

Report on the Outcome of proceedings

SUMMARY

The ARB's case against I— S— has collapsed. The architect has shown it to be without foundation. His challenge had been to the validity of the revised Code Standard 8 (as introduced by the ARB in November 2001) and the attempt to use disciplinary proceedings to enforce it. As a result the effect on earlier PCC decisions and the current ARB activity must come under consideration.

1. **ARB in error**

Having regard to the documents and remarks previously reported in these pages (Case Study 2 Parts 1-8), it can now be seen that the Board (ARB), the Registrar, the Investigations Committee, and the members of the Professional Conduct Committee who made or concurred with the decisions permitting the continuance of the proceedings against this architect (I- S-), had been in error, ill-advised or misguided at all stages, from the inception of the proceedings on the part of the then Registrar (as “complainant” pursuant to the PII “tick-box” policy of the ARB) until the decision for a public retraction on the part of the Board to be made at the PCC hearing on **7 April 2010**. This followed the High Court ruling which had (1) quashed the wrongful decision which the PCC had made against the architect and which (2) upheld the architect’s right to challenge the validity of Code Standard 8 which the Board had introduced in **November 2001** (and which had been questioned by the RIBA, as mentioned in the Note issued by the RIBA in May 2003 quoted below). In the High Court proceedings, and at the hearings before the PCC whose decision was quashed (Mr Michael Williams presiding) and before the reconstituted PCC (Mr Peter Verdin presiding) the architect was represented by Tony Child, who practises as a solicitor advocate with right of audience in the higher courts in England and Wales, a member of the firm Beachcroft LLP.

2. **ARB retracts**

As a result of a formal decision of **22 March 2010** made by the Investigations Committee of the ARB (Mr A.K.Galloway in the chair), the Board’s solicitor, as instructed, applied to the PCC for the withdrawal [i.e. retraction or cancellation] of the solicitor’s report against the architect dated **7 December 2005**, to comply with the High Court ruling against the ARB (order dated **21 August 2009**). The architect’s solicitor (Mr Tony Child) has confirmed that the Board has given the architect certain assurances to the effect that the architect can be considered to have been wholly vindicated in his initial and subsequent challenges to the Board’s contentions and in his persistence in resisting the proceedings against him.

3. **ARB’s “extravagance” (RIBA Note)**

The architect’s challenge had been to the validity of revised Code Standard 8 which the ARB had introduced in **November 2001**. Before the ARB report against him of **7 December 2005**, which the ARB has now retracted, the RIBA had issued a Note (for the information of members) entitled “**The Status of the Architects Registration Board**” (May 2003) [<http://www.aaruk.info/ARB/SARB.pdf>]. This opened with Part 1 headed “Consultation: Standard 8 of the Board’s Code” which

stated that 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. It mentioned that the proposed guidelines stated "*The Board has decided that it must monitor PII compliance across the whole profession*" and that "*The Architects Act 1997 makes express provision for certain administrative acts but none for monitoring compliance with the code*". In Part 2 of the Note the final paragraph mentioned 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*".

The "ENDNOTE" (on page 9 after Part 2 of the Note) reproduced the then revised Standard 8 of the ARB Code (no longer operative) and continued: "*Members [of the Institute] 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"*

The "ENDNOTE" concluded: "*...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) [of the Architects Act 1997] 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.*"

4. *Architect's "complete defence" (QC's advice)*

As has been reported elsewhere in these pages
[\[http://www.aaruk.info/PCC/Hearing/CSPT3.htm\]](http://www.aaruk.info/PCC/Hearing/CSPT3.htm),

in early **September 2007**, after a lengthy and unproductive exchange of correspondence with the PCC Clerk, the architect decided to take formal legal advice. He was advised by David Blunt, QC, in a reasoned opinion directly related to the proceedings, as follows: "*I have come to the conclusion that Section 13(4) [of the Architects Act 1997] provides Mr S— with an obvious and complete defence to the charge against him*"..... "*Section 14 does not authorise the Registrar to initiate, or the Investigations Committee to report a case to answer in, proceedings against a registered person based only on the admitted fact that despite requests from the Board pursuant to Standard 8 of the Board's present Code the architect had failed (or had expressly refused) to provide the Board with evidence that he maintained an appropriate level of professional Indemnity Insurance.*"

5. *Architect's claim "plainly justified" (High Court ruling)*

The subsequent course of events was reported as Parts 6 to 8 of AARUK Case Study 2 as follows:

- **Case Study 2 (continued)**

(6) Judicial review "plainly justified" The Court has ruled that the application of the architect (I— S—) raises issues which "plainly justify" the grant of permission for judicial review. The submissions which had been made by the ARB to oppose the architect's application failed. When giving this ruling the judge (Mr Justice Munby) added that the case was not suitable for hearing by a Deputy High Court Judge. A date for a hearing is now fixed for 15 July 2009. Pending the outcome, the PCC proceedings will remain adjourned.

(7) Consent Order dated 21 August 2009 (once again in favour of the architect): **On 21 August 2009**, by consent, the High Court ordered that the PCC's decision of **9 June 2009** be quashed, also ordering that the case be remitted to a newly constituted committee, so as to consider the architect's legal submissions, those being: (1) breach of natural justice / fairness; (2) the vires of the requirement to hold PII; (3) what may constitute professional misconduct; and (4) whether the claimant was guilty of unacceptable professional conduct. It was further ordered that the Board pay the architect's costs of £13,000.

(8) The proceedings before the PCC are withdrawn: At a hearing of the PCC on **7 April 2010**, the ARB proceedings were (by consent of the architect) publicly withdrawn to comply with the High Court ruling against the Board in August 2009. On behalf of the Board it has been acknowledged, in effect, that the charge should not have been commenced or continued.

6. *Earlier decisions and current activity of the ARB*

The consequential effect upon current activity on the part of the ARB, and upon certain other decisions in respect of enforcement of the tick-box policy (including PCC decisions against J— L— and R— L— reported in Case Study 1), must now inevitably come under mature consideration.

LIST OF DOCUMENTS giving narrative and background detail:

Documents included or referred to in AARUK pages "Notes and Articles: ELSY (Long-Scrolling) version as at 1 June 2009"

http://www.aaruk.info/ELSY/1.6_ELSY_o1.mht

74 ma Pfscdp Case Study 1 (PCC) (January 2006)

74 ma Pfscdp 74s1 [4A1] Explanatory introduction: Disciplinary proceedings 10 Jan 2006

74 ma Pfscdp 74s1 [4A2] An architect's eloquence

and

75 ma Pfscdp Case Study 2 (PCC): 2007

76 ma Pfscdp Case Study 2 (PCC): 2008, 2009

For a more detailed narrative of events and reasoning included in certain of the applications presented by the accused architects in the course of the ARB proceedings against them see AARUK website for:

Case Study 1

Notice of Application to Quash, being an elision of a notice dated 28 November 2005 and its continuation on 19 December 2005:

<http://www.aaruk.info/PCC/Appln05-12.htm>

Decision of the Professional Conduct Committee, 11 January 2006. (With links to the appropriate parts of the application)

Case Study 2

Applications to the Professional Conduct Committee (continued), 27 March 2007:

http://www.aaruk.info/PCC/Appln07-03.htm#TOC1_1