



Ombudsman Tasmania

**Investigation into delays and poor communication in
relation to a complaint made to the Board of
Architects of Tasmania**

10 September 2020

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Summary

Mr P contacted my office in November 2019 and advised that he had lodged a complaint with the Board of Architects of Tasmania (the Board) in August 2019 in relation to the conduct of an architect. Mr P indicated that he had not received a substantive response after waiting approximately three months and following up several times.

My office attempted to make inquiries about the reason for the delay by contacting the Board by email and phone six times over a period of several weeks, but received no response. Because of this, I initiated a formal investigation on 22 January 2020 and formally required a response. I still did not receive one. On 30 January 2020, I issued a notice of entry of premises and advised the Board that my staff would enter its premises to obtain the required information. The Board responded at that point and advised that the delay had been caused by a change in email server and the personal circumstances of a staff member.

The Board then provided Mr P with the architect's comments in relation to his complaint. Mr P responded, and the Board provided a further response from the architect. Throughout this process, the issues of delay and poor communication were ongoing, and Mr P had to send the Board several emails in order to elicit a response when he contacted the Board to follow up.

Until May 2020, the Board did not appear to follow its own complaints procedure by making a determination in relation to the submissions of Mr P and the architect. Rather, it acted as an intermediary between the two parties. After receiving submissions from the architect and Mr P twice, the Board referred the matter to its Investigation Panel and reached a decision. The issues of delay and poor communication continued throughout this process, and Mr P had to follow up more than once to receive the final outcome. I decided not to continue attempting to facilitate communication from the Board, as my previous attempts to do so had proven ineffective. The Board did not notify my office when it finalised its investigation of the matter. In total, it took nearly a year for the Board to finalise its consideration of Mr P's complaint.

It is important to note that it is practically unheard of for a complaint about such a minor issue to proceed to an investigation, and I have never before had to issue a notice of entry of premises in relation to any matter. The investigation has found that the Board's communication in relation to complaints is very poor, and it is very difficult for either my office or a complainant to elicit any response from it by phone, email, or letter. The Board did not appear to have regard to the fact that it is an offence under the *Ombudsman Act 1978* to resist or fail to comply with any requirement of me or my officers. My office had more success when dealing with the Board's Chairman, but all contact had to be at his private business rather than the Board.

In the course of the investigation it became apparent that the *Architects Act 1929* is outdated and does not provide an effective framework for the Board to handle complaints against architects. The *Architects Amendment Bill 2020* appears to address these shortcomings.

Recommendations

1. I recommend that the **Board** apologises to **Mr P** for the delays and poor communication he has experienced.
2. I recommend that the **Board** establishes a formal means of contacting the **Chairman of the Board** directly in his professional capacity as **Chairman**, such as a separate email address.
3. I recommend that the **Board** updates its complaint handling procedure to provide that complainants should be updated on the status of their complaint at regular intervals, for example on a monthly basis.
4. I recommend that the **Board** ensures all staff responsible for complaint handling receive training on the complaint handling procedure, with an emphasis on the need for the **Board** to make a determination rather than simply acting as an intermediary.
5. I recommend that the **Board** amends its complaints handling procedure to include information about the role of the **Ombudsman** in considering complaints regarding the **Board's** administrative actions, and the **Board's** obligation to respond to the **Ombudsman's** inquiries.

The Complaint

1. Mr P made a complaint to my office on 22 November 2019 alleging that he had made a complaint regarding an architect's services to the Board on 20 August 2019, but had not received a substantive response.
2. Mr P said that six weeks prior to him contacting my office, the Board had advised him that his complaint was being reviewed and he would receive an outcome in due course. Mr P said he had followed up twice since then but had not received any response.
3. My office tried to contact the Registrar of the Board to make preliminary inquiries pursuant to section 20A of the *Ombudsman Act 1978* on six occasions over a period of approximately seven weeks by way of email, telephone, and letter. The Board did not respond to any of this.
4. It is almost unprecedented for my office to initiate an investigation into an issue as minor as a delayed response, however in this case I was left with no other way to progress the matter due to the Board's complete lack of action.

Jurisdiction

5. I can initiate an investigation as a result of a complaint made to my office pursuant to section 13 of the *Ombudsman Act 1978*. The subject of the investigation needs to relate to the administrative action of a public authority. The Board was established as a public authority under the *Architects Act 1929*.

Relevant Legislation

6. In addition to the *Ombudsman Act 1978*, I also considered the *Architects Act 1929*.

The Investigation

Methodology

7. I wrote to the Chairman and the Registrar of the Board on 22 January 2020 by letter and email to notify them of my intention to investigate this matter pursuant to section 23 of the *Ombudsman Act 1978*. I advised that I required the Board to explain what had caused its lack of response to Mr P, as well as to my office by 29 January 2020. The Board did not respond to the notice of investigation.
8. I issued a notice pursuant to section 25(2) of the *Ombudsman Act 1978* of my intention to enter the Board's premises by letter and email to the Chairman and the Registrar of the Board on 30 January 2020. The notice explained that, as my office had received no response from the Board after attempting to contact it several times and issuing a notice of investigation, two of my officers would enter the premises of the Board on 3 February 2020 if my office had still not received a response from the Board by close of business on 31 January 2020. The notice advised that my officers would inspect the Board's records in relation to Mr P's complaint and

my office's inquiries, as well as the Board's record keeping system and any policies or guidelines related to complaint handling and record keeping.

9. I received a response from the Registrar of the Board on 31 January 2020 which advised that he had not received my office's previous emails, and that the Board had recently switched to a different email provider. The Registrar's response also explained the personal circumstances of a staff member which had contributed to the lack of response. The Registrar provided a copy of the Board's complaints handling procedure, as well as the response provided by the architect to Mr P's complaint. The Registrar advised that the architect's response had been provided to Mr P, but the Board had not heard anything further from him.
10. One of my Investigation Officers responded to the Registrar by email on 4 February 2020 and requested a copy of the email or letter conveying the architect's response to Mr P, as Mr P had advised that he had not received a copy of that response from the Board. The Registrar did not respond, so my Investigation Officer sent him a further email on 11 February 2020 requesting a response by 14 February 2020. The Registrar did not respond to that email either.
11. I wrote by letter to the Chairman of the Board on 18 February 2020 outlining the ongoing difficulties my office was having in attempting to get a response from the Registrar of the Board. I asked the Chairman to provide a copy of the letter or email sent to Mr P providing the architect's response by 25 February 2020. I indicated that if I did not receive a response I would be forced to issue a further notice of entry to premises. I did not receive a response.
12. My Principal Officer called the Board on 26 February 2020 and asked to speak to the Registrar. She was advised that the Registrar was unavailable but a message would be passed on.
13. I attempted to contact the Chairman of the Board via telephone at his private business on 2 March 2020. I left a message requesting that the Chairman contact me.
14. My Principal Officer sent the Chairman an email at his private business on 3 March 2020 requesting that he take carriage of the matter and contact me by telephone.
15. I spoke to the Chairman by telephone on 4 March 2020 and he agreed to take responsibility for the matter. The Chairman indicated that the Board needed to continue operating despite the personal circumstances of staff.
16. The Registrar sent Mr P an email on 4 March 2020 which attached the architect's response and forwarded a previous email dated 5 December 2019 in which the Board had provided the architect's response to Mr P. The Board did not communicate with my office about this.
17. Mr P felt the architect's response did not properly address his complaint, and he outlined his concerns about this to the Board in an email of 20 March 2020. Mr P did not receive a response, and he sent the Board further emails on 1, 6, and 15 April 2020 requesting a response.
18. Mr P received a response from the Chairman on 15 April 2020 which advised that the Chairman did not know why the Registrar had not responded, and the Chairman would follow this up.

19. Mr P then received a response from the Registrar on 23 April 2020 advising that the further delay had been caused by the impacts of the COVID-19 pandemic and continuing email server issues. The Registrar also provided further comments from the architect in response to Mr P's concerns. Mr P in turn responded that he still did not think his complaint had been properly addressed, and asked for the Board to acknowledge receipt of this response.
20. On 6 May 2020 the Board advised Mr P that the matter had been referred to the Board's Investigation Panel, and that the Board was expecting to receive a report from the Panel within two weeks.
21. Mr P contacted the Board on 23 June 2020 to enquire about the status of the report.
22. On 25 June 2020, Mr P received an email from the Registrar of the Board indicating that it had concluded its investigation and was in the process of drafting its decision.
23. On 10 July 2020, Mr P sent the Board another email to follow up after not hearing anything further.
24. The Board advised Mr P of the outcome of its investigation by email on 13 July 2020 and provided a copy of a letter it had sent to the architect.
25. The Board did not provide any updates to my office, or advise my office when it had finalised its investigation.
26. I provided the Board with a draft copy of this report and gave the Board three weeks in which it could make any comments on the content of the report. The only comment the Board made was that it has created a separate email address for the Chairman of the Board. The Board did not give any feedback on whether or not it intends to implement my other recommendations.
27. I received an email from the Chairman of the Board seven business days after the previously confirmed deadline for making comments had expired. The email enclosed a letter from the Chairman dated before the expiration of the deadline, and the Chairman advised that the letter had been sent via the new email address prior to the deadline, but this did not appear to have worked. In the letter, the Chairman confirmed that the Board had experienced email difficulties, and he stated that the Board will implement all of my recommendations as soon as possible. The Chairman noted that the Board's powers under the *Architects Act 1929* are limited, and advised that during the period when Mr P's complaint was under consideration there was a vacant position for a non-architect member of the Board, which exacerbated the delays and communication issues Mr P experienced.

Analysis

28. It is clear that the Board's ongoing failure to properly respond to both Mr P's complaint and my office's inquiries is reflective of extremely poor administrative practice. My office attempted to contact the Board six times via phone, email, and letter over a period of nearly two months and received no response. The Board also failed to respond when my office issued a notice of investigation. The Board only responded when I issued a notice of entry of premises. During my term as Ombudsman I have never had to initiate an investigation in

relation to an issue as minor as a delayed response, nor have I had to issue a notice of entry of premises in relation to any matter. It is concerning that the Board demonstrated very little willingness to engage with my office and exhibited a lack of respect for it. In accordance with section 27 of the *Ombudsman Act 1978*, it is an offence to resist or fail to comply with any lawful requirement made by the Ombudsman.

29. The Board indicated that its initial lack of response was in part due to a change of email server, but my office had also unsuccessfully attempted to contact the Board by telephone and letter. When my office eventually did receive a response from the Board, it became apparent that the personal circumstances of a staff member may have affected the Board's ability to respond. While I was sympathetic and took this into consideration, I do not consider that it is acceptable for the Board to simply cease performing key functions for lengthy periods of time due to the personal circumstances of one staff member.
30. It is difficult to make contact with the Board's Chairman. I sent letters to the Board addressed to the Chairman and they did not seem to reach him. The only publicly available email address for the Board is that of the Registrar. I found that the only way to successfully make contact with the Chairman was through his private business. All of this contributed to the difficulties experienced when trying to investigate the complaint.
31. Initially, it appeared that the Board was not following its complaint handling procedure in relation to Mr P's complaint. The procedure provides that the Board should establish an investigating committee to review the submissions provided by the complainant and the architect and subsequently make a determination in relation to whether further action should be taken. In Mr P's case, the Board initially appeared to simply act as an intermediary between the complainant and the architect and did not make a determination in relation to the complaint. After receiving submissions from both parties twice, the matter was finally considered by an Investigation Panel, and an outcome has now been reached. Overall, it took the Board just under a year to investigate and finalise the complaint. The Board's complaints handling procedure does advise that matters can take up to twelve months to resolve, but it appears that the resolution of this matter was unnecessarily delayed by poor communication and the Board receiving submissions from each party twice.
32. The issues of delay and poor communication have persisted even after the intervention of my office. After attempting to facilitate communication from the Board to Mr P on a number of occasions with limited success, I decided there was little point in continuing to make inquiries with the Board in relation to its delayed responses to Mr P. Mr P advised my office when the matter had been finalised, but my office did not receive any notification of the outcome of investigation from the Board.
33. It became apparent during the investigation that the *Architects Act 1929* is in need of reforms to modernise it and provide the Board with broader powers to resolve complaints and take disciplinary action against architects found to have engaged in professional misconduct. The *Architects Amendment Bill 2020* encompasses these reforms as well as a range of other changes to bring the Board's regulatory functions in line with equivalent bodies in other states and the Tasmanian Administrator of Occupational Licensing.

Conclusion

This was an unusual investigation in that it resulted from a complaint in relation to a relatively minor administrative issue. Usually such issues are resolved following preliminary inquiries, but in this case I was left with no choice but to proceed to a formal investigation after multiple attempts by my office to contact the Board over a period of several weeks were unsuccessful. The Board eventually responded after I took the highly unusual step of issuing a notice of intention to enter its premises, which my office has never previously been required to do. After this initial response, the issues of delay and poor communication with both my office and Mr P persisted. The Board appears to be either ignorant of or unwilling to fulfil its responsibility to assist my office with inquiries and investigations in accordance with the *Ombudsman Act 1978*.

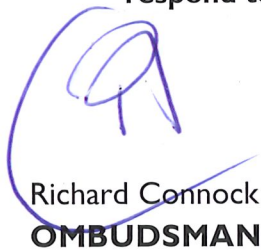
Until recently it appeared the Board was simply acting as an intermediary between Mr P and the architect, however the matter was then referred to an Investigation Panel and a decision was reached. It took nearly a year for the Board to reach a decision, and this office's attempts to facilitate contact between the Board and Mr P proved ineffective.

Pursuant to section 28(1)(b) of the *Ombudsman Act 1978* I find that the Board's actions in relation to this matter have been unreasonable.

My investigation also found that the *Architects Act 1929* is outdated and does not provide the Board with a contemporary and effective framework for complaint handling and disciplinary action. It is encouraging to note that the *Architects Amendment Bill 2020* proposes to address these issues.

Recommendations

1. I recommend that the Board apologises to Mr P for the delays and poor communication he has experienced.
2. I recommend that the Board establishes a formal means of contacting the Chairman of the Board directly in his professional capacity as Chairman, such as a separate email address.
3. I recommend that the Board updates its complaint handling procedure to provide that complainants should be updated on the status of their complaint at regular intervals, for example on a monthly basis.
4. I recommend that the Board ensures all staff responsible for complaint handling receive training on the complaint handling procedure, with an emphasis on the need for the Board to make a determination rather than simply acting as an intermediary.
5. I recommend that the Board amends its complaints handling procedure to include information about the role of the Ombudsman in considering complaints regarding the Board's administrative actions, and the Board's obligation to respond to the Ombudsman's inquiries.



Richard Connock
OMBUDSMAN