

Forgetting the Act : difficulties arising from the process of revising the Code of Conduct

3 August 2009

A casual observer on reading the text of the old Code¹ and a new revised version, for which wording was approved at the Board meeting on 22 July 2009, might be excused for concluding that there is not much to choose between them – but there are nevertheless changes in emphasis in the revised wording which, it may be expected, will be noted carefully by the Professional Conduct Committee as more nearly complying with the Act.

The old Code was in need of correction. It had been the subject of criticism by Leading Counsel (reproduced by AARUK with permission [elsewhere](#)) which may have led the Board's working group to recommend to the Board that "the Code cannot introduce Rules, only Guidance"².

The Board accepted this recommendation substituting for all the former imperative provisions³ the indicative language "You are expected..." Obligatory language has been removed, and although by its own admission⁴ the Board has accepted a revised Code that is not ideal⁵, it cannot be doubted that the move away from this language of obligation is correct, and thus to be welcomed.⁶

But optimism in the application of any properly issued code, properly administered and properly adjudicated ends there; for the Board's papers showed that a significant number of those consulted included members of the Professional Conduct Committee who may, it appears, have forgotten that their duty is not to enforce their understanding of the Board's wishes but to act in a judicial capacity as authorised by the Act.

Take for instance the comments of Mr Michael Williams who is one of the chairmen of the Committee, a solicitor nominated by the Law Society to that office. He gave the impression that the Board should relieve itself of any burden of justification:

"The inclusion of the wording 'which [the Board] needs to carry out its statutory duties' arguably gives the defendant a right to require the ARB to prove that every item of information it requests is necessary for a particular purpose. It would be better to remove that obligation from the Board".

And both he and another chairman, Ms Angela Deacon (another Law Society nominee), in misapprehension (we trust not neglect) of the Act, expressed their dissatisfaction with the removal of the language of obligation from the Code. Ms Deacon was remarkably insistent, repeating:

1 Introduced in November 2002.

2 Annex B, Agendum 11, Board meeting of 22 July 2009.

3 Such as: "Architects *must* maintain, in any event, minimum cover in accordance with the Board's guidelines on professional indemnity insurance..." (Emphasis added)

4 The general agreement of members at this Board meeting.

5 Observers at the meeting concluded that the draft wording was accepted only because the chairman of the working group that had prepared it threatened to resign. It emerged that the working group did not have as a member an architect in full-time practice and they may not, therefore, have been as well apprised of standards of an architect in practice as they might.

6 See also AARUK articles: [The purpose of a code under the Architects Act 1997, s. 13](#) (28 April 2009), [The Code and "best" practice](#) (15 July 2009), and [Architects Registration Board – meeting of 22 July 2009 : Vigilance](#) (22 July 2009).

“Replace ‘are expected to’ with ‘must’. It must be mandatory”.

More generally, two questions unavoidably arise: can such remarks by members of the Professional Conduct Committee be considered (by the Board and others) befitting when the law has been stated by a former Lord Chief Justice, a Master of the Rolls and a Vice-Chancellor as being thus:

In determination of their rights and liabilities, civil or criminal, everyone is entitled to a fair hearing by an impartial tribunal. That right, guaranteed by the European Convention on Human Rights, is properly described as fundamental. The reason is obvious. All legal arbiters are bound to apply the law as they understand it to the facts of individual cases as they find them.⁷

And now that the Board has understood and accepted that the Code cannot be mandatory, can it be supposed that its own Committee will not?

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