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Instructions to Leading Counsel

Leading Counsel is requested to give his written opinion on the following matter that comes before the Professional Conduct Committee of the Architects Registration Board on 17 and 18 September 2007. The matter is a charge of unacceptable professional conduct brought as an allegation under section 14 of the Architects Act 1997 against a person whose name has appeared in the Register of Architects since 1997 and who is the originator of these instructions.

Leading Counsel is advised that it is intended to refer to, and publish his opinion in due course, and his permission is sought for this.

FACTS

The present ARB Code Standard 8 was introduced on 29 November 2001 by the addition of paragraph 8.3. Comparison with the previous Code (ie. without paragraph 8.3) shows the conversion of guidance into a purported requirement. This was reflected in the demand notices and follow-up letters to registrants, asking for Professional Indemnity Insurance ("PII") compliance information.

It is known that the great majority of registered persons have complied with the demand for PII information, either by ticking the box and returning the form or after being sent a follow up letter threatening proceedings under Part III of the Act; but that others, while actually having the level of insurance cover described, have decided on principle not to give the information, maintaining that the Board is not authorised to make the demand nor the PCC to entertain an allegation of unacceptable professional conduct based only on such a refusal. It is also known, and for the present purpose can be assumed, that their reasons are in no way connected with anything which could otherwise be treated as

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"unacceptable professional conduct" within the meaning of Part III of the Act, nor with any complaint received by the Board or Registrar from a third party.

It should be mentioned that

(a) the ARB is not a professional body, but the keeper of the statutory Register of Architects, and the executant of the legislation enacted for that purpose, while the leading professional body for architects in the UK is the Royal Institute of British Architects ("RIBA"), a voluntary society of members incorporated by charter in the 1830s, under the supervision of the Privy Council; and that

(b) the registration body was created in 1931 (by the name of the Architects Registration Council of the United Kingdom ("ARCUK")) and was then and continues to be somewhat different from what have come to be known as "regulatory" bodies for certain other activities or professions: the Architects Act 1997 ("the Act") restricts *use* of the word "architect" but not the *practice* of architecture, while everyone is bound by Building Regulations etc.

QUESTIONS

Two questions have arisen, which react upon each other:

ONE, whether the present Code Standard 8 is expressed in terms which are consistent with the Act, having regard to s.13 and anything in the following sections which could be relevant for the purposes of applying and executing the legislation according to its true interpretation (as distinct from according to enforcement of a policy which may be thought to be both reasonable and desirable if it were actually authorised by the legislation)?

TWO, whether s.14 authorises 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 PII?

REMARKS

In considering these questions, attention is called:

1. In particular to s.13(4)(a) and, more generally, to the absence of anything else in the Act authorizing the Board to prescribe such a request or demand for information, or to act as if such a request or demand were enforceable against a recalcitrant but otherwise blameless person by way of an allegation of "unacceptable professional conduct", and making that person liable to disciplinary proceedings under Part III.

2. To a recent article headed "Note on Part III of the Architects Act 1997" from an AARUK contributor who is not an architect but is well versed in this topic. The article mentions the question of jactitation of power and brings the issue into sharper focus, and into the perspective of the legislative history from the originating Act of 1931 to the last amending Act of 1996 (now consolidated in the 1997 Act).

DOCUMENTS

A list of documents follows.

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23 August 2007

Documents

1. Architects Act 1997

2. The Architects' Qualifications (EC Recognition) Order 2002

3. The Architects (Professional Conduct Committee) Amendment Order 2004

4. ARB – General Rules (current version)

5. ARB – Investigations Rules and Professional Conduct Committee Rules, February 2004 (current version)

6. ARB – published note on *Registering as a Company*, with Rule 25 Declaration (current versions)

7. ARB – Architects Code : Standards of Conduct and Practice, 29 November 2001 (showing the amendment that first introduced paragraph 8.3)

8. ARB – extract from the Code showing Standard 8 (version of December 1999 that preceded the November 2001 revision) together with the amendment notice.

9. ARB – PII Guidelines, referred to in paragraph 8.3 of the Code (current version)

10. ARB – PII Guidelines (version current at June 2001)

11. ARB – Professional Indemnity Insurance : Certificate of Compliance (2002), together with the Demand dated 14 December 2001 and an extract from the ARB meeting minutes of 29 November 2001.

12. ARB – published note of *An architect's obligations.*

13. Charge of Unacceptable Professional Conduct, dated 7 December 2005 with its supporting documents

14. Letter from the Board's solicitor in respect of Allegation 1.1(a) dated 31 July 2007

15. AARUK – *Note on Part III of the Architects Act 1997* (The AARUK website is to be found at http://www.aaruk.info)

16. RIBA – Note on *The Status of the Architects Registration Board*, May 2003.

Amended 24 August 2007