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| Subject | Amendments to the Investigations Committee and Professional Conduct Committee Rules | | |
| Status | Open session | | |
| Purpose | For decision | | |
| From | Registrar | | |
| History | Parent Committee | First submitted | Revision number |
| | Investigations Committee | 24/02/2012 | IC & PCC Rules 2 |

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1. Purpose

To consider changes to the way in which allegations of unacceptable professional conduct and serious professional incompetence are investigated.

2. Recommendations

It is recommended that the Board **consults** on the following proposals:

- i. to amend the Investigations Rules to provide for a pool of non-Board members to investigate allegations under section 14 of the Architects Act 1997;
- ii. to amend the Investigations Rules to remove the requirement for an architect's previous conduct to be discretely considered when deciding whether he or she has a case to answer at the Professional Conduct Committee; and
- iii. to constitute a new Committee of the Board to oversee the work of the Investigations Pool.

3. Terms of Reference

Section 14 of the Architects Act 1997 ("the Act") requires that the Board make rules to appoint persons to investigate allegations of unacceptable professional conduct or serious professional incompetence.

The current Investigations Rules which provide for the appointment of these persons came into force on 1 April 2011.

Part III of Schedule 1 of the Act provides that any committee established to discharge any function of the Board must have a majority of Board members on it.

4. Open

5. Contribution to the Board's Strategic Aims

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

Architects: A robust and fair disciplinary procedure will maintain the reputation of the profession.

Act: Section 14 of the Act states that any allegation of unacceptable professional conduct or serious professional incompetence shall be investigated by persons in accordance with rules made by the Board.

6. Key Points

The Investigations Committee (IC)

- i. Under the terms of Section 14 of Act, the Board is required to make rules to appoint persons to investigate allegations of unacceptable professional conduct or serious professional incompetence. The Rules made by the Board have created a Committee to undertake this role, and the Committee consists of three Board members and two external appointments. Prior to April 2011, the IC comprised three Board members, but was extended at that time to mitigate workload problems.

The current problem

- ii. ARB has in place a number of performance indicators, providing both management information and Board oversight of ARB's delivery. The performance indicators within the area of professional standards complaints handling are:
 - 80% of complaints received about architects should be investigated and referred to the IC within 16 weeks of receipt.
 - 80% of cases sent to the IC should be issued with a final decision within 12 weeks.

The target of 80% is set as there will always be cases which are outside the normal parameters.

- iii. Since January 2010, when performance indicator reporting to the Board was introduced, the Board has noted that the performance indicator on the timescale taken to issue an IC decision has been a significant risk. In 2009, 20% of cases met the target of 12 weeks. In 2010, 14.7% of cases met this target, and in 2011, 12% of cases met this target. The average length of time taken to reach a decision in 2011 was 22.4 weeks.

While the time taken to reach decisions has fallen since the expansion of the Committee in April 2011, it continues to struggle to meet those timescales on a regular basis. It is also vulnerable to the conflicting time-commitments of its members. Whilst the quality of decision making is considered to have been maintained the performance measure for the speed of reaching decisions has continued to deteriorate, despite having a full complement of members for eight months of the year.

- iv. In addition to increasing the Committee's membership, various steps have been taken to reduce administrative delays whilst maintaining quality during the last three years. These have included:
 - Additional meetings for the IC and improved communications outside of

Continuation of agenda item 10

meetings

- Requesting standard documentation, such as terms of business, in all cases
- Administrative improvements to case presentation for the IC, including: standardising case memos; lists of parties to the complaint; tagging all papers together; highlighting documents of significance and clear numbering of case files
- Regularly alerting IC members to cases which are over or are approaching the deadline, using colour coded tables
- The use of decision framework templates to assist deliberations and staff preparing the first draft of the decision for the IC based on the IC's initial comments
- The redrafting of the complaints form
- The membership of the Investigations Committee was expanded by two external appointments on 7 April 2011, one architect and one lay member, to assist with the throughput of work.

- v. The difficulty the Committee faces in dealing effectively with its workload is one of the key risks the Board faces. An internal audit exercise was undertaken in 2011 and overall the results for complaints handling within ARB were positive, the highest level of risk was medium and recommendations for improvement are being adopted with reporting on progress to the Audit Committee. The audit noted the following:
- "A KPI is in place to measure the number of weeks from referral of a case to the IC to the issue of a final decision by the IC. The benchmark for the KPI is currently set at 12 weeks. A review of the KPI dashboard during our fieldwork noted that only 10% of cases met this benchmark. The failure to meet this KPI has not been formally reported in this report since the primary reason for the failure to meet the KPI has historically been due to the ratio of IC members to the case load. Since April 2011, two further members have been added to the IC and a review of more recent cases has noted an improvement in this KPI. As a result, whilst we recommend that management keep a watchful eye on this KPI, no further recommendation is considered necessary."*
- vi. As the performance indicator for the whole of 2011 shows a further percentage reduction in turnaround time, it is clear that the introduction of two new members has not fully mitigated the problem. However, the two new members are devoting significantly more time to IC work than Board members and are able to respond much more quickly than Board members. It has also been noted that both new members are able to provide detailed comments which can be used to assist staff in drafting decisions for the Committee's consideration.
- vii. The functioning of the current Committee is highly dependent on appointed and elected Board members having both the necessary skills and time to fulfil the role. The issues involved are often opaque and complex and require the ability to identify and assimilate salient facts from substantial quantities of information. The architectural issues are varied, and so a breadth of experience is required from the

Continuation of agenda item 10

architect member of the Committee. The Board has been fortunate in that it has been able to rely on Board members who have particular expertise; however, there is no guarantee that this will be the case indefinitely. A failure to have appropriately skilled persons to investigate allegations against architects will place the Board at risk, both in terms of future quality and promptness of decisions. It is essential that improving the speed of the process does not adversely affect the quality of decision making.

Comparison with other regulators

- viii. In comparison with other regulators, ARB's turnaround time is slow. The following table, which may include some inconsistencies as it is not guaranteed to be a like- for- like comparison, shows the average total time taken to progress complaints:

Table 2: Timescales identified in complaints handling

| Organisation | Average time taken from receipt of complaint to final Investigations Committee decision (days) |
|---------------------------------|--|
| General Osteopathic Council | 120 |
| Pharmacists | 141 |
| Health Professions Council | 150 |
| General Optical Council | 150 |
| Solicitors Regulation Authority | 171 |
| General Dental Council | 177 |
| General Medical Council | 195 |
| ARB | 254 |
| General Chiropractic Council | 297 |
| Nursing and Midwifery Council | 444 |

(Figures taken from various sources including reports on regulators conducted by the Council for Health Care Regulatory Excellence)

ARB should therefore be working to improve the turnaround times. However, there is little scope for cutting the timescale of investigations at the earlier stage before a case is referred to the IC.

- ix. As Board members themselves are taking decisions under the procedures, there may be a perception that this makes it difficult for the Board to fulfil a robust oversight role.
- x. Staff and the IC therefore discussed whether a solution may be to recruit individuals from outside the Board. This would also fall in line with the approach taken by other regulators, where decisions taken on individual cases are separated from the functions of a Board member. From a review of a number of regulators, only the

Continuation of agenda item 10

Royal College of Veterinary Surgeons includes Council members in its investigations process and this is currently out for consultation to significantly change this practice.

- Nursing & Midwifery Council
- General Dental Council
- Royal College Veterinary Surgeons
- General Optical Council
- Royal Institute of Chartered Surveyors
- General Medical Council
- General Pharmaceutical Society
- Solicitors Regulatory Authority
- The Actuarial Profession
- General Osteopathic Council

The Proposals

- xi. Staff discussed the issue in detail with the IC in December and it was agreed to recommend to the Board the changes which are shown in the **Appendix A**.
- xii. The Act only provides that the Board must appoint persons to conduct investigations. There is no mention of an obligation to appoint a Committee, and therefore the Board can move to appointing a pool of individuals. This would also ensure greater oversight for the Board and accountability in delivery in accordance with performance indicators.
- xiii. The appointment of non-Board members to investigate allegations would ensure that appropriately qualified and skilled persons would be more readily available to undertake the work including exceptionally complex or document heavy cases.
- xiv. For clarity, it is recommended that the group of individuals should not be referred to as a "Committee," as Part III of Schedule 1 of the Act prevents any committee discharging Board functions from consisting solely of non-Board members. Although the decisions being taken are not reserved to the Board, it is recommended that for greater clarity the Rules move away from the word "Committee", and instead appoint a pool of non-Board members to undertake this function.
- xv. It is proposed that the pool is a minimum of six persons, both architect and lay members, who will then work in smaller panels to consider individual cases. Each panel will have one of the members appointed as Chair on a case-by-case basis, eliminating the need for the pool to have an 'overall' Chairperson. The current mix of architects and lay members will be retained. Consistency of approach would be maintained through regular discussions across the whole pool, and appointing Chairs on a case by case basis will ensure there is no bottle neck with a single IC Chair having to consider every case. This flexible approach means that staff can manage workloads

Continuation of agenda item 10

more effectively to mitigate holidays and other absences.

- xvi. In stating a minimum rather than a finite number, the Board will be free to amend and expand the membership of the Investigations Pool as demand and performance require.
- xvii. Changes to the membership of the Investigations Committee need to be formulated through amended Investigations Rules, and a copy of the proposed changes is shown at **Attachment A**.

Oversight

- xviii. It is important that the Board retains proper oversight of the process for investigating complaints. It is therefore proposed that an Oversight Committee is formed comprising three Board members (architect and lay), tasked with monitoring the performance of the investigations process, reporting back to the Board on a twice-yearly basis.
- xix. The Committee Terms of Reference would be set by the Board, and would include responsibility for ensuring that the investigation and decision-making processes were functioning appropriately, rather than having any involvement in individual cases.
- xx. The Act allows the Board to establish Committees as it sees fit, and this proposal does not therefore need to be included within the Investigations Rules. However, it is recommended that reference is made to this proposal within the consultation paper to explain how the oversight function operates. The question of adequate oversight is particularly important; the Board will need to consider the Terms of Reference for this Committee carefully so as to have confidence in both the process and the control of costs.
- xxi. Staff would have responsibility for ensuring that the Oversight Committee (and the Board, as appropriate) receives adequate management information to be satisfied that pool members were fulfilling their roles in delivering the Act and providing a prompt, fair and effective service to architects and the public.

Change to Rule 11

- xxii. Whilst considering the above changes to the Investigations Rules, the Board is also asked to consider and consult on a proposed change to Rule 11.
The existing inclusion to consider an architect's previous conduct may over-emphasise its importance when assessing the public interest element of the disciplinary offences. Its deletion would not prevent an architect's previous conduct being considered as part of the broader consideration of the public interest in deciding whether conduct was sufficiently serious to constitute a case to answer in relation to the disciplinary offences. It is therefore proposed that this requirement is removed from Rule 11.

Recommendations

- xxiii. The proposed changes to the Investigations Rules should be issued for a three month consultation period. Any changes ultimately agreed would then need some transition to appoint new members, and it is envisaged that the new Rules will come into effect on 1 January 2013. Terms of Reference for the Oversight Committee will be drafted in the next three months for consideration by the Board.

7. Resource Implications

A recruitment exercise and amendments to the Investigations Rules would incur a one-off cost of £5,000 in 2012. On-going costs relating to the reformed approach are budgeted at an additional £18,000 pa effective from 2013. This reflects a slightly higher attendance at meetings, as the Committee is expanded and the greater amount of time commitment needed for this process and the increase in complexity of cases.

8. Communication

The proposed changes to the Investigations Rules are to ensure that the investigations process is as effective and prompt as possible for both members of the public and architects.

9. Risk Implications

By not taking action to deal with the problems the Investigations Committee faces in dealing with its caseload promptly, together with its future vulnerability to a lack of appropriately skilled members, the Board is exposed to an increased risk of judicial reviews and criticism of its regulatory function.

10. Equality and Diversity Implications

None identified.