

## **RIBA Response to the ARB Consultation on proposed changes to the ARB Investigations and Professional Conduct Committee Rules, Standard of Acceptance, and Sanctions Guidance**

*In March 2020 the ARB commissioned an independent review of ARB's investigatory processes and procedures. The review recommended that ARB's Investigations and Professional Conduct Committee Rules and key supporting guidance should be revisited and modernised to ensure that they are thorough, accessible and reflect modern regulatory best practice.*

*Changes are now being proposed by the ARB with the stated aim of addressing the unduly complex and inconsistent language within the Rules, modernising ARB's approach, and improving the accessibility and transparency of the process. The ARB is consulting on the proposed changes to understand whether it has achieved those aims and whether any further changes should be made.*

*The ARB Rules were last updated in 2018. However, the cumulative effect of different iterations over time has meant that the overall document has become unduly complex and inconsistent in its language. Rather than risking further inconsistency, the Rules and guidance have been approached afresh. It is important that the ARB seek the views and feedback from a wide range of key stakeholders and regulators before confirming any proposed changes.*

### **RIBA Response:**

#### **Royal Institute of British Architects**

The Royal Institute of British Architects is a global professional membership body driving excellence in architecture. We serve our members and society, in order to deliver better buildings and places, stronger communities and a sustainable environment. Being inclusive, ethical, environmentally aware and collaborative underpins all that we do.

Honesty, integrity and competency, as well as concern for others and for the environment, are the foundations of the Royal Institute's own codes of professional conduct and practice. All members of the Royal Institute and our accredited chartered practices are required to comply. Members shall act with honesty and integrity at all times. In the performance of their work Members shall act competently, conscientiously and responsibly. Members must be able to provide the knowledge, the ability and the financial and technical resources appropriate for their work. Members shall respect the relevant rights and interests of others.

The RIBA has previously raised concerns regarding the efficiency and fairness of the ARB's disciplinary processes – and we made specific recommendations for improvement at the last triennial review of Architects Regulation and the ARB in 2014. The RIBA set out a strong case for a review of the operation of the ARB's disciplinary and prosecution processes, to consider whether:

- a) It could be made more flexible and effective (e.g. by the greater use of agreed settlements, now adopted by ARB as Consent Orders, but see also further comments in our submission).
- b) It can be made fairer (e.g. the ARB is sometimes slow to identify clearly the gravamen of the charge and unreasonably applies its reconsideration rule to revisit cases which have been dismissed);
- c) It can be used more effectively against those falsely purporting to be architects (including whether the powers and penalties in this area are sufficient); and
- d) Its costs can be reduced.

At the request of RIBA Council, the RIBA Standards Committee has recently reviewed on-going concerns about the ARB disciplinary processes raised by RIBA members, and this has informed our submission to this current ARB consultation. We believe that a more fundamental review of the ARB's professional conduct processes is needed. Our submission to this consultation focusses particularly on the need to:

- i. Redefine the role of the Case Presenter, including a requirement for the Case Presenter's review and presentation of the evidence to be balanced and fair.
- ii. Ensure Respondent Architects are able to be represented at Hearing Panels, with no restriction on the qualifications of such representatives.
- iii. Place greater emphasis on the adoption of more streamlined processes, except in the most serious cases, and provide for modification by agreement of Consent Orders proposed by the Case Presenter.

**1. To what extent do you agree that the Rules provide a modern and clear framework for ARB's investigatory process? (Agree, somewhat agree, neither agree or disagree, somewhat disagree, disagree) (Document 1)**

Neither agree or disagree.

The RIBA recognises that this consultation primarily relates to clarifying and removing inconsistencies of detail in the Rules and supporting documents, but we would welcome a much more comprehensive review of the ARB's investigatory framework.

**2. Is there anything you would like us to change in the Rules? (Document 1)**

**Investigations Panel:**

The Rules do not clearly state that the Investigations Panel must be impartial, in accordance with the principles of natural justice, and must work on a presumption of innocence.

Guidance is needed on what may be the "public interest".

The Investigations Panel is not required to reconsider its Decision if additional evidence emerges before a Hearing Panel or reference to a Consent Order Panel takes place. Under the draft Rules, such a review is only undertaken at the discretion of the Case Presenter and there is no provision for a submission by the Respondent Architect that new evidence merits reconsideration.

The members of the Investigations Panel are not identified.

**Third party review:**

There is provision for a third party review of the Investigations Panel process, but not of the Hearing Panel process.

**The Case Presenter:**

The role of the Case Presenter is ambiguous and conflicted. It is not made clear in the Rules that the Case Presenter's report to the Professional Conduct Committee ought to be impartial, covering evidence that is both favourable and unfavourable to the Respondent Architect, and not redacting submissions that do not support the ARB case. Effectively, the Case Presenter's role is to

secure a conviction, as the prosecutor. The Case Presenter is usually legally qualified, whereas the Respondent Architect may not be legally or otherwise represented.

The Case Presenter's report provides what amounts to evidence and it is bound to carry significant weight with the Professional Conduct Committee and Hearing Panel. It may be the only evidence that is provided, though it is not available for cross-examination. The Rules should require the Case Presenter to review and present this evidence in a fair and balanced way.

The Case Presenter cannot be said to be demonstrably personally independent, since they likely have an interest in reappointment by the ARB in future cases.

### **Representation:**

The Rules envisage that the Respondent Architect may be legally represented, but must otherwise represent themselves. The Legal Services Act does not apply in ARB proceedings and it is invalid to assert as the ARB has in the past that a Respondent Architect cannot be formally represented by a person who is not legally qualified. This is especially obvious as the Rules specifically provide that the ARB Case Presenter need not be legally qualified.

It is a fundamental principle of social justice framework that the "prosecution" and "defence" should have "equality of arms" in representation. In practice, the Respondent Architect is overwhelmingly likely to be at a serious disadvantage. Defence costs are not reimbursed by the ARB, even in the case of a "not guilty" decision. Professional Indemnity insurers are increasingly unlikely to cover costs of defending an ARB complaint (since a Professional Indemnity policy is a policy to cover for loss caused to the claimant due to a breach of professional duty in direct contractual relation to the services the Insured has been engaged to provide).

### **Consent order process:**

The Consent Order procedure does not provide for any modification by agreement of the Proposed Consent Order prepared and proposed by the Case Presenter. The Respondent Architect must either accept or reject the Order as proposed. There is no scope for a partial admission of facts.

Respondent Architects are likely to be under great pressure to agree to a Consent Order, notably as a result of financial constraints and personal stress.

### **3. The Acceptance Criteria document identifies the criteria to be applied when deciding whether or not to investigate a complaint. How clear is the guidance? (Clear, somewhat clear, neither clear nor unclear, somewhat unclear, unclear) (Document 3, Pages 5-9)**

The RIBA agrees that the adoption of Acceptance Criteria is an important safeguard to prevent the investigation of matters which do not fall within the statutory remit of the ARB, and also to avoid frivolous or vexatious complaints. The primary concern in any acceptance criteria or threshold test for complaints should be to consider the significance of the complaint in relation to public safety and protection.

**4. Do you agree that six years is an appropriate timeframe within which complaints must be made to ARB? (Yes, no, if not, why?) (Document 3, Page 7)**

The RIBA currently has a timeframe of five years within which complaints must be made under its codes of professional conduct and practice.

**5. The Sanctions Guidance explains the rationale for imposing a disciplinary order after an architect has been found guilty of unacceptable professional conduct or serious professional incompetence. How clear is the guidance? (Clear, somewhat clear, neither clear nor unclear, somewhat unclear, unclear) (Document 4)**

Somewhat clear.

**6. Are there any changes we could make to improve accessibility to our investigation procedures, or make the process more inclusive? (All)**

Further consideration could be given to making the documentation accessible to all, for example an audio description version for those with visual impairments or print disabilities.

**7. Do you have any other comments to make?**

**Dealing with Complaints:**

The ARB considers the most informal of complaints.

The ARB invites the complainant to submit large volumes of material in support of the complaint. This leads to large and unwieldy bundles which are time consuming and costly to review properly. The ARB also seeks large volumes of material from the Respondent Architect (including contract details), thereby conducting “fishing” exercises. The ARB acts upon a complaint made and searches the documentation to find other grounds for complaint. These frequently outnumber and/or outweigh the original complaint and may replace the original complaint. The ARB does not identify in its Decisions which allegations arise from the original complaint and which have been identified by the ARB.

From an initial stage, the ARB encourages those contacting them to make a formal complaint against their architect.

**Unacceptable Professional Conduct:**

The ARB has previously stated that a finding against a Respondent Architect must involve a “serious” failing. The courts have found that a finding of misconduct incurs a degree of moral opprobrium (“shame, disgrace, infamy”). The ARB does not admit independent expert evidence on the seriousness or otherwise of any circumstances, making such judgements the exclusive purview of the Professional Conduct Committee based on opinions offered by the ARB’s own Case Presenters and witnesses.

**The Case Presenter:**

The Case Presenter ought to be impartial. It should not be the purpose of the ARB Case Presenter merely to demonstrate the failure of the architect, but rather to present balanced evidence to enable the Hearings Panel to assess whether or not the architect had in fact failed to discharge their duties and meet the obligations set out in the ARB code.

**The Professional Conduct Committee:**

The ARB appears to actively promote disciplinary cases, the numbers of which have escalated over time, as have the costs of running the ARB disciplinary processes. The Professional Conduct Committee can appear intimidating to architects. Hearing Panel members can be unduly overbearing and Hearings an intimidating experience, especially due to the fact that architects are likely to be unrepresented. It is noticeable that Respondent Architects frequently do not appear.