

**IN THE MATTER OF THE INTELLECTUAL PROPERTY REGULATION BOARD
DISCIPLINARY PANEL**

BETWEEN:

THE INTELLECTUAL PROPERTY REGULATION BOARD

-and-

JOHN FREDERICK HARDWICK

DETERMINATION OF DISCIPLINARY PANEL

31ST AUGUST 2023

DISCIPLINARY PANEL:

Paul Brooks (Lay Chair)
Hannah Poulton (Lay Member)
Nicholas Fox (Patent Attorney)

LEGAL ADVISOR:

Kevin Saunders

1. The Respondent, Mr. John Frederick Hardwick, was admitted to the Register of Patent Attorneys on 24th September 1987. He has no previous disciplinary history.
2. Commensurate with IPReg Standard Operating Procedure, the Disciplinary Panel convened on 31st August 2023 to determine two allegations against the Respondent, namely:

1.	<i>On a date or dates between 1 July 2021 and 30 June 2022 you acted contrary to Rule 17 of the Rules of Conduct for Patent Attorneys, Trade Mark Attorneys and Other Regulated Persons in that:</i> <i>(a) you were or had been in private practice as a registered patent attorney; and</i> <i>(b) you failed to</i> <i>(i) take out and/or maintain a policy of Professional Indemnity Insurance with a participating insurer; alternatively</i> <i>(ii) apply for and/or take out and maintain a Professional Indemnity Insurance run-off policy with a participating insurer.</i>
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2.	<p><i>You acted contrary to Rules 19 and/or 20 of the Rules of Conduct for Patent Attorneys, Trade Mark Attorneys and Other Regulated Persons in that you:</i></p> <p><i>(a) failed to provide in a timely manner information reasonably required by the Intellectual Property Regulation Board</i></p> <p><i>and/or</i></p> <p><i>(b) failed to co-operate with the Intellectual Property Regulation Board by failing to provide the information requested</i></p> <p><i>in its letters to you dated 23 May 2022 and/or 22 November 2022.</i></p>
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3. The Disciplinary Panel is satisfied that the Respondent was aware of the disciplinary proceedings and the hearing on 31st August 2023. The Disciplinary Panel was further satisfied that the Respondent was in receipt of all relevant hearing documents. The Respondent chose not to engage with these proceedings.

Background

4. PAMIA emailed the Respondent on 26th June 2020 to remind him to complete the renewal documentation for his professional indemnity insurance. On 29th June 2020, the Respondent stated the following in a response email to PAMIA¹:

“This is the third year I have tried to retire so far without success though I have only one remaining US one European and no UK cases. I have turned down all new work for the past two years. For at least the past two tax returns I have shown a loss. I am now entirely dependent on my pension. I hope 1 [sic] can afford you.”

5. PAMIA provided professional indemnity insurance to John Frederick Hardwick between 24th August 2009 and 30th June 2021².

¹ RC/2 Correspondence between PAMIA and Respondent, 2020 insurance year: Bundle p. 33.

² Witness statement of Redvers Cunningham dated 19th June 2023: Bundle, p.5.

6. IPReg emailed the Respondent on 1st March 2022. The e-mail stated that records showed that IPReg had not received the Respondent's practising fee for 2022³. The email further stated the following:

You are now suspended from the Register with immediate effect.

This means that you are not able to conduct any reserved legal activity during the period of your suspension. To do so may risk criminal prosecution under section 14 of the Legal Services Act 2007. You may not use the protected title "Patent Attorney" or "Patent Agent".

7. Mark Barnett, an Assurance Officer of IPReg, telephoned the Respondent on 5th April 2022 in order to discuss issues relating to unanswered correspondence and the Respondent's suspension from the register. A telephone attendance note of the conversation records that the Respondent stated the following⁴:

- i. The Respondent had stopped working as a Patent Attorney three years prior, and he has had no income since then.
- ii. The Respondent had not renewed his professional indemnity insurance.

8. Due to the disclosures made by the Respondent on 5th April 2022, IPReg commenced an investigation into the conduct of the Respondent. Mr. Barnett telephoned the Respondent again on 7th April 2022 in order to obtain more information about the Respondent's retirement from practice. A telephone attendance note of the conversation records that the Respondent disclosed the following⁵:

³ SE/1: IPReg email to respondent confirming suspension 1.3.22: Bundle, p.39.

⁴ SE/2: Attendance note of telephone call with Respondent, 5.4.22: Bundle, p.41.

⁵ SE/3 Attendance note of telephone call with Respondent, 7.4.22: Bundle, p.44.

- i. The Respondent confirmed that he had not informed PAMIA or IPReg about his retirement.
 - ii. The Respondent's European Patent Office ("EPO") deposit account held a residual balance of €740 and he was unsure what he should do with these funds.
9. In a letter dated 23rd May 2022⁶, Mr. Barnett formally requested that the Respondent provide an explanation for his apparent failure to have a policy of professional indemnity insurance in place. The letter further made a formal request for the provision of documentary information about the Respondent's EPO deposit account, in particular the exact balance of the account, to whom the funds belonged and how he intended to deal with the funds. The Respondent did not respond to this letter⁷.
10. In an email to the Respondent dated 22nd November 2022⁸, Mr. Barnett repeated the formal request made on 23rd May 2022 for provision of documentary information about the Respondent's EPO deposit account, in particular the balance of the account, to whom the funds belonged and how he intended to deal with the funds. The email stipulated that a response was required from the Respondent within 7 days. The Respondent did not respond to this email⁹, as requested or at all.

Findings

11. The Disciplinary Panel has carefully considered the documentary evidence in this case with a view to determining whether the allegations have been proven to the requisite standard of proof, namely the civil standard.
12. The panel considered each allegation in turn. The first allegation concerns a contravention of Rule 17 of the Rules of Conduct for Patent Attorneys, Trade Mark Attorneys and Other Regulated Persons.

⁶ SE/5: IPReg Letter to Respondent, 23.5.22: Bundle p.65.

⁷ Witness statement of Shelley Edwards dated 20th June 2022, Bundle p.36.

⁸ SE/7: IPReg email to Respondent, 22.11.22: Bundle, p.72.

⁹ Witness statement of Shelley Edwards dated 20th June 2022: Bundle p.37.

13. Having regard specifically to allegation 1(a), the Disciplinary Panel is satisfied to the requisite standard that the Respondent had been in private practice as a registered patent attorney. The Disciplinary Panel arrived at this conclusion based on the Respondent's hitherto registration, and his email correspondence with PAMIA concerning professional indemnity insurance. The Disciplinary Panel noted the e-mail that the Respondent sent to PAMIA on 29th June 2020 in which he stated that he was in the process of retiring from private practice and refusing all new instructions. He further acknowledged that he was still responsible for two outstanding cases.
14. The Disciplinary Panel also noted the Respondent had renewed his professional indemnity insurance until 30th June 2021. The Disciplinary Panel therefore deemed it reasonable to infer that the Respondent was in private practice in the year ending 30th June 2021.
15. In the absence of evidence that the Respondent was continuing in private practice beyond 30th June 2021, the Disciplinary Panel did not find that the Respondent was obliged to take out professional indemnity insurance after that date. It follows that there was no evidence that the Respondent required PII between 1st July 2021 and 30th June 2022. Accordingly, the Disciplinary Panel did not find allegation 1(b)(i) proven. The Disciplinary Panel went on to consider allegation 1(b)(ii).
16. The Disciplinary Panel referred to the particulars of rule 17 and the requirement that each registered person in private practice, when closing their practice (without any outstanding liabilities being transferred to another regulated provider), must apply for and, if offered terms, take out and maintain for at least 6 years, a PII run-off policy with a participating insurer.
17. In support of this limb of allegation 1, the Disciplinary Panel considered the witness statement of Redvers Cunningham¹⁰ and the correspondence between PAMIA and IPReg. The Disciplinary Panel further observed that no evidence has been adduced by or on behalf of the Respondent to indicate that he did in fact apply for or take out a PII run-off policy. The Disciplinary Panel is therefore satisfied on the balance of probabilities that the Respondent did not apply for and/or

¹⁰ Witness statement of Redvers Cunningham dated 19th June 2023, Bundle p5.

take out and maintain a Professional Indemnity Insurance run-off policy with a participating insurer. Accordingly, the Disciplinary Panel finds that allegation 1(b)(ii) is proven to the requisite standard.

18. By virtue of the determinations in respect of allegation 1(a) and (b)(ii), it follows that on a date or dates between 1 July 2021 and 30 June 2022, the Respondent acted contrary to rule 17 of the Rules of Conduct for Patent Attorneys, Trade Mark Attorneys and Other Regulated Persons.
19. Having regard to the second allegation, the Disciplinary Panel carefully considered the background evidence in this case, the correspondence between Mr. Barnett and the Respondent, and the witness statements of Shelley Edwards.
20. The Disciplinary Panel had little difficulty in finding to the requisite standard of proof that requests made by Mr. Barnett, in correspondence to the Respondent on 23rd May 2022 and 22nd November 2022, were reasonable requests for information in the context of a regulator exercising its function and duty.
21. The Disciplinary Panel found that the Respondent failed to respond to these requests for information in a timely manner, or at all. It follows that the Disciplinary Panel is satisfied that both limbs of the second allegation are proven to the requisite standard; namely that the Respondent failed to provide in a timely manner information reasonably required by IPReg, and the Respondent failed to co-operate with IPReg by failing to provide the information requested. Accordingly, the Respondent acted contrary to rules 19 and 20 of the Rules of Conduct for Patent Attorneys, Trade Mark Attorneys and Other Regulated Persons.

Sanction

22. The Disciplinary Panel applied the IPReg Disciplinary Sanctions Guidance. At the outset of the Disciplinary Panel's determination on sanction, the Disciplinary Panel considered the seriousness of the misconduct.

23. The Disciplinary Panel formed the view that this was not a case concerning actual harm to clients, but rather a case concerning a potential risk of harm due to a failure to apply for or take out a PII run-off policy when closing a practice.
24. The Disciplinary Panel further formed the view that the Respondent demonstrated a wilful disregard for IPReg's regulatory arrangements by failing to cooperate with or adequately respond to reasonable requests for information. The proven misconduct would clearly undermine both the reputation of, and client confidence in, the profession.
25. Having regard to the IPReg Disciplinary Sanctions Guidance, the Disciplinary Panel regarded the Respondent's misconduct as constituting a reckless disregard for clients' interests, due to the lack of appropriate insurance arrangements.
26. Accordingly, the Disciplinary Panel attributed the Respondent's misconduct to the category of "*Very serious*".
27. In the absence of representations or evidence from the Respondent, the Disciplinary Panel identified the following mitigating factors in this case:
- i. No previous disciplinary history
 - ii. No evidence of actual harm to clients or others as a result of the behaviour
 - iii. Minimal risk of the Respondent repeating the misconduct, due to his stated intention to retire.
28. The Disciplinary Panel considered whether the relatively small size of the Respondent's practice in recent years might be considered a mitigating factor in this case and concluded that it was not. The purpose of obtaining run-off insurance is to protect clients' interests when an attorney in private practice ceases to trade. All clients of regulated attorneys are entitled to that protection regardless of the size of an attorney's practice which may be being closed.
29. The Disciplinary Panel identified the following aggravating factors in this case:

- i. The Respondent did not engage or co-operate with IPReg
- ii. No evidence that the Respondent has taken steps to remedy the misconduct.
- iii. The Respondent has not demonstrated remorse.
- iv. The Respondent was at the material times an experienced professional who ought to have been aware of his duties and obligations.

30. The Disciplinary Panel carefully weighed the mitigating and aggravating factors in this case, and formed the view that the aggravating factors outweighed the mitigating factors.

31. The Disciplinary Panel resolved not to impose a separate sanction for the second allegation, but instead to regard the second allegation as further aggravating feature of the Respondent's misconduct, namely that he had failed to cooperate with his regulator after concerns were raised in respect of the status of his professional indemnity insurance.

32. The Disciplinary Panel carefully considered whether the very serious nature of the Respondent's misconduct could be adequately reflected by a sanction of suspension from the Register. However, due to the cumulative effect of the aggravating factors, the Disciplinary Panel determined that the Respondent's misconduct was both very serious and wholly incompatible with the practice of law. It follows that the only appropriate sanction in this case is that the Respondent is permanently removed from the Register. The Disciplinary Panel orders the same.

Costs

33. In light of the fact that both allegations are proven against the Respondent, the Disciplinary Panel sees no good reason why the Respondent should not bear the costs of these proceedings. The Respondent has not challenged the application for costs, of which he was made aware in advance of the hearing.

34. IPReg seeks a costs order in the sum of £8,372.95. The Disciplinary Panel deems these costs to have been actually and reasonably incurred by IPReg. Accordingly, the Disciplinary Panel makes a costs order against the Respondent in the sum of £8,372.95.