

In an email to ARB on 20 May 2010, the architect I—S— asked for copies of all communicated information that contained his name for the period 14 April 2006 until 7 April 2010 (inclusive), between the Board and members of the Investigations Committee and between members of the Investigations Committee. The information was provided by letter on 17 June 2010.

Within that information was a memorandum provided to the Investigations Committee and dated 18 March 2010. It said:

This is a request for the Investigations Committee to reconsider the complaint¹ about I—S— under Investigations Rules 14 and 15.

By way of background, Mr S— was referred to the Professional Conduct Committee as a result of an Investigations Committee decision dated 23 May 2005.

A report was prepared by the Board's Solicitor alleging that the architect was guilty of unacceptable professional conduct in that:

- a) he did not maintain an appropriate level of professional indemnity insurance; alternatively*
- b) that despite requests from the ARB, he failed to produce evidence demonstrating that he maintains an appropriate level of professional indemnity insurance.*

Prior to the hearing of the case, Mr S— produced evidence of his insurance at that time, and the matter was referred back to the Investigations Committee for reconsideration under Investigations Rule 15. Further the Board's Solicitor notified Mr S— that allegation (a) would not be pursued in view of his evidence.

A revised decision was issued on 14 April 2006, asking for permission from the PCC to withdraw the case and allow further investigations to be undertaken as to whether the architect had been properly insured in subsequent years.

Mr S— objected to this request for the case to be withdrawn, and the PCC agreed, that on the basis of Mr S—'s objection, that it had no power to do so under the Architects Act 1997. The Board's Solicitor and the Clerk's view at that time was that the PCC could agree to a withdrawal.

After a number of days hearing spanning 2006-2009 the Professional Conduct Committee reached a finding of unacceptable professional conduct against the architect, a decision that has now been referred back to the PCC after an application for Judicial Review. Under the terms of the Consent Order in respect of the judicial review, the High Court instructed that a newly constituted PCC hear further argument on behalf of Mr S—, being

- 1) a breach of natural justice*

¹ It will be recalled that there was, in fact, never a complaint against this architect. The original investigation was instigated by the then Registrar, Robin Vaughan.

- 2) *the vires of the requirement to hold PII (and to provide evidence of PII cover to the Board)*
- 3) *what may constitute professional misconduct*
- 4) *whether the architect was guilty of unacceptable professional conduct*

The Board did not contest the judicial review as legal advice received indicated that the PCC would have been able to hear these submissions. The PCC had ruled that it could not hear further submissions as it believed it was functus officio (its duties had been completed). It was this decision that was contested.

It should be noted that the wording of the Architects Code of Conduct and Practice and the PII Statement of Compliance have changed significantly since the start of these proceedings. In addition, considerable time has elapsed since the original charge was brought. The Registrar has now received acceptable assurances that the architect has been appropriately insured in the intervening years since the case was brought and a copy of the solicitor's letter is attached². Therefore the Registrar requests that the Investigations Committee reconsiders this matter and instructs the Board's Solicitor to apply to the PCC to withdraw the Report without any additional caveats. The Registrar recommends that there are no further enquiries necessary of the architect at this time in view of the assurances received.

The IC are requested to reach a conclusion on this case as soon as possible in order for both the ARB and the architect to prepare for the hearing of the PCC, which will consider the current case before it, or any application made by the Board's solicitor on the instruction of the IC on 7 April 2010.

It may be concluded from this memorandum that the first disclosure, made in March 2006, was made to the Professional Conduct Committee well in advance of it reaching its annulled decision of unacceptable professional conduct; and that the second disclosure (which was in any event made in *without prejudice* correspondence) concerned matters that were wholly unrelated to the charge against the architect which was that he had refused to account for his professional indemnity insurance (that is, he had refused to "tick the box") in 2004. The ARB spokesperson was therefore in error, as stated in the headline observations: "ARB misclaims 'new evidence'".

2 This letter has not been disclosed. It was part of an exchange between the architect's and the Board's solicitors. The matter referred to was a disclosure, properly made under the Board's Investigations Rules, in relation to the architect's professional indemnity insurance held in subsequent years.