



REVIEW OF CONSTRUCTION INDUSTRY COUNCIL APPROVED INSPECTORS REGISTER

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1 Background to the Review

Legislative Framework

1.1 The Construction Industry Council (CIC) was initially designated as the approval body for Approved Inspectors (AIs) in 1996. Initially its role was limited to consideration of applications for approval of individuals as AIs, but since the beginning of March 1999 it has also been responsible for approval of corporate AIs in England and Wales. Under the regulations, CIC's designation is of indefinite duration, subject to withdrawal by the Secretary of State in England and/or Welsh Ministers in Wales.

1.2 Scotland has its own building regulations regime and legislation was introduced in 2003 which for the first time gave the Minister the power to choose who should undertake the verification role for building regulations. During 2011 Ministers consulted on whether to allow a limited amount of private verification for new build housing but concluded at the end of the consultation that local authorities will continue to be the only government appointed verifiers in Scotland. Since 1 January 2012, building regulations and building control matters have been devolved to Welsh Ministers but they continue to support the approval of AIs through the CIC.

1.3 Although the designation of CIC is for an indefinite period, it was felt in 2004 that an objective review of the way it was performing its role would be appropriate and a report was produced in July 2004. Earlier this year, CIC felt that a second independent and objective review of its role as designated body was now due and this was supported by the Department for Communities and Local Government (DCLG), the government department responsible for Building Regulations

Terms of Reference

1.4 Terms of reference for the Review are set down in **Appendix 1**. Details of the Review were circulated widely and I received comments from a large number of stakeholders, many of whom I was able to meet to discuss their comments in more detail. Those I met or received comments from in the course of the Review are listed in **Appendix 2**.

1.5 The issues behind Objective 3 of the Terms of Reference were unclear to many of those that input to the Review. The concerns that lie behind this apparently arise from a recent case that raised a number of issues about how CICAIR should deal with significant disciplinary matters as a result of the performance of an AI, and I have addressed these issues in a number of sections of the Review including recommendations on the future governance of CICAIR in Section 5.

1.6 To many of those I spoke to, the Review provided an opportunity to raise a wide range of issues about the Approved Inspectors' Register, including various commercial issues, the different levels of service provided by AIs and local authorities, and insurance available to AIs. I regarded these as outside my brief and have therefore not made further reference to them in the Review.

1.7 One matter that was raised consistently was the question of 'franchising'. This was a source of concern as much to local authorities as it was to many AIs and I know has also been of concern to CICAIR. A number of revisions have recently been made to the Code of Conduct for Approved Inspectors, including a requirement that notices and certificates are only signed by persons directly employed by the AI, and that an AI must satisfy itself of the competence to carry out the tasks assigned to them of any professional consultant they employ. It seems to me that this goes as far as is possible to address the various issues that were raised, and it is now a matter for CICAIR to ensure that AIs comply with these when appointing sub contractors/consultants. Recommendations later in this Review regarding on-going monitoring of performance should assist in this.



The Register

1.8 When CIC was given responsibility for approval of both individual and corporate Approved Inspectors in March 1999 the majority were individuals. By the time of the 2004 Review the balance had shifted and there were 25 corporate AIs and only 10 individuals. As **Table 1** shows, over the last 5 years the total number of AIs has continued to grow with the growth in corporate AIs more than compensating for a decline in individual AIs.

Table 1: Number of Approved Inspectors on the Register 2008-12

Year	Individual AIs	Corporate AIs	Total
2008	20	47	67
2009	19	50	69
2010	15	56	71
2011	14	61	75
2012	11	66	77

1.9 The Register generates an annual income of nearly £130k and employs a part-time Registrar who has part time administrative support. The operation of the Register is overseen by the Chief Executive of CIC and the Management Board of the Register is responsible to the CIC Executive Board.

The Review

1.10 The terms of reference referred to earlier set the brief for the Review. In the course of carrying this out, however, I have been struck by the commitment of many of the AIs to see how the Register can help set higher standards for the provision of Approved Inspector services. The key in introducing new measures to raise standards is that they are applied consistently and create a framework which allows those that provide a professional and cost effective service, consistent with the provisions of the Code of Conduct, to benefit commercially. In undertaking the Review I have therefore tried to look not just at how CICAIR can operate more effectively and efficiently, but also how the framework that it sets can help raise the standards of performance of all AIs.

Acknowledgements

1.11 I am grateful for the support I have received from many different groups, organisations, and individuals in conducting this Review, many of whom are listed in **Appendix 2**. A special thanks, however, goes to the Registrar, Richard Biggs, and his colleague, Huw Taylor, for the support they have given me in understanding the way CICAIR operates and responding promptly to my countless requests for information. Although I benefited enormously from the experience and comments of all those who gave their time to contribute to the Review, the recommendations are, of course, my own.



2 The framework within which the Register operates

2.1 The basis on which CIC was appointed as the Designated Body for approving inspectors derives from an independent research study undertaken in the mid 1990s and a subsequent pilot study commissioned by the Department of the Environment, the government department responsible for Building Regulations at that time. The Building (Approved Inspectors etc) Regulations 1985 and Circular 10/96 which designated CIC were not intended to provide specific guidance on the way it should carry out this role, and government then, as now, was keen not to be prescriptive in the framework that it set.

2.2 However, in the course of this Review a number of those I spoke to felt that there was a lack of clarity in the powers that CIC has as a Designated Body and the framework within which it was expected to operate. In particular, there seems to be some uncertainty about the authority of CIC to take action against AIs, especially in respect of the ultimate sanction of withdrawing approval and removing an AI from the Register.

2.3 At the same time, government thinking in terms of designating bodies to carry out functions of this kind has developed in the 16 years since CIC was initially designated (particularly with the development of a number of competent person schemes), and this would be an opportune time to bring the arrangements for designating Approved Inspectors in line with current thinking. Both DCLG and CIC have indicated they would welcome the opportunity to review the current framework. In doing so, however, there is nothing to suggest there needs to be any significant change to this framework or that the regulations governing the Register need to be amended..

RECOMMENDATION 1

DCLG and the Welsh Government, in consultation with CIC, should review and clarify the framework within which CIC runs the Register of Approved Inspectors, having regard to the way other schemes of this kind now operate.



3 Processes and Procedures involved in operating the Register

The process for designating Approved Inspectors

3.1 The application process to become an AI is thorough and the information that has to be provided as part of the application is wide ranging and includes detailed knowledge of building regulations, health and safety, and legal and professional ethical issues. Applicants then have to present themselves before an Interview/Admissions Panel which is made up of three experienced building control professionals who are drawn from the Assessment Panel approved by the CICAIR Management Board. In drawing up the Interview/Admissions Panel, care is taken to ensure there is no conflict of interest with the applicant. Decisions are taken by the Panel immediately following each interview and these are conveyed to the applicants within 14 days.

3.2 In the last five years there have been up to 10 applications a year to become an AI and as **Table 2** shows, the vast majority of these are for corporate AI status. In this time only three applications have been unsuccessful and these have been where those applying have not satisfied the Interview /Admissions Panel that they have an appropriate level of competence and experience in the areas relevant to an AI.

Table 2: Applications to become Approved Inspectors 2007-11

	Applications			Approved			Unsuccessful		
	AIs	Corps AIs	Total	AIs	Corp AIs	Total	AIs	Corp AIs	Total
2007	2	5	7	1	5	6	1	0	1
2008	2	7	9	2	7	9	0	0	0
2009	1	6	7	1	6	7	0	0	0
2010	0	6	6	0	5	5	0	1	1
2011	0	4	4	0	3	3	0	1	1

3.3 Approval by the Panel gives the AI ability to provide services in any area that it believes it has sufficient competence. It has been suggested that it would be more appropriate to give ‘tiered’ designation so that AIs are only designated for particular building types according to their particular expertise and competence. However, it is not clear that the regulations would allow for this, and in my view such an approach would be complicated in relation to the increasingly mixed use nature of many developments. It would also be an additional burden on companies who would have to apply for re-designation if they took on new staff with expertise in areas beyond their initial designation.

3.4 Overall the application process seems to work satisfactorily and applications are considered well within the six month time frame that is set. Concerns have been raised, however, that the application and interview process is too heavily focused on detailed knowledge of the building regulations, and that issues concerning the efficient management of the business and supervision of its professional staff are not given sufficient attention.

3.5 A thorough understanding of the building regulations is undoubtedly important for all AIs, but the role of a professional is not necessarily to know the answers to every possible question ‘off pat’, but rather to know where to find the answers and to be able to interpret them correctly. A proper business management regime with appropriate risk assessment procedures is as important in ensuring



that AIs provide their clients with an efficient and professional service which gives them value for money, as is a detailed knowledge of the building regulations at a particular point in time. I therefore recommend that the Management Board looks again at the balance of the issues considered in the approvals process in the light of these comments.

3.6 Those that fail to reach the standard are informed as to where their application fell short and they have the opportunity to appeal against the decision. There has been at least one instance, however, where an applicant did not provide sufficient information to the Interview/Admissions Panel and the application was rejected. In such a situation it would seem appropriate to defer the decision of the Panel pending the additional information being provided but this is not an option available to the Panel, and so the applicant in this case had no alternative but to lodge an appeal. This seems to be a rather cumbersome way of dealing with such situations and I am therefore recommending that the proposed Approvals Panel has the opportunity to defer a decision whilst awaiting additional information and can then reconvene to reconsider the application once this information is available.

RECOMMENDATION 2

The Management Board should review the criteria for approving Inspectors to ensure that more consideration is given to the way the companies/individuals run their businesses. The proposed Approvals Panel should also be given the power, where appropriate, to defer their decision on an application pending further information being provided.

The monitoring and re-approval process

3.7 Approved Inspectors are expected to complete the Building Control Performance Indicators on an annual basis. The purpose of these performance indicators is to provide contextual data against which all building control bodies can assess their own performance and they are not, therefore, a particularly good guide as to how an AI is performing in relation to the Code of Conduct or other key indicators measuring quality of service. As a result, unless any complaints are lodged with CICAIR about its performance, once an AI is designated there is no further monitoring of its performance until it is required to apply for re-approval after five years.

3.8 There is a widespread view that this is not a satisfactory state of affairs and that to maintain the standards expected of an AI there needs to be a more regular monitoring of its performance. This should help to identify at an early stage any shortcomings that might not otherwise come to light until the re-approval or as a consequence of a complaint. In introducing regular monitoring, I am keen to avoid this imposing an additional administrative burden on AIs or additional cost to CICAIR, cost that would have to be passed on to AIs though the registration fees they pay.

3.9 The key seems to be to achieve a better balance between a more regular monitoring of performance and a far less rigorous re-approval process for those that the monitoring process shows are consistently performing to a satisfactory standard. In the course of the Review a number of AIs have indicated that they are unhappy at the amount of time they have to commit to preparing for the re-approval process when they believe their performance over the previous five years has been perfectly satisfactory. Several have commented that the information they have to provide, and the questions they are asked at the re-approval interview, make it appear as if they are applying to be designated for the first time.

3.10 As a result many AIs see the merit in having an annual system of monitoring, providing it is proportionate, applies to all AIs, and focuses on issues relevant to the professionalism of their business and their adherence to the Approved Inspectors Code of Conduct and the Building Control



Performance Standards. Amongst the critical issues that this annual monitoring exercise might, for example, consider are:

- A list of the qualified people they employ that have authority to issue notices
- The use during the year of sub-contractors/consultants to carry out approved inspector work and the measures that are taken to ensure they have the appropriate levels of competence and expertise
- A list of complaints received and resolved, and actions taken as a result of these
- Any insurance claims made in respect of their AI work
- Measures taken during the year to meet the Continuing Professional Development of their staff.

3.11 It will also be important to ensure that there is sufficient insight into the way the AI conducts its business as well as more factual information. The monitoring information would need to be returned electronically on an annual basis to the Registrar who will need to make a judgement as to whether any of the returns give cause for concern. Where this is the case I suggest they would need to either:

- Speak to the AI to seek assurances that any minor shortcomings will be remedied, or
- Refer more significant concerns to the Chairman of the proposed Monitoring and Re-approvals Panel.

3.12 The Chairman would have the authority to:

- Recommend that no action be taken
- Ask the Registrar to discuss specific issues with the AI, or
- Refer the issue to the members of the Monitoring and Re-approvals Panel for them to determine what, if any, action should be taken. This might include the requirement for an audit of the AI to be undertaken at the AI's expense.

3.13 For those AIs whose monitoring returns are perfectly satisfactory over the five year period, the re-approval process will be something of a formality when it comes before the Monitoring and Re-approval Panel and a formal interview would not be necessary. The Panel should still, however, have the authority to ask for additional information from AIs if there are issues of concern and also, where appropriate, require the AI to attend a meeting of the Panel for a formal interview.

3.14 I have considered carefully whether completing this annual return should be mandatory on all AIs or whether the default position for those that choose not to complete it is that they are subject to the same thorough five-yearly re-approval process that currently exists. Given that the monitoring process should be requiring information that it is expected that a well run AI would have readily to hand, I have concluded that this new arrangement could be made mandatory on all AIs without imposing an unreasonable administrative burden. Taking the five year period as whole, I am confident that the requirement on those AIs that perform satisfactorily will be reduced compared with the current arrangements for five-yearly reviews, and that the information that CICAIR will receive will ensure that any unsatisfactory levels of performance are picked up at a much earlier stage than is likely at present.

3.15 Setting up the annual monitoring returns will require additional resource input from the Registrar, but once the process is established the on-going monitoring requirement will be offset by the savings that arise from a less extensive re-approvals process.



RECOMMENDATION 3

An annual return which monitors an AI's performance over the previous 12 months should be developed and agreed by the Management Board. All AIs should be required to complete this return and those that through these returns demonstrate that their performance is meeting the requirements of the Code of Conduct and the Performance Standards should be subject to a less rigorous five-yearly review process.

3.16 On a number of occasions during the Review, the question of more formal auditing of AIs was raised with me and on at least two occasions it was suggested that AIs should be required to seek formal accreditation by UKAS. I do not believe, however, that imposing this requirement is necessary or appropriate, but I do see merit in an audit mechanism that aims to be constructive, and which helps to spread examples of best practice across the AI community. I am particularly keen that a newly designated AI should be subject to an audit after 12 months to ensure that their processes and performance are in line with what they presented to the Approvals Panel at the time of their initial application. This audit would involve at least one representative from the Approvals or Monitoring and Re-approvals Panel.

3.17 Thereafter I believe that to supplement the annual monitoring return each AI should expect to have a one-day audit visit during the five year period of their designation. The audit 'team' need only comprise two, or at most three, individuals, one of which I would recommend is the Registrar so that they can keep in touch with the way companies on the Register operate. The others in the audit team may well be other AIs. Initially, I was concerned that this could give rise to a conflict of interest, but as was pointed out to me the purpose of the audit would be to review the processes adopted and the auditors would have no need to have access to any information that may be regarded as sensitive or commercially confidential.

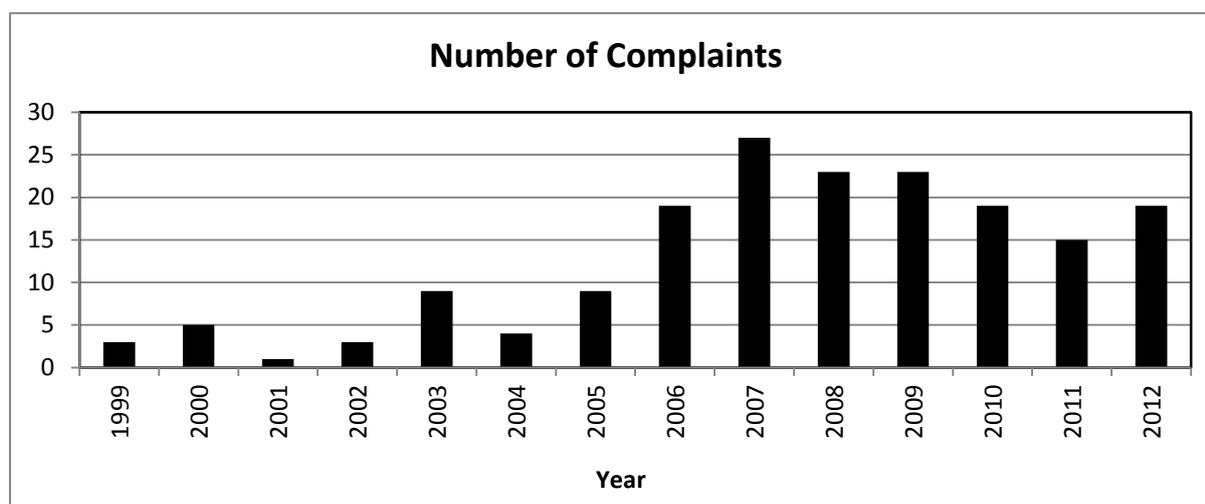
3.18 This may seem to add a considerable amount to the role of the Registrar, but given the number of AIs currently registered there would on average only be about one audit visit a month and I believe that the benefits from this level of commitment would justify the resource committed to it.

RECOMMENDATION 4

A formal audit is conducted of each newly-registered Approved Inspector 12 months after their initial registration. Thereafter, each AI should expect to have a one-day audit visit during the five year period of their designation.

Handling of complaints

3.19 Perhaps not surprisingly the AI Register has become the focus of attention of a number of people whose construction project did not work out in the way they hoped. Generally, complainants do not understand the way the industry operates and will turn anywhere in an effort to get redress for the injustice they believe they have suffered. In particular it is often difficult to explain to the complainant that the perceived 'failure' of their project may have nothing to do with the role of the AI and that the Register has no means of providing redress.

**Table 3: Complaints against Approved Inspectors, 1999-2012**

3.20 Any complaint against the performance of an AI is initially a matter for the AI's own complaints procedure and only when this does not provide the complainant with a satisfactory outcome should it become an issue for CICAIR to consider. **Table 3** shows that five years ago, at the beginning of this Review period, complaints were running at a record level, and the only explanation I have been given for this is the volume of building work that was being undertaken in the middle of the last decade. Since then the annual number of complaints received by the Registrar has fallen but is still much higher than ten years ago. Of the 173 complaints received over the last 14 years, 12 have been against individual AIs and 161 against corporates. Over half (99) have been from householders and another third (59) from other building control bodies. Complaints seem to relate equally to new build and conversions/extensions.

3.21 Clearly it is not possible to predict the number of complaints that will be received in a year and the peak of complaints identified in Table 3 coincided with long term sickness of CICAIR staff with the result that the resource available to deal with this increased workload was severely reduced. Even without this added burden, however, assembling panels is proving to be incredibly time-consuming. Although the last two years has seen an improvement in the timeframe for handling complaints, the figures in **Table 4** highlight an unacceptable situation which is unsatisfactory from the perspective of both the complainant and the AI against which the complaint is being made.

Table 4: Time taken to handle complaints against AIs

Period	Nov 1999 to June 2012		Jan 2010 to June 2012	
Average	630	days	223	days
Average	90	weeks	32	weeks
Shortest	1	days	2	days
Longest	2986	days	716	days
Longest	427	weeks	102	weeks
Longest	8.2	Years	2	Years



3.22 There are also other significant implications from this level of delay. I was advised of one complaint that was lodged in respect of the alleged failure of an AI when in fact the issue related to planning approval and not building regulations. When this eventually came before the Review Panel after over five years, the Panel quickly acknowledged that it was a planning matter and dismissed the complaint against the AI. Unfortunately for the complainant by then the period to raise the matter as a planning issue had already expired.

3.23 These protracted time periods also mean that should the issue that has led to the complaint result in a disciplinary case being brought against an AI, the period before this is dealt with is likely to be several years from when the alleged breach of the Code occurred, and this is not the way that a professional body should deal with such issues.

3.24 The Code of Conduct sets out a clear timetable for dealing with complaints up to the point where the Review Panel believes that it needs to interview the AI to hear their views on the case. The maximum period that should elapse from the point where a complaint is formally registered to this stage is 60 days if the timetable set down in the Code is adhered to. Within that time frame a decision should be reached on any complaint that is considered to be insubstantial or unfounded and all parties should be advised within a further five working days.

3.25 The only complaints that should extend beyond this period of 65 days are those which cannot proceed because legal action is pending in respect of the case, or those where the Review Panel believe that they need to summon the AI for an interview. In the latter case, no time frame is set and I recommend that no more than a further 30 days should elapse before such an interview takes place. On the basis that all parties are notified within a further five days of this interview, then the outcome of any complaint should be determined within 100 days of this being formally registered. I recommend that this additional timeframe for the final stage of the complaints procedure is introduced into the Code of Conduct.

RECOMMENDATION 5

A new target should be set with the aim that all complaints against AIs are dealt with within 100 days of them being formally registered and a new timetable should be set within the complaints procedure to set the framework for this. At each of its meetings, the Management Board should monitor the time taken to handle complaints to ensure that the time frames set are being adhered to.

3.26 Concerns have also been raised about the way the Review Panel handles complaints. There is no formal Procedural Note and I have been told of an instance where an AI was not advised in advance of the panel members only to find on arrival that one of them had a clear conflict of interest with his company. Throughout the hearing it was felt that the session was unstructured and the Panel was not as familiar as it should have been with its own procedures, exploring in great detail technical issues when the focus of attention should have been on issues relevant to the alleged breach of the Code of Conduct or the Building Control Performance Standards. Although this particular AI was satisfied with the outcome of the Panel, they felt that the way that it had gone about its business was unprofessional.

3.27 It is essential that in these situations all concerned – complainant, AI, and the Panel members themselves – feel that the matter has been dealt with fairly and professionally. It is important therefore that a Procedural Note is drawn up for the way the proposed Complaints Panel goes about its business and when an AI is called to appear before the Panel, it is advised as to the purpose of this. I am also proposing later in this report (see Section 6) that as part of the restructuring of the governance of



CICAIR a Standing Panel is introduced to consider complaints with an appointed Chairman and Vice Chairman, and that the composition of the Panel is reviewed so that the majority of voting members are not AIs. These measures should help speed up the process, provide a greater degree of continuity and consistency of approach, and reassure all concerned about the independence of the Panel.

3.28 In the past when a complaint was dismissed, it was not normal practice for the complainant to be advised of the reasons for this. In order to demonstrate the independence of CICAIR on these matters complainants should be given a brief explanation as to why their complaint has been dismissed and I am pleased that this is now standard practice.

RECOMMENDATION 6

A Procedural Note should be drawn up to set the framework for the way the Review (to be renamed Complaints) Panel handle complaints and this should require that the majority of the members of the Panel are not AIs.

Disciplinary Procedures

3.29 **Table 5** shows that of those complaints on which a decision has been reached, six have led to disciplinary action against an AI, five of which have been during the period of this Review.

Table 5: Outcome of complaints received – 1999 - 2012

	Still to be resolved	Not progressed	Complaint dismissed	Disciplinary Action against AI
Outcome of complaints received	15	45	107	6

3.30 The experience of dealing with these five disciplinary cases has raised a number of concerns.

- Whether CIC actually has the authority to take action against AIs, particularly in respect of the ultimate sanction of withdrawing approval and removing an AI from the Register
- The financial threat to CIC if an AI takes legal action because it disagrees with a decision that has been taken against it.
- The timetable for arranging disciplinary hearings and dealing with the outcome is unrealistic and is not being met.
- Membership of the Disciplinary Panel and the potential for conflict of interest
- A lack of clarity about the authority of the Panel to require an audit of the AI before the Panel in order to assist them in understanding the issues that have been raised.
- Confusion in the procedures that were being followed and the issues that should be explored.
- The potential that there is a legal liability on the individuals on the Panel that sanctions an AI

3.31 These concerns have been raised with me by both AIs and other stakeholders, and have led to the suggestion that it is unlikely that CICAIR will ever remove an AI from the Register. This clearly has the potential to harm the credibility of CICAIR and all AIs. I have already recommended that the first of these concerns is addressed in the context of a new framework to be drawn up between CLG and CIC – see Recommendation 1 earlier. In respect of the other concerns, I am recommending that these issues are addressed in a number of ways outlined in Recommendation 7.



RECOMMENDATION 7

Disciplinary Procedures associated with the Register are reviewed in the light of recent disciplinary cases and in particular;

- **The timetable in the Code is reviewed to ensure that it is realistic, but timely, in dealing with disciplinary cases**
- **Voting membership of the Disciplinary Panel is revised so that the majority of the voting members are not AIs, but ‘Knowledgeable Persons’ as defined in the Code**
- **The Code and Procedural Notes for the Conduct of Disciplinary Hearings are updated in the light of experience from recent hearings, and in particular provision is made for the Panel, where appropriate, to require an audit of the AI before them (at the AI’s expense) so they have a better understanding of the issues being raised.**

3.32 Concerns about the financial threat to CIC are addressed by a recommendation later in this Review that CICAIR be set up as a limited company within the CIC framework and in doing so it will be important to establish very clearly the legal liability of the directors of the company and those who make decisions on the various panels. If necessary, appropriate insurance cover will need to be taken out to protect them as individuals acting in these various roles.

3.33 A number of issues have been raised about the sanctions that are set down in the Code of Conduct. One concern is that the Code lacks any guidance on the circumstances in which the Disciplinary Panel should impose the three sanctions identified – admonishment, serious breach, or unacceptable breach – and I recommend that this guidance is introduced in the revisions to the Code and Procedural Notes referred to earlier.

RECOMMENDATION 8

The revisions to the Code of Conduct and Procedural Notes for Disciplinary Hearings should provide guidance to the Disciplinary Panel on the circumstances that will give rise to the different sanctions being imposed on an AI.

3.34 In cases where a serious or unacceptable breach is identified by the Disciplinary Panel, and steps have not yet been taken to address the shortcomings, the Panel should require the AI to spell out the measures it intends to undertake, and by when, to resolve the issues, and for an audit to be undertaken (at the AIs expense) at the end of the period to ensure the steps agreed have been taken.

3.35 In those cases where an AI is found to have committed an unacceptable breach of the Code, the Panel is obliged to remove it from the Register for a period of time even if the AI has already taken steps to address the issue or issues that led to the breach in the first place. Whilst it would seem appropriate in certain circumstances to require an audit take place to satisfy the Panel that this is the case, removal from the Register does not seem to be the most appropriate sanction and the implications of this both on the AI and those it is currently working for are very significant. It has been suggested that a more effective sanction would be to impose a financial penalty on the AI, but unfortunately it does not appear that the current legislation would allow for this.

3.36 In my view removal from the Register for disciplinary reasons should be the last resort and only applied when an AI is unwilling or unable to comply with the requirements of the Disciplinary Panel and abide by the provisions of the Code or the Building Control Performance Standards.



RECOMMENDATION 9

The Code of Conduct should be amended so that those AIs that have breached the Code of Conduct are required to demonstrate through an independent audit that they have remedied the shortcomings within an appropriate period of time. Only when an AI is unwilling or unable to abide by the Code should it be removed from the Register.

3.37 Although the removal of an AI from the Register may be a last resort, were it to happen the implications would be disruptive to the AI involved, its clients and potentially harm the image of the Approved Inspector route to building regulation approval. The Management Board therefore needs to develop a model procedure which would help facilitate an orderly transfer of outstanding work from any AI that it is felt necessary to remove from the Register. Whilst such arrangements could not be enforced, it would help ensure the credibility and reputation of the Register in these circumstances.

RECOMMENDATION 10

The Management Board agrees a framework which would help clarify arrangements for the orderly transfer of work from an AI that is removed from the Register.

Appeals Procedure

3.38 The Appeals Panel has a permanent chairman and handles appeals made against decisions of the Applications/Interview Panel or the Disciplinary Panel. There are Procedural Notes for the Conduct of Appeals Panels for the status of Approved Inspectors, but not for appeals against Disciplinary Hearings. Only two appeals have been heard over the last five years – one against refusal of an application and the other against the outcome of a disciplinary hearing.

3.39 To reinforce earlier comments about independence in disciplinary cases I recommend that the composition of the voting members of the Appeals Panel in these cases should be revised to ensure that two of the members are ‘Knowledgeable Persons’ and only one is, where reasonably practical, an AI. I also believe that Procedural Notes should be prepared for the conduct of Appeals Panels hearings into disciplinary cases to help ensure consistency in dealing with these cases.

3.40 One concern that has been expressed is that no-one from the Panel making the initial decision is present to support the decision of that Panel, and the Appeals Panel therefore has to argue the case against the appellant in a way that can appear to compromise its independence. I recommend therefore that the Chairman of the original Panel is invited to attend the appeal hearing to explain the decisions of that Panel, and to answer questions. This will help ensure that the Appeals Panel is seen by the appellant as truly independent. I understand that the Registrar is already taking steps to bring this about and I encourage the Management Board to support this change when it comes before them.

RECOMMENDATION 11

A set of Procedural Notes should be drawn up for Conduct of Appeals against decisions of the Disciplinary Panel. It should include revisions to the composition of the voting members of the Appeals Panel in disciplinary cases so that the majority of voting members are not AIs, but ‘Knowledgeable Persons’ as defined in the Code.

In all hearings of the Appeals Panel, the Chairman of the Panel whose decision is being appealed against should attend the hearing in order to explain the decision of the original Panel and to answer any questions.



4 The Perception of CIC in operating the Register

4.1 In the course of the Review I discussed this issue with a wide range of stakeholders, including AIs, clients of AIs, those responsible for building control in local authorities, central government, and those responsible for insuring AIs. There is a view from outside bodies that CIC is ‘on the side of the AIs’ rather than acting as a truly objective and independent registration body. Factors that have contributed to this impression include the unacceptable delays in dealing with complaints against AIs and the way in which a particularly high profile disciplinary case was handled. CIC has not helped itself in the tone of some of its correspondence to complainants, in one notable instance saying a case could not be taken further because of the time that had elapsed even though none of the delay appears to have been the fault of the person who raised the complaint.

4.2 A number of AIs have also indicated that they feel communication with them about issues such as changes to the Code of Conduct could be improved, and they are not clear how they can make an input to decisions taken by the Management Board that affect their businesses. There also seems to be a lack of understanding of how the Management Board is made up and how those that might wish to be involved in this can have their interest considered.

4.3 Recommendations I am making elsewhere in the Review to do with the approval and re-approval process, the way complaints are handled, and the organisational structure, are intended to make CICAIR appear more professional, independent, and transparent in the way it conducts its business. What it also needs to look at very carefully is how it deals with those outside the Register to ensure that any issues that are raised with CICAIR are dealt with promptly and professionally, and in the way that would be expected of an independent regulatory body.

4.4 I would also encourage the Management Board to consider the benefits of seeking independent UKAS accreditation for the way the Register is operated. This would provide all AIs with an assurance that the Register is being run without favour to any one group of AIs and also reassure outside bodies that there is an independent audit of the way CICAIR goes about its business.

RECOMMENDATION 12

CICAIR needs to improve the quality and professionalism in the way it deals with outside parties and ensure that it demonstrates that it is acting as an independent regulatory body. As part of this, the Management Board should consider seeking independent UKAS accreditation for the way the Register is operated.



5 Governance and Resources

Governance of the Register

5.1 The brief for this Review invites me to look at the constitution, function and effectiveness of the CICAIR Management Board, and I have encompassed within this the wider issues of corporate governance surrounding the way the Register is operated.

5.2 The terms of reference of the Management Board, the broad balance of representation on the Board, and the current list of Board members are set down in **Appendix 3**. The Chairman of the Board and of the Appeals Panel are appointed by the CIC Executive Board for a period of 3 years and members of the Management Board are appointed to serve for normally no more than 6 years, although these guidelines have not always been followed. Potential new members of the Management Board are identified by its existing members and then recommended to the CIC Executive Board.

5.3 A number of issues have arisen about the operation of the Management Board.

- There is a lack of understanding amongst AIs about the way people are appointed to the Management Board and the role it plays in overseeing the Register. This has led to some concerns that those running the Register could become something of a clique and that there is no input to its thinking from other stakeholders. A number of AIs have expressed an interest in being more involved in the work of the Board but they are not clear about the process for engaging with this.
- The Board's terms of reference are extremely wide-ranging and this is reflected in the diversity of issues considered at its meetings. Follow up to the various discussions is dependent on the Registrar or the voluntary efforts of Board members and so progress in addressing the various issues is sometimes quite slow. There is also a lack of clarity about the budget setting process and I was surprised that a financial report was not a regular feature on the Management Board agenda.
- As referred to earlier, there is concern that CIC as a professional body is exposed financially and reputationally to any legal actions taken against CICAIR, and that as a result this may influence decisions taken by the Management Board and its supporting Panels in disciplinary cases.

5.4 In the light of these concerns I have concluded that CICAIR should be set up as a separate limited company which is a wholly owned subsidiary of CIC. This would make significant steps towards addressing the various concerns raised above by providing a clear framework for the way the company operates (set down in its memorandum and articles), and this would also encourage greater transparency and financial accountability in the way the Board of the new company is appointed and conducts its business. There should continue to be an independent Chairman, and the number of AI members on the Board should be at least matched by those that do not have an AI background.

5.5 In addition I am proposing some changes to the internal structure of the way the Register operates, the main features of which should be:

- Establishment of a separate Technical Committee in order to help the new Board focus on strategic issues. This Committee would consider issues such as changes to the building regulations and the preparation of guidance notes and procedures related to the Code of Conduct. They would be responsible to the Board, but the Board could delegate issues to them for decision.
- The setting up of 5 Standing Panels each with a chairman and vice chairman and members appointed by the Board. This would help ensure consistency in the way the Panels operate and

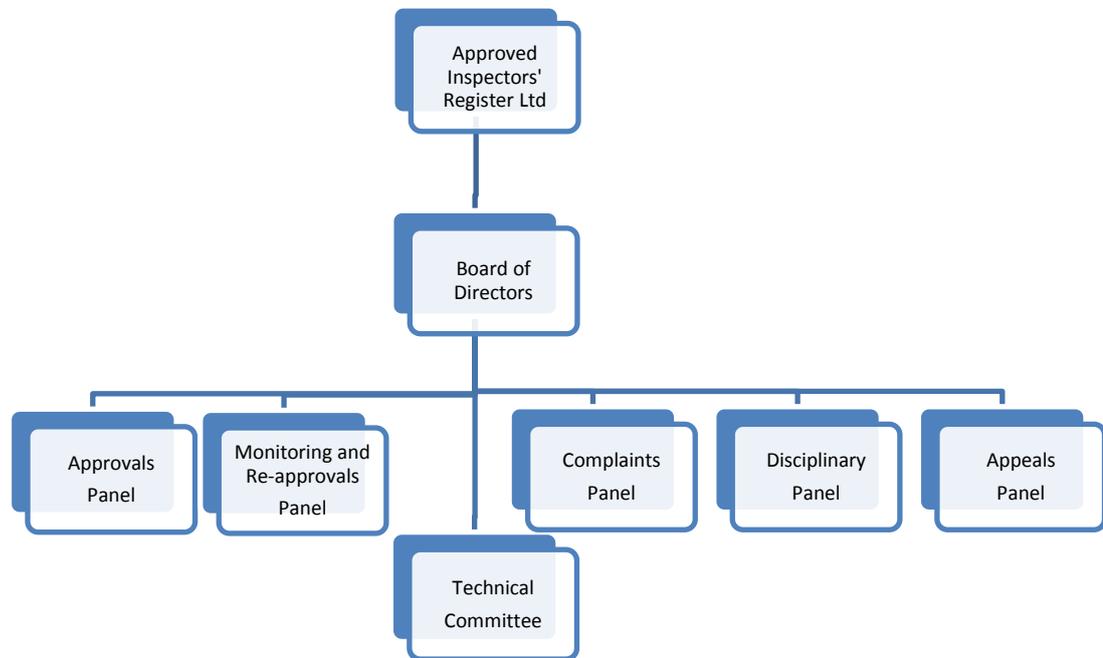


improve the time in which issues are dealt with. There would be more members appointed to the panels than were actually needed to sit at any one time, and that should help ensure the panels can be easily populated and conflicts of interest are avoided. The identification of a designated vice chairman is to ensure that there is a natural deputy where there is a conflict of interest or where other commitments would otherwise delay the handling of specific cases.

- In the case of the Disciplinary and Appeals Panels any AIs involved as voting members should be in a minority in order to demonstrate independence in the decisions these panels make.

5.6 **Table 6** summarises the proposed structure. The name given to the company is at this stage purely illustrative.

Table 6: Revised Operational Structure for the Register



RECOMMENDATION 13

CICAIR is set up as a company limited by guarantee as a wholly-owned subsidiary of the CIC. The operational structure is reviewed and a Technical Committee is established. The Standing Panels each have a fixed Chairman and Vice Chairman, and cover Approvals, Monitoring and Re-approvals, Complaints, Discipline, and Appeals.

Resources to operate the Register

5.7 CICAIR is run by a part-time Registrar with some modest administrative support. It is entirely financed by the fees received from AIs and, as the table in **Appendix 4** shows, the main expenses relate to staff costs, accommodation, and other office expenses. The objective behind the budget is to balance the books from one year to the next and CICAIR has no reserves.

5.8 There is no doubt that the resources available to operate the Register have been stretched, particularly when there was a high level of complaints to deal with and staff sickness. The current



Registrar is retiring and his successor has been appointed on a full time basis and this will mean more staff time is available.

5.9 The resource implications of the recommendations in this Review are related to staff time, some of a one-off nature such as setting up the proposed monitoring arrangements and reviewing procedures for the key panels. On an on-going basis the audit proposals, collecting and analysing the annual monitoring returns, and ensuring complaints are dealt with more expeditiously, will require more of the Registrar's time than is perhaps currently the case, but that will to an extent be balanced by a reduction in the resource needed to arrange the current re-approval process.

5.10 As far as income is concerned, if the recommendations on monitoring and re-approval are agreed, then it will be difficult in future to justify a re-registration fee every 5 years and so the annual fee will need to increase to compensate for this. At the moment the annual fee is set at the time of initial registration for the first five years and then at each of the re-approval points. Ideally, once an AI is established, the annual fee should be set on an annual basis based on the latest available annual returns of the AI as this will more accurately reflect the current state of the business. In the past it has been believed that the regulations would not allow the setting of an annual fee in this way, but officials at DCLG have indicated that this may indeed be possible. If this turns out to be the case I would suggest that this is the basis on which fees are calculated in the future.

5.11 The new Registrar will be taking up his post at the time that the Management Board and the CIC Executive Board are reaching their conclusions on the recommendations in this Review. At that time a priority for the new Registrar will be to prepare a business plan for the Register over the next three years having regard to the decisions made on the recommendations in this Review and any other matters that might arise from the clarification with DCLG of the framework within which the Register is operated. This will then allow the Board to balance the pace at which they want to introduce any changes with the fee and other income they believe it is reasonable to obtain from the AIs.

RECOMMENDATION 14

A priority for the new Registrar is to prepare a three year business plan for the proposed limited company, setting out a costed programme for implementing the recommendations in this Review, any issues arising from the new framework being agreed with DCLG and the Welsh Government, and the on-going operation of the Register.

5.12 In the course of the Review I have discussed the level of fees with a number of AIs all of whom were inevitably reluctant to see any increase, particularly at a time when the construction industry is experiencing such a severe recession. However, I do believe that the current level of fees is fairly modest given that AIs are being provided with a licence to practice. One of the main problems in the past when fee increases have been introduced is that the reason for this does not seem to have been explained to AIs, one AI telling me, for example, that its fees were increased by 600% without any explanation as to the basis for this or what additional value they would get for the money they were now being asked to pay. Should the Board consider that fee increases are necessary, it is important that there is a clear explanation and justification for this in the context of the value that AIs receive from the services of CICAIR.



6 Alternatives to CIC as the designated body operating the Register

6.1 The Review has shown that there are a number of ways in which CIC can improve its performance as the designated body for Approved Inspectors, but at no time has it been suggested to me that CIC should be replaced in this role. No other body or organisation has indicated an interest in taking this responsibility on should the opportunity arise, and there is no other body that has the breadth of engagement with the professional disciplines from which AIs will typically be drawn. Such insight has considerable value for the designated body, but it does also mean that in this role CIC needs to show an unquestioned degree of independence from its other responsibilities as a representative umbrella body for these professional disciplines.

6.2 I am also clear that given the size of the Approved Inspector Register it would not be appropriate to have more than one body designated by the Secretary of State as the competition could lead to a lowering rather than a raising of standards, and it would only serve to confuse those who choose to use the Approved Inspector route for building regulations approval.

RECOMMENDATION 15

CIC continues to be the sole Designated Body for Approved Inspectors under the Regulations.



7 Conclusions

7.1 The number of Approved Inspectors on the CIC Register is increasing from year to year and is now at record levels. The increasing number of corporate AIs is more than compensating for the steady decline in individual AIs. Complaints against AIs have fallen by nearly 50% over the last five years.

7.2 On the face of it therefore all would seem well. Underlying this, however, it quickly became apparent that there were a number of concerns about the operation of the Register and practically everyone I spoke to felt that this Review was timely and provided an opportunity to address some important issues and to build on what had been achieved since the Register was set up 16 years ago.

7.3 Throughout I have been encouraged by the way many of the AIs I spoke to have been keen to see how the framework set by the Register can encourage higher standards in the provision of Approved Inspector services. The Register is not just seen as a 'necessary evil', simply a means to provide a licence to practise, but also a means to help set standards that will benefit those that are committed to providing professional and cost effective services.

7.4 The recommendations in the Review therefore focus on trying to ensure that only competent and professional businesses are approved as AIs; that there is a mechanism to ensure that once AIs are approved they continue to perform to these standards at all times; and that those that fall short of what is expected of them are identified and appropriate steps taken to bring their performance back up to standard. In its role as Designated Body I have also been keen to ensure that CIC is providing the services professionally, efficiently, and gives value for money.

7.5 In recommending what needs to be done to achieve these objectives, I have been very keen not to impose additional administrative or financial burdens on AIs either through requirements that the Register imposes on them or costs in running the Register that will ultimately have to be paid for through the registration fees that the AIs pay.

7.6 The starting point is to revisit with government the remit that CIC has in acting as a Designated Body, something that DCLG is happy to engage in. I also believe that the time has come to look at how CICAIR sits within the CIC framework and I am convinced that the setting up of a separate legal entity will help address a number of the issues that were raised with me and encourage a more professional and transparent operation of the Register. Other recommendations are more tactical, but no less important, in bringing about improvements to the way the Register operates and Approved Inspectors perform.

7.7 Finally, I have concluded that CIC is the most appropriate body to continue to operate the Register and I hope that in accepting this endorsement of its role it will consider very carefully the various recommendations in this Review as to how its future performance can be improved.



APPENDIX 1: Terms of Reference for the Review

Aim

To review and report back with recommendations on any improvements felt desirable in the way the CIC discharges its role as designated body and potentially on whether the DCLG and/or Welsh Ministers should consider replacing or supplementing the CIC in that role.

Objective 1

To form a view on whether CIC is providing an effective service as designated body in accordance with the Building (Approved Inspectors etc) Regulations 2000 (now 2010) with particular consideration to the following:

- The approval and re-approval process
- Monitoring
- Disciplinary processes and sanctions and whether processes are joined up and if there are any gaps in delivery, for examples the coverage of and effectiveness of the disciplinary processes
- Consider how these processes are carried out and the resources needed including how CIC presents itself to outside parties
- The constitution, function and effectiveness of the CICAIR Management Board in supporting CIC to discharge its duties

Objective 2

To develop recommendations on how its performance might be improved

Objective 3

To consider and make any recommendations on any legal strengthening required regarding the apparent conflict of CIC being the body to take controlling enforcement action that could lead to an AI losing its right to trade and also being the only body with adequate knowledge to take that action.

Objective 4

To advise on whether the DCLG and/or the Welsh Ministers should consider supplementing or replacing the CIC as designated body under the Regulations and, if so, by what other bodies.



APPENDIX 2: List of those who made an input to the Review

CICAIR Management Board

Nick Raynsford MP, Chair
Bill Black, Chair of the Appeals Panel
Paul Timmins
Patricia Wynne CBE

CIC

Graham Watts OBE, Chief Executive
Richard Biggs, CICAIR Registrar
Huw Taylor, CICAIR admin support
Gillian Birkby, CIC Solicitor

Government

Bob Ledsoe, Ant Burd, Tracey Cull, Ian Drummond, Sandra Simoni, DCLG
Colin Blick, Welsh Government
Bill Dodds, Scottish Government

Approved Inspectors

Nigel Barr (Chairman) plus members of the Association of Consultant Approved Inspectors
Ian Davis, Diane Marshall, NHBC
Richard Batte, Assent Building Control Ltd
Andy Crooks Jhai Ltd
Gerard Marsh, Yorkshire Dales Building Control Ltd
Stuart Brown, Studios Ltd

Local Authority Building Control

Paul Overall (Chief Executive) plus members of LABC
Steve Warner, Doncaster Borough Council
Mike Sansom, Brighton and Hove City Council

Building Regulations Advisory Committee

Neil Cooper (Chairman)
John Tebbit
Peter Caplehorn

Building Control Performance Standards Advisory Group

Alan Crane CBE (Chairman)

Other

Susan Doran, Institution of Structural Engineers
Paul Kempton, Sennocke International Insurance Services Ltd



APPENDIX 3: CICAIR Management Board

Terms of Reference for CICAIR Management Board

1. Pursuant to the designation of the Construction Industry Council as a body for the purpose of approving inspectors for the purposes of Part II of the Building Act 1984, a Management Board will be established to implement the duties required, including overseeing the operations of the CIC Approved Inspector Register (CICAIR).
2. The Management Board will have delegated powers from the Council to establish, oversee, prescribe and manage the following:
 - Pool of Assessors
 - Admissions/Interview Panels, Review Panels & Appeals Panel(s)
 - The route to qualification as an Approved Inspector
 - Approve Approved Inspectors
 - Register of Approved Inspectors
 - Code of Conduct and Disciplinary Procedures
 - Determination of Appeals
 - Dissemination of the services provided by CICAIR.
 - Liaison with DCLG
3. The Management Board will report on these matters on a regular basis to the CIC Executive Board, and consider matters raised by the Executive Board in relation to all matters within its purview. It will refer and request guidance from the Executive Board on any matters, particularly those it considers to be outside its competence or designation.
4. The Management Board will advise the Executive Board on any matter relating to the activities of CICAIR including:
 - Any proposals for amendment to the relevant legislation
 - The fee CIC should charge for Approved Inspectors under section 49 (4) of the Building Act 1984
 - Membership of CICAIR Management Board, Appeals and Admissions Panel
5. The Management Board will make recommendations to the Executive Board for the withdrawal of Approvals.
6. The chairmen of the CICAIR Management Board and its Appeals Panel will be appointed by the Council for a period of three years. Members of the CICAIR Management Board will be appointed at the discretion of the Executive Board of CIC on an annual basis and will not normally serve for more than six years. In order to provide continuity the principle of rotation shall be adopted. The appointments will commence at the conclusion of the Council's AGM in each year. If additional members with specialist experience, or replacement members, are required between AGMs the Board shall co-opt such members.
7. The Assessors Pool Members will be appointed by the Management Board on an annual basis and the membership will be regularly reviewed by the Board. The choice of members from the Assessors Pool for individual admissions panels and the choice of Chairman will be left to the Registrar's discretion. Members of the Appeals Panel will be appointed on an ad hoc basis, drawing on expertise as appropriate for individual cases. The appointments to the Appeals



Panels will be made by the Registrar in consultation with the Chairman of the Panel and may be from the Management Board, the Assessors Pool or other suitable persons.

CICAIR Management Board Representation

The Management Board has agreed that a balanced Board should preferably comprise people with expertise the following areas:

- Independent Chairman;
- 3 Approved Inspectors;
- 2 Local Authority building control officers;
- 2 Civil/structural;
- 1 Fire;
- 1 Contractor;
- 1 Consumer;
- 1 House builder/developer.

In addition an observer from DCLG and the Chief Executive of CIC as an ex officio member. Additional suitably qualified persons might be added if the Board agreed to their appointment.

Current Membership of the Management Board

Members

Nick Raynsford MP	Chairman
Bill Black	Chairman of Appeals Panel – public sector background
Neil Cooper	AI and Chairman of BRAC
Diane Marshall	AI (NHBC)
Paul Timmins	AI
Dave Mitchell	Home Builders Federation
David Smith	Private and public sector building control
Chris Dawson	Public sector building control
Robert Hunter-Jones	LABC officer
Patricia Wynne CBE	Consumer interests
Nicholas Clay	Insurance industry
Paul Jenkins	London Fire Brigade

Observers

Ian Drummond	Department for Communities and Local Government
Sandra Simoni	Department for Communities and Local Government
Colin Blick	Welsh Government

Ex officio

Graham Watts OBE	Chief Executive, CIC
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Registrar

Richard Biggs	CIC
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APPENDIX 4: Budget for operation CICAIR in 2012

	£k
INCOME	
Application Fees ¹	28.0
Registration Fees ²	100.8
Total	128.8
EXPENDITURE	
Staff and Chairman costs	69.5
Overheads	33.5
Audit/legal costs	10.8
Board and Assessor expenses	5.0
Quinquennial Review	10.0
Total	128.8

¹ Application fees are £3.5k for new approvals and an admin charge of £3.5k at the time of re-approval

² Registration fees for new applicants are £0.5k pa for years 2-5 of their first 5 year period of registration. Following re-approval after 5 years the annual fee is set at 0.8% of the average turnover of the AI in building regulation work over the previous 5 years.

