceedings if they disclose serious professional incompetence or unacceptable professional conduct.

Conduct resulting in proceedings against you relating to your employment of others, whether based on unfair dismissal, disability, age, gender, sexual orientation, ethnicity, race discrimination or otherwise, may amount to unacceptable professional conduct, and judicial findings may be evidence in the disciplinary process.

3 Criminal Proceedings

ARB does not determine whether or not a criminal offence has been committed and ARB will not assume the responsibilities allocated to the criminal justice system.

If you are acquitted by a court of a criminal charge you may nonetheless be still subject to disciplinary proceedings arising from the same factual circumstances.

Criminal Convictions

A criminal conviction may be materially relevant to your fitness to practise, if, for example (this list is not exclusive):

- a) it constitutes an offence under the Architects Act 1997 or other legislation directly affecting architects;
- b) it arises directly out of your professional activities;
- c) it constitutes an offence of dishonesty;
- d) it otherwise calls into question your integrity.

Leaflets and Advice

ARB does not give legal advice, nor does it become involved in the settlement of disputes. ARB does publish a range of information leaflets about different aspects of its work. If you are in doubt as to how to act in a particular situation, you should seek independent professional or legal advice.

You are expected to observe this Code wherever in the world you work. In a country where there are accepted standards of professional conduct for architects, you are expected to (and, if registered there, you should) also conduct yourself according to that country's codes and ethical standards.

Advice on the appointment of Architects, including the appointment of expert witnesses or advisers in the case of disputes, can be obtained from the Royal Institute of British Architects, the Royal Incorporation of Architects in Scotland, the Royal Society of Ulster Architects, the Royal Society of Architects in Wales, the Association of Consultant Architects, or other relevant professional organisation.



Architects Registration Board

Consultation on proposed amendments to the Architects Code – Standards of Conduct and Practice

Responders:

| Code | Name/Organisation |
|------|--------------------------------------|
| TA | Architect |
| JA | Architect |
| DBG | Architect |
| AB | Architect |
| BC | Architect |
| SC | Architect |
| SE | Architect |
| NH | Architect |
| ML | Architect |
| GAP | Architect |
| GP | Architect |
| RIAS | Professional Body |
| KS | Member of the ARB Investigation Pool |
| HT | Architect |
| JW | PCC Chair |
| IW | Architect |
| TW | Architect |
| MW | Architect |

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| 1. Do you consider that the proposed amendments to the Code represent an improvement 2010 version? | | IOC comments |
|--|---|--------------|
| TA | Yes | |
| JA | No | |
| DBG | Generally yes, subject to my further comments below. | |
| AB | Yes | |
| BC | No | |
| SC | Marginal | |
| SE | Yes, although I do find it odd that within the Introduction, the additional reference to one's private life has been added to the Code. What is the justification for this? | |
| NH | Generally, but please see below | |
| ML | In general, yes, although some sections appear to be putting additional onus on registered architects when this is not required; as those items are covered already | |

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| | by UK laws. | |
| GAP | Yes, generally an improvement | |
| GP | Yes | |
| RIAS | <p>Please find below the RIAS comments and suggestions:</p> <p>Introductory paragraph</p> <p>The RIAS suggests the addition of the word <i>materially</i> as follows:</p> <p>The Code also covers your private life where your conduct may materially affect your fitness to practise as an architect.</p> <p>Standard 4 Competent management of your business</p> <p>4.3 – add <i>take all reasonably practicable steps to</i> after <i>must</i> as follows:</p> <ul style="list-style-type: none"> You must take all reasonably practicable steps to ensure that adequate security is in place to safeguard both paper and electronic records for your clients <p>4.4 – Comments: The word <i>must</i> creates a situation where it is a breach of the Code to undertake <u>any</u> professional work for a client before entering into a written agreement covering all the points listed elsewhere within that Clause.. In almost every case and certainly in most domestic projects, there is a measure of at least</p> | <p>Does not consider the additional text necessary</p> <p>Reasonableness can be implied into the whole Code of Conduct</p> <p>Agree to replace ‘must’ with ‘should’</p> |

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| | <p>some preliminary work undertaken by an architect for the client in connection with the project before a decision can be taken on whether or not to proceed with their appointment. In its current terms this provision would offer the availability of a complaint about a breach of the Code even where all other aspects of the project proceeded without incident. In an effort to avoid this problem. We suggest adding the word <i>significant</i> as follows:</p> <ul style="list-style-type: none"> You must ensure that before you undertake any significant professional work you have entered into a written agreement with the client <p>Standard 5 Considering the wider impact of your work This change is welcome. The Code should focus on obligations and steer clear of aspirations.</p> <p>Standard 8 Insurance The RIAS feels that the standard is now clearer. It has been narrowed down to only referring to PI, rather than a vague reference to “appropriate” insurances.</p> <p>Standard 10 Dealing with Complaints. We welcome the fact that it is no longer necessary to provide the client with a complaint procedure at the start of the project.</p> <p>Standard 9 Maintaining the reputation of architects Comments on revised wording: The previous wording of this provision with its caveat “other than in settlement of a dispute” satisfied architects’ insurers. The deletion of that provision is, in the circumstances, unreasonable and presents a real issue for architects and their insurers. It may give rise to a conflict of interest between architects and their insurers and in turn create a problem for those acting on their behalf.</p> | <p>‘Significant’ is a subjective term that has the potential for confusion.</p> <p>It may well not be in the interests of insurers, or the particular architect involved, or even the particular client involved. But it must be in the public interest to prevent an architect from avoiding disciplinary investigations by way of a private agreement.</p> |
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| | <p>Standard 12 Respect for others</p> <p>The RIAS does not think it is necessary to include this standard.</p> <p>All architects are obliged by law to avoid discriminatory behaviour in the conduct of their everyday lives as a matter of course so this standard is unnecessary.</p> <p>Adding specific new categories might be open to challenge. Why single out those listed?</p> <p>In the current climate, others, such as national or linguistic groups are probably as likely to be grounds for discrimination as any of those listed.</p> | <p>Those listed reflect the provisions of the Equality Act 2010. IOC considers the specific reference to this legislation is appropriate, given ARB's public sector equality duty.</p> |
| IS | <i>All comments provided in letter form (set out at as an appendix)</i> | |
| KS | <p>I do consider that the proposed amendments represent an improvement, apart from the proposed changes at 2.1, where the emphasis has shifted from the architect have a specific responsibility "if you engage others to do that work you should ensure that they are competent and adequately supervised" to a more general requirement that those working for the architect should be competent.</p> <p>The proposed revision seems to detract from the architect being responsible.</p> | <p>Previously discussed at IOC and Board and it was felt to be an improvement and more of a realistic expectation.</p> |
| HT | Yes in principal, with a single exception noted below. | |
| JW | Yes, subject to matters raised below | |
| IW | No | |

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| TW | To some extent | |
| MW | <i>All comments provided in email form – set out at Q4</i> | |
| 2. Do any of the proposals detract from the Code’s clarity? | | |
| TA | No | |
| JA | <p>Yes. The phrase “This Code also covers your private life where your conduct may affect your fitness to practice as an architect” should not be added to the code. This is taking a huge liberty and is completely irrelevant to whether or not an architect does his/her job properly.</p> <p>Aside from the morality of intruding into anyone’s private life, the Code of Conduct is there to ensure professional standards are maintained. It should not be used as some sort of 19th century arbiter of what is considered right or wrong in people’s private lives. That is already covered by the law.</p> <p>If the argument is that the code would only apply in such instances where certain types of conduct may affect someone’s fitness to practice as an architect, then who determines what is and is not covered? Surely this would only lead to expensive challenges from disgruntled clients who would seek to discredit.</p> <p>I can think of many instances where a minor breach of the law in an area completely unrelated to work could be challenged as having some relevance by clients (or even the ARB) in the event of a complaint – So what is “relevant” and</p> | <p>There is sufficient judicial precedent to confirm that the conduct of a professional outside of their profession may amount to misconduct if it was sufficiently serious or immoral, and it affects the public reputation of and public confidence in the profession. (see <i>Roylance v GMC</i> [1999]).</p> <p>It would therefore be remiss of the Code not to explain this to architects.</p> |

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| | <p>who decides?</p> <p>A speeding offence? Drink driving? Common assault? Ignoring a parking ticket? Driving without insurance? Failing to pay a gas bill? Cutting down a protected tree in your own back garden by mistake? Common assault?</p> <p>When it comes to people’s private life, there are many, many possible breaches of “the law”, none of which would have any relevance to being able to carry out the job of an architect. Whilst there are good reasons for having the Code and ensuring certain standards are adhered to in a working sense, there is absolutely no justification for including people’s private lives within a Code of Conduct.</p> <p>In fact, even the House of Lords does not seem to subscribe to this theory since a number of ‘practicing’ Lords have criminal convictions.</p> <p>I would not therefore include this phrase in any amendment to the Code of Conduct.</p> | |
| DBG | <p>Introduction: The addition to the third paragraph of the introduction with respect to architects’ private life is a worrying extension of the Code’s application that could be open to abuse and not one I am sure is appropriate as currently drafted. The drafting ought to be amended to make it clear that only conduct which has a material consequence on an architect’s fitness to practice will be subject to the Code. Further guidance from the ARB for consumers and architects regarding</p> | See previous comment |

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| | <p>examples of misconduct in private life where the Code might apply would be useful.</p> <p>Standard 5.1: The original drafting of this standard was applicable to the environmental impact of an architect’s activities, in the broadest sense. The proposed drafting implies the standard only relates to the natural environment and limits the scope to advice regarding the client’s activities that the architect has little control over. I do not consider the proposed drafting to be an improvement on the original.</p> <p>As currently drafted, the proposed standard may be very difficult to meet. Advice about “<i>how <u>best</u> to conserve and enhance</i>” is very subjective and may rely on a level of expertise that architects may not have. A duty that requires architects to provide advice regarding the impact on and opportunities for enhancing the environment would be better.</p> <p>Standard 8.4: The proposed drafting is unclear as to whether it is the evidence or the professional indemnity insurance that should be in such form as ARB may require. The intent of the reference to “<i>where applicable</i>” is also not clear. Alternative drafting to achieve what I believe may be the intent of the standard might be:</p> <p>“When requested, you are expected to provide evidence in such form as ARB may require that you have professional indemnity insurance” or “When requested, you are expected to provide evidence that you have professional indemnity insurance in accordance with this Standard”</p> | <p>The standard, as drafted, does not appear to be overly onerous.</p> <p>Agreed and adopted</p> |
| AB | No | |

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| BC | Yes | |
| SC | No, but see suggestions 4 below | |
| SE | <p>I agree with the amendments to 4.3, 4.4 and 12.1 etc. where the word “must” has been introduced, but question why this change has not been implemented further to remove “should” and “expected to” from other clauses i.e. 4.1 and 4.2?</p> <p>“Must” implies an order to be obeyed, where “Should” implies a lesser recommendation. Is it the ARB’s intention to distinguish between the two and imply that 4.3, 4.4 etc. are more important than the other clauses or should they all be changed to “must”?</p> | Agreed that the inclusion of ‘musts’ gives greater scope for confusion and an unwanted hierarchy. |
| NH | Not in general, but definitely where it states – <i>The Code also covers your private life where your conduct may affect your fitness to practice as an architect!</i> | Previously dealt with |
| ML | <p>Introduction</p> <p>I do not see why there should be a statement that; “The Code also covers your private life where your conduct may affect your fitness to practise as an architect.” The opening paragraph explains;</p> <p><i>“Section 13 of the Architects Act 1997 (“the Act”) requires the Architects Registration Board to issue a Code laying down the standards of <u>professional conduct and practice</u> expected of persons registered as architects under the Act.”</i></p> <p>Therefore this change is going beyond the requirements of the Act and potentially invades the principles of human rights and one’s right to live their life as they choose. Does this open the door for AARB to be judge and jury on the private life</p> | Previously dealt with |

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| | <p>of an architect?</p> <p>Clause 9.2 already covers conduct which does not “bring either [an architect] or the profession into disrepute”.</p> <p>Some of the changes appear to be unnecessary or may require further refinement for clarity;</p> <p>3.5 – no need for the proposed insertion “<i>identity of the</i>”. The meaning is clearer without these words.</p> <p>4.3 – Rather than “<i>You must ensure that adequate security...</i>” propose the following wording; “<i>You must implement measures that ensures adequate security...</i>” This puts the onus to instigate and implement measures cognizant of data protection Legislation.</p> <p>5.1 – Please clarify how to interpret “<i>Where appropriate, you should...</i>” When is it ‘appropriate’ and when is it ‘not appropriate’? By what criteria will this be judged?</p> <p>12.1 – Rather than a growing list of non-discriminatory considerations, which main change if further descriptions come into everyday language, suggest it would be easier to simply refer to the Laws regarding equality.</p> | <p>Raised at the Feb 2016 Board meeting. Wording does not make sense without ‘identity of the’</p> <p>IOC did not consider that the suggestion materially improved the proposed draft.</p> <p>Amended</p> |
| GAP | <p>Clause 4.4 includes one proposed clause change that seems unaligned with the overarching intent. Namely, identifying the sub-contracted parties. In practice, there are often good Project Management protocol / commercial clarity reasons to <u>not</u> identify by name the sub-contracted parties.</p> | <p>IOC agrees with the comment and that it may cause unintended confusion. The proposed revision to be undone.</p> |

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| | <p>For example, in cases where the Architect is also the Contractor, it would be impractical, confusing and counter to the spirit of the Architect-Contractor’s agreement with the Client to identify the building works sub-contracted parties. We have seen instances in which the authority of the “Architect’s Instruction” becomes confused by the Client, raising disputes among the parties.</p> <p>Alternatively, I suggest that the scope of sub-contracted works should be made clear. i.e. the Architect forms a multi-disciplinary team and sub-contracts M&E, Struct Eng, Acoustic Eng, etc etc, (and in D&C mode, the building works, etc). Moreover, to protect the Client, the Code should require the Architect to record in the agreement that “only suitably qualified” parties shall be sub-contracted (i.e. registered engineers & registered building contractors).</p> | |
| GP | I find a problem with the precise meaning of “faithfully” and “skill” in clause 6.1. Perhaps “competence” would be a better word than “skill”. | IOC agree that ‘faithfully’ is superfluous and should be removed |
| RIAS | Blank | |
| IS | <i>All comments provided in letter form – set out separately</i> | |
| KS | No | |
| HT | Item 12.1 attempts to capture the spirit of the Equality Act in a simplistic list. Given the act may well be subject to amendments over time to reflect greater diversity, I would suggest that either the first line remains only (i.e. compliance with the law) or that specific reference is made to the Equalities Act, placing the | IOC considers it helpful to set out the protected characteristics of the Equality Act 2010. If the law changes, then the Code may have to be revised to accommodate that. |

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| | implication on Architects to ensure that they are familiar with its full contents. At the moment the wording appears an awkward half way house. | |
| JW | <p>Yes. I note that in some cases, but not others, you have substituted “are expected” for “must” (which should be the correct position. However, there are occasions when this has not been done, for which the rationale is not clear. My view is that the wording should be amended uniformly to “must”.</p> <p>Standard 5.1: As a decision maker on the PCC, how is it proposed to know when it is appropriate to act as required? Is the intention that it covers every case? When would it not be appropriate?</p> <p>Standard 8.4: If ARB requires the information, what is the relevance of the words “where applicable”?</p> <p>Standard 11.2: Should the word should “should” be “must”?</p> <p>Standard 12: You have included gender reassignment but not gender</p> | <p>See earlier comments</p> <p>Each case will turn on its own facts and evidence</p> <p>Amended</p> |
| IW | <p>Introduction. ‘The Code also covers your private life where your conduct may affect your fitness to practise as an architect.’</p> <p>This could be amended to include the terms ‘public, professional and private’</p> <p>However the Calcutt Committee in 1990 concluded that: "nowhere have we found a wholly satisfactory statutory definition of privacy"</p> <p>Therefore the section might need to be reviewed since it has no legal definition.</p> <p>Item 4.1 suggest replace ‘projects’ with ‘agreed services’</p> | <p>Previously dealt with</p> <p>Agreed suggested change</p> |

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| | <p>Item 4.3 clients confidential information cannot be safeguarded completely in relation to the current commercially available surveillance technology until a breach has occurred. The Architect may also not be privy to all of the clients data. And therefore the limits as to what needs to be safeguarded cannot be legally defined.</p> <p>Item 4.4 suggest replace ‘professional work’ with ‘professional services’</p> <p>Item 7.4 does this include bank administration costs ?</p> <p>Standard 8 If an architect does not carry out professional services do they still need to arrange for adequate and appropriate PI cover.? This was raised by email previously see below.</p> <p><i>Please can you confirm if I need PI Insurance. I offer architectural ideas for purchase through my web page. I do not create any client appointments. I do not carry out any other architectural services.</i></p> | <p>Agree that must to be replaced with should</p> <p>IOC do not agree</p> <p>The Code lays down general expectations for the conduct and competence of architects; it says that insurance is generally expected to cover professional work undertaken. There will always be individual circumstances where it is appropriate to act contrary to the Code – which is guidance. The Code can’t cover every eventuality, and advice should be sought.</p> |
| TW | No | |
| MW | <i>All comments provided in email form – set out at Q4</i> | |

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| 3. Have there been any legal, professional or regulatory developments since 2010 that the proposed Code has failed to address? | | |
|---|--|--|
| TA | Blank | |
| JA | Not sure how the Code related to EU law and Human Rights, especially in relation to the above. Maybe this needs to be checked. | |
| DBG | Blank | |
| AB | Not that I'm aware | |
| BC | Blank | |
| SC | Blank | |
| SE | Blank | |

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| NH | Not aware of any | |
| ML | No comment | |
| GAP | Jurisdictions differ. Cannot cover all jurisdictions. The Code could, therefore, demand that the Architect complies with all relevant local and regional statutory codes of practice. | There is nothing within the Code that is jurisdiction specific. It is clarified within the Code that it does not repeat legal obligations. |
| GP | Not to my knowledge. | |
| RIAS | Blank | |
| IS | <i>All comments provided in letter form – set out in an appendix</i> | |
| KS | Blank | |
| HT | Blank | |

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| JW | Blank | |
| IW | <p>Increased communications density. A faster distribution of information. Increased surveillance. A decrease in privacy. Issues arising out of the 2011 to 2012 Leveson Enquiry.</p> <p>The professional issue is that it is becoming increasingly difficult to be party to, allow for, monitor and ensure information security.</p> <p>Item 9.4 Suggest this includes providing information to Police. Anti-Terrorism. Borderland Security Organizations.</p> | <p>IOC is unsure how this is particularly relevant to architects, and required anything above and beyond legal obligations</p> |
| TW | <p>The code should address the EU construction products regulations, which have been incorporated into UK law</p> <p>http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:088:0005:0043:EN:PDF</p> <p>EN 4.4.2011 Official Journal of the European Union L 88/33</p> <p>and in particular Annex 1 Section 3</p> <p>3. Hygiene, health and the environment</p> <p>The construction works must be designed and built in such a way that they will, throughout their life cycle, not be a threat to the hygiene or health and safety of workers, occupants or neighbours, nor have an exceedingly high impact, over their entire life cycle, on the environmental quality or on the climate during their</p> | <p>The Code does not repeat legal obligations, and a failure to design works in line with the law would already be covered by Standard 6:</p> <p><i>You should carry out your professional work conscientiously and with due regard to relevant technical and professional standards</i></p> |

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| | <p>construction, use and demolition, in particular as a result of any of the following:</p> <p>(a) the giving-off of toxic gas;</p> <p>(b) the emissions of dangerous substances, volatile organic compounds (VOC), greenhouse gases or dangerous particles into indoor or outdoor air;</p> <p>(c) the emission of dangerous radiation;</p> <p>(d) the release of dangerous substances into ground water, marine waters, surface waters or soil;</p> <p>(e) the release of dangerous substances into drinking water or substances which have an otherwise negative impact on drinking water;</p> <p>(f) faulty discharge of waste water, emission of flue gases or faulty disposal of solid or liquid waste;</p> <p>(g) dampness in parts of the construction works or on surfaces within the construction works.</p> | |
| MW | <i>All comments provided in email form – set out at Q4</i> | |
| 4. Any further comments | | |
| TA | <p>Section 8.1, “with the Board’s guidance” to be changed to “with ARB guidance”</p> <p>Standard 11.2, Further references to “the Board” to be changed to “ARB”</p> <p>A Interpretation and Definitions – references to “the Board” to be checked in the “A word in the singular...” section</p> <p>General Guidance, 3 Criminal Proceedings. Further references to “the Board” to be changed to “ARB”</p> <p>General Guidance, Leaflets and Advice. Further references to “the Board” to be changed to “ARB”</p> | Agreed and amended |

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| | | |
| JA | None. | |
| DBG | Blank | |
| AB | Draft Code seems clear and concise | |
| BC | <p>The code as currently ordered is confused, and confusing. A re-arrangement of the standards would clarify this.</p> <p>The order of the Standards should be re-arranged, so that the more generally applicable standards are grouped together at the beginning; ie 1, 2, 5, 6, 9, 12, 11, followed by business related standards, 3, 4, 7, 8, 10. This group should include a new standard on treatment of employees, if it does not fit comfortably within any existing standard.</p> <p>More specifically: 2.1 You are expected to be competent to carry out the professional work you undertake to do, and if you engage others to do that work they should be competent and adequately supervised.</p> <p>This change is for the worse. The change removes responsibility for the competence of the engaged person (architect or non-architect) from the architect who engages, to - who? The original wording makes clear who is responsible, and this should be maintained. Standards 3.4 and 3.5 do not fit sensibly in Standard 3. They fit more naturally in Standard 4, and should re-</p> | <p>IOC do not agree that a comprehensive re-ordering of the Code would aid clarity.</p> <p>The treatment of employees fits within Standard 12.1 (you should treat everyone fairly and in line with the law).</p> <p>IOC considered the proposed amendment reflected a more realistic expectation</p> |

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| | <p>located in that section.</p> <p>3.5 You should notify your client promptly of any change in the identity of the architect responsible for the work. Change to:</p> <p>3.5 If the architect who is responsible for any work ceases to be responsible, the new architect must be notified promptly to the client.</p> | |
| SC | <p>4.4 and 10. Guidance should be given on complaint handling procedures and ADR if they are to become compulsory</p> <p>5.1 Why “where appropriate”? Our environmental responsibility should apply in ALL circumstances</p> | <p>Guidance on how complaints should be dealt with is provided by the Code, and separately in published advice. IOC agree with the ADR point, and guidance to be provided if and when it becomes compulsory.</p> |
| SE | Blank | |
| NH | <p>The statement that; The Code also covers your private life where your conduct may affect your fitness to practice as an architect, is too ambiguous and open for interpretation. I feel you have tightened up the code in other areas but left a gap here for unreasonable intrusion into registered Architects ‘Private’ life. I understand why this clause should be in here but it needs to be rethought!</p> <p>I know of situations where the code has been used unreasonably by clients to act as leverage and threats to not pay their bills. It is very worrying that unscrupulous people may somehow use this clause to further benefit themselves in this situation with false accusations which could result in the ARB investigating your personal life.</p> | <p>Previously dealt with</p> |

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| ML | No comment | |
| GAP | None | |
| GP | The new iteration of Standard 5 is interesting. Should one resign a commission if the brief is against the common good? I feel that this requires more thought as it could open up impossible dilemmas in day to day practice. Clause 11.2 The threat of expulsion for not informing a change of address is a little extreme in my view. | |
| RIAS | We reiterate comments made on our previous submission in particular in relation to the way the code is applied: The RIAS feels that the issue is not so much the standards themselves but the way they are interpreted and applied disproportionately against architects. The RIAS has previously raised its concern about a number of case histories of recent Scottish cases which went before ARB. | Not relevant for the purposes of this consultation |
| IS | See separate letter | |
| KS | The provisions of Section 9 of the Code relating to insolvency provisions could be strengthened to take account of developments in insolvency law during 2000s which saw the introduction of Bankruptcy Restriction Orders (a parallel to director disqualification) and the use of undertakings in both bankruptcy restriction and director disqualification proceedings. I also suggest the inclusion of other forms of | IOC agree with the suggestions and adopt the wording proposed. |

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| | <p>corporate insolvency, in order to be consistent with the personal insolvency references. I have made some suggestions by way of tracked changes below. It might be helpful to consult with the Insolvency Service, who are responsible for insolvency law and policy who would be able to confirm the appropriate provisions.</p> <p>" For example, you should notify the Registrar within 28 days if you:</p> <ul style="list-style-type: none"> • are convicted of a criminal offence; • are made the subject of a court order disqualifying you from acting as a company director; <p>have given a director disqualification undertaking</p> <ul style="list-style-type: none"> • are made the subject of a bankruptcy order or Debt Relief Order; <p>Are made the subject of a Bankruptcy Restriction Order</p> <p>Have given a Bankruptcy Restriction undertaking</p> <ul style="list-style-type: none"> • are a director of a company which is wound up or placed in administration or a CVA (other than for amalgamation or reconstruction purposes); • make an accommodation with creditors (including a voluntary arrangement); • fail to pay a judgment debt" | |
| HT | Blank | |
| JW | I note that there is no reporting requirement that ARB be notified of any matter that may impact on an architect's fitness to practice. Has this been considered? | Standard 9 of the Code refers. |

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| <p>IW</p> | <p>Definitions.</p> <p>Please can the ARB define what the Term 'Architect' currently refers to since no specific definition appears to be included in the Architects Act 1997 beyond that in Section 20 of the Architects Act which states:</p> <p>"A person shall not practise or carry on business under any name, style or title containing the word "architect" unless he is a person registered under this Act."</p> <p>The term, title, 'Architect' is now being used to refer to such professions as 'software architect', 'hardware architect', 'systems architect', and 'enterprise architect'.</p> <p>Can the Architects Act or Consultation on the Architects Code Standards examine these evolutions of the term and incorporate them into the professional body and its regulatory framework. ?</p> | <p>Irrelevant for the purpose of this consultation (though the definition of an architect in this context is someone whose name is entered on the Register of Architects)</p> |
| <p>TW</p> | <p>Standard 5 Considering the "wider impact of your work" is wholly inadequate</p> <p><i>Old Text 5.1 Whilst your primary responsibility is to your clients, you should take into account the environmental impact of your professional activities.</i></p> <p>Proposed text 5.1 Where appropriate, you should advise your client how best to conserve and enhance the quality of the environment and its natural resources</p> <p>The reason that this is inadequate is that it avoids the importance of architects considering the environmental impact of their designs and buildings. It is too vague</p> | <p>IOC consider that the originally proposed wording is appropriate, while accepting that others have strong views either way on this point.</p> |

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| | <p>and implies only a general concern for nature and matters external to buildings.</p> <p>Standard 5 should say: Where appropriate, you should advise your client how best to save energy, reduce CO2 emissions and ensure that buildings are designed to reduce material resource consumption, using materials that minimize hazardous emissions, protecting the health of occupants.</p> | |
| MW | <p>I see no reason why the coverage of The Code should be extended to include an architect's private life. The inclusion of the wording in the introduction lacks definition and as such is open to interpretation and therefore abuse. Please remove this extension.</p> <p>I have no other comments to make on the proposed amendments to The Code.</p> | Previously dealt with |

24 February 2016,
revised 10 March 2016

Ms Karen Holmes
Registrar and Chief Executive
info@arb.or.uk

Dear Karen,

Consultation under s.13(3)(a) of the Architects Act

Please accept this letter as a response to the statutory consultation on the code. Please bring this response to the attention of the Board.

1. *Definitions.* At the end of the document, in Section A, the word “must” is defined as being “used where the duty is compulsory by law”. This is an inaccurate description. Dealing with each occasion in the draft of the varied code where this word is used:–

a. *At paragraph 4.3.* Only electronic data held by architects is in certain defined circumstances subject to the protection of the Data Protection Act 1998. (See section 1 of that Act, where “data” is defined.) Where that data is protected, it is subject to the data protection principles of section 4. There is no other statutory requirement requiring the safeguarding of either paper or electronic records, or clients’ confidential information. The Official Secrets Act 1989 controls the activities of persons who are or have been members of the security and intelligence services or who have been placed under notice. All other control of confidential information is a matter of private agreement. The use of the word “must” is therefore inappropriate, for what is “compulsory in law” is of narrow and closely defined application.

The use of the word “must” in this paragraph does not describe a requirement that is generally made compulsory by law. It is only compulsory in expressly defined circumstances.

b. *At paragraph 4.4.* There is no compulsion under law to enter a written agreement for the provision of architectural services.

The use of the word “must” in this paragraph does not describe a requirements that is ever made compulsory by law.

c. *At paragraph 12.1.* Although the law requires certain people in certain circumstances to treat others fairly – as for instance in the application of the Equality Act, the Arbitration Act or, in the case of public servants, when acting so as not to contravene the provisions of the Human Rights Act 1998 – there is no law that provides universal application to a duty to act fairly.



The use of the word “must” in this paragraph does not describe a requirement that is generally made compulsory by law. It is only compulsory in expressly defined circumstances.

2. *The use of obligatory language in the code.* The use of the obligatory word “must”, and indeed any obligatory language in the code is always unlawful. A few years ago the Board spent several tens of thousands of pounds in legal fees and costs defending this usage, and failed. In issue then was the attempt by the Board to make it an obligation for registered persons to provide themselves with the protection of professional indemnity insurance. This was agreed¹ as being unlawful on review by the court because imposing any obligatory duty was beyond the power of the Board. The legal axiom is: “What is not permitted is prohibited”.

By way of explanation the code, by s.13.(1) of the Architects Act 1997 (“the Act”) lays down standards of professional conduct and practice that are merely “expected” of registered persons. There can therefore be no compulsion in the code.

This is reflected in the wording of s.13.(4)(a) of the Act which states:

Failure by a registered person to comply with the provisions of the code–

(a) shall not be taken of itself to constitute unacceptable professional conduct or serious professional incompetence; but

(b) shall be taken into account in any proceedings against him...

Leading Counsel’s opinion, based on which the successful challenge was made, may be found at <http://www.aaruk.info/PCC/Hearing/QCOpin.pdf>.

It follows that the code can never be more than guidance: it may never be taken as being regulatory. The use of the word “must” in the code is both inappropriate and misleading to the public and the profession.

3. *The headline standards.*
 - a. The code may only lay down expected standards of “professional” conduct and practice. The introduction should therefore be varied so as to exclude any expectation of the public and registered persons that the Board can make a code that impinges on the private or other business activities of registered persons.

It follows that the introduction should be varied so that it reads: “In your practice as an architect you are expected to: ...”

The words: “The Code also covers your private life where your conduct may affect your fitness to practise as an architect” should not be incorporated

- b. To be expected to “Maintain the reputation of architects” may be appropriate to the rules of a professional organisation, but not to the Board

1 Revision: “agreed” substituted for “ruled”, 10 March 2016.



which exercises purely statutory functions. This is, in any event, the natural consequence of observing the other standards and is not a matter of conduct and practice.

Standard 9 is redundant and unenforceable and should be removed.

- c. Section 23(1) of the Act allows the Board to make rules generally for carrying out or facilitating the purposes of the Act. The Board has accordingly made Investigations Rules and Professional Conduct Committee Rules. So far as those rules are lawful it is reasonable to expect (without any obligation) registered persons to cooperate with the Board’s Part III disciplinary procedures, where those procedures are both lawful and reasonable: investigatory and disciplinary proceedings are not “regulatory requirements”.

The wording of Standard 11 should be varied so that it reads “Co-operate with persons appointed and reasonably undertaking their duties in accordance with rules made by the Board”.

- 4. *The explanatory standards.* These are the subsidiary or explanatory standards shown in sub-paragraphs of the code. They are not (and cannot be) universal in their description of instances of serious professional incompetence and unacceptable professional conduct.

Where they merely repeat the headline in a prolix fashion they are unnecessary. Some are unnecessarily over-particular – particularly this latest crop of insertions dealing with agreements. Some refer not only to the headline standard under which they appear, but to other standards as well. Some refer unnecessarily to extraneous laws and standards which have their own discrete binding powers. Lastly, several of these subsidiary standards appear to be entirely disconnected and irrelevant to professional conduct and competence.

The code, apart from the headlines, is unnecessary. It has been thrown together without proper thought, is poorly written and generally unfit for purpose

The subsidiary Standards are redundant and should in due course be removed.

For the present, the following are inapposite to the code:

- a statement that you have adequate and appropriate insurance cover as specified by [the BoardARB](#);
- [the existence of any Alternative Dispute Resolution schemes that the contract is subject to and how they might be accessed;](#)
- [your complaints-handling procedure \(see Standard 10\), including details of any special arrangements for resolving disputes \(e.g. arbitration\), that you have a complaints-handling procedure available on request;](#)
- [that you are registered with the Architects Registration Board and that you are subject to this Code.](#)



5.1 Where appropriate, you should advise your client how best to conserve and enhance the quality of the environment and its natural resources

for by no description can these inclusions be necessary for the effective performance of a written agreement and none is relevant to professional conduct and practice.

For a successful precedent to the drafting of a code, the Board is referred to the Standards that were set by ARCUK. These were concise, to the point, and effective.

With kind regards

Yours sincerely,

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