

## **Guidance on the RIBA Code of Practice for Chartered Practices - complaint procedures.**

### **Foreword**

The RIBA is a chartered professional body formed to advance architecture by demonstrating benefit to society and promoting excellence in the profession. As part of this commitment the RIBA maintains a Code of Practice by which all Chartered Practices are required to abide.

However, the RIBA acknowledges that, on occasion, Chartered Practices may fall short of the exacting standards of the Code. In order to deal with any such possible breaches of the Code, and other concerns, the RIBA has established a clear and equitable process for dealing with complaints against Chartered Practices.

The Institute also accepts that misunderstandings and disputes can arise between Chartered Practices and their clients, co-professionals and others they encounter through their professional obligations, but that these often do not amount to a breach of the Code. The RIBA has therefore also implemented a series of processes to assist parties in resolving these matters.

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## **Introduction**

This document is designed to guide and support those involved in the RIBA Chartered Practice complaints process.

This guidance is intended for all parties to a complaint: complainants, witnesses, Chartered Practices and others involved in the operation of the procedures.

This guidance will be continually reviewed to ensure that it evolves in response to changes in the law, the Institute's byelaws, and RIBA Chartered Practice membership requirements, and conforms to best practice and continues to be effective in use. The expectation is that the guidance current at the time of the stage reached will be followed in any individual case, and users should ensure that they are referring to the appropriate edition. The Practice & Profession Committee will monitor the effectiveness of the guidance.

The RIBA would welcome suggestions and comments to enable the guidance to be improved.

## **Purpose of the guidance**

This document is designed to assist those involved in the Institute's Chartered Practice complaints procedures to achieve a consistently high quality of process leading to sound decision-making. It sets out the expectations of the process and outcomes of the RIBA procedures consistent with the basic aim of achieving clarity and transparency. It is intended that those involved should follow the guidance at each stage of the process, at all times keeping in mind the requirement for fairness, openness, clarity and transparency.

## **Basic guidance**

### **Management of process.**

Disputes and complaints involving RIBA Chartered Practices are dealt with at the Institute by the Head of Professional Standards.

#### **1. Initial process.**

##### **1.1 Stage 1**

When an enquirer first contacts the Institute about a problem involving a Chartered Practice or services provided by a Chartered Practice, he or she will be sent guidance which explains the possible options as well as information on how to make a formal complaint. These options are :

- Use of the Chartered Practice's internal complaints procedure
- Arbitration/adjudication/mediation
- Lodging a formal complaint with the RIBA
- Litigation

The enquirer is informed that the Institute's powers are limited and, in particular, that it cannot:

award compensation; or  
award damages against a Chartered Practice; or  
fine a Chartered Practice; or  
guarantee the quality of a Chartered Practice's work; or  
compel a Chartered Practice to undertake remedial works.

##### **1.2 Stage 2**

The RIBA will endeavour to resolve any matter on first contact. This may be by directly supplying information, by reference to RIBA guidance notes or by reference to external information sources. It is expected that, before the RIBA will accept a complaint, that the potential complainant has exhausted the Chartered Practice's own internal complaints procedures. Often, the RIBA will suggest that matters are dealt with through an alternative dispute resolution (ADR) process.

##### **1.3 Stage 3**

The RIBA accepts that not all enquiries, disputes or complaints will be resolved at Stage 2 and that a party may wish to continue to make a formal allegation that a Chartered Practice, or employee, has:

- in a professional capacity, behaved in a manner considered to be unacceptable for a Chartered Practice; or
- contravened the Institute's Code of Practice for Chartered Practices

Please note that such allegations will not normally be accepted by the RIBA unless the matter has already been addressed at stage 2 .

## **1.4 Formal complaint.**

Formal allegations of a breach of the Code of Practice must be made on a standard RIBA complaint form (available from the RIBA Professional Standards Department). Accompanying evidence and information may be provided but must be limited to 20 sides of A4. Any complaints received which exceed this limit will be returned to the complainant with a request for resubmission within the prescribed limit. Please note that no additional submissions are permitted unless specifically requested by the RIBA. An appendix listing further available documentation could therefore prove useful. If, later in the process, further information is required, it will be requested at that point.

## **1.5 Case registration**

Completed complaint forms are registered by giving them a reference number and creating a paper file and computer record. However, complaints will only be registered formally if they are acceptable in both presentation and relevance.

NB. All records (electronic and paper) are confidential and are not disclosed to anyone other than staff of the Professional Standards Department, unless necessary to the operation of the disciplinary process.

## **1.6 Prevention of resignation**

The Institute's Regulations (1.24) prevent a Chartered Practice whose conduct is under disciplinary investigation from resigning their Chartered Practice membership. Accordingly, when a complaint is registered the Chartered Practice's record is 'frozen'. Lapsing of Chartered Practice status for subscription default will not occur while a disciplinary investigation is in progress. However, Chartered Practices are not exempted from subscription payment during this period. Once a case is concluded, the Chartered Practice's record will be unfrozen and if Chartered Practice membership is to continue, outstanding subscriptions will have to be paid.

## **1.7 Suspension of complaint**

Any matters that are subject to litigation or to an alternative dispute resolution process will not be considered until these processes have run their course. The complainant is required to notify the RIBA of the outcome before any further action can be taken. The outcome will be taken into account in any further appraisal of the complaint.

## **2. Investigation procedure.**

### **2.1 Letter of enquiry**

Once the complaint is registered, and provided that there is no reason to suspend the investigation, the Head of Professional Standards will issue a formal letter of enquiry to the Chartered Practice concerned. The letter will be

accompanied by a package which will include a copy of the complaint form and its accompanying evidence, the Code of Practice, these Guidance Notes and a flowchart which explains the process diagrammatically.

## **2.2 Obligation to reply**

Where a Chartered Practice is the subject of a formal complaint and is sent a letter of enquiry they are allowed 28 days to respond. A response is obligatory. If the Chartered Practice fails to contact the Head of Professional Standards at all after receiving such a letter, the matter will be referred to an appraisal team and the Chartered Practice's failure to comply with their obligations may in itself give rise to disciplinary procedures.

## **2.3 Extension of time**

If it is impossible to respond within the period allowed, the Chartered Practice may request an extension, explaining the reasons. All reasonable requests (such as for illness or accident) will be allowed and the response period will usually be extended by one week (or more, in exceptional circumstances, such as serious illness). However, the Head of Professional Standards reserves the right to require independent verification when such requests are made.

## **2.4 What is expected in the response**

The response must address every issue raised by the complainant and must be considered in the context of the relevant Principles of the Code and other disciplinary matters. Wherever possible, supporting evidence should be included with the response. The relevance to the case of every item should be considered before it is included. A maximum of 20 A4 pages is sufficient to allow the appraisers to reach a decision as to whether there is justifiable cause to continue with the procedures. Large format documents (including drawings) should be reduced to A3 format, but standard A4 documents should not be reduced or copied back-to-back. Documents will be photocopied and/or scanned so pages should not be stapled together.

Submissions greater than 20 sides of A4 may be accepted at the discretion of the Head of Professional Standards.

## **3. Case assessment**

### **3.1 Initial case assessment**

A formal allegation of a breach the Code of Practice, and the Chartered Practice's response, will undergo an initial appraisal by an appraisal team made up of 2 RIBA Chartered members and 1 non-member. The appraisal team will be selected from a pool of persons recruited for this purpose, and approved by the Practice & Profession Committee.

The Head of Professional Standards will select the initial appraisal team, on the understanding that they have no conflicts of interest. Members of appraisal teams and hearing panels will be required to sign a statement that they will act impartially and respect confidentiality. An individual who fails to sign such a statement or who acts (or has acted) in breach of the principles of impartiality

or confidentiality will not be eligible for selection and, if already selected, will be removed.

Where a majority of the appraisal team decides that the complaint does not relate to the Code of Practice then the complaint will be dismissed but the panel may, where appropriate, provide recommendations for resolution of the dispute through other means.

Where a majority of the appraisal team decides that the matter does relate to the Code of Practice, but that the complaint is not justified, the appraisal team will dismiss the complaint. The panel will provide reasons for dismissing the complaint, and may make recommendations for resolving the matter, where appropriate.

Where a majority of the appraisal team decide that a hearing panel could make a finding of a breach of the Code of Practice but the matter is not of sufficient seriousness to warrant a hearing, they may issue the Chartered Practice with cautionary advice and may require remedial action as appropriate. This caution will remain on record for a period of two years and may be taken into account in any subsequent professional conduct matter referred to the RIBA during that period. The complainant will be informed of the outcome but not of the detail of the caution.

Where a majority of the appraisal team are of the opinion that, on the balance of probabilities, a breach of the Code of Practice is likely to have occurred, and the matter is of sufficient seriousness, then the complaint will be referred to an independent hearing panel.

Appraisal teams will normally conduct their appraisals individually or on the basis of correspondence only. However, they may request a meeting to discuss specific cases as appropriate.

Please note that while the appraisal team will take the complaint as the initial basis for their investigation, any further matters that come to light in undertaking the appraisal may form part of the basis of a caution or further investigation at a hearing.

### **3.2 Independent review**

Where the appraisal team has dismissed a complaint and the complainant believes that the RIBA process was not conducted correctly or fairly, he or she may refer the matter for independent review. Any such review will be carried out by the Centre for Effective Dispute Resolution (CEDR). CEDR will charge a fee for this review (contact the RIBA Professional Standards department for current fee). Where the review finds that RIBA procedures were conducted correctly and fairly the complainant will be liable for the fee. Should the review find that the RIBA procedures were not conducted correctly or fairly the RIBA will be liable for the fee. Alternatively, CEDR will apportion the fee as appropriate. Parties are responsible for their own costs.

It should be noted that any application for review must be based on evidence that the process was not conducted correctly or fairly. Appeals against the decision of the appraisal team will not be accepted. Requests for an independent review must be submitted to CEDR, and copied to the Head of

Professional Standards within 28 days of the date of delivery of the appraisal team's decision.

#### **4. Hearing procedure**

##### **4.1 Hearing panel**

If a case is referred to a hearing panel in accordance with section 3.1 above, the date and time of the hearing will be notified to the Chartered Practice and the complainant as soon as practicable after the appraisers have made their decision. The Chartered Practice will be expected to send representatives to attend the hearing. If the hearing panel decides a reason for non-attendance is unacceptable, the Chartered Practice could face removal from membership. Additional evidence may be presented at this stage, but the fact that it was not submitted earlier may be taken into account.

The hearing panel will be made up of 2 non-members and one RIBA Chartered member, and other expert advisors as required. This panel will be selected by the Head of Professional Standards, on the same basis as the appraisal team (see section 3.1). No-one may sit on the appraisal team and the hearing panel to consider the same matter. Members of the Professional Standards team may attend in a support / advisory capacity to the panel.

The hearing panel will invite representatives of the Chartered Practice and the complainant to attend and to respond to questions from the panel. Failure to attend by any invited party may be taken into consideration when assessing the complaint.

The complainant is invited in the role of witness only, in order to respond to questions from the panel. The complainant and the Chartered Practice representatives will not normally sit before the panel at the same time, nor will the complainant be allowed to question the representatives of the Chartered Practice.

The hearing panel may, at its discretion, invite other witnesses to attend the hearing to answer questions. The Chartered Practice representatives will be given a final opportunity to address the panel at the end of the hearing.

The hearing panel will consider whether, on the basis of all the evidence presented, including the Chartered Practice's verbal testimony, an allegation of a breach of the Code of Practice or other disciplinary matters is upheld. The Chartered Practice is advised to be well-prepared for the questioning. The Chartered Practice may bring a solicitor or other advocate or friend with them to the hearing. However, the panel will prefer to hear the representatives of the Chartered Practice, rather than their advocate.

##### **4.2 Standard of proof**

The hearing panel operates on the principle that the minimum standard of proof is 'beyond reasonable doubt' and will make its decisions accordingly. Proof to a lower standard would result in the charge being dismissed. The decisions of the panel will be made by majority decision.



### **4.3 Powers available to hearing panel**

At the conclusion of the hearing, the panel may decide either to take no further action, issue a caution, or impose one of the following sanctions;

- formal reprimand; or
- suspension from membership (for a period to be decided by the Panel); or
- permanent exclusion from membership.

### **4.4 Notice of outcomes**

The Chartered Practice and complainant will normally be informed of the decision of the hearing panel in writing within 7 days of the hearing. In the case of a caution, the complainant will be informed of the outcome but not of the detail of any cautionary advice given.

### **4.6 Reprimands**

In the case of a reprimand, the hearing panel may also attach certain requirements, such as additional training or remedial actions, and compliance may be monitored. Failure to comply may result in a further sanction being imposed on the Chartered Practice.

### **4.7 Suspensions and expulsions**

Suspensions and expulsions are effective immediately. A formal written notification will be sent to the Chartered Practice after the hearing.

### **4.8 Independent review**

Should either party, following the decision of the hearing panel, believe that that the process was not conducted correctly or fairly then they may refer the matter to independent review. Any such review will be carried out by the Centre for Effective Dispute Resolution (CEDR). CEDR will charge a fee for this review (contact the RIBA Professional Standards Department for current fee). Where the review finds that RIBA procedures were conducted correctly and fairly the complainant will be liable for the fee. Should the review find that the RIBA procedures were not conducted correctly or fairly the RIBA will be liable for the fee. Alternatively, CEDR will apportion the fee as appropriate. Parties are responsible for their own costs.

It should be noted that any application for review must be based on evidence that the process was not conducted correctly or fairly. Appeals against the decision of the hearing panel will not be accepted. Requests for independent review must be submitted to CEDR and copied to the Head of Professional Standards within 28 days of the date of delivery of the appraisal team's decision.

In the case of the review finding against the RIBA, the RIBA investigation procedure will recommence at the relevant stage.

#### **4.9 Resubmission of complaint.**

If at any stage of the process, the complaint is rejected, then that decision is final (subject to any independent review) and the complaint may not be resubmitted. A new complaint may be accepted where, in the opinion of the RIBA, significant new evidence exists.

Similarly, if any appeal to CEDR finds that a complaint was rejected by the RIBA where the procedures were followed correctly and fairly, then the complaint may not be resubmitted.

## **Supplementary guidance**

### **Evidence**

The complainant or Chartered Practice may submit whatever evidence they think is relevant and appropriate, within the specified limitations. Where possible all evidence should be in writing.

Anonymous evidence is inadmissible and will not put before a hearing panel.

All written evidence submitted prior to an appraisal or hearing will be circulated between the parties.

Hearsay evidence may be ruled inadmissible (although it may suggest a need for further information from a witness, complainant or Chartered Practice).

### **Appraisal of complaint**

#### **Structured approach**

The appraisal team will examine the complaint and the evidence to establish relevance to the Code of Practice. The appraisal team will clarify and determine what is being alleged and the admissible evidence will then be assessed against the allegation or allegations to see if there is sufficient evidence to warrant further action.

The test whether there is sufficient evidence for an allegation to proceed to a hearing panel is a majority decision of the appraisal team; that the evidence suggests, on the balance of probabilities, a breach of the Code of Practice of sufficient seriousness to warrant further investigation, and that a hearing panel could (not would, inevitably), find a Chartered Practice guilty of the allegations on the evidence to date.

The appraisal team will formulate the allegation or allegations stating which part of the Code of Practice applies.

The Chartered Practice and complainant will be informed of the appraisal team's findings. This will form the basis of the investigation by the hearing panel, but in addition the panel has the power to make a finding of other breaches of the Code of Practice not specified by the appraisal team, based on the evidence presented at the hearing.

### **Hearing**

The Chartered Practice will be informed of the date and time of the hearing, along with the allegations which gave the appraisal team cause for concern and on which the hearing panel will be questioning the representatives. A Chartered Practice is expected to send representatives and failure to do so may lead to exclusion from membership. A Chartered Practice may bring a solicitor or other advocate or friend to the hearing. The Chartered Practice may also call and question witnesses (see RIBA Byelaw 4.3(b)).

The hearing panel will also invite the complainant and may invite other witnesses to the hearing and may question them.

### **Hearing panel decision process on proof**

At a hearing panel the evidence will be dealt with by a structured process with decisions on evidence based on the majority verdict of panel members.

The panel will consider all evidence and collectively determine if it is:

- Admissible
- Relevant to the areas of concern
- Agreed by both parties
- In dispute

The Panel will consider the admissible, relevant, agreed and disputed evidence and collectively determine, on the basis of the standard of proof required (see section 4.2), what are the facts.

In determining facts the weight of evidence should be taken into account and also the quantity of evidence but only when it is for a number of incidents or from a number of witnesses. Multiple, corroborative evidence and multiple references to the same piece of evidence will not add additional weight.

The panel will consider all the admissible, relevant, agreed and collectively decided facts to help decide, on the basis of the standard of proof required, whether the Chartered Practice is guilty of the allegation. It may be necessary to decide that more than one element of the allegation is proved for the allegation to be proved.

### **Witnesses**

Witnesses may be called by the Chartered Practice or the complainant or the hearing panel. It is preferred that witnesses be kept to a minimum consistent with a fair hearing. Witnesses will not normally be expected to give evidence under oath or affirmation.