

RIBA proposals to clarify the ARB/RIBA relationship

Update: October 2006

In June 2005 the RIBA Council unanimously approved a set of six proposals to clarify the relationship between the RIBA and the ARB, in the hope of establishing an agreed understanding of the respective roles of each body.

We have pursued a deliberate strategy of quiet discussion on these issues with the ARB and others. We felt that the relationship between the RIBA and the ARB had been damaged unnecessarily through mudslinging between the two bodies in the press. An ill-tempered “debate” taking place in such a way was clearly going nowhere and was rightly seen by many – including our own members and the Government – as counter-productive. So we decided to embark on a more responsible strategy of engagement with the ARB and other parties.

Since March a series of bilateral discussions between the RIBA and ARB, led by Jack Pringle and Humphrey Lloyd respectively, has taken place on a roughly bi-monthly basis. These are used to discuss the six issues presented by the RIBA and other current concerns. Although there has been some progress, it has been slow and we have not achieved as much as we reasonably expected.

The RIBA has also discussed its proposals with a number of other organisations. These include the Department for Communities and Local Government (previously the ODPM), the Cabinet Office Better Regulation Unit and the National Consumer Council. There have also been regular meetings of the RIBA’s ARB Liaison Group.

We remain committed to pursuing agreement where possible on our proposals through those discussions. We are conscious, however, that a long period of silence on our part has allowed a misconception to arise that the RIBA was doing nothing. This statement is intended to update our members and others on progress since our proposals were first published.

It should be noted that we no longer talk of a Regulatory Reform Order as the primary mechanism by which we seek to secure our objectives. The new Legislative and Regulatory Reform Bill, currently before Parliament, offers potentially more effective routes. Additionally, a number of our proposals could be delivered by bilateral agreement between our two bodies. However, if our bilateral discussions fail to identify suitable non-legislative means of creating a mutually acceptable understanding of our respective roles, then we could seek Government support for a Regulatory Reform Order (or Orders) to secure any necessary amendments to the Architects Act 1997.

Issue 1: Exercise of statutory functions

We had proposed that the ARB should be made subject to a statutory duty to be prudent and economical with its resources through an amendment to the Architects Act 1997. A number of regulatory bodies created since 1997 were created with such a duty in their founding statutes, such as the Financial Services Authority and OFCOM. We saw these as a useful precedent.

Securing amendments to primary legislation is, however, extremely difficult so we looked for other possible remedies.

Part 2 of the Legislative and Regulatory Reform Bill will introduce a set of regulatory principles and a statutory regulators' code. Ministers will have the power, by way of secondary legislation, to make any statutory body with regulatory functions subject to the principles and/or the code. The code, in particular, seeks to place regulators under a common set of behaviours governing risk assessment, inspection, data requirements, handling suspected breaches, advice, supporting economic progress and accountability.

It should be noted that we treat the ARB as a statutory body with regulatory functions here only for the purposes of the Legislative and Regulatory Reform Bill, whose interpretation of "regulatory functions" is extremely broad.

We recognise that the statutory regulators' code is broader than a duty only to be prudent and economical with resources. The code, however, represents a high set of standards under which statutory bodies with regulatory functions must exercise their functions beyond the mere budgetary. We believe that if the ARB were subject to the code it would give significant comfort to consumers as well as architects. It would also enable the ARB, in exercising its statutory functions within the code, to seek to justify its actions as within a set of statutory standards which it shares in common with other statutory body with regulatory functions.

We have discussed this proposal with the ARB, officials from the Cabinet Office and Department for Communities and Local Government, and with Angela Smith MP (Parliamentary Under Secretary at the DCLG with responsibility for the ARB). The Minister remains to be persuaded of the merits of making the ARB subject to Part 2 of the anticipated Legislative and Regulatory Reform Act. We do not expect immediate agreement on this proposal between ourselves, the ARB and Ministers, but we will continue to make our case.

Issue 2: Affordable Appeals Mechanism

We maintain that the lack of an affordable external appeals mechanism from the ARB is contrary to natural justice and must be remedied. It also conditions the way the ARB behaves as they are effectively beyond appeal.

We had proposed that the ARB, like other statutory bodies, should be brought within the remit of the Parliamentary Commissioner for Administration (the Ombudsman). This is not possible without amendment to the Parliamentary Commissioner Act 1967 which precludes bodies whose activities include the control of entry into any profession or the regulation of professional conduct. This would clearly include the ARB. We have accepted that amendment of the 1967 Act is unrealistic and sought other possible remedies.

We have had discussions with the Chartered Institute of Arbitrators whose dispute resolution service allows adjudication or arbitration of decisions and/or processes of a number of statutory and non-statutory bodies. It is also, importantly, independent and affordable, and does not preclude appeal thereafter or instead to the High Court (or

Court of Session in Scotland). We have proposed to the ARB that they should discuss the creation of an external appeals route with the RIBA and the CI Arb.

It is worth noting that, were the ARB subject to the statutory regulators' code under the anticipated Legislative and Regulatory Reform Act, it would be obliged to introduce a complaints procedure with a final stage that allows referral to an external person.

At its last Board meeting, the ARB considered a paper that put forward a number of proposals for review of its decisions by an independent third party. The Board has agreed in principle to such an independent review being available. We see this as progress and would like the ARB to work with us as it develops its own proposals.

Issue 3: Education and professional standing

There is wasteful duplication of accreditation of architectural courses in that RIBA reviews and validates and ARB prescribes the same courses (within the UK). The way the Architects Act 1997 has been drafted makes this inevitable. We propose that validation of courses by the RIBA should be sufficient evidence for the ARB to be able to prescribe those courses.

We recognise that this proposal, of the six, is by far the most significant. We have yet to address it fully through bilateral discussions with the ARB. We are conscious that other relevant stakeholders such as SCHOSA and the DfES will need to be brought on board before any progress can be made. We have, however, raised the issue of current duplication with the Minister who has asked her officials to examine it further.

An additional issue is the status of RIBA recognised courses outside of the UK. We propose that persons with such qualifications at either part 1 or part 2 level should have those qualifications accepted by the ARB without the need for their costly Examinations procedure. A UK part 3 should still be necessary and this will ensure competence within the UK system and deliver consumer protection.

Issue 4: Temporary absences from the Register

We have proposed that the ARB should allow automatic re-registration for up to five years of absence from the Register of Architects, without requiring returnees to re-qualify for registration or take re-examinations. Such automatic re-registration would be subject to individuals' maintenance of competence through CPD during their absence or participation on an approved refreshers' course.

We were initially encouraged by an agreement in principle between the Board and the RIBA on this proposal. The situation has, however, been complicated by the recent adoption by the ARB of a new Rule 20 prescribing "practical experience". We have requested clarification from the ARB of the precise meaning of Rule 20 and the contents of the forthcoming guidelines which are expected to be published for consultation shortly. We believe their guidance should have been applied to "competence to practise" within the Act rather than "practical experience".

We hope to secure agreement soon on this issue, which will remove a significant burden on those who want to absent themselves from the Register without having to

subsequently re-qualify – such as those taking parental or other family leave, those on career breaks or those in an increasingly international profession who seek work overseas.

Issue 5: Honorary Architects and Student Architects

The ARB maintains that recipients of Honorary Fellowships of the RIBA may be subject to prosecution for abuse of title. We submit that this is nonsensical and have requested the ARB to give an assurance to current and prospective recipients of the title that they will not be prosecuted under the Architects Act.

The RIBA believes that this is a relatively minor issue which can be resolved easily without recourse to amending the 1997 Act. We would be content with a memorandum of understanding between the RIBA and ARB. During the course of bilateral discussions we suggested the following form of words:

“It is agreed that for the purposes of Section 21 of the Architects Act 1997 the Architects Registration Board (ARB) accepts that no offence is committed if a person uses the affix “Hon FRIBA” or describes himself or herself as a “student architect” provided they do not describe themselves as an architect.”

The ARB, in responding to that proposal, has suggested the following guidance:

- (1) If you are an architect on the register there would be no grounds for a prosecution for the use of the style “Honorary Fellow of the RIBA” or the suffix “Hon FRIBA” or the like.
- (2) If you are in practice or business relating to architecture or to the design and construction of buildings and you are not on the register but you are not in practice or business in the United Kingdom then you are not liable to prosecution simply for using such style of suffix.
- (3) If you do not practice or carry on business in the United Kingdom (because, for example, you are retired) you are not liable to prosecution simply for using such style or suffix.
- (4) If you are in practice or carry on business in the United Kingdom but your practice or business does not relate to architecture or to the design and construction of buildings then the use of such style or suffix may still contravene section 20 [of the Architects Act 1997]. However since any prosecution would have to be in the public interest there would have to be exceptional circumstances before a prosecution was brought.
- (5) If you are in practice or carry on business in the United Kingdom relating to architecture or to the design and construction of buildings and you are not on the register then you are liable to prosecution if you use such style or suffix.

We consider that section (5) of the guidance perpetuates a very narrow interpretation of the 1997 Act and gives no comfort to many RIBA Honorary Fellows who are involved in fields connected to architecture, building design or construction. They are all very senior and respected figures in their respective fields, and it is nonsensical to suggest that they could be confused for registered architects. For example, we find it hard to conceive that the ARB refuses to give an assurance to the Rt Hon Nick Raynsford MP that he will not be prosecuted under the Architects Act because he is the current Chairman of the Construction Industry Council.

On student architects, the ARB maintains that if and in so far as the words “student architect” are used by a person in connection with any practice or business, then there could be an offence under section 20 and such a person would be liable for prosecution. Many architectural students spend much of their time in practices – that is one of the most valuable elements of architectural education in the UK. We maintain that the use of the term “student architect” is, in reality, not confusing in any way to consumers. Jack Pringle has responded to the ARB, saying that the ARB ruling seems to deny a proper interpretation of English grammar as a student architect is clearly not an architect in the same way as a “non-architect” is clearly not an architect.

Issue 6: “Architectural consultants”

We proposed that the ARB ought to be empowered to prosecute "Architectural Consultants" in the same way that they can prosecute unqualified persons who call themselves architects.

The RIBA and ARB both recognise that such a measure would represent a significant extension of the ARB’s current responsibilities and would certainly require amendment to the Architects Act. No substantive discussions on this proposal have taken place.