

## Annexe B

### Draft Professional Conduct Committee Rules

#### Professional Conduct Committee Rules

1. These Rules shall be known as the 'Architects Registration Board Professional Conduct Committee Rules' and are made under section 14(6), section 23 and Part II of Schedule 1 to the Architects Act 1997.
2. They came into force on [DATE] and replace the Rules made by the Board on 9 February 2022.

#### Interpretation

3. In these Rules the words and phrases below shall, except where the contrary intention appears, have the following meanings:

“the Act” means the Architects Act 1997;

“ARB” means the Architects Registration Board;

“the Board” means persons designated under Part I of the First Schedule of the Act;

"Case Examiners" means a Lay or Registrant Case Examiner appointed by the Registrar for the purpose of exercising functions under section 14(1) and (2) of the Act and "Case Examiners" means the Lay and Registrant Case Examiners to whom a matter is referred under rule 3.3(b) of the Investigation Rules and includes any replacement or additional Case Examiner appointed by the Registrar;

“Case Presenter” is a person appointed by the Registrar to present a Charge to the Professional Conduct Committee on behalf of ARB;

“Charge” is a charge to be heard before the Professional Conduct Committee of unacceptable professional conduct or serious unprofessional incompetence or that the Registered Person has been convicted of a relevant criminal offence;

“Consent Order” means a document which sets out terms upon which the Case Presenter proposes that a Charge which is the subject of a report to the Professional Conduct Committee may be settled with the consent of the Registered Person;

"Consent Order Panel" means the three members of the Professional Conduct Committee designated by the Chair under Rule 4(c) to consider the settlement of a Charge with the consent of a Registered Person;

“Disciplinary Order” means a disciplinary order made by the Professional Conduct Committee under section 15(1) of the Act;

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"Hearing Panel" means the members of the Professional Conduct Committee designated by the Chair under Rule 4(a) to consider a Charge against a Registered Person at a hearing;

"Investigations Panel" means the panel of Investigations Pool Members designated under Rule 7 of the former Investigations Rules;

"the Investigation Rules" means the Architects Registration Board Investigation Rules made by the Board on [DATE];

"the former Investigations Rules" means the rules made by the Board on 9 February 2022 and in force on 1 April 2022;

"the former Professional Conduct Committee Rules" means the rules made by the Board on 9 February 2022 and in force on 1 April 2022;

"Professional Conduct Committee" means the Committee of that name appointed under Part II of the First Schedule to the Act or, where a Hearing Panel has been designated under Rule 4(a) or 4(c), that Panel;

"referrer" is a person who refers a matter to the Registrar for the purposes of section 14(1) of the Act;

"Register" means the Register of Architects established under the Act;

"Registered Person" is a person whose name is on the Register;

"Registrar" is the person appointed by the Board as the Registrar of Architects;

"relevant criminal offence" means a criminal offence which has a material relevance to the fitness of a Registered Person to practise as an architect.

4. The Interpretation Act 1978 shall apply to these Rules as if they were an Act of Parliament.

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#### Action upon receiving a report

5. Upon receiving a report from the **Case Examiners** under Rule 4.5(b) or the Registrar under Rule 8.1(b) of the Investigation Rules, the Chair of the Professional Conduct Committee shall subject to Rule 6, designate:

- a) three members of the Professional Conduct Committee as a Hearing Panel to consider the Charge;
- b) a Chair for the purposes of the proceedings before the Hearing Panel (which may be themselves unless unavailable or it is otherwise appropriate for another member of the Committee to act as Chair for these purposes);
- c) if needed, three further but different members of the Professional Conduct Committee as a Consent Order Panel to consider any proposed Consent Order in relation to that Charge.

6. No member of the Professional Conduct Committee appointed to a Consent Order Panel to consider a proposed Consent Order shall be designated to a Hearing Panel to consider the same matter at a hearing.

#### Notice of the hearing

7. Not less than 49 days before the date set for the hearing of a Charge by the Hearing Panel, a written notice of the date, time and venue of the hearing shall be served upon the Registered Person or their legal representative (and for these purposes "venue" may include audio or video conferencing facilities).

8. A shorter period of notice than that specified in Rule 7 may be given where the Registered Person consents or the Chair of the Hearing Panel or Chair of the Professional Conduct Committee (if different) considers it reasonable in the public interest.

9. Such notice shall be accompanied by:

- a) the Charge;
- b) a copy of the **Case Examiners'** report as drafted by the Case Presenter to the Professional Conduct Committee;
- c) a copy of any written statement or other document or plan that the Case Presenter intends to adduce in evidence at the hearing; and

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- d) the name of any witness whom the Case Presenter intends to call in person at the hearing, including any expert witness, and a summary of what that witness is expected to say.

#### **Registered Person's response**

10. Within 21 days of receipt of the notice referred to in Rule 7 the Registered Person shall give to the Case Presenter written notice:

- a) of whether they intend to appear at the hearing;
- b) if they are to be legally represented, the name and address of their legal representative; and
- c) brief particulars of any defence.

11. If the Registered Person intends to deny the Charge then not less than 21 days before the date set for the hearing they shall serve upon the Case Presenter a notice which contains:

- a) particulars of the defence;
- b) a copy of any written statement or other document or plan that they intend to adduce in evidence at the hearing; and
- c) the name of any witness whom they intend to call in person at the hearing, including any expert witness, and a summary of what that witness is expected to say.

12. Such notice may be given by being sent either by post or electronically, addressed to the Case Presenter at the registered offices of ARB or at any other address given for this purpose in the notice served under Rule 7 of these Rules.

#### **Adjournment**

13. The Hearing Panel, the Chair of the Hearing Panel, or Chair of the Professional Conduct Committee (if different) on any day prior to the relevant hearing may adjourn any hearing at any time if they consider that it is appropriate to do so.

14. Written notice of the date, time and venue of the adjourned hearing shall be served upon the Registered Person and if a copy of the notice of the original hearing was sent to a referrer, a copy of the notice of the adjourned hearing shall be sent to that person also.

#### **Case management directions**

15. At the request of the Case Presenter or a Registered Person or of their own volition, the Chair of the Hearing Panel or of the Professional Conduct Committee (if different) may

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give such directions as are in the interests of justice and as they see fit. These may include directions as to:

- a) participation in a case management meeting;
- b) any other directions for the conduct of the hearing.

#### **Expert Evidence**

16. The Registered Person or the Case Presenter may apply to the Chair of the Hearing Panel for permission to adduce expert evidence, which shall be restricted to that which is reasonably required to resolve the proceedings.

17. The Chair may give directions with regard to the provision of a written report by any expert witness, any evidence in reply and the giving of oral evidence.

#### **Proceeding in the absence of the Registered Person**

18. If the Registered Person fails to appear in person at a hearing of a Charge, and a legal representative does not appear on their behalf, the Hearing Panel may, if satisfied that the Registered Person has been served with notice of the hearing or all reasonable efforts have been made to serve the notice of the hearing, hear the case in the Registered Person's absence.

#### **Evidence and proof**

19. The Hearing Panel may admit any evidence it considers fair and relevant to the case before it, whether or not such evidence would be admissible in a court of law.

20. Neither the Registered Person or the Case Presenter shall, without the permission of the Hearing Panel, call a witness or adduce evidence that was not referred to in a notice served on the other before the hearing in accordance with these Rules.

21. In determining whether a charge of unacceptable professional conduct or serious professional incompetence has been proved, the Hearing Panel shall take into account any failure by the Registered Person to comply with any provision of the Code of Professional Conduct and Practice issued by the Board under Section 13 of the Act.

22. The burden of proving a relevant fact shall lie upon the Case Presenter.

23. The Hearing Panel shall apply the civil standard of proof to any findings of fact.

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24. Except where it appears to it that it would not be in the interests of justice to do so, the Hearing Panel may hear Charges against two or more Registered Persons at the same time and two or more Charges against a Registered Person at the same time.

#### Order of proceedings at hearings of the Professional Conduct Committee

25. Subject to Rule 28 the procedure at a substantive hearing is to be as provided for in this rule.

a) The Chair of the Hearing Panel shall:

(i) require the Registered Person's name and registration number to be confirmed by the Registered Person, where the Registered Person is present; or

(ii) require the Case Presenter to confirm the Registered Person's name and registration number, where paragraph (i) does not apply.

b) The Hearing Panel shall hear and consider any preliminary legal arguments.

c) The Chair shall ask for the Charge to be read out and inquire whether the Registered Person wishes to make any admissions.

d) Where facts have been admitted, the Chair of the Hearing Panel shall announce that such facts have been found proved.

e) Where facts remain in dispute, the Case Presenter is to open the case and may adduce evidence and call witnesses in support of it.

f) The Registered Person's case is then to be opened, and the Registered Person may adduce evidence and call witnesses in support of it.

g) Following the conclusion of the evidence, the Case Presenter followed by the Registered Person shall be invited to make closing submissions.

h) The Hearing Panel shall, after consideration of all the evidence and submissions made:

(i) consider and announce its findings of fact and give reasons for that decision;

(ii) after hearing further submissions and evidence if appropriate, the Hearing Panel shall then decide and announce whether it finds the Registered Person guilty of unacceptable professional conduct and/or serious professional incompetence and/or a conviction of a relevant criminal offence.

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- i) Following the announcement of that decision the Hearing Panel may receive further evidence and hear any further submissions from the Case Presenter and the Registered Person as to the appropriate disciplinary order, if any, to be imposed.
- j) The Hearing Panel shall, having considered any further evidence and any further submissions made under Rule 25(i), announce its decision as to the disciplinary order (if any) to be imposed, giving reasons for its decision.

26. Where it appears to the Hearing Panel at any time during the hearing, either upon the application of the Case Presenter or the Registered Person, or of its own volition, that

- a) the particulars of the Charge or the grounds upon which it is based and which have been notified under Rule 9, should be amended; and
- b) the amendment can be made without injustice,

it may, after hearing from the Case Presenter and Registered Person, and taking legal advice, amend those particulars or those grounds in appropriate terms.

27. At any stage before making its decision as to the imposition of a disciplinary order, the Hearing Panel may adjourn for further information or evidence to assist it in exercising its functions.

#### **Departure from these Rules**

28. Provided that the proceedings are fair to the Registered Person and it is in the interests of justice to do so:

- a) no objection shall be upheld to any technical fault in the proceedings;
- b) the Hearing Panel may depart from any provision of Rule 25 of these Rules.

#### **Witnesses**

29. Witnesses shall be required to take an oath, or to affirm, before giving oral evidence at a hearing.

30. Subject to Rule 32, witnesses:

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- a) shall first be examined by the party calling them;
  - b) may then be cross-examined by the opposing party;
  - c) may then be re-examined by the party calling them; and
  - d) may at any time be questioned by the Hearing Panel.
31. Any further questioning of the witnesses by the parties shall be at the discretion of the Chair of the Hearing Panel.
32. Subject to legal advice, and upon hearing representations from the Case Presenter and the Registered Person, the Hearing Panel may adopt such measures as it considers appropriate to enable it to receive evidence from a witness.

#### **Public hearing**

33. Subject to Rules 34 and 35, hearings of the Professional Conduct Committee shall be held in public.
34. The Hearing Panel may determine that the public shall be excluded from the proceedings or any part of the proceedings, where they consider that the circumstances of the case outweigh the public interest in holding the hearing in public.
35. An application that all or part of a hearing should be conducted in private shall be heard in private.

#### **Recording**

36. An audio recording shall be made of the proceedings of a Hearing Panel and a copy or transcript of such recording shall be provided to the Registered Person as soon as reasonably practicable, upon his or her written request and on receipt of the costs thereof.

#### **Reasons**

37. The Hearing Panel shall provide the Registered Person with written reasons for its decisions as soon as practicable after the hearing.

#### **Consent Orders**

38. At any time after a report has been served upon the Registered Person but not less than 42 days before the date fixed for a hearing of the Charge, unless otherwise agreed between the Registered Person and ARB, the Case Presenter may serve on the Registered Person a proposed Consent Order setting out terms upon which it is proposed that the case may be concluded with the consent of the Registered Person.

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39. The Registered Person may within 14 days of the date when the proposed Consent Order was sent to them (subject to any extension of time agreed between the Registered Person and ARB), confirm in writing to the Case Presenter that the Registered Person accepts the matters set out in the proposed Consent Order and agrees to the terms of the disciplinary order, if any, therein.
40. Where the Registered Person does not confirm within 14 days their consent to the proposed Consent Order in accordance with Rule 39, the proposed Consent Order will be regarded as withdrawn and the case must proceed to be considered at a hearing.
41. Where the Registered Person has given the consent referred to in Rule 39, the Case Presenter must refer the proposed Consent Order to the Consent Order Panel.
42. The Consent Order Panel must make such arrangements as it considers appropriate to decide whether to approve or reject the proposed Consent Order, provided that:
  - a) such arrangements must not involve a hearing in the presence of the parties;
  - b) such arrangements need not require the members of the Consent Order Panel to deliberate in each other's presence, unless they consider it necessary to do so;
  - c) the Consent Order Panel must consider and reach its decision in relation to the proposed Consent Order within 21 days of receipt.

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43. As soon as reasonably practicable after reaching its decision the Consent Order Panel must inform ARB and the Registered Person of its decision in writing.
44. Where a proposed Consent Order is not consented to by the Registered Person or not approved by the Consent Order Panel, the Charge must proceed to be considered by a Hearing Panel at a hearing.
45. Where a proposed Consent Order has not been agreed or approved, the proposed Consent Order, any reasons given by the Consent Order Panel, and any discussions relating to it between the Case Presenter and the Registered Person shall remain confidential and shall not be made known to any Hearing Panel designated to hear the Charge, unless the Registered Person chooses to bring this information to its attention.

### Publicity

46. The Professional Conduct Committee shall, in such manner as it considers appropriate:
  - a) where there has been an adverse finding, instruct that the name of the Registered Person be published with a description of the conduct, incompetence or relevant criminal offence and nature of any disciplinary order or Consent Order;
  - b) where it does not uphold a Charge of unacceptable professional conduct or serious professional incompetence, and if so asked by the Registered Person, it shall instruct that a statement of fact to this effect, be published.

### Transitional provision

47. These Rules shall apply to proceedings after the date on which they come into force, save in respect of which:

(a) a report has been made to the Professional Conduct Committee by the Investigations Panel or Registrar under the former Investigations Rules; or

(b) where the Investigations Panel is already seized of the matter under the former Investigations Rules.

48. Proceedings falling within rule 47 shall be subject to the former Professional Conduct Committee Rules as if they had not been revoked.