

**JUDGMENT : Mr Justice Collins** : Administrative Court. 16<sup>th</sup> March 2007

1. This is an appeal from a decision of the Professional Conduct Committee of the Architects' Registration Board which was given on 15 July 2005. It followed hearings which took place over five days on 17 and 18 February, and 10 and 11 May and 28 June 2005. The charges against the appellant related to her professional work in connection with a relatively minor, in terms of cost, extension to a house in the autumn and winter of 2000. It is to say the least unfortunate that there have been substantial delays both in the matter being dealt with by the Respondents and this appeal being heard. One of the grounds of appeal is based on the delay.
2. The Architects Act 1997 prohibits anyone from practising as an architect unless he is registered under the Act (s.20). Anyone registered is subject to the disciplinary provisions set out in the Act which means that any alleged misconduct or relevant incompetence is dealt with by the Professional Conduct Committee (PCC) of the Respondent. Section 14 of the Act provides:-

*"(1) Where an allegation is made that a registered person is guilty of –*

*(a) unacceptable professional conduct (that is, conduct which falls short of the standard required of a registered person); or*

*(b) serious professional incompetence,*

*or it appears to the Registrar that a person may be so guilty, the case shall be investigated in accordance with rules made by the Board."*

There then follow provisions dealing with the steps that have to be taken if a case to answer is found to exist. These require that the PCC serve on the person charged "written notice ... outlining the case against him". (s.14(4)(a)). There is also power to make rules of procedure. If any charges are found proved, the PCC may make one of a number of disciplinary orders. These, in order of seriousness, are a reprimand, a penalty order, a suspension order or an erasure order. (S.15(2)).

3. This appeal is brought pursuant to s.22 of the Act, which provides, so far as material:- *"Any person aggrieved by – ... (c) the making of a disciplinary order in relation to him, may appeal to the High Court ... within 3 months from the date on which notice of the order concerned is served on him; and on an appeal under this section the Court may make any order which appears appropriate, and no appeal shall lie from any decision of the Court on such an appeal."*

The appeal is therefore at large and is not limited to errors of law. It falls within CPR 52.11 as varied by paragraph 22.3 of the Practice Direction to CPR 52. This puts the appeal on a par with those from other disciplinary Tribunals such as the GMC. While it is to be a rehearing, in practice the Court will normally rely on the verbatim transcript of the hearing and no evidence will be called. In addition, the Court will be reluctant to interfere with findings of fact unless persuaded that they were not justified by the evidence because they exceeded *"the generous ambit within which reasonable disagreement about the conclusion to be drawn from the evidence is possible"* – see per Ward LJ in *Assicurazioni General SpA v Arab Insurance Group* [2003] 1 W.L.R. 577.

4. In addition, the Court will recognise the expertise of the PCC. When it comes to setting the standards of professional conduct, the Court will not simply bow to the decision of the PCC, but where that decision is, as is the case in respect of professional competence, based not on principle but on a matter of degree, the Court will be very cautious in differing from the evaluation made by the PCC.
5. Following a complaint which the Registrar decides should go forward, there is an investigation which leads to a report by the Board solicitor. That report must set out the relevant facts and incorporate *"a charge that a Registered person is guilty of unacceptable professional conduct and/or serious professional incompetence, accompanied by a copy of any written statement or other document or plan that it is intended to adduce against him, together with the name and address of any witness whom it is intended to call in person before the Committee and a summary of what he is expected to say"*: Rule 15(i) of the Investigations Rules. The report and its accompanying documents must be served on the person charged not fewer than twenty working days before the date fixed for the hearing: Rule 6(a)(i) of the PCC Rules. Within 10 working days of receiving the report, the person charged must respond with brief particulars of his defence, a copy of any written statement or other document or plan that he intends to adduce in evidence at the hearing and the name and address of any witness he intends to call together with a summary of what he is expected to say: Rule 7 of the PCC Rules. Rule 11(b) provides:- *"neither party shall, without the consent of the other or the permission of the PCC 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."*

Finally, Rule 19 provides:- *"The PCC shall, upon his written request, provide the defendant as soon as practicable after the hearing with written reasons for its decision."*

6. Section 13(1) of the Act requires the respondents to issue a 'code laying down standards of professional conduct and practice expected of registered persons'. Section 13(4) provides:- *"Failures by a registered person to comply with the provisions of the code – (a) shall not be taken of itself to constitute unacceptable professional conduct or serious professional incompetence on his part, but (b) shall be taken into account in any proceedings against him under Section 14."*

Apart from the obvious requirements of honesty, integrity and proper care and skill, standard 11 of the code is relevant. This requires architects not to undertake professional work unless the allocation of responsibilities and any limitation of responsibilities are recorded in writing in the terms of the contract between the architect and his

client. And 11.5 states:- "Architects should keep their clients informed of the progress of the work undertaken on their behalf and of any issue which may significantly affect its quality or cost."

7. In addition to the code, the respondents have issued guidance on what constitutes serious professional incompetence and unacceptable professional conduct. Paragraphs 3.3 and 3.4 read:-

**"3.3 What is Serious Professional Incompetence?**

*Serious professional incompetence is a serious failure to meet the standard of competence required of an architect. Only acts of incompetence that might be considered serious can be considered by the Professional Conduct Committee.*

*Because the facts and circumstances of each case are different, it is not possible to identify the exact point at which incompetence becomes serious incompetence. But some features of a case make it more likely to be viewed as serious:*

- *When the consequences are or could be particularly serious – for example, death or injury*
- *When an architect's standard of competence falls dramatically below that expected*
- *When an architect knowingly acts or continues to act incompetently, or attempts to cover up incompetence*
- *When an architect fails to maintain proper records of the terms of engagement, scope of work or fees to be charged, or other matters*
- *When incompetence is particularly likely to reduce public confidence in registered architects*
- *When a number of complaints or events, though not serious in themselves, together demonstrate a pattern of incompetence*
- *When a pattern of incompetence suggests an architect may not act competently in the future*

**3.4 The Standards of Professional Competence Expected of an Architect**

*These examples give some idea of the standard of professional competence expected of architects and when the failure to reach it may amount to serious professional incompetence. They offer general guidance only and do not cover every area of professional practice.*

*The Professional Conduct Committee judges every complaint of serious professional incompetence on its own facts and circumstances."*

At paragraph 3.4.2 it is noted that failure to advise on the most appropriate form of standard contract can lead to serious problems, although it is unlikely in itself to amount to serious professional incompetence. Party Wall awards are also referred to and this is stated:- "It may be an architect's duty to advise on the service of Party Wall Notices. Failing to serve the required notices at the correct time could be considered serious professional incompetence if the consequences were serious, or otherwise might be held to be a contributing factor in conjunction with other failings on the same project."

Accurate and detailed records of the progress of the project and the performance of the contractors must be kept. Failure to do so could contribute towards a finding of serious professional incompetence.

8. The Act distinguishes between serious professional incompetence and unacceptable professional conduct. However, as must be obvious, there is a considerable overlap between the two and particular acts or omissions could be charged under either head. But in my view the standard applicable should not differ and unless what has been done or not done in an individual case can be regarded as a serious lapse it would not be appropriate to impose a disciplinary sanction. Only in that way can proper weight be given to the adjective unacceptable.
9. Scott Sartain and Eleanor Flook, the complainants, bought a Victorian terraced house in Kilburn in 1999. They wanted to have an extension built to provide a new kitchen on the ground floor and, in addition, there was to be a new bathroom on the second floor. They instructed the appellant as a result of advice from the RIBA. They met her in January 2000. They had a budget of £25,000 and she agreed to carry out an inception and feasibility study for £1500 and thereafter, if they accepted her designs and wished to continue to retain her to provide architectural services, she would act for a fee of 15.75% of the £25,000 total. The design of the kitchen involved a glass roof which would look and indeed was virtually flat, being 1 metre wide and 6 metres long with a slope of 1 in 66 along the 6 metre length. This was attractive, but was technically difficult. It was beyond the capacity of an ordinary builder and so it would be necessary to employ a specialist to produce and to install the roof and an associated rear door.
10. The complainants decided to proceed with the appellant's design and so to employ her to provide architectural services. The appellant had difficulty in finding a builder who was willing to take on the work at a cost which was within the budget but eventually one was found, namely DCB (Kent) Limited, a firm based in Dartford. DCB was in fact the only contractor who was found to be interested in doing the work. The specialist contractors who were to construct and assemble the glass roof and the door were a firm called Alloy Fabweld Ltd (AF). A structural engineer was also engaged to assess the nature of work needed to carry out the appellant's design, in particular in relation to possible underpinning of the building and, as it transpired, how to deal with a wall which was found to be bowed. Before the roof could be put in place, the necessary building work had to be carried out in order to ensure that it could be fixed properly.
11. Since the work involved opening up the building, both for the bathroom work but more particularly for the kitchen extension, the complainants recognised that they would have to move out while the work was being done. It was scheduled to take 8 weeks and it was hoped to commence on 31 July. However, DCB was not ready until 14 August and then there were problems because the appellant was thoroughly dissatisfied with the foreman

provided by DCB. The complainants moved out in early September and it was anticipated that the work would be completed by mid-October.

12. Unfortunately, not only was the work not completed by the time that the complainants had to move back into the house in October, but AF had not even constructed the window or the door. The house was not weatherproof so that the complainants suffered ill-health. When a temporary roof was installed shortly before Christmas, it turned out to be defective and the builders had not provided the necessary slope so that water accumulated and there was penetration and damage. In addition, there was no window fitted and so the kitchen was unusable and the house uninhabitable over Christmas: it was also insecure. When the permanent roof was installed in early January, the absence of the necessary slope became apparent. Remedial work was thus needed to achieve the 1.66 fall. However, neither DCB nor AF attended, despite instructions from the appellant (DCB asserted that her designs were unworkable). By now the complainants had lost faith in the appellant and obtained legal advice and an independent report. No solution was found and it was not until October 2001, the appellant's services having been dispensed with, that other contractors were called in to complete the work (with a different sort of roof).
13. The main trouble seems to have resulted from a lack of co-ordination between DCB and AF. The failure to incorporate the slope was in the end critical, but the error was not spotted until it came to installing the roof. AF did not start its work in time and, when DCB had supposedly done what was necessary in October, AF were not able to start work because of the amount they had on hand at the time.
14. There can be no doubt that things went badly wrong for the complainants. It is said on the appellant's behalf that problems regularly occur on building sites and it is commonplace for contractors to blame each other. No architect can, it is suggested, prevent such problems and over-runs if contractors turn out to be less than competent. Further, it is said that at the end of the saga the complainants got their extension at no extra cost. None of this is in my view in the least impressive. It is precisely because such difficulties are foreseeable that an architect who is engaged to supervise must take all reasonable steps to ensure that the project runs as smoothly as possible by advising clients on the appropriate contractual arrangements and monitoring the progress, identifying poor or defective workmanship and requiring it to be remedied and seeking that what should be done is done and in time. There is of course a limit to what can reasonably be achieved if contractors do not co-operate or turn out to be slapdash or less than satisfactory, particularly in delaying because, for example, they have taken on too much work at a particular time.
15. The respondent obtained a report from an expert witness, Sarah Lupton, a distinguished architect who has edited a number of RIBA publications which deal with advice on appropriate contractual arrangements and what should be expected in relation to arrangements of a project. Her original report, which was critical not only of the manner in which the project had been managed and of the contractual arrangements that had been adopted but also of the design produced by the appellant, was dated 14 April 2003. In due course, it was relied on by the Board solicitor in his report of 19 May 2003. This report contained charges both of unacceptable professional conduct and of serious professional incompetence. It was sent to the appellant on 13 August with a view to a hearing on 26 November 2003. This was adjourned to 29 January 2004 due to the complainants being unable to attend on the November date. The appellant or the complainants then sought and obtained adjournments of various other proposed dates in 2004 and eventually a hearing was arranged for 17 and 18 February 2005.
16. There is in the bundle a copy of a witness statement from the appellant which is unsigned with a typed date 'January 2005'. It refers to a number of site visits, giving dates, and identifies what occurred. She was relying on her diary entries. It seems that this was served on the respondents on 27 January 2005 together with copies of documents including correspondence with DCB and AF. This led to a supplementary report from Sarah Lupton, which was served on the appellant by letter of 11 February 2005. This, while accepting that some of the detailed criticisms could not be proved, maintained her overall view that there had been sufficiently serious lapses to support the charges.
17. In fact, a draft statement from the appellant and her expert (who dealt with the allegations that the design was defective) were served in September 2004. It seems that there was some confusion about what documentation had been in the respondent's possession, the appellant believing that they had all relevant documentation. In any event, there had earlier in March 2004 been served a schedule setting out the answers that were to be given to the allegations contained in the charges. This referred to the existence of minutes and correspondence in the appellant's file, but the respondent does not seem to have reacted to this if it had reason to believe that some or all of this documentation was not in their possession.
18. The charges were broken down into seven allegations. Four were under the charge of unacceptable professional conduct and three under the charge of serious professional incompetence. The case was approached by both parties on the basis that there were seven charges faced by the appellant. These were, in summary form, as follows:-

*"(1) She had at the initial meeting with the complainants in January 2000 shown them a portfolio of work which included photographs of work which was not her own. She either impliedly or expressly conveyed that it was her work. The appellant submitted at the commencement of the hearing that the delay meant that a fair hearing was impossible and that there was a breach of Article 6 of the European Convention on Human Rights. After hearing argument, the PCC decided that this charge should not be permitted to proceed since it depended on recollections rather than any documentation.*

- (2) There was a failure to comply with Standard 11 in respect of the contractual arrangements between herself and the complainants. This charge was dismissed.
  - (3) and (4) She failed to keep the complainants adequately informed of the progress of the project or to communicate with them. This charge was not substantiated and it is pertinent to note that it largely depended on assertions by the complainants which the documentary records kept by the appellant showed to be incorrect. Indeed, the PCC made it clear that, where there were conflicts of evidence on matters of fact between the complainants and the appellant, they preferred the evidence of the appellant.
  - (5) She failed to provide or negotiate adequate or appropriate contractual protection either with DCB or with AF. The contract with DCB did not contain any obligation to accommodate or work with other contractors and that with AF did not properly protect the complainants' interests. This was found proved.
  - (6) There were design errors in the scheme. This was dismissed. There was expert evidence given on the appellant's behalf which contradicted that of Sarah Lupton and the PCC decided that her evidence was more theoretical than practical.
  - (7) There was a failure to administer the project competently. There was an overlap with Charge (5) since included in the details of this charge were allegations that the contractual arrangements were inadequate. In addition, there was an alleged failure to advise on the need to serve a Party Wall Notice and to administer the project properly. This charge was found proved.
19. The PCC's reasons for finding Charge (5) proved and that the appellant was guilty of serious professional incompetence were as follows:- *"The minor works contract does itself envisage that there can be separate contracts with other contractors, but the Committee questions whether in these circumstances that would have been wise or desirable. We are conscious that many of the problems of this project do stem from the division of responsibilities between the contractors. The defendant herself recognised in her evidence that she had been dealing with the matter now she would have done it in a different way. We are unable to accept Mr Gwillim's submissions on this point. The approach of the defendant meant that there was a loss of control by her – especially she was the contract administrator. Accordingly the Committee find that the defendant is guilty of serious professional incompetence."*
20. It seems clear that the project was properly to be regarded as minor building works and so the agreement identified as MW 98 was prima facie appropriate. It was in fact entered into with DCB on 5 September 2000 and provided for the works to commence on 14 August and to be completed by 2 October 2000. The Practice Notes annexed to it recognise the possibility of the need to control the selection of sub-contractor for specialist work. Note 5 reads:- *"In some contracts for which the Form is used the Employer may wish to seek to control the selection of sub-contractors for specialist work. While this may be done by naming a person or company in the tender documents or in instructions on the expenditure of a provisional sum, there are no provisions in the Form which deal with the consequences of such naming; nor be applicable to such selected sub-contractors. Such control of selection could be better achieved by the Employer entering into a direct contract with the specialist."*
- The appellant's case was that it was inappropriate to seek to amend the standard form contract to deal with the identification of and liaison with specialist contractors and that, following the note, a separate contract between the complainants and AF was appropriate. I do not think that approach can properly be criticised, particularly having regard to paragraph 3.4.2 of the guidance referred to in Paragraph 6 of this judgment. But, if this was to be done, it was surely necessary for the appellant to advise on what terms should be sought from AF to ensure proper liaison and what obligations should be accepted by DCB. Those would have been spelt out in correspondence: they did not need a modification to the terms of the MW98 contract. Thus, for example, DCB indicated that they were unable to move until the roof was installed. In a letter of 13 October 2000 they say:- *"As this contractor [viz:AF] is not contractually related to us, we are unable to obtain a date from them for their installation, so therefore cannot give you a final completion date."*
21. The contract with AF, when eventually it was formally entered into, contained its usual terms and conditions, which included that they should have access to all areas from commencement and the main contractor was to provide various facilities. Mr Gwillim submitted that the implied terms which would apply meant that AF and DCB were bound to liaise properly. That may be so, but it is undesirable that there should have to be reliance on implied terms, since the absence of express obligations will inevitably lead to an opportunity to argue and so to delay. It seems to me that the PCC were clearly entitled to conclude that the appellant did not retain proper control and that the difficulties that arose were at least in part caused by that. The lack of express contractual terms also required that the control exercised by the appellant should be greater because she should have known that it was important for DCB and AF to work together. In any event, the timing of arrangements with AF made it improbable that, even if they had not delayed for longer than they should, the roof would have been produced ready for installation when DCB should have been ready for it.
22. In giving their reasons for finding charge (7) proved, the PCC said this:- *"With regard to the charge of serious professional incompetence due to the maladministration of the contract, the Committee find that the defendant is guilty. This charge relates firstly to the issues of the party wall. The need for a party wall notice only became an issue as the project itself progressed as it was not apparent at the start that a party wall notice would be needed. The defendant did mention to the clients that notice would be appropriate. There was no response from the clients to indicate that they appreciated the importance of this. Given their apparent lack of appreciation and the importance – especially in London – of party walls, the defendant should have at least recorded her advice in writing. The fact that there was no*

*complaint made about this failure or that there was no disadvantage because of the defendants failure makes no difference. The clients themselves were inexperienced in building projects and it was all the more important that in such circumstances an architect should ensure that the clients appreciated the importance of the architect's advice.*

*This charge also relates to site visits. It is appreciated that the defendant made an adequate number of site visits – namely 23. the defendant's diaries record these visits and they contain notes of what was raised at them. Ms Lupton criticises the absence of adequate minutes of site meetings and the absence of correspondence with contractors at least until a late stage in the administration of the contract. There was certainly an absence of written instructions to the contractors which one would expect following a site visit if that became necessary.*

*Although the defendant was conscientious in visiting the site, her failure to issue appropriate written instructions resulted in poor administration of the contract. The project itself was sliding out of control long before the defendants started to write to the contractors. The exasperation of contractors at this lack of control is evidenced by correspondence from them asking for instructions (see file one of the defendant's bundle Section 5). Accordingly taking all these matters into account we find that the defendant is guilty of serious professional incompetence."*

23. As it stated, the manner in which the appellant dealt with the question of a Party Wall Notice was part of this charge. The complainants' evidence coupled with the absence of any documentation put before her about a Party Wall Notice had led Ms Lupton to criticise the appellant on the basis that she had given no advice. A Party Wall Notice can be very important and its absence can create considerable difficulties. In this case, a Notice ought prima facie to have been served on the London Borough of Camden as adjoining owners. No notice was served but, fortunately, no problems arose as a result of that. The appellant, it is clear, did give oral advice in the sense that she drew the complainant's attention to the need. A letter to the appellant from Ms Flook of 15 August 2000 states:- *"This is just to confirm our conversation of this morning. I was advised by [a third party] that if the neighbouring property is owned by the Council – which we believe it is – that the freeholder – Camden Council – should be served a Party Wall Notice."* The letter goes on to ask the appellant to liaise with the relevant person at the Council and *"see him with the necessary paperwork as the whole procedure may be a formality."*
24. The appellant's evidence was that she had advised Mr Sartain about the need for a Party Wall award. She spoke to him on the telephone on or about 14 August and gave him that advice. He asked how much it would cost and she told him about £1500. He had ascertained that the neighbouring occupiers had no objection and so he decided that he would not inform the Council. She did not record her advice or the fact that she had given it in writing. The PCC accepts that she had spoken to the complainants about a Party Wall Notice. No doubt she should have recorded her advice in writing, but, having ensured that the neighbouring occupiers had no objection, the complainants, on her account, decided to take the risk of not serving a Notice. No problems in fact arose. Thus the criticism here boiled down to a failure to record the advice in writing. While that may have been foolish – in evidence, the appellant said she had learnt a lesson and did now record her advice and concerns in writing – it is difficult to see that on its own it could be regarded as serious professional incompetence. There is no reason to believe that the complainants had not appreciated from what they were told (assuming they had noted the advice: their evidence that they had not was not accepted) the importance of the matter. The importance of such failure as there was is that it was symptomatic of the general lack of sufficient control over the progress of the scheme.
25. The whole appeal was estimated to take a day and was listed accordingly. By the normal time to adjourn, I had only heard argument from Mr Gwillim in presenting and from Mr Peebles in responding to the appeal. It was accordingly agreed that Mr Gwillim should make submissions in reply (he having indicated that he had more than a few minutes worth) in writing. When these came, they ran to 120 paragraphs over 25 pages and annexed some additional documents. This is not what is expected in a reply. More importantly, they raised an entirely new issue which had not been referred to in the amended notice of appeal or in the course of argument before me. It is said that the documents contained in pages 607 to 818 inclusive in the respondent's bundle had not been produced until shortly before the hearing of the appeal. They had apparently been in the possession of the complainants and ought to have been disclosed before the hearing before the PCC. It was the appellant's case that she had corresponded with and had certainly had numerous discussions with the complainants during the course of the project and so any allegation, which was put forward by the complainants and was said to be supported by a lack of documentation or record, that there had been a failure of communication was not true. The PCC accepted the appellant's evidence in this respect and dismissed charges (3) and (4) which were based on a lack of communication.
26. I was concerned at this new allegation and asked the parties whether they wished to make further representations at a resumed hearing. Neither asked for a further hearing. Mr Gwillim was aware of the further material, which he said was new, when he made his submissions. If he was at a disadvantage or felt that it was necessary to amend his grounds of appeal, he should have raised the matter then. It was not appropriate to seek to make new points in reply. In any event, the material does not in my view prejudice the appellant's case. As I have indicated, the alleged failure to communicate properly with the complainants was not established. The case against her depends on the failure to administer the project competently by not maintaining control over the contractors and ensuring the smooth progress of the project.
27. The balance of the written reply involved a detailed analysis of the appellant's site visits and correspondence with the contractors. It constitutes an attempt to reargue the case. The PCC are the judges of fact and are entitled to draw reasonable conclusions from the material put before them. I do not propose to go through the material in any detail: that would lengthen this judgment unnecessarily. The PCC had before them the relevant material. It

was clear that the contractors did complain about the lack of written instructions and the lack of control, particularly so far as DCB were concerned in failing to ensure that AF was in a position to carry out its obligations when it should. No doubt it could be said that that was no more than an attempt to justify their own shortcomings. Contractors do raise complaints to cover their own failures. But it was for the PCC to judge what the situation was and it was open to them to decide as they did.

28. Two complaints are made of procedural defects. First, it was submitted that the delay was such that the whole matter should not have proceeded. It was a breach of Article 6 of the European Convention on Human Rights. The PCC considered this submission and, as I have already stated, decided that Charge (1) which depended on recollections unaided by documents should not proceed. The delay was undoubtedly most unfortunate, but it was, at least after 2003, not the fault of the respondent. The PCC were entitled to decide as they did. It is only if that decision was irrational that I could overturn it. It is quite impossible to establish that it was.
29. Secondly, it is said that the late service of the supplementary statement of Sarah Lupton was unfair since it raised what essentially amounted to new charges only a few days before the hearing. I think there has been a fundamental misconception of what amounts to a charge. The Rules make it clear that there are potentially only two charges and indeed the Board Solicitor's report identifies them as (a) that the appellant was guilty of unacceptable professional conduct and (b) that she was guilty of serious professional incompetence. That is entirely consistent with Rule 15 of the Investigation Rules which I have already cited. The allegations that follow, which were wrongly described as individual charges by the PCC, are particulars of the matters which are relied on to substantiate the charges. The appellant was referred to the statement of Sarah Lupton which was said to establish the particular allegations relied on. The purpose of the supplementary statement was, in the light of further information which she had not hitherto seen, to reconsider and to retract some of those particular allegations. If the appellant's advisor had felt it necessary to seek more time to deal with the supplementary statement, he could have asked for time. He did not. In any event, the hearing was adjourned from February to May when two days proved insufficient to complete it and so there was ample time to consider the matter. It was not a case of amending the charges; they remained as they were. The PCC had at the end of the case to decide whether either or both of the charges were established by the facts which they found proved on the evidence before them. Although it misdescribed the particulars as charges, it dismissed the charge of unacceptable professional conduct but found proved that of serious professional incompetence.
30. It follows that the PCC was in my judgment wrong in the sense that it was unnecessary to decide that each individual allegation that they found proved established serious professional incompetence. What they should have done was to consider all the allegations which were found proved to decide whether together they established the charge against the appellant. However, it has been, as it happens, helpful to see that they considered that each of what they described as Charges (5) and (7) individually justified a finding of serious professional incompetence. This makes all the more clear that if they were considered cumulatively a similar finding would have been made.
31. I am in any event not persuaded that the use of MW98 was in itself serious professional incompetence. In reality, as it seems to me, it must be considered as part of the failure properly to control the project. If there was to be a separate contract with AF, it had to be made clear that there was to be proper liaison with DCB and there was an added responsibility on the appellant not only to ensure that the contractual arrangement was properly identified but to keep close control over the activities of each contractor.
32. I must now ask myself whether what was established, particularly of the Party Wall aspect is removed, could properly be regarded as serious professional incompetence. Mr Peebles accepted that this case was on the border, as perhaps the sanction imposed indicates. Nonetheless, he submitted that the standard was to be set by the PCC and I should not interfere unless it was shown that they were not entitled to conclude as they did. It is useful to see whether the conduct of the appellant falls within the examples given in Paragraph 3.3 of the Guidance which I have set out in Paragraph 7 of this judgment. It is to be noted that in seeking to give guidance on the standard set by the adjective serious the word '*dramatically*' is used. I do not think that is particularly helpful. The Act says serious and that cannot usefully be redefined by stating that the conduct in question must fall dramatically below that to be expected. That suggests a somewhat higher requirement than the Act imposes. The same word used in the context of medical practitioners has been considered to cover '*conduct which would be regarded as deplorable by fellow practitioners or properly informed members of the public*'. The PCC sets the standard to be applied by fellow practitioners and unless in a given case it is unreasonable to conclude that that standard has been set properly this court should not interfere. A relevant bullet point is the penultimate one, namely that a number of events, though not serious in themselves, together may demonstrate a pattern of incompetence.
33. I recognise that the appellant has not fallen below the appropriate standards in the past and is to be regarded generally as a competent member of her profession. Things went badly wrong on the project in issue here, but it is an isolated event. Nonetheless, I am not persuaded that the PCC were wrong to find serious professional incompetence to have been established. There is no complaint about the sanction imposed.
34. It follows that this appeal must be dismissed.

Mr D Gwillim (of Messrs Speechly Bircham LLP) for the Appellant  
Mr A Peebles (instructed by Messrs Russell-Cooke) for the Respondents