

## The Status of the Architects Registration Board

*This is the paper mentioned in the Practice pages of the RIBA Journal for issue 6 June 2003.  
It is for the information of members of the RIBA.*

Has the Architects Registration Board the status or function of "regulator"? Is the Board's claim to be entitled to "monitor" professional practice justified? To what extent can the Board impose on architects rules of professional conduct?

Questions of this kind can be of importance to architects in practice and their significance should be understood by Part 3 students.

In this Note:

Alec Grant mentions the advice of the RIBA to the Board on the revision to Standard 8 of the Board's code (PII certificates)

and

Robert Johnstone (who retired from the post of RIBA Legal Adviser in 1995) gives a view challenging certain remarks in the paper by the present Board Chairman, Judge Humphrey Lloyd, with the title:

"SOME ASPECTS OF PROFESSIONAL REGULATION - THE ARCHITECTS' REGISTRATION BOARD"

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PART 1

**Consultation: Standard 8 of the Board's Code**

The Institute had misgivings about the revision to Standard 8 of the Board's Code and the new guidelines on professional indemnity insurance to which it referred. The guidelines stated "The Board has decided that it must monitor PII compliance across the whole profession".

The Institute's misgivings were expressed in the consultation stage before the change was promulgated in November 2001. The Institute informed the Board:

"We support the Board's desire to establish better guidelines for serving clients, architects and third parties.";

but at the same time the Institute pointed out:

"...there may be difficulties in introducing into the Code an obligation on a registered person to provide evidence of compliance with a particular standard. It may be argued for instance that such a provision is outside the purpose of the code and it may not be made a standard under section 13 of the Architects Act."

The Institute also stated:

"The Architects Act 1997 makes express provision for certain administrative acts but none for monitoring compliance with the code".

Despite the Institute's advice the Board went ahead and issued the revised Standard 8 together with its new guidelines. Standard 8 as revised is reproduced in the endnote on page 9 with a description of the way its paragraph 8.3 has been operated in respect of the Certificate of Compliance.

The Institute could see that there would be difficulties if the Board in the guise of discharging its code-making duty were to impose a requirement for the purpose of furthering a policy in respect of a particular aspect of architectural practice, or as a means of executing administrative tasks which it had decided to assume. The result could only be prejudicial to the work for which the Board's Professional Conduct Committee is constituted under the Act.

In the following Part of this Note the Board's status and functions are described by reference to the Act, and the final paragraph mentions the paramount importance of "seeing that members of the Professional Conduct Committee are not prejudiced as a result of the Board having misguided or misdirected itself in matters of the Code and professional conduct".

ALEC GRANT

## PART 2

### The Board's status and function

#### GENERAL PRINCIPLES

The existence of the architectural profession, organised both in the sense of having schools and membership bodies, and in the sense of possessing, creating, sharing and practising skill and knowledge beyond the ordinary and with a view to proficiency and excellence, is the premise for the existence of the Registration Board; and if there were no such profession, the Board could not conjure it into existence. This can be taken as the criterion and touchstone for considering the validity of claims which are being made about the Board's powers and functions.

A public register is essentially an administrative device. The Board is essentially constituted as an administrative organ for maintaining and publishing the Register of Architects. It is not a professional body with power to admit or exclude from a profession. It has developed a theory about its functions which in practice has resulted in extending administrative requirements of its own making beyond what has been authorised by the Act, as if this were justified in furtherance of a policy represented by the slogan which it has given itself and prints on its official publications including the Architects Code: "Protecting the consumer and safeguarding the reputation of Architects".

#### JUDGE LLOYD'S ASSERTIONS

In a paper by his Honour Judge Humphrey Lloyd, issued in February by the Society of Construction Law (he is a past President) ([www.scl.org.uk](http://www.scl.org.uk)), it was stated quite categorically that "The raison d'etre of ARB is to regulate the name and title 'architect' ". There followed a quotation of section 20 of the Architects Act 1997, as if the assertion were based upon that section. But sections 20 and 21 together make up Part IV of the Act, which is headed "Use of the title 'architect' ", and nothing is there, or anywhere else in the Act, about the Board having any power of itself to "regulate the name and title 'architect' ". That assertion is mere invention.

Judge Lloyd (so far as I am aware) has not been its inventor, and it is puzzling that he has made himself its advocate. He is well known in the profession as one of the judges of the Technology and Construction Court, a specialist branch of the High Court. He became a member of the Registration Board in 2001, was elected its vice-chairman in 2002 and at the time of publication of his paper was due to become its chairman in March 2003. The Board's claim to status as a "regulator" originated some time before he became a member, but has not abated.

The words "regulator"/"regulation" are not used in the Act and such a status is not conferred in terms upon the Board. Is the Board's use of this style or title adverse to the public interest? Does it among other things:

- tend to lead to conceptual and practical difficulties which obedience to the Act itself was meant to avoid e.g. about "monitoring" PII or "validating" schools of architecture or permitting registrants to use "ARB" as a logo;
- tend to distract from the actual purposes which are within the Board's remit;
- result in misdirection of the resources at its disposal and failure to deploy its resources effectively for its lawful purposes, including acting as the Competent Authority for the EEC Directive?

A contrary proposition to the Board's claim would be that an essential characteristic of a "regulatory" body in this context is having jurisdiction or control in respect of a particular function or activity in the supply of goods or services, from necessities such as water to optional transactions such as life insurance (and including building works), whether or not the regulating method is in conjunction with a system of certificating or licensing (such as applies to solicitors or places of entertainment). In that respect RIBA members well know that the Board (like ARCUK before it) is famously unqualified: it protects not function but title.

If you require a regulator look at the Building Regulations. It must be common knowledge to registrants and to practitioners of building law that anyone, including an architect, who participates in building work in today's world is constrained by the statutory requirements of the Building Regulations, and that compliance is monitored and enforced in each locality by its local authority. Architects are equally affected, whether Chartered Architects or "unattached" registrants. Their performance of professional services happens, not in isolation, but in connection with all other participants in building work to which the Regulations apply; and there are other legislative requirements which similarly apply to the product of the work or services of all participants, including architects whether Chartered Architects or "unattached" registrants.

In short, persons supplying architectural services are under no compulsion to comply with the requirements of any regulatory authority other than those which apply generally to all.

The Board is not a licensing authority and has no power directly or indirectly to ban any person, firm, partnership or body corporate from offering, performing or supplying architectural services; and were the Board, in connection with its functions of prescribing qualifications under Part II of the Act, to require qualifying bodies to teach and applicants for registration to accept as fact assertions such as those in Judge Lloyd's paper, viz.:

- "The raison d'etre of ARB is to regulate the name and title 'architect' ",
- the architects' profession is "one of the few professions (and the only profession in the construction industry) where there is any real form of licensing", and is "regulated by statute in order to protect the name or title 'architect' ",
- and "regulation starts with registration",

it would undoubtedly be at risk of complaint by reason of what has been called "jactitation of powers" (in a leading case decided by the Queen's Bench Divisional Court: *Staughton LJ & Mitchell J, R. v. Securities and Investment Board* [1995] 2 BCLC 76); or in plain terms, throwing one's weight about.

It can be acknowledged that the Registration Board has an estimable and distinct public service to perform, in obedience to the Act and in amity with the professional bodies. So also have the Royal Institute of British Architects and the other professional societies of architects, in fulfilling the cultural and educational aspirations expressed in the charters for which members past or present have petitioned and been granted, and in amity with the Board.

The Board's incessant claims to regulatory status appear to have been the result not of excess of zeal in the service of the public interest, but of some want of understanding how the Board can usefully and with economy go about fulfilling the services which have been assigned to it by statute for the public benefit. It is reassuring to note that Judge Lloyd's experience and service both as a judge and as a teacher of construction law are such that he will be well able to put the case for the Board in a way which will be more exact, better informed and on a securer footing. Until then, what has been published in his paper should not go unchallenged.

### **The Architects Act 1997**

#### PROTECTION OF TITLE (Part IV of the Act)

The Registration Board's claim to regulatory status seems to rest on the proposition that:-

- (1) under the Architects Act 1997 the Board is required to publish annually the current version of the Register of Architects, previously maintained by the Architects Registration Council of the United Kingdom (ARCUK) under the 1931 Act as amended, and/or
- (2) the 1997 Act re-enacted the provision which makes it a summary offence (liable on conviction to a fine) to contravene the prohibition against the use of the name, style or title of "architect" by a person who is not registered under the Act (but the Act does not impose on the Board a duty to prosecute offenders), and/or
- (3) under Part III of the Act the Board's Professional Conduct Committee has been given a limited jurisdiction over registered persons in cases of alleged professional misconduct, and/or
- (4) the provisions in s.20 in Part IV of the Act govern the use of the word "architect" by persons, firms, partnerships and bodies corporate.

But in 1996 (when the amending provisions which are now in the 1997 Act were first enacted, in the wake of the two thorough-ranging consultative inquiries undertaken respectively by John Warne and Sir Michael Latham) there was not considered to be a gap in the general law relating to building design and construction which could usefully be filled by constituting the Board in a way that would fit it to have the function or status of regulator of architectural practice, as the Board has been claiming. Such a gap has not appeared since then, and, if it ever did, it is unlikely that the Board as now constituted would be considered suitably qualified to fill it.

A reading of the Act, as distinct from glosses upon it which have appeared in various publications issued by the Board itself, will show that the Board has certain functions relating to the Register of Architects but that these do not amount to "regulation" of registrants or of architectural practice.

The principal inducement to register is found in Part IV of the Act (Use of the title 'architect'). This comprises sections 20 and 21 (mentioned above) which provide that

-- "if any person contravenes section 20 (1) he commits an offence and is liable on summary conviction to a fine ... " (s. 21 (1), re-enacted from the 1931 Act as amended);

-- " 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 the Act" (s. 20 (1)), subject to certain specific exceptions including , by subsection (3), firms, partnerships and bodies corporate whose business relating to architecture is carried on by or under the supervision of such a person; and

-- the Board may by rules provide that subsection (3) shall not apply in relation to a firm, partnership or body corporate "unless it has provided to the Board such information necessary for determining whether that subsection applies as may be prescribed" (s. 20 (4)).

## QUALIFICATION (Part II)

An understanding of the lawful functions of the Board, as compared with some of the more extravagant claims which have been made about it, requires attentive scrutiny of the provisions of the Act, particularly Part III (Discipline). The following summarises how the Act operates:

1.-The business or practice use of the word "architect" is protected by reserving it to those who are qualified by examination and otherwise, as PRESCRIBED under Part II of the Act (Registration etc.), and who, upon application, have been registered; and to firms, partnerships and bodies corporate whose business relating to architecture is carried on by or under the supervision of such a person. Part II, therefore, expresses the main and essential part of the Board's work in connection with maintaining and publishing the Register.

2.-It follows that the Board should prescribe for qualification something which distinguishes the registrant from other persons who participate in the supply of professional services for the design and construction of buildings. The criteria can be expected to include:

(1) Proficiency in the knowledge of the Building Regulations and the like for the purposes of architectural design and construction operations pursuant to such a design.

(2) Working knowledge of the law relating to (a) building contracts and the like, and (b) contracts for professional services.

(3) Comprehension of the method of professional practice used for supplying architectural services (represented by the stages of the RIBA "Plan of Work"), and a knowledge of how this relates to cost management and control in the architect's office and billing clients for professional services.

(4) Proficiency in the skill and knowledge, and the art and science, of architectural design as something distinct from the product only of the technical or engineering design skill and knowledge of separately identifiable disciplines.

(5) Understanding of the professional ethic as it applies within the field of architectural practice in respect of each of (1), (2), (3) and (4) above, according to the received and accepted customs and usages of professions generally and of the architectural profession in particular, adapted to the present day, and including the significance of s.20(3) of the Act in relation to firms, partnerships and bodies corporate. (Note: Professional ethics may be required to take second place to common law or statutory provisions prevailing from time to time; but may also be given special dispensation as, for instance, under the Competition Act 1998 c.41).

3.-Insofar as degrees, diplomas, testimonials, certificates and the like show that examiners or others have been satisfied that an applicant has attained the prescribed proficiency, the applicant may be entitled to be registered (subject to the operation then or later of s.9 - "Competence to practise").

#### THE CODE AND THE PCC (Part III)

4.-But having regard to provisions which now are contained in Part III of the 1997 Act, an architect who applies for registration (or retention) is making a certain publicly recorded commitment of his own volition: namely, that when practising or carrying on business under a name, style or title containing the word "architect" the applicant will act in accordance with the professional ethic mentioned in the fifth criterion in paragraph 2. above.

5.-The registrant's commitment is voluntary, and a registrant remains free to terminate it by notice or lapse of retention. But the effect of the Act is to make this commitment be a condition of using the title free from the liability to summary conviction. That applies equally to Chartered Architects and other registrants. But it is NOT a commitment to adhere to the code of professional conduct which the Board issues under section 13 (1). In particular, it should never be taken as such to the extent that the Board's code imports extraneous matter.

6.-The purpose of section 13 (1), in Part III of the Act (Discipline: Professional standards; Disciplinary orders; Visiting EEA architects) thus becomes manifest. It is to provide a way of letting all concerned know what is "EXPECTED" of registered persons by reason of that commitment to: *the professional ethic as it applies within the field of architectural practice, according to the received and accepted customs and usages of professions generally and of the architectural profession in particular, adapted to the present day.* [By s.13 (1): "The Board shall issue a code laying down standards of professional conduct and practice expected of registered persons." What the Board may do in this respect is prescribed for it by the Act; while by Part II the Board itself is authorised to prescribe the qualifications which entitle a person to be registered.]

7.-The character of the statutory code is given by section 13 (4). This shows that all or part of the code may be expressed in a manner such that it could be said of a registrant that he had failed to comply with it, and that, in the event of there being any [current or future] proceedings against him under section 14 [but not otherwise], the failure to comply "shall be taken into account"; but at the same time it expressly and unambiguously prohibits the non-compliance being taken "of itself to constitute unacceptable professional conduct". (Section 14 then shows that disciplinary proceedings for professional misconduct can be initiated only as stated in s. 14 (1): "Where an allegation is made that a registered person is guilty of (a) unacceptable professional conduct (that is, conduct which falls short of the standard required of a registered person) or (b) serious professional incompetence, or [where] it appears to the Registrar that a registered person may be so guilty".)

8.-It follows that:-

--the Board could not rightfully import into the code matter which is invented or otherwise extraneous to the description in 6. above; and

--a judicial body such as the Board's Professional Conduct Committee ought not to allow a decision adverse to a registrant result from such extraneous matter, or hold that a registrant can properly be treated as bound by such extraneous matter, particularly where compliance has been demanded, by the Board or with its authority, under threat of coercive action.

9.-For the purposes of Part III any such extraneous matter which has been mistakenly imported by the Board should, in justice to registrants (and eligible applicants), be treated by the Board (and its Professional Conduct Committee ) as a nullity as soon as it has been identified.

10.-Under Part III of the Act, those individuals who, being duly qualified, have claimed the right to practise or carry on business using a name, style or title containing the word "architect", are, upon payment of the retention fee under Part II, entitled to the benefit of a forum for the hearing and determining of allegations of professional misconduct against them or other registrants, including the right to public exoneration under section 15 (4) (a). This is a benefit which extends indifferently to Chartered Architects and to the "unattached" registrants: a member of either category could be reported for professional misconduct by a member of the other, and members of both categories are entitled to an equally fair hearing before the Professional Conduct Committee. Hence the paramount importance of seeing that members of the Committee are not prejudiced either as a result of the Board having misguided or misdirected itself in matters of the Code and professional conduct, or for or against those registrants who are Chartered Architects or those who are not. Similar considerations obtain in the case of any judge of the High Court or Court of Session hearing an appeal under section 22, from whose decision the Act permits no further appeal.

ROBERT JOHNSTONE



**ENDNOTE**

The revised Standard 8 as issued by the Architects Registration Board in November 2001 reads as follows:-

*Architects should not undertake professional work without adequate and appropriate professional indemnity insurance.*

- 8.1 *The need for cover extends to professional work undertaken outside an Architect's main professional practice or employment, and to work undertaken by employees of an Architect.*
- 8.2 *Employed Architects should, as far as possible, ensure that professional indemnity insurance cover or other appropriate cover is provided by their employer.*
- 8.3 *Without limiting an Architect's duty to maintain professional indemnity cover which is adequate and appropriate for the work the Architect is undertaking, Architects must maintain, in any event, minimum cover in accordance with the Board's guidelines on professional indemnity insurance issued from time to time and provide such evidence in such form, as the Board may require demonstrating compliance with this standard.*

Members will know that it is the practice of the Architects Registration Board at the end of every year to send to registrants an invoice for the retention fee due for the following year, with a written demand for payment. The demand for retention fees due for 2002 stated as a requirement the following: "You must also complete and return the enclosed certificate of your professional indemnity insurance ...". This has been repeated in the demand issued for the year 2003. With the demand a form was sent headed "Professional Indemnity Insurance: Certificate of Compliance". Under it the following was printed: "Completion of this Certificate is required to confirm to the Board that you have professional indemnity insurance as required by Standard 8 of the Architects Code: Standards of Conduct and Practice. You should complete this certificate, and return to ARB ...."

On one analysis, the present issues concerning Standard 8 can be reduced to the conflict between section 13(4) of the Architects Act 1997 and the position for which the Board has been contending in the terms of a letter to the Institute from the Registrar in the consultation stage:

*"Any architect failing to provide the evidence prescribed would not be removed from the Register immediately but would receive a warning that if the evidence was not produced a reference would be made to the PCC."*

As explained in Part 2 of this Note it appears that in the event of a registrant declining to give the information called for in the so-called "Certificate of Compliance", it would be an extravagance to read section 14(1) as if it allowed that of itself to be treated as prima facie evidence of unacceptable professional conduct for the purpose of initiating disciplinary proceedings by investigation.

A.G., R.J.