

Code revision consultation
Submission of Ian Salisbury, 12 January

1. Is the Code clear and easy to understand in terms of its language and structure?

In the past, it has been my perception that consultation on code revisions, required by section 13(3)(a) of the Architects Act, has done little to influence the Board which has acted without regard to the provisions of the Architects Act.

I have the following observations to make and shall be pleased to have them taken into account. Furthermore, if the consultation results in any significant modification of the draft, I shall be pleased to be invited to comment on the revisions before the draft is approved by the Board.

I would be grateful if the Board is given sight of this submission in its entirety, rather than being given a selection of the points made, or a summary. The reason for this is that most who respond to this consultation will do so on the face of the suggestions and without reference to the governing statute.

2. If you are an architect, does the Code introduce any aspects that you could consider onerous?

The code should not import extraneous standards. The code is made under statute law of the United Kingdom and should therefore lay down the standards of professional conduct and practice expected of persons registered in the United Kingdom. Any attempt to "improve" the code by introducing notions of what is thought to be good practice elsewhere is misguided. There is no overarching principle of some European-wide codes that can be relevant, even those principles of the European Council of the Liberal Professions (CEPLIS) or the Architects Council of Europe's Deontological Code. Any introduction to the ARB code of an expectation for conduct and practice elsewhere than in the United Kingdom will be unlawful even though such conduct and practice may be relevant to a registered person engaged in the practice of architecture overseas. It is clear that these aspects have been introduced to the code. They should be removed.

3. If you are not an architect, does the Code help to identify the standards of conduct and competence expected of architects?

It is stated in the website preamble that the code serves the dual purposes of providing architects with "a sound indicator of the principles of good practice and offers protection for the consumer by highlighting the standards that they can expect from the profession". This is misleading. The principal purpose of the code is set down at section 13(4)(b) of the Act where it is stated that "[the code] shall be taken into account in any proceedings against [a registered person] under section 14". It is only by extension that the code is of general interest to those on the register and beyond as to what might and what might not constitute [serious*] unacceptable professional conduct or serious professional incompetence. The code is therefore concerned only with those threshold or base-line professional values and should not attempt to emulate the standards promulgated by the professional bodies.

*See ARB v Vranicky, 16 March 2007 (unreported) where, reasoning that the standard applicable to professional conduct should not differ from that applied to professional incompetence, the court explained that, unless what had been done or not done in an individual case could be regarded as a serious lapse, it would not be appropriate

to impose a disciplinary sanction. The judge added: "Only in that way can proper weight be given to the adjective 'unacceptable'".

4. Are there any omissions that you believe should be included?

No.

5. Are there any standards that you believe to be ambiguous?

Dealt with below.

6. Is the status of the Code clear in that it reflects expected standards, and is not a set of rules?

In this latest draft it appears that some attention has been paid to the criticisms and suggestions made in the past of the scope of the code: for the language is now less strident. But I believe that the Board has a long way to go before the code standards are what they should be: guidance for the PCC which, by extension, informs those on the register of what the PCC will take into account when deciding a disciplinary order.

It is clear that the draft remains intended as an imperative document, not as guidance.

The Architects Code: Standards of Professional Conduct and Practice

1. **As an architect you are expected to:**
2. **Be honest and to act with integrity**
3. **Be competent**
4. **Promote your services honestly and responsibly**
5. **Carry out your work conscientiously and to the best of your ability**
6. **Consider the wider impact of your work**
7. **Be trustworthy and to look after your clients' money properly**
8. **Have appropriate insurance arrangements**
9. **Co-operate with regulatory requirements and investigations**
10. **Safeguard the reputation of the profession in the public interest**
11. **Manage your business professionally**
12. **Deal with disputes or complaints appropriately**
13. **Have respect for others**

This summary should be omitted firstly because of the danger that it may be interpreted differently to the main code and, secondly, because some may not bother to read beyond it.

By Section 13 of the Architects Act 1997 ("the Act"), the Architects Registration Board ("the Board") is required to issue a Code laying down the standards of professional conduct and practice expected of persons registered as architects under the Act. 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 must be taken into account in any disciplinary proceedings before the Board's Professional Conduct Committee.

This would be apposite if it were to apply to the wording of the draft, but it does not. And even if it were apposite, it is not necessary. The Act should be allowed to speak for itself: this prolix introduction should be omitted.

In any event the word "must" should be substituted by "shall" to reflect the statutory wording and to avoid any impression that the Board intends to bring its own influence to bear on the proceedings of the Professional Conduct Committee.

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. 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. 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.

The preamble to the draft code, I suggest, is in large part unnecessary.

(i) The code requires no internal explanation or justification: that is to be found in the Act which requires no repetition. The preamble should be omitted.

(ii) Nor is any purpose served by introducing peripheral or secondary considerations such as being guided "by the spirit of the code". As I have suggested, the purpose of the code is clear: it is to be taken into account in any proceedings against a registered person. If there is any matter that the Board considers apposite to that purpose, then it should be expressly included in the text of the code. The Act permits no wider interpretation other than the inclusion of standards expected of registered persons. References to extraneous matter should be omitted.

Not every shortcoming on your part, or failure to comply with the provisions of the Code, will necessarily give rise to disciplinary proceedings.

The code has been recast in the vocative voice, using the more direct "you are expected" rather than "architects are expected". The change brings no improvement to comprehension or simplicity of language and is therefore unnecessary. Moreover, unlike the currently fashionable use of "you" and "we" in many standard forms of consumer contract, introduction of the personal pronoun in a code where there is an expectation of compliance brings with it a subtle and inappropriate change of emphasis that suggests a pejorative general expectation of failure that is only saved by the code. It should be remembered, as the preface to this draft code emphasises, that the code is not there to be followed but is to be referred to by the Professional Conduct Committee on the instance of a case of unacceptable professional conduct or serious professional incompetence.

The wording "not every shortcoming on your part" illustrates the negative imputation of using the second personal pronoun. The implication is that any registered person will have shortcomings. That is clearly pejorative and inappropriate. It should be omitted.

Use of the vocative voice should be dropped.

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

This is not relevant to the code but to section 15(1)(b) of the Act, which is largely repeated. It should be omitted.

***Standard 1
Honesty and Integrity***

1.1 You are expected at all times to act with integrity and to avoid any action or situations which are inconsistent with your professional obligations. 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.

The removal of the headline standard to secondary status serves no purpose other than to diminish the overriding importance of acting with honesty and integrity. I suggest this draft amendment be reversed.

1.2 Where a conflict of interest arises you are expected to disclose it and to do your best to manage it to the satisfaction of all affected parties. Where this cannot be done you should cease acting for one or more of the parties to remove the conflict. If you are in any doubt, you should seek written assurances that all parties involved give their informed consent to your continuing to act.

The wording of the original standard 1.2 is preferred and I suggest the wording of the draft be discarded accordingly.

The qualifiers "financial or personal business interests" of the extant code are appropriate to the consideration of a conflict with professional services. Without this qualifier, registered persons will be laid open to vexatious allegations*. The draft standard should be amended accordingly to include the extant qualification.

The introduction of the concept of "managing" a conflict of interest "to the satisfaction of all affected parties" introduces the possibility of the subjective views of third parties being taken into account in disciplinary proceedings. A registered person who in all respects acts with honesty and integrity may fall foul of the code if a person who is not satisfied by that exemplary behaviour makes a complaint. A standard which has the effect of drawing a registered person away from the overriding duty to act with honesty and integrity is not apt because it is open to abuse. These draft provisions should accordingly be omitted.

*The Board will be aware, for instance, of an allegation made against a registered person concerning her private relationship with an engineer, an allegation which the PCC quite rightly rejected out of hand, but which was nevertheless highly distressing to the architect.

1.3 Where you offer, or take part in offering, a service which combines architectural services with non-architectural services, you are expected to make the distinction clear to all parties in writing.

This draft standard has nothing to do with professional conduct or competence and should therefore be omitted. It would, in any case, cause unnecessary practical difficulties where registered persons attempt to distinguish between those parts of their services that are purely architectural from those that are not.

(Consider, for instance, providing engineering services, advising on the application of VAT, designing furniture or acting under the provisions of the CDM regulations.)

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.

Whereas I agree that the extant standard 1.4 is unenforceable and thus fails to provide useful guidance, its replacement is unnecessary because it is appropriately,

and obviously, covered by the provisions of draft standard 1.1. It should therefore be omitted.

1.5 This standard underpins the Code and will be taken to be required in any consideration of your conduct under any of the other standards.

This draft standard is peripheral guidance that has nothing to do with conduct or competence, but appears to be an attempt to influence the outcome of disciplinary proceedings. This is inappropriate. The draft standard should be omitted.

**Standard 2
Competence**

2.1 You are expected to be competent to carry out the professional work you undertake to do and if you employ others to do that work you should ensure that they are competent to do so.

It would be unusual for any architect to accept a commission which does not require new competencies to be acquired after acceptance. That is the nature of architecture. As expressed, this draft standard will lead to an approach that will be detrimental to the advancement of architecture. The draft standard should be amended to reflect the statutory requirement so as to take account of this.

2.2 You should ensure that you have 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.

This draft standard also contains pitfalls. All that should be necessary is for architects to apply their reasonable expectations* to their business practice and not to act recklessly. This draft standard should be amended accordingly.

* The lack of this qualification would, for instance, now make architects responsible for failing to predict the influence of the recession on their loan facilities.

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

This draft standard is unenforceable for reasons which I believe to be obvious, and should accordingly be omitted. Moreover, if a client wishes to hire a solo practitioner it is not unreasonable to expect the employer to be aware of the risk.

2.4 It is your responsibility to ensure that you have the necessary language skills and local knowledge to enable you to properly interpret your client's requirements.

This draft standard is also unnecessary and will present its own set of difficulties to the PCC. Moreover it is not necessary to demean "consumers" to such a degree as to suppose that they are incapable of acting on common sense. The code should not include guidance that might appear to some to be encouraging xenophobia and protectionism*. This draft standard should be omitted; it is adequately covered by draft standard 2.1.

*Many architects on the register do not have English as their first language. But that is no indication that they have a poor command of it, even if their use of it is accented.

2.5 You are expected to keep your knowledge and skills relevant to your professional work up to date.

The words "up to date" are superfluous and would naturally be included in draft standard 2.1, suitable revised as already suggested. I presume that this draft standard in some way derives from the provisions of s.9 of the Act. These provisions are however not fit for inclusion in the code as they relate to such "recent practical experience" as the Board is required to prescribe. There is no provision under the Act for the Board, either directly or indirectly, to introduce CPD requirements on registered persons. Such a requirement would therefore be ultra vires. This draft standard should therefore be omitted.

2.6 You should observe any guidelines or requirements of the Board for maintaining your professional skills or your continuing professional development.

This draft standard appears to introduce a rule, even though it is noted that the subjunctive "should" is employed rather than an indicative "must". Even so, "guidelines" or "requirements" that are imposed on registered persons are extraneous to the code which, even if mistakenly included, cannot by reason of section 13(4)(a) be taken into account in the assessment of professional conduct or competence. A duty to the Board is not a professional duty at all and it is my view that this draft standard is irrelevant. It should be omitted.

**Standard 3
Honest promotion of your services**

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

The objective language of the extant code ("Architects should not make any untruthful or misleading statements") is to be preferred over the vagueness of the draft. I would ask: how is "a truthful and responsible manner" to be ascertained, and where is the line to be drawn in this regard between what is acceptable and what is unacceptable professional conduct? A complainant should rely on objective fact and not be invited to frame a complaint on such subjective criteria. This draft standard should be amended accordingly.

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.

This draft standard is unnecessary (and the second sentence entirely superfluous). The extract from the extant code quoted above provides adequate guidance and if there is any infringement of advertising standards then there are other means available to the public for protection*. The draft standard should therefore be omitted.

*The Trades Description Act 1968 makes it a criminal offence in relation to the provision of services to make a statement which is known to be false or misleading or which is recklessly made. A registered person, found to be guilty of such an offence, would then properly be dealt with under s.15(1)(b) of the Act.

3.3 You are expected to describe your business accurately. For example, if you are a sole principal, you should not imply that there is more than one architect in the

practice by using "Architects" as part of your business name or in your promotional material.

I consider this draft standard, if relied upon in proceedings, is likely to lead to an infringement of human rights and in particular, Convention Rights included in the Human Rights Act 1998 and the Protocols thereto*. It should be omitted.

*See, for instance, Article 1 of the First Protocol. In connection with this draft standard, the Board may wish to consider the names of firms that include the names of deceased or retired members, such as Gibberd, Skidmore Owings and Merrill, Aukett and EPR.

3.4 If you are a principal in an architectural practice you are expected to ensure that all professional work is under the control and management of an architect, and that the name of that architect is made known to clients and any relevant third party. You should notify your client promptly of any change in the architect responsible for the work.

By the omission of the words "so far as it relates to architecture", the code appears to narrow the consent granted by s.20(3) of the Act and therefore appears to be unjustified. Other considerations are:

(i) This is an inappropriate inclusion in the standard as it relates neither to professional conduct or competence. As such it is unenforceable.

(ii) If an architectural firm or partnership carries on business under the name, style or title "architect" when the business, so far as it relates to architecture, is not under the control of a registered person, then that firm commits an offence under s.21. Such an offence is not relevant to proceedings under s.14.

(iii) It will also be noted that a registered person who is under the control of a person who is not registered is in no position to exact the changes required by this draft standard.

(iv) The code cannot be used as a means of introducing rules of conduct, as already mentioned.

(v) The last provision of the draft standard appears in any event to be irrelevant to the majority of persons on the register. The code should not have selective application.

There is therefore, in my view, nothing useful in this draft standard. It should be omitted.

3.5 You are expected to tell your clients of any proposed changes in terms and conditions which occur during the course of a specific agreement (including any change in the legal identity of the person or business with whom they entered into the agreement), and to seek their agreement to the proposed changes.

I suggest that if any of the events given as examples to this standard were to occur, then it would result in a fundamental breach of contract. I believe a failure to inform and obtain agreement to such a proposal would fall short of draft code standard 1; there is therefore no necessity to make express reference to it elsewhere. This draft standard should, accordingly, be omitted.

Standard 4

Carrying out work conscientiously and to the best of your ability

4.1 You are expected to carry out your work promptly and with skill and care.

The title introduces a standard of care and attention that is alien to usual practice. The required standard (if it needs to be rehearsed at all, which I do not think it does) is the reasonable skill and care provided in conformity with the normal standards of the architect's profession. That naturally includes conscientious behaviour but nobody can ever work consistently to the best of their ability.~

Promptness is a matter for agreement. Reasonable skill and care is the standard of service that the courts have established as the requirement of an architect*. This draft standard adds nothing and should therefore be omitted.

*"Every person who enters into a learned profession undertakes to bring to the exercise of it a reasonable degree of care and skill ... [he does not] undertake to use the highest possible degree of skill" – per Tindal, LJ in *Lamphier v Phipos* (1831) 8 Car. & P. 475 at p. 479.

4.2 You should make every effort to keep within the timescales and cost limits agreed with your clients, to keep them regularly informed of progress and to notify them promptly of any issue which might materially affect the quality or cost of a project.

This draft standard sounds like a paragraph from an appointment document and is inappropriate to the code*. It has no bearing on conduct or competence that is not covered elsewhere. Accordingly this draft standard should be omitted.

*It may be noted that matters of timescale and budget are frequently not agreed until well after the appointment of the architect. Is the architect to stop drawing, for instance, if a budget has not been agreed? Where do the responsibilities of the quantity surveyor and project manager fit in? Moreover, some of the best ideas take a long time to mature; it is not necessarily a matter of professionalism to be quick.

4.3 You are expected to maintain your professional independence and act according to your best professional judgment.

This is a repetition of the guidance of draft standard 1. In any event, the term "best professional judgment" is ambiguous and subjective. The draft standard should, in my view, be omitted.

Standard 5

Considering the wider impact of your work

5.1 You are expected to bear in mind at all times, and to draw your client's attention to, the wider impact that architectural projects can have on the environment. You should consider the reasonable steps that can be taken to mitigate any adverse effects.

Although green issues are generally to be encouraged, like CPD and insurance, they are not a matter for the Board*. This draft standard should, I think, be omitted.

*Under this code a registered person might feel obliged to refuse any engagement involving development in a Gulf State, for instance.

Standard 6
Trustworthiness and safeguarding clients' money

6.1 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.

I consider the words "at all times" to be unnecessary, impractical and unduly onerous. These words should be omitted.

6.2 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.

As to the remainder of this draft Standard, I find the wording of the extant Code to be more exact and better. The draft revised wording should be omitted.

6.3 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.

See above.

6.4 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.

See above.

6.5 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.

See above.

Standard 7
Insurance arrangements

7.1 You are expected not to undertake professional work without adequate and appropriate insurance cover.

I have noted that changes made to this standard arise from advice received by the Board from its Professional Indemnity Insurance Working Group. Given the sidenote in the consultation draft I presume that the insurance referred to in this clause is not professional indemnity insurance but employers' liability insurance, for which there is a clear statutory requirement. If this is so, because a failure to insure is dealt with as an offence under separate legislative provision, I see no reason to make it a separate code requirement. But if it is professional indemnity insurance that is referred to, then I believe the inclusion to be inappropriate for the following reasons:

- (i) Despite the relatively passive "you are expected" rather than the purported mandatory obligation of the extant code, this draft standard is clearly intended as a rule for which there is no provision under the Act.
- (ii) Experience has shown that the instance of a client or member of the public failing to recover the justly ascertained losses resulting from an architect's negligence is immensely rare. Nevertheless I would agree with a finding of unacceptable professional conduct against a registered person if that architect were to fail to meet

a reasonable obligation arising out of a negligent act. But whether to carry insurance or not is a matter for the judgement of the registered person.

(iii) On the whole, insurance is purchased by architects primarily to ensure their own safety, not their clients'. Perhaps for that reason parliament, when discussing provisions for architects in the Housing Grants, Construction and Regeneration Bill, made it clear that it had no intention of enabling the Board to make a rule that requires insurance.

This Standard should therefore be omitted.

7.2 The need for cover extends to professional work undertaken outside your main professional practice or employment, and for work carried out by any employees that you may have.

This draft standard appears to extend the requirement for insurance to cover any private work undertaken by employees including 'moonlighting'. This would clearly be unenforceable. The draft standard should be omitted.

7.3 If you are an employed architect you should, as far as possible, ensure that insurance cover or other appropriate cover is provided by your employer.

Again, employees cannot be made responsible for the business practices of their employers. Employers are vicariously responsible for the actions of their employees, not the other way around. This draft standard should be omitted.

7.4 Without limiting your duty to maintain insurance cover which is adequate and appropriate for the work you are undertaking you are expected, in any event, to maintain a minimum level of cover as specified in the Board's guidance.

I am aware from an unguarded public statement made by Mr Alan Crane at a board meeting on 23 May 2002 that the Board has taken advice from its solicitors and counsel on this matter and had been advised that the "Guidance" had been introduced arbitrarily and without evidence of any need for cover; and that without such evidence, the board's policy was open to challenge. I believe it to be irresponsible of the Board and its members to persist in issuing this guidance when it has received this advice. In any event, the Act provides the Board with no power to make rules of this nature which are alien to a properly formulated code. Such purported guidance which is in fact intended as a rule is therefore alien to the code and should be no part of it. This draft standard should be omitted.

7.5 You are expected to provide evidence of compliance with this Standard in such form as the Board may require.

The Board is aware that this requirement is being challenged and that leading counsel's advice* is that the Board has no lawful power to require evidence of compliance under the extant code Standard 8 – and so also under this draft standard. These unlawful demands of registered persons should be omitted and the draft standard should be omitted.

*See <http://www.aaruk.info/PCC/Hearing/QCOpin.pdf>

***Standard 8
Co-operation with regulatory requirements and investigations***

8.1 You are expected to co-operate fully and promptly with the Board, 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.

The Act provides the Board with no power to make rules of this nature which are alien to a properly formulated code. I believe this draft standard to be ultra vires the Act. It should be omitted.

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

This draft standard is also alien to the code, being adequately dealt with by s.11 of the Act. It should not be included within the code for any extraneous reason including the reduction of administrative problems; it should be omitted.

Standard 9

Safeguarding the Profession's reputation in the public interest

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

The inclusion of "personal finances" is irrelevant to the statutory purposes of the Code. This draft standard is in any case ambiguous. It is adequately covered by the provisions of draft code standard 1. This draft standard should accordingly be omitted.

9.2 You are expected to conduct yourself in both your professional and personal life 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 personal conduct could reflect badly on the profession, you are expected to report the matter to the Board. For example (without limit), you should notify the Registrar within 28 days if 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;**
- **are a director of a company which is wound up (other than for amalgamation or reconstruction purposes);**
- **make an accommodation with creditors (including a voluntary arrangement);**
- **fail to pay a judgment debt.**

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.

Under the 1997 Act, the only conduct which may lawfully be made the subject of a disciplinary order is "professional conduct". This draft standard, referring as it does to personal conduct, is therefore more widely cast than the proper scope of the code. Secondly, the requirement on a registered person to report such instances of behaviour to the Board is a rule for which the Act makes no provision. The draft standard should accordingly be omitted

9.3 In appropriate circumstances, you should to report to the Board and/or other public authority another architect whose professional or personal conduct falls short

of the expected standards. If you are in doubt as to whether such a report is required, you should consult the Board for guidance.

This draft standard is, like the similar extant provisions of the code, bizarre and incapable of justification under the provisions of the Act. It is clearly ultra vires and should be omitted.

9.4 Where you are appointed as an arbitrator, adjudicator, mediator, conciliator or expert witness and are in receipt of privileged information the Board accepts that your duty in that role may take precedence over any requirement to report breaches of the Code to the Registrar.

See 9.3. The draft standard should be omitted.

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.

This draft standard amounts to a rule for which there is no statutory provision. It is clearly ultra vires and should be omitted.

9.6 If you attempt to frustrate the investigation of a complaint, for example by making an unreasonable threat of defamation proceedings, this may be regarded as unacceptable professional conduct.

This draft standard is a rule for which there is no statutory provision and which appears in any event to have no bearing on professional conduct. It is clearly ultra vires and appears to be an attempt to stifle opposition to the Board's activities which, I understand, are currently the subject of a legal challenge. This draft standard should be omitted.

Standard 10

Professional management of your business

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

This draft standard is not universally applicable to all on the register but only to those who have control of the management of their businesses. That is inapposite to a code of universal application. This draft standard in any case relates to matters of competence that are adequately covered by draft Standard 2. This draft standard should, accordingly, be omitted.

10.2 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.

Data protection is the subject of the Data Protection Act and need not be restated inappropriately in a code. A breach of security would be the subject of draft Standard 2. This draft standard should, accordingly, be omitted.

10.3 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 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;**
- **a statement that you have at least the minimum insurance cover as specified by the Board;**
- **the provisions for terminating the agreement;**
- **your complaints-handling procedure (see Standard 11), including details of any special arrangements for resolving disputes (e.g. arbitration);**

A written basis for services can be a matter of competence bearing in mind the uncertainties likely to be prevalent in any oral agreement. However, there is no place for insurance in the list, as the Board has no power to require it.

10.4 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 potentially amounting to unacceptable professional conduct or serious professional incompetence.

This provision appears to impose a duty on the registered person to provide information that is not an essential part of a properly made professional appointment. This draft standard should therefore be omitted.

10.5 You should make clear to the client the basis upon which any architectural services required are being provided other than by yourself.

This provision is impractical. If it has to do with subcontracting it should say so. Clients hire firms, not individuals unless they are solo practitioners. Trying to personalise the service serves no useful purpose. I can see the advantage of there being a representative to act as a point of contact; but I do not see this as being relevant to the assessment of an individual's conduct or competence. If there was a serious breach in communications, then it would be a matter of conduct and competence described adequately by draft standards 1 and 2.

10.6 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.

This draft standard is superfluous, as evidenced by the words "legally entitled". If an architect were to withhold someone else's property unlawfully then the aggrieved party has that legal remedy. If a registered person purports to retain materials as part of their professional duty, then their conduct will be susceptible to examination under draft standard 1. This draft standard should, accordingly, be omitted.

Standard 11

Deal with disputes or complaints appropriately

11.1 You are expected to have a written procedure for prompt and courteous handling of complaints and provide this to clients.

A prompt and courteous handling of a complaint is to be expected of a professional person, but a written procedure may not be necessary, particularly in a small practice. This draft standard should be amended accordingly so as to omit the reference to written procedure. It should also be rephrased in the form of a code rather than a rule, which it cannot be.

11.2 Complaints should to be dealt with by the architect in control and management of the architectural work.

This provision is unnecessary. The skills of an architect are not always the best available; some practices may refer the matter to their insurers or to a solicitor. This draft standard should be omitted.

11.3 Complaints should be handled courteously and promptly at every stage; and where appropriate in accordance with the following time scale:

- 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.**

The guidance of this particular draft standard is not appropriate to the purposes of the code, irrespective of its value. A code should not be exact but should provide reasonable guidance. I believe this to be adequately provided by draft standard 11.1, amended as I have proposed. This draft standard should therefore be omitted.

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

Helpful guidance such as this is nevertheless inappropriate to a code for the purposes of the Act, s.13. It should be omitted.

**Standard 12
Respect for others**

12.1 You should treat all clients and others fairly and in line with the law. You should not discriminate because of disability, age, gender, religion or belief, sexual orientation, race, or any other inappropriate consideration.

Disability, sexual orientation, age, gender, religion or belief, and race are subject to the protection of statutory law and are therefore inappropriate for inclusion in the code. The draft standard should therefore be omitted.

I trust that these observations are useful in focussing the Code on what it needs to be concerned with and thereby gain it appropriate respect both within the profession and with the public. In that regard I would respectfully suggest the following as a suitable code for issue by the Board in substitution of the consultation draft.

Registered persons who intend to maintain their integrity so as to deserve the respect and confidence of all for whom or with whom they shall work in their capacity as architect

- Will assure themselves that information given in connection with their services is in substance and presentation factual and relevant to the occasion and neither misleading nor unfair to others***

- Will before making an engagement whether by agreement for professional services by a contract of employment or by a contract for the supply of services or goods have defined beyond reasonable doubt the terms of the engagement including

the scope of the service

the allocation of responsibilities and any limitation of liability

the method of calculation of remuneration

the provision for termination

- Will have declared to the other parties to the engagement any business interest which might be or appear to be prejudicial to the proper performance of the engagements which they will carry out faithfully and conscientiously

with proper regard for the interests of those who may be expected to use or enjoy the product of their work

with fairness in the administration of a building contract

with reasonable competency

and without inducements to show favour

- Will if at any time they find that their interests whether professional or personal conflict so as to put their integrity in question inform without delay those who may be concerned and if agreement is not reached to the continuance of any engagement will withdraw from it.

It will doubtless be recognised that in substance and with only very minor amendments, this is the same as the Standard of Conduct for Architects published by ARCUK under the Architects (Registration) Acts, 1931 to 1938. I believe that this Standard withstands the tests of comprehension and simplicity. It contains all of the professional conduct and practice that may reasonably be expected of registered persons in their capacity as architects, and I recommend it in place of this draft and the present erroneous code.