

## IPReg Complaints Handling and Enforcement Policy

***IPReg is a legal regulator. We regulate the conduct of trade mark and patent attorneys. IPReg expects a standard of conduct which is set out in its Rules of Conduct for Patent Attorneys, Trade Mark Attorneys and other Regulated Persons (“the Rules of Conduct”). Where we receive information that a Regulated Person may not have met those standards, or may have breached IPReg’s Regulatory Arrangements, we consider whether action needs to be taken under the Disciplinary Procedure Rules.***

***This document sets out our policy in relation to complaints handling and enforcement.***

### Introduction

1. The public are entitled to expect that those we regulate will follow the standards of conduct we set out in the Rules of Conduct. In addition, the public can expect that Regulated Persons are of acceptable character and suitability to be registered as legal professionals and that they do not breach any of IPReg’s regulatory arrangements specified in the Legal Services Act 2007. IPReg may take action if a Regulated Person fails to meet the standards required. A Regulated Person includes a registered Attorney, a registered body, a Head of Legal Practice and a Head of Finance and Administration, as well as an employee or Manager of a registered body.
2. Complaints under the Disciplinary Procedure Rules can arise in a number of ways:
  - a complaint under the [ombudsman scheme](#);
  - a breach of the [Rules of Conduct](#);
  - failure to meet [IPReg’s Guidelines on the Assessment of Character and Suitability](#);
  - a breach of one of the Regulatory Arrangements made under [Section 21 of the Legal Services Act 2007](#).
3. This policy should therefore be read in conjunction with the Rules of Conduct, IPReg’s Guidelines on the Assessment of Character and Suitability and section 21 of the Legal Services Act 2007.
4. Not all complaints against a Regulated Person will warrant an investigation by IPReg or referral to the Complaints Review Committee or Disciplinary Board. IPReg seeks to encourage and support compliance as a first response, taking formal enforcement

action only where it is consistent with the [regulatory objectives](#) and [principles of good regulation](#), to do so.

## Receipt of information

5. IPReg will consider whether a referral or information suggests that there has been a breach of the Rules of Conduct or any of IPReg's regulatory arrangements, or other rules or obligations. IPReg can deal with a complaint only if it is about a person or firm it regulates (herein referred to as the 'Regulated Person').
6. The vast majority of concerns IPReg receives deal with a Regulated Person's conduct in a practice or work context; however IPReg will also consider concerns about their conduct outside the practice of intellectual property law. In such a case IPReg will determine whether the misconduct alleged may have an impact on the reputation of, or the public's confidence in, the profession.
7. In assessing a concern, IPReg may take into account information it already holds about a Regulated Person. It may also seek further information from the person making the referral, the Regulated Person themselves or any other third party.
8. Following the investigation, IPReg will consider whether the information held amounts to a Complaint within the meaning of the [Disciplinary Procedure Rules](#). This decision will be made by an officer at IPReg, with input from the Head of Registration and/or the Registrar.
9. In making the decision, IPReg will take into account factors including:
  - Whether the person making the referral has complained directly to the Regulated Person under their complaints handling procedure;
  - The nature and gravity of the allegations made;
  - Whether there is a history of regulatory non-compliance;
  - Whether the information suggests that the Regulated Person poses a risk to consumers or the public;
  - Whether the information suggests that the Regulated Person poses a risk to the reputation of either profession;
  - Whether the evidence provided or capable of being provided will, at its highest, suggest there has been an actionable breach which engages IPReg's regulatory powers;
  - Whether the matter should be more appropriately dealt with by another body, such as the Legal Ombudsman or the Police.

10. If it is considered that the information does not amount to a Complaint, the person making the referral will be notified of the decision and reasons will be provided in writing.
11. If it is considered that the information does amount to a Complaint, an Administrator will be appointed to handle the case. This will usually be the officer that has dealt with the investigation.
12. The Administrator will formally notify the Regulated Person (hereinafter referred to as 'the Respondent') of the Complaint, and provide a copy of the relevant information which will include the Complaint and any other information gathered during any investigation which the Administrator deems to be relevant to the Complaint. The Administrator will advise them that the case will be referred to the Complaints Review Committee. The Respondent will be invited to provide brief and concise observations, including any admissions, within 28 days of receipt of the notification.

### Complaints Review Committee

13. The Complaints Review Committee ("CRC") is an interim filtering committee composed of three members of the IPReg Board. The CRC determines whether:
  - the Complaint has been received in time;
  - the Complaint falls within IPReg's jurisdiction, in that it raises issues as to the professional conduct or practice of the Respondent;
  - the Complaint fails to disclose a prima facie case<sup>1</sup> against the Respondent; and
  - it would be disproportionate to progress the Complaint further, either to summary hearing or to a hearing before the Disciplinary Board.
14. In determining whether it would be disproportionate to progress a Complaint further, Rule 9.3 of the Rules provides that the CRC are to:
  - a) have regard to the public interest, the Rules of Conduct, the Regulatory Objectives and the Professional Principles; and*
  - b) take account of all the circumstances of the case including, without limitation:*

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<sup>1</sup> A *prima facie* case is one where on assessment, the evidence provided appears to support an allegation that the Respondent has breached one of IPReg's Rules of Conduct or regulatory arrangements, or has failed to meet the character and suitability requirements.

- i) *whether any alleged breach is of a purely technical or trivial nature;*
- ii) *the extent of any material prejudice or loss caused or likely to be caused to the Complainant or to any other person by reason of the Respondent's acts;*
- iii) *whether the Complaint calls into question the integrity or honesty of the Respondent;*
- iv) *the Respondent's standard of care and conduct in the matter leading to the alleged breach;*
- v) *whether the Respondent's handling of the matter, once drawn to their attention, was reasonable and what, if any, steps he has taken to terminate and prevent any repetition of the alleged breach;*
- vi) *whether any material harm has been caused to the standing of the Respondent's profession;*
- vii) *the past disciplinary record of the Respondent; and*
- viii) *whether it is a case of doubt or difficulty or one which involves a matter of public interest".*

15. The CRC might, although it would not be obliged to, dismiss or discontinue all or part of a complaint as being disproportionate if, in its opinion:

- the Complaint does not meet the realistic prospect test<sup>2</sup>, or is frivolous or vexatious;
- the Respondent's actions or conduct did not cause financial loss, distress, inconvenience or any other detriment, and the Respondent poses no ongoing risk of harm to consumers or the public;
- the Respondent's actions or conduct did not cause reputational harm or risk of harm to either profession;

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<sup>2</sup> The realistic prospect test is applied when considering both whether the facts of an individual case may be proved, and whether action may need to be taken in relation to the Respondent's registration as a result of those facts. The CRC must consider whether there is a genuine (not remote or fanciful) possibility that a Disciplinary Board would find the facts alleged proved, and that action will need to be taken in connection with the Respondent's registration or licence. The realistic prospect test reflects that it is not in the public interest to refer to the Disciplinary Board cases that appear bound to fail. On the other hand, where there is a genuine issue which would justify regulatory action being taken, it is consistent with the Regulatory Objectives that the case be determined by the Disciplinary Board.

- it would be more suitable for the issue to be dealt with by a Court or by another complaints scheme;
  - even if the allegation were proved, the breach does not meet the threshold of seriousness that would require IPReg to take any action on the registration of the Respondent or their ability to be an employee, manager, HOLP or HOFA of a registered body.
16. Where the CRC determines that a prima facie case has not been disclosed on the evidence, or that it would be disproportionate to progress the Complaint further, the CRC will reject the Complaint and provide written reasons to the Complainant and the Respondent. This decision is not otherwise published. There is no appeal from a decision of the CRC.
17. Where the CRC determines that a prima facie case has been made out and it would not be disproportionate to progress the case further, the CRC shall consider whether it would be appropriate to deal with the Complaint under the summary procedure. The summary procedure allows the CRC to resolve the Complaint on the papers at a future hearing and is suitable for cases where the appropriate sanction would be a Notice, a Warning or a Reprimand. Cases involving serious breaches or dishonest conduct are unlikely to be suitable for the summary procedure.
18. The summary procedure can be used only if the Respondent consents. If they wish to have an oral hearing they must elect to have a full hearing before the Disciplinary Panel. There is no appeal from a decision of the CRC made under the summary procedure. Decisions made under the summary procedure are published on IPReg's website.
19. Where the CRC considers it is not appropriate that the case be dealt with summarily, or where the Respondent elects to have a full hearing, the matter will go before the Disciplinary Board.
20. The CRC is assisted by an independent legal adviser who will advise on matters of law and procedure. The legal adviser will not play any part in the decision-making process.

## Disciplinary Board

21. The Joint Disciplinary Panel ("the JDP") is set up by IPReg and consists of at least three Trade Mark Attorneys, three Patent Attorneys and three lay members. The members of the JDP are entirely independent from IPReg, CITMA and CIPA. The Chair of the JDP will appoint a Disciplinary Board which will be made up of JDP members under the Disciplinary Procedure Rules. The Disciplinary Board will be the

body that hears the Complaint and makes a determination following an assessment of all the evidence.

22. The CRC will advise the JDP whether the case should be dealt with as a Patent Complaint, a Trade Mark Complaint or a General Complaint. This advice will be based on an assessment of the nature of the Complaint and the evidence. A Complaint that deals with issues that affect both professions, such as professional conduct, dishonesty or lack of integrity, is likely to be treated as a General Complaint.
23. The Complainant who made the initial referral to IPReg may elect to pursue the Complaint in their own name. If they elect to do so, IPReg will usually require that the Complaint be brought jointly between the Complainant and IPReg.
24. IPReg will appoint a Case Manager to manage the case on behalf of IPReg (and, where applicable, the Complainant). The Case Manager will usually be an officer of IPReg or an external solicitor instructed to act for IPReg. The Case Manager will be responsible for finalising the evidence IPReg seeks to rely upon, and serving it together with a Statement of Case. The Statement of Case is the formal “charge” which sets out the particulars of the Complaint including details of which rule(s) or obligation(s) the Respondent is alleged to have breached, and how it is alleged the breach(es) occurred.
25. The presumption is that hearings will be conducted on the papers. However, either party may request that an oral hearing be held. Oral hearings will be in public unless the Disciplinary Board determines that the press and other members of the public should be excluded for specific reasons set out in the Disciplinary Procedure Rules. Oral hearings will usually take place in London, but parties may apply to have the hearing held elsewhere. Applications will be considered by the Chair of the Disciplinary Board who must take into account fairness to all parties.
26. The Disciplinary Board has a wide discretion to manage hearing procedures as it sees fit, including giving pre-hearing case management directions. In doing so, the Disciplinary Board will at all times consider fairness to all parties.
27. The burden of proof is at all times on the maker of the allegation who will usually be IPReg. The standard of proof is the civil standard; that is, the maker of the allegation is required to prove factual matters on the balance of probabilities.
28. At the conclusion of the hearing, the Disciplinary Board will give a reasoned written decision setting out the Complaint, its findings of fact, and its conclusion as to whether the Statement of Case has been proved. The Disciplinary Board may reserve its decision and provide it at a later date. Where it elects to do this, the Disciplinary Board will ensure that the decision is delivered without undue delay.

29. The Disciplinary Board is assisted by an independent legal adviser who will advise on matters of law and procedure. The legal adviser will not play any part in the decision-making process.
30. Decisions of the Disciplinary Board as to findings of fact and (if the case is proved) sanction, will be published on IPReg's website.

## Appeals

31. Any party (other than IPReg) may appeal a decision or order of the Disciplinary Board, provided notice of the appeal is received by IPReg no later than 21 days after the date the decision or order was served upon the party.
32. The Disciplinary Procedure Rules set out the grounds upon which an appeal may be brought. These are:
  - The decision of the Disciplinary Board was wrong in that it gave insufficient weight to or drew incorrect conclusions from any evidence before it, which was or should have been material to its decision;
  - The decision was flawed because of a serious procedural or other irregularity in the proceedings;
  - The Appellant has new evidence which could not reasonably have been obtained for the initial hearing, and where that new evidence would have had an important influence on the original determination of the matter;
  - The Disciplinary Board did not have the power to make the order appealed against; or
  - The penalty imposed or order for costs imposed was excessive in light of the Disciplinary Board's findings on the facts or the Appellant's circumstances.
33. Upon notice of receipt of an appeal, the IPReg Board will appoint an Adjudicator to determine the appeal. The Adjudicator is a solicitor or barrister of at least 10 years' experience. The Adjudicator is independent of IPReg.
34. An appeal will be by way of a review of the decision made and/or procedure taken, and unless there is new evidence that was not available at the time of the initial hearing, the appeal will not involve a re-hearing of the evidence. The Adjudicator has the power to conduct the appeal as they consider appropriate, including determining the appropriate procedure to be followed, case management issues and the admissibility of fresh evidence. The Adjudicator will at all times, consider fairness to parties. The Adjudicator may make costs orders.

35. The Adjudicator's decision will be issued in writing, with reasons. The decision is pronounced publically, and published on IPReg's website.
36. There is a further right to appeal to the General Regulatory Chamber of the First Tier Tribunal in particular cases as set out in the [Disciplinary Procedure Rules](#).

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