

**THE ARCHITECTS REGISTRATION BOARD**

**PROFESSIONAL CONDUCT COMMITTEE**

In the matter of

**Mr Adrian Russell (0509631)**

held on

24 October 2013

at

Chartered Institute of Arbitrators  
12 Bloomsbury Square  
London  
WC1A 2LP

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Present:

Mr Paul Housego (Chair)  
Ms Judy Carr (PCC Architect Member)  
Mrs Barbara Saunders (PCC Lay Member)

Mr Stephen Battersby (Clerk to the PCC)

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Mr Jonathan Goodwin of Jonathan Goodwin Solicitor Advocate appeared on behalf of the Board.

Mr Russell attended and was represented by Mr Robin Mason.

1. Adrian Russell appeared before the Professional Conduct Committee of the Architects Registration Board ("ARB") to deny the allegation made against him.
2. That allegation was that he is guilty of unacceptable professional conduct ("upc") in that:–
  - a. he made representations in correspondence which were inappropriate, offensive and/or discreditable to the profession;*
  - b. he copied communications to his client and/or third parties and in so doing propagated the inappropriate, and offensive comments;*
  - c. he circulated to other practitioners a list of his inappropriate and offensive comments and/or made unsupported allegations relating to named officers of the local authority;*
  - d. he repeated allegations made by his client, which had not been adjudicated upon and/or had been investigated by the local authority and found to be unsubstantiated;*
  - e. he made representations which were inaccurate and misleading in relation to decisions of the local authorities planning committee and/or the planning inspector.*
3. Mr Russell accepted that all the facts presented on behalf of the ARB were correct, but denied that any of them singly or collectively amounted to upc.
4. We first asked the Board's solicitor to specify precisely which representations were referred to in paragraph a, which communications were copied (paragraph b) to clarify exactly what it was alleged was circulated (paragraph c) and which allegations of which client were repeated, which had been investigated and found unsubstantiated, and which had been adjudicated upon, with details. We asked for details of exactly what representations were made, to whom, how they were inaccurate and misleading, and in relation to which decisions. While these seemed apparent from the pack of documents provided to us it was important to have the particulars set out for the benefit of the architect, and for ourselves.
5. This was done in the course of Mr Goodwin's explanation of the case for the ARB.
6. This case arises from Mr Russell's passion for the Peak District National Park in which he has practised as an architect for many years. National Park planning authorities are somewhat different to other planning authorities and have a great degree of autonomy. Mr Russell believes that the Peak District National Park planning authority is not well run. He believes that officers exercise an inappropriate level of power. They will, he believes, seek to make substantial alterations to plans that have

been passed rather than approve details and that this is an abuse of their authority. He thinks that the Park's policies are applied inconsistently. He thinks that when this is brought to the attention of the Chief Executive he will invariably support his planning officer, whether the decision is correct or not. He believes that some planning officers have not been truthful in their dealings with the planning committee, both in terms of the material they placed before it and in terms of what they have said. By way of example he points to a planning officer stating that he had no idea how large the interior of a property was when he says that officer had been around the inside of the property in a detailed inspection, and to the use of a photomontage which he says was inaccurate to the point of being completely misleading. Mr Russell's wife is the chair of an organisation called Peak Park Watch and he is very active in it.

7. Understandably, Mr Russell has tendered to this Committee a substantial amount of documentation illustrating his concerns at the way the Peak District planning authority functions, or malfunctions. This all goes to the sincerity of Mr Russell's beliefs, but it is not the function of this Committee to explore the adequacies or inadequacies of the Peak District National Park's planning department. What we are here to explore is the way Mr Russell went about voicing his concerns in exposing what he views as malfeasance in public office.
8. There was a difference of opinion between Mr Goodwin and Mr Mason as to the test of upc. Mr Goodwin asserted that it was the view of the profession that determines whether it is unacceptable or not. Mr Mason asserted that it was "the man on the Clapham omnibus" that was relevant, and he was not an architect. Our legal advice in the hearing was that Mr Goodwin was correct. We have reviewed this in our deliberations, as have the representatives and our clerk. One's reputation is what others think of one, and that must mean the public at large. More, the ARB has itself a lay component and so the profession's standards are in part set by members of the public. Accordingly we have taken the view that the judgment of whether there is upc is what members of the public would think of the professional standards set by the ARB, set against the backdrop of an aspiration of high professional standards. Ultimately it is for the members of this Panel to decide, and we comprise an architect, a lay member and a legally qualified Chair for precisely this reason. The Code states "The Code should be central to the professional life of an architect not only as a source of ethical guidance but also as a common sense indicator to the principles of good practice. It is only through the maintenance of high standards by individuals that architecture as a whole will be served, the public will be protected and the profession as a whole will thrive." We will apply common sense.
9. It was asserted that there was a breach of Standard 1.1, to the extent that the actions of Mr Russell were inconsistent with his professional obligations. It was asserted that there was a breach of Standard 1.2, to the extent that what Mr Russell wrote was unfair to others or discreditable to the profession. Mr Goodwin made it clear that the other parts of Standards 1.1 and 1.2 were not in issue in this case. We pointed out that the preamble to the Code is also important. Architects are expected to be guided in their professional conduct and professional work by the spirit of the

Code as well as by its express terms. Each case is judged on its facts, and there may be circumstances in which unacceptable professional conduct is found even where there has been no clear breach of the express terms of the Code. It is also the case that not every shortcoming, or failure to meet the standards expected by the Code, will necessarily give rise to disciplinary proceedings (and by necessary implication to a finding against an architect if proceedings are brought).

10. Arising from a difficulty for a client Mr Russell contacted Mr Dixon, head of the Peak District National Park. They had a meeting at which Mr Dixon invited feedback from Mr Russell. Mr Russell prepared a document dated 16th January 2012 running to some four pages with 9 separate sections. This commences with some general views where Mr Russell states that "your younger planners have seen their seniors getting away with lying and cheating, and now feel that they can do the same." He then turns to what he refers to "iffy" schemes. His first example states "demolition of a small bungalow and the erection of a massive ugly house in the open countryside. You have not protected countryside—why? (Stinks of corruption)!" At paragraph 5 of the document Mr Russell states "officers lied to planning committee members at site visits and committee meetings BT lied about the Bakewell show offices – it was not in a conservation area and outbuildings would be demolished. JK has lied about Warren ...."
11. In section 6 he refers to listed buildings and states that language can "deliberately?" confuse planning committee members. His conclusion paragraph 9 states "your planning department is out of control and from BB down have been found out in lying, cheating and probably illegal actions to disadvantage applicants."
12. Mr Russell sent this document not only to Mr Dixon but to members of the planning committee, to his client and to 23 "local design practitioners". Mr Russell had made a list of the people he knew submitted planning applications, and looked in the local newspapers to find advertisements of other applications and sent this document to those 23. He wrote to them on the same date to say that Mr Dixon had asked him for "useful feedback" on the planning service and invited them to give feedback to Mr Dixon as well. He enclosed the documents to which we have just referred. He refers to his wife being chairman of Peak Park Watch, an organisation only recently formed, and said that he wished to "add cases to our already bulging files of Peak Park misdeeds."
13. Mr Dixon responded by complaining to ARB filing his complaint online on 29th January 2012. This refers not only to that document but also to earlier matters. On 10th January 2012 Mr Russell had emailed Mr Dixon to say "yet again I can only conclude that the way (client) has been treated is both petty and vindictive and shows a complete lack of integrity and professionalism by officers in dealing with his application." Mr Dixon responded to that and Mr Russell then sent a further email which after an opening paragraph stated "Thank you instead for your evasive, insulting, ill considered and hasty response to my email of 10th January 2012. The root of this case is not a difference of opinion over the plot at (place)—it is about the lying, cheating, petty, vindictive and probably illegal actions of your officers to

obstruct (client) in his attempts to improve his site." It added "you as chief executive will be seen as morally bankrupt," (if Mr Dixon did not do as Mr Russell suggested).

14. The way the case is put to us is that Mr Russell has freedom of speech. He is entirely entitled to advance his client interests. However freedom of speech involves responsibilities as well as rights. Professional status is a privilege and that confers obligations as well. Advancing his client's interests has to be consistent with professional obligation. While it is entirely proper to raise matters of concern, Mr Goodwin, for the Board, puts it to us that the way this was done, and in particular the language used, and the dissemination of these comments to other practitioners was not consistent with those professional standards – it was unacceptable professional conduct.
15. We find there was upc. That is the allegation - the matters to support that allegation are various and we accept some but not all of them, as follows.

*a. making representations which were inappropriate offensive and/or discreditable.*

It is entirely proper to raise concerns about conduct of planning officers both in terms of the integrity and in terms of their competence. Both the profession and the public expect professionals to have a high standard. This is inherent in the simple English word "professional". The language used was intemperate. The whole phraseology is not what one would expect of a professional. Mr Russell in his evidence to us candidly admitted that he went "a bit far" but asserted that it did not trespass over the boundary of unacceptable professional conduct. We disagree. While one does not wish to see the robustness of a view totally sanitised by euphemism, there are, in short, ways of doing things. To use phrases such as "it is about the lying, cheating, petty, vindictive and probably illegal actions of your officers" is beyond that boundary. So was to assert that the Chief Executive would be "morally bankrupt" if he did not do as Mr Russell suggested. The email from Mr Russell to Mr Dixon saying "Thank you instead, for your evasive, insulting, ill considered, and hasty response to my email of 10th January.... It is disingenuous and possibly dishonest to claim they are unjustified and unfair, if you (and members) refuse to meet Mr H to listen to his case." We accept that Mr Russell did not use swear words or epithets, but this is not, in our judgment, consistent with professional conduct. It is unacceptable. It is not acceptable to say something "stinks of corruption" and then try to excuse that by saying that this is not an allegation of corruption but simply an invitation to investigate whether matters were entirely proper, as Mr Russell did before us.

*b. copy communications to his client and/or 3rd parties and in so doing propagated the inappropriate, and offensive comments.*

Mr Russell agrees that he circulated this to 23 individuals or firms active in planning work in the Peak Park district, unsolicited. We have found the comments inappropriate and offensive. Mr Russell agrees that he circulated the document unbidden and so this must be unacceptable professional conduct. The document and

other matters were sent to members of the board of Peak Park. Communications sent to members of the Authority are in essence internal and there is nothing unprofessional in sending communications to board members. We have already decided that what was sent was inappropriate; sending appropriate matters around the board would not be unacceptable professional conduct.

*c. he circulated to other practitioners a list of his inappropriate and offensive comments in regard to named officials*

It is accepted that this occurred and we find it to be upc. The allegation continues that Mr Russell made unsupported allegations related to named officers of the local authority. Mr Russell says that these allegations were supported. However he was stating as fact things he genuinely believed to be true without the evidence necessary to establish those things. That is rather different from stating that he had concerns that needed to be investigated.

*d. he repeated allegations made by his client which had not been adjudicated upon and/or had been investigated by the local authority and found to be unsubstantiated.*

Here Mr Mason's submissions for Mr Russell have great force. If repeating allegations was unacceptable professional conduct there would be no complaints to uphold. Insofar as matters had been investigated by the local authority and found to be unsubstantiated, that very point was the substance of his concern. Mr Russell was concerned about the way the local authority's complaints resolution process worked. He felt it was not impartial. It is entirely proper to raise such concerns. Accordingly we find allegation d not proved. In particular that a complaint to the Local Government Ombudsman about Mr Dixon should apparently end up being adjudicated by the York office - where Mrs Dixon worked - (which was not disputed) is perfect reason to feel that external complaint was difficult.

*e. Mr Russell made representations that were inaccurate and misleading in relation to decisions of the local authorities planning committee and/or the planning inspector.*

Mr Russell did not dispute the facts in the documentation; he denies the allegation of unacceptable professional conduct, in total. Mr Dixon made this allegation. Mr Russell commented on appeal decisions, but on the balance of probabilities we do not find that his representations were inaccurate or misleading.

16. Our conclusion is that Mr Russell is guilty of unacceptable professional conduct.
17. We then moved on to consider sanction. Mr Russell has now retired from practice after a blemish free career.
18. We considered the Indicative Sanctions Guidance. We have first to decide whether a sanction is necessary, and if one is necessary then we start at the bottom to consider

whether a reprimand is appropriate, followed by a penalty order, suspension and ultimately erasure if we have considered none of the lesser sanctions appropriate. When considering whether to impose a sanction before deciding upon one we examine whether the next sanction up would be appropriate or whether the sanction which were minded to impose is appropriate.

19. Mr Russell has supplied to us a series of references. These speak powerfully of his commitment to the Peak District, and his extensive work, often on a pro bono basis for local organisations in the Peak District. It is not disputed that Mr Russell feels passionately about the Peak District. His motivation in these matters was to strive for the best possible standards in the Peak District. There is no suggestion of any lack of integrity or honesty in these matters. Mr Russell genuinely believes in the things that he has said.
20. Given insight and some degree of contrition we would be considering whether a reprimand was the appropriate sanction. However in his evidence to us Mr Russell said that he did not regret anything that he had done, and that he would do it again if the clock were turned back. He will continue his efforts concerning the Peak District National Park Authority in the future. Only in re-examination did he somewhat grudgingly accept that perhaps in future he would moderate his behaviour. Plainly he has absolutely no insight into the lack of professionalism which such language displays. He seems not to understand that belief is not the same as proof. He shows no contrition. This causes us great concern, and we very much hope that Mr Russell will reflect upon this Panel's view of his actions. We are, as we have made clear, independent, and concerned with upholding professional standards.
21. Because of these aggravating factors we cannot consider a reprimand appropriate. We next considered a penalty order. After giving the matter considerable thought we decide that the penalty order is appropriate. Because of the risk that Mr Russell might continue with inappropriate behaviour we did consider whether a suspension might be required; however we conclude that a penalty order is appropriate. Should Mr Russell continue with similar behaviour he must be aware of the probability of a return to this Committee.
22. Mr Russell has not given us evidence as to his means, and so we do not consider them in imposing the amount of the penalty. We impose a penalty of £1000.

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