



The Conveyancing Committee has investigated the guidelines to be adopted by solicitors in advising clients on the qualification of persons offering Certificates of Compliance with planning permission and, where appropriate, building bye-laws and building regulations.

The Committee is satisfied that the current practice is to accept Certificates of Compliance from chartered or civil engineers, persons with a degree in architecture, or persons (calling themselves architects or engineers) in professional practice on their own account either solely or in partnership for a period of at least ten years.

The Committee has recently decided that it is reasonable for solicitors to accept Certificates of Compliance from qualified building surveyors. This is a professional qualification at degree level.

The Committee has also considered whether Certificates of Compliance should continue in the old form of a “certificate” or whether they should accept “Certificates of Opinion” as to substantial compliance, which some of the main architectural bodies feel is more appropriate. Having obtained the opinion of Senior Counsel the Committee has decided that the nomenclature is not materially significant and that it is reasonable for solicitors to accept either “Certificates” or “Certificates of Opinion”.

The EC Directive 85/384/EEC (Council Directive of 10th of June 1985) which is sometimes hereunder referred to as “The Architects’ Directive” deals with the mutual recognition of diplomas, certificates and qualifications in architecture. It is important to understand that this Directive was not intended to regulate the practice of architecture in Member States, but rather to facilitate the free movement of architects between them. The Irish qualifications recognised in the Directive are set out below.

The Minister for the Environment, Mr. Smith, was asked in the Dail on 6th of April 1993 when he intended to establish a review system for architects whose work had traditionally been accepted in this country, but who were not covered by the EC Architect’s Directive; what form the review would take; and whether he would ensure that such architects would be admitted to the list of architects being prepared by him.

The Minister said in reply:

“A proposal has been submitted to the EC Commission to amend the Architects Directive in order to bring under its protection persons whose established right to practice, and consequently their right to the protection of the Directive, was overlooked when the Directive was being negotiated. The proposed amendment would allow for the issue of a certificate by the Minister for the Environment that

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the person concerned had over a period of at least five years immediately prior to the date of coming into force of the Directive pursued architectural activities, the nature and importance of which in the opinion of the Minister gave that person an established right to pursue those activities. The number of persons involved would be relatively small”.

“Pending amendment of the Directive, and in order to protect their position in the meantime, a list will now be prepared of those persons who would have the requisite experience to qualify for certification under the proposed amendment. To this end, I have already decided that persons with the requisite length of experience who, on the date of coming into force of the Directive, were members of the Irish Architects Society or were corporate architect members of the Irish Branch of the Architects and Surveyors Institute or of the Irish Branch of the Incorporated Association of Architects and Surveyors would, by virtue of such membership, have been included in the Directive had their position not been overlooked and that these would, accordingly, qualify for certification. The claims of others to have the necessary experience to qualify for certification under the amended Directive will be reviewed on an individual basis. Details of the review procedure have not yet been finalised”.

The following is the text of the proposed Amendment to the Architects Directive:

To add the following additional qualification to Article 11 (f) of the Directive.

“a certificate issued by the competent authorities to the effect that a person, who, on the date of entry into force of this Directive, had, over a period of at least five years immediately prior to that date, pursued architectural activities the nature and importance of which in the opinion of the competent authorities give that person an established right to pursue those activities”.

The Committee understands that the Department of the Environment is preparing a list of those persons who would qualify for protection under the Directive, should the amendment be accepted. In the meantime, the Department has advised financial institutions and local authorities that architects whose work has traditionally been accepted should not be prevented from continuing to practice by any form of discriminatory action. The Department has given similar advice to the Law Society and this seems reasonable to the Committee.

The qualifications recognised in Ireland by the Architects' Directive are a Degree of Bachelor of Architecture awarded by the National University of Ireland (B. Arch.) (NUI), the Diploma of Degree standard in Architecture awarded by the College of Technology, Bolton Street, Dublin (Dipl. Arch.), the Certificate of Associateship of the Royal Institute



of Architects of Ireland (ARIAI) and the Certificate of Membership of the Royal Institute of the Architects of Ireland (MRIA).

It has been suggested by various professional bodies that Solicitors be advised automatically to accept certificates from their members on the sole basis of such membership. Some of these bodies have student members and technician members, and the Committee feels that relying solely on membership can only lead to confusion. This suggestion was accordingly rejected.

In future the Committee feels that it is reasonable for solicitors to accept Certificates of Compliance or Certificates of Opinion from:-

- (a) Persons with a degree or a diploma of degree standard in Architecture.
- (b) Persons who have been in practice as Architects on their own account for ten years. This would include persons certified by or included on a list prepared by the Minister for the Environment as persons who in the Minister's opinion are appropriately qualified as described supra.
- (c) Chartered Engineers.
- (d) Persons with a degree in Civil Engineering.
- (e) Persons who have been in practice on their own account as Engineers in the construction industry for ten years.
- (f) Qualified Building Surveyors.
- (g) Persons from another jurisdiction in the European Union whose qualification is entitled to recognition in Ireland under the Architects' Directive.

The Committee has consistently advised solicitors to exercise caution in relation to the qualifications of persons from whom they will recommend acceptance of Certificates of Compliance. The reason for this is obvious. The Committee takes the view that if a solicitor advises a client to accept a Certificate of Compliance in relation to a development (such as a house or a house extension) from a person who is not adequately qualified, and a problem arises, the solicitor will almost certainly be sued for negligence on the basis that he or she should not have accepted the Certificate from a person who was not adequately qualified.

When advising a client in a house purchase transaction regarding any material point such as whether a Certificate of Compliance relative to a house or extension is in an acceptable form, or is given by a person with an acceptable qualification, solicitors usually apply a three-fold test:

1. In the solicitor's own opinion, is the particular matter in order and in accordance with good conveyancing practice?
2. Will it be acceptable under the rules or guidelines of the Bank of Building Society from whom the client is borrowing? and,

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3. Will it be acceptable to most other solicitors if the property were to be put up for sale again in the near future?

If the answer to any of these questions is in the negative the solicitor will normally advise his or her client not to accept the situation and advise the client not to proceed with the transaction unless the difficulty is resolved.

If a query arises over the qualification of a person giving a Certificate the solicitor should take care to make it clear that he or she is not making the decision but is advising the purchaser, and that the final decision as to whether or not to proceed with the purchase is the client's responsibility. Most purchasers, particularly those borrowing, will tend to be cautious and accept their solicitor's advice, but some will take a commercial judgment and proceed despite what the solicitor perceives as a problem. Obviously if a client decides to proceed despite the solicitor's concerns, it is good practice for the solicitor to confirm the advice in writing. Solicitors should also bear in mind that while the Law Society will assist and advise its members in regard to best practice, none of this can absolve the individual solicitor from his or her responsibility to the client. Each solicitor must look at each individual case on its own merits.

The Committee recognises that there may be exceptional cases involving persons practicing as architects whose competence is recognised in their own locality and whose certificates may be generally acceptable in that locality, even though their qualifications or experience fail to meet one or some of the criteria mentioned above. Having said that, solicitors are cautioned that in a resale it may be difficult to persuade potential purchasers to accept any departure from the foregoing guidelines.

26th October 1994

r.o.d.