Has ARB's practice of discrimination against UK qualifications ever been fair or lawful or justifiable?

From an AARUK contributor, 23 November 2010

Earlier this year the ARB had to be reminded (at some cost to a registered person) that what had been ruled against it (in the Administrative Court of the High Court) was "not a question of reasonableness but of legality".

It has now been reported in the press that Paul McGrath has founded an Association of Part Two Architects, "TAPTA"[1]. Many may welcome this as a courageous attempt to resolve one of the long-standing grievances affecting the profession which have arisen while the administration of the statutory Register of Architects has been under the ARB regime.

Mr McGrath (it is reported) has not yet passed Part 3, but has already attained qualifications in this country equivalent to those which, if obtained elsewhere in the EU, the ARB accepts as sufficient to entitle an applicant for registration. This double standard, which discriminates severely (in point of career and livelihood) against persons qualifying here in favour of those qualifying elsewhere, has long been the decided policy of the ARB (on what advice has not been revealed); and it had long been known about within the RIBA. But it caused astonishment among the late Michael Highton and his colleagues at the RIBA when it became known to them in 2004[2].

The effect of the ARB policy is manifestly unfair. On inquiry, it appears to be questionable in law for that reason alone, but also because it appears to be in all probability another, if not direct and flagrant, then indirect and covert, violation of the relevant EU directives which the government is obliged (by EU treaty law) to transpose into Westminster legislation operative in this country. When challenged, the ARB has never (so far as is known) published anything to justify this probable abuse; and may, like other public bodies posing as champions of the "consumer", or of the popular or public interest, have done whatever lies within its power (including making claim to "legal professional privilege" as with the Dutton Opinion[3]) to suppress truthful information about it.

As Case Study 3 has reported, the present coalition government is currently working out how to rectify a violation in the 2008 transposing legislation, for which the Labour government was responsible (following a letter with a proposal to that effect at the consultation stage from a former chairman of the ARB). It would certainly be in the public interest if at the same time the anomaly which Mr McGrath is seeking to redress were removed. But given the muddle that government left behind, it may not be as easy a job for the coalition to tackle as it seems.

All the same, it must be out of keeping with these straitened times and the overall policy professed by the present government to allow the funds at the disposal of the ARB (which is being treated as a Whitehall outstation, as reported elsewhere in these pages) to be used for resisting a private citizen's valid and representative claim, and forcing a costly legal battle in the manner of the old-style "inequality of arms" where virtually inexhaustible bureaucratic resources oppose and withhold the ordinary person's rights, whether "rights" is denominated

1 http://www.tapta.org/

2 See the Highton Report, the AARUK Article "An Unequal Standard across Europe" and AARUK Case Study 3, which describes the events leading to a necessary and relevant revision of the Architects Act.

3 See extracts here.

by all or any of the adjectives: *human, natural, lawful, proprietary, commercial* or of some other category known to enforceable jurisprudence (normally a better guide for lawmakers and public bodies charged with executing the law, than for the acquisition of skills in artful devices for "getting away with it"). In any event some plain common sense would not come amiss.

The immediate source of this mischief is in Part II of the Act[4] (not Part 2 of the three RIBA qualifying stages), and the taproot is in Part IV of the Act[5], which inevitably magnifies any such mischief out of all proportion to whatever merits the Register could be supposed to have for practitioners, schools, students or the general public. To anyone who pauses long enough to give the matter dispassionate attention, this is likely to become evident, as a matter of simple fact, not of opinion or sectional or party interest.

Note: For accurate and detailed information about the relevant legislation, see the booklet *ARCUK and ARB : 1930s to 2010*, also shown on the front page.

4 Part II, Registration etc.

5 Part IV, Use of Title "Architect".