

IPReg– Disciplinary and enforcement guidance

Who is this guidance for?

This guidance has been prepared to assist both *regulated persons* who may be the subject of a complaint made to *IPReg* and their representatives, the maker of the complaint and *IPReg* decision makers.

Purpose of this guidance

1. This guidance should be read in conjunction with Chapter 4 of *IPReg's* Core Regulatory Framework and the section in *IPReg's* Standard Operating Procedure which relates to investigation and disciplinary requirements. These documents set out *IPReg's* investigatory powers and how it seeks to investigate concerns and bring disciplinary action where necessary.
2. This guidance document provides more general information about the investigation and disciplinary process, and how decisions at various stages are made.

General principles

3. *IPReg* can investigate complaints about the conduct of any *regulated person*. This includes *registered attorneys, registered and licensed bodies, employees* of firms and those holding statutory roles within firms, such as the *HoLP* and *HoFA*. It is rare that *IPReg* receives complaints about people who are not *registered attorneys* or *registered firms*, but *IPReg* may investigate where there are concerns that a non-attorney has breached any of *IPReg's* *regulatory arrangements*. An example may be where an *employee* working in a firm's accounts department has misappropriated funds.
4. *IPReg* can receive complaints from anyone, including *clients* (which includes former and prospective ones), members of the public, the *Legal Ombudsman*, another legal services regulator, the UKIPO and from other *regulated persons*. The maker of the complaint is referred to as "the complainant". *IPReg* can also open investigations of its own volition based on information it holds about a *regulated person's* regulatory compliance, such as failures to comply with *IPReg's* rules in respect of professional indemnity insurance or continuing competence (CPD).
5. *IPReg* will not usually investigate anonymous complaints. This is because it is not possible to verify any information received from the complainant, or seek clarification from them.
6. *IPReg* will consider whether a referral or information it has suggests that there has been a breach of the Core Regulatory Framework or any other of *IPReg's* *regulatory*

arrangements. In doing so, *IPReg* does not act for or on behalf of the complainant, but *IPReg* will keep the complainant updated with the progress of any investigation and will provide the complainant with written reasons for key decisions.

7. Not all complaints against a *regulated person* will warrant an investigation by *IPReg* or referral to the next stages in the disciplinary process. *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.
8. When investigating complaints, *IPReg* will bear in mind the role and regulated status of the subject of the complaint. In most cases it will be appropriate and proportionate to treat complaints about junior, non-attorney *employees* in a large firm differently to complaints about *registered attorneys*, particularly if senior or if they are statutory role holders. In making decisions about complaints and concerns, *IPReg* will consider its Decision making guidance with emphasis on the *regulatory objectives* as the foundation for decision making.

What does IPReg investigate?

9. *IPReg* reports annually on the types of complaints it receives, in our [Annual Report](#). Of those *cases* received, not all will warrant an investigation and fewer still will end up going before the *Case Examiners*, or being referred to the *Disciplinary and Interim Orders Tribunal*. Further details of case findings can be found [here](#).
10. The majority of concerns *IPReg* receives deal with a *regulated person's* conduct in a practice or work context. However, the overarching *Principles* makes clear that *regulated persons* are expected to uphold the *Principles* in their personal lives as well, where relevant to their practice as a *regulated person*.
11. Whether or not conduct in a *regulated person's* private life is relevant to their practice, will be a matter to be considered on a case by case basis. For the conduct to be relevant, *IPReg* will need to be satisfied that there is:
 - a. A clear qualitative link between the act or misconduct alleged and the professional practice of a *regulated person*; or
 - b. A risk that the confidence the public holds in the profession(s) may be damaged or the reputation of the profession(s) may be brought into disrepute.
12. It is not possible or desirable to provide an exhaustive list of possible 'private' behaviours that may be deemed to be in breach of the *Principles*, but the following may suggest the *Principles* are engaged and an investigation by *IPReg* is warranted:

- a. Where a *regulated person* has been dishonest such as committing mortgage or insurance fraud. This propensity to act dishonestly would have an impact on *IPReg's* assessment of that *person's* suitability to be a regulated legal professional and would also have an impact on the reputation of the profession as a whole.
- b. Where a *regulated person* makes racist, sexist, homophobic or defamatory comments in a public forum, including on social media. This calls into question their ability to treat *clients*, colleagues and other third parties in a professional context with dignity and respect and to act in their best interests. It may also harm the reputation of the regulated profession.
- c. Where a *regulated person* has been found in private, non-criminal legal proceedings (such as family court or an employment tribunal), to have been dishonest, misleading or has sought to unjustifiably disrupt or delay legal proceedings, or another finding that is relevant to their practice as a *regulated person*. This conduct would suggest that they have not acted in a way that upholds the constitutional principle of the rule of law and the proper administration of justice; ethical characteristics that are central to the role of being a regulated legal professional.
- d. Where a *regulated person* is found to have committed a crime. A criminal conviction, charge or caution is likely to call into question a *regulated person's* suitability to be a member of a profession who has a duty to protect and promote the public interest and interests of consumers and to support the constitutional principle of the rule of law.

13. *IPReg* is mindful that individuals in their private lives, have rights and freedoms protected by the Human Rights Act 1998 and upheld by the European Convention on Human Rights. These include the right to a private life, the right to freedom of thought, opinion and expression, and the right to work. However, where those rights come into conflict with the *Principles* which set out the ethical behaviours expected of all *regulated persons*, *IPReg* may act to uphold those *Principles* in pursuit of its legitimate aim to regulate in accordance with the *regulatory objectives*.

14. Again, this is not an exhaustive list but the following types of complaint are unlikely to engage the *Principles*¹:

- a. Where a *regulated person* is alleged to have breached an employee's rights. This would normally be considered an employment matter for which other avenues of redress are appropriate. Should an Employment Tribunal or

¹ Although in some cases, investigation may be needed first in order to make that assessment

higher Court make findings of fact that are of relevance to that person's practice as a *regulated person*, then this may be a matter for *IPReg* to investigate.

- b. A business or commercial dispute between a *regulated person* and another party/parties where it is alleged that the *regulated person* has breached a contract. These disputes are best resolved in another forum such as the civil courts or via mediation or arbitration.
- c. An allegation that a *regulated person* has had an extra marital affair. Such conduct would have no relevance to the *regulated person's* practice and there is minimal risk that such conduct would bring harm to the reputation of the profession.
- d. An allegation that a *regulated person* is a member of, or supports, a particular political party, religion or organisation. *IPReg* supports and encourages a diverse profession made up of individuals with a wide range of different beliefs, values and life experiences, reflective of the *UK's* diverse society. Unless there is evidence that the *regulated person's* beliefs will negatively impact on the way they practise their profession, or are of such a nature that the reputation of the profession may be harmed, then there can be no suggestion of a breach of *IPReg's* regulatory arrangements.

Decision making factors when investigating

15. In deciding whether to close the complaint or that further investigation or escalation is required, *IPReg* will take into account a number of factors, including but not limited to:

- a. Whether the evidence provided or capable of being provided suggests there has been a breach of *IPReg's* regulatory arrangements;
- b. Whether the person making the complaint has complained directly to the *regulated person* under their complaints handling procedure (if applicable);
- c. The nature and gravity of the allegations made;
- d. Whether the information suggests that the *regulated person* poses a risk to consumers or the public;
- e. Whether the information suggests that the *regulated person* poses a risk to the reputation of either profession;

- f. Whether there is a history of regulatory non-compliance or previous allegations of misconduct;
 - g. Whether the matter would be more appropriately dealt with by another body, such as the *Legal Ombudsman* or the Police.
16. *IPReg* will continue to investigate the case until there is enough information to decide whether to close the matter or escalate it further. There is no evidential threshold that must be met at this stage; rather *IPReg* will consider whether there is sufficient evidence, both quantitatively and qualitatively, that a breach of the *regulatory arrangements* has been made out that warrants escalation to the *Case Examiners*. This will be a matter of judgement and where there is any doubt, the case will be referred to the *Case Examiners*.
17. If it is considered that the information does suggest that there has been a breach of *IPReg's regulatory arrangements*, *IPReg* will consider whether the matter may need to be escalated to the *Case Examiners*. Not all cases of a breach of *regulatory arrangements* will warrant escalation to the *Case Examiners*. For example, a one-off failure to comply with a request from *IPReg* for particular information by a particular date is unlikely to warrant escalation. Likewise, a failure to advise *IPReg* of changes in a regulated firm's ownership structure, if quickly rectified, is likely to be dealt with administratively without escalation through the disciplinary process.

Case Examiners' approach to decision making

18. The *Case Examiners* will consider the case on the papers. As set out in *IPReg's* standard operating procedure, there is no facility for a hearing with the parties in attendance, or for oral evidence to be given. The *Case Examiners* will usually consider the papers separately and then meet remotely via video conferencing, or in exceptional circumstances, face to face. Whilst the meetings may be set up by *IPReg* and administrative support provided, none of *IPReg's* staff are present whilst the *Case Examiners* discuss the case. The *Case Examiners* may request that a *legal adviser* be present while they consider the matter.
19. The *Case Examiners* will determine whether there is a *case to answer*, that is, if the facts alleged against the *regulated person* are proved, would they support a finding of a breach of any of *IPReg's regulatory arrangements*. This is sometimes referred to as a "prima facie case".
20. The *Case Examiners* have to consider:
- a. Is the evidence, as presented, sufficient to support the allegation?
 - b. If so, does the allegation suggest a breach of any of *IPReg's regulatory arrangements*?

21. It is not for the *Case Examiners* to conduct an in-depth exploration of the facts, to resolve any conflicts in the evidence or to make a finding on the facts. They may, however, assess the weight of the evidence and use that assessment to guide them as to whether or not it is sufficient to find a *case to answer*.
22. As the *Case Examiners* are not required to resolve conflicts of evidence or make findings of fact, they need to merely be mindful that they may not have all the evidence before them. It is sufficient that the *Case Examiners* consider that the evidence, taken at its highest, is capable of supporting the allegation of a breach of *regulatory arrangements*. If the strength or weakness of the *case* is determined by whose evidence is to be preferred, it is appropriate that this assessment is made by the *Disciplinary Panel* who will have the benefit of hearing from and potentially questioning, the witnesses directly.
23. The *Case Examiners* have a number of options open to them once they have considered the case.
24. As set out in the standard operating procedure, *Case Examiners* can direct *IPReg* to undertake further investigation before a decision is made. This would usually be done for one of the following reasons:
 - a. further information is needed before the *Case Examiners* can make a decision as to whether there is a *case to answer*. This may be because another agency is investigating the matter or other legal proceedings are in play; in such cases it would be appropriate to refer the matter back to *IPReg* pending the outcome of those matters and any further enquiry that needs to be made as a result; or
 - b. there are other avenues of enquiry into the conduct of the respondent that have not been explored and which would provide more evidence about the matter alleged, or about a completely different matter. An example may be where the *case* put to the *Case Examiners* deals with an allegation about poor financial management of a practice but where it seems to the *Case Examiners* that there may also be concerns about the *regulated person's* lack of transparency in respect of pricing provided to *clients*. It is not for the *Case Examiners* to go on a 'fishing expedition'; rather they should be clear about the reason they consider it is appropriate to undertake the targeted enquiries directed.
25. As set out in the standard operating procedure, *Case Examiners* can recommend that the case be resolved via a process of mutual consent in any one or a combination of ways: a warning, a reprimand, the signing of undertakings, a financial penalty and/or suspension from the *register*. More information about these penalties, what they

mean and when they may be imposed, can be found in the Sanctions Guidance. There are some important points to consider, as follows:

- a. Disposal of a *case* using this method requires the respondent to agree a set of facts which set out the regulatory breach, and to admit that they breached the *regulatory arrangement(s)* in question;
 - b. The *Case Examiners'* decision will be published and notice of the breach will be recorded against the respondent's name on the online *register*, in accordance with *IPReg's* publications guidance.
 - c. This method of disposal is best suited to *cases* where the respondent admits the breach and the only real issue to be determined is what sanction is appropriate. It is a mechanism to avoid a full hearing which can be time consuming, stressful and resource-intensive whilst still ensuring full transparency around the breach and sanction. This method of resolving the *case* will not be suitable where there are material facts in dispute between *IPReg* and the respondent, or where the public interest would best be served by a full hearing of the facts and ventilation of the issues in a public forum.
26. If agreement on the facts cannot be reached or the *Case Examiners* determine that resolution via the consensual disposal method is inappropriate, the *Case Examiners* can refer the *case* to the *Disciplinary and Interim Orders Tribunal* for consideration and hearing.
27. *Cases* are likely to be referred to a full hearing where the following factors are present:
- i. The allegations are so serious that if proved, they may warrant a sanction which is more severe than those available to the *Case Examiners* by consent (i.e. removal from the *register(s)*, disqualification);
 - ii. There are significant facts in dispute that require the calling of evidence to resolve, and those facts are material to the allegations;
 - iii. The respondent exercises their right to a full hearing;
 - iv. It would otherwise be in the public interest to hold a full hearing.

Interim Orders – the process

28. As set out in the standard operating procedure, an *interim order* can be sought and granted at any point during the disciplinary process. It is an order that restricts the practice of the *regulated person* in some way until such time as the disciplinary process has been completed.
29. The burden is on *IPReg* to make the case that an *interim order* should be granted.

Making an application for an interim order

30. As set out in the standard operating procedure, *IPReg* may apply to an *Interim Orders Panel* for an *interim order* in respect of a *regulated person*.
31. In deciding whether to apply for an *interim order*, *IPReg* will act with caution where the evidence *IPReg* has is hearsay, speculative or incomplete. However, it should not be a bar to applying for such an *order* where the information that *IPReg* holds suggests there is an immediate risk to consumers, *clients'* interests or *client money*, and the evidence is compelling.
32. *Interim order* applications are urgent applications, designed to ensure any risk to consumers or *clients* is mitigated immediately. Despite this urgency, the respondent will usually be given notice that *IPReg* intends to make an application for an *interim order*, to allow the respondent an opportunity to make submissions or provide evidence that such an *order* is unnecessary. As *interim orders* are concerned with urgent applications determined on the face of the available evidence and are not full, fact-finding hearings, it would be unusual that more than 14 days' notice of the hearing is given and only in exceptional circumstances would adjournments be considered.

Interim Orders hearings – panel's approach

33. Like *Case Examiners*, the *Interim Orders Panel* is not tasked with resolving factual disputes or making findings of fact. Rather, it is only required to assess the current risk posed by the respondent to consumers or *clients* based on the weight of the evidence presented by *IPReg*. It must be satisfied that an *interim order* is necessary and proportionate. This is a high bar.
34. Hearings will normally be held remotely via video conferencing and both *IPReg* and the *regulated person* may attend to give oral submissions. The *Interim Orders Panel* will be supported by a *Legal Adviser*. *Interim orders* hearings will be held in private but the decision to impose an *interim order* will be published in accordance with *IPReg's* publications guidance.
35. The *Interim Orders Panel* may impose any *interim order* it considers appropriate, bearing in mind the test that it must apply. In practice, *interim orders* are likely to be:
 - a. Conditions of practice orders imposed on the *regulated person*, such as a condition not to hold *client money* or only to practise within a specified regulated entity;
 - b. Suspension orders which suspend the *regulated person's* authorisation to practise. The *regulated person* would not be able to carry out any *reserved legal activities* or use any protected title during the period of their suspension.

36. Decisions of the *Interim Orders Panel* will be recorded in writing, with reasons, and may be appealed. If the respondent appeals the imposition of the *interim order*, the order will remain in place until the outcome of the appeal.

Disciplinary Panel – its approach

37. As set out in the standard operating procedure, *IPReg* will serve a formal notice of allegation on the respondent which particularises the breaches alleged. Only those matters in respect of which the *Case Examiners* found a case to answer, may be included on the notice of allegation, but they may be expressed or particularised differently. Witness statements setting out the evidence upon which *IPReg* bases its case together with any documents relied upon will be served with the allegations.
38. As set out in the standard operating procedure, either party may ask, or the *Panel* itself may direct a case management hearing. Case management hearings are often useful in complex cases or where a respondent is not represented. At a case management hearing, either party may ask for or the Chair may direct, orders for the timetabling of serving evidence, settling witness attendance, dealing with mode of hearing (remote or in person) issues and other administrative matters that arise.
39. Where no case management hearing is sought, the Chair of the *Panel* may make directions as to the steps necessary for the determination of the case.
40. As set out in the standard operating procedure, the presumption is that all *Disciplinary Panel* hearings will be conducted on the papers (that is, in the absence of both parties). Either party may request or the *Panel* may direct that an oral hearing take place where it is necessary to fairly dispose of the matter. It will usually be the case that oral hearings will be conducted remotely via video-conferencing. This helps to accommodate people involved in the hearing who may not be able to travel (and in some cases, stay overnight in another place) and reduces the costs for all parties. Hearings may be conducted in-person only if it is fair to do so.

The hearing

41. The *Disciplinary Panel* may conduct the hearing in any manner it considers appropriate. Its aims are to ensure the fair and expedient hearing of the case. That is, the process is fair to both parties and is conducted efficiently. Both parties may be legally represented. Should the respondent wish to attend with a non-legally qualified representative, they should first seek permission from the Chair of the Panel.
42. Where a hearing is an oral one, whether online or in person, the hearing itself proceeds in two stages – fact finding and misconduct, followed by sanction.

43. Where any evidence is not accepted by the respondent, *IPReg* will call witnesses in support of that aspect of the case. Where the evidence of any witness is not in dispute, the witness statement of that person shall stand as evidence and be taken into account by the *Panel*. The respondent has the right to cross examine *IPReg's* witnesses and the *Panel* too, may ask questions of the witness.
44. Once *IPReg* has called all its witnesses, the respondent may give evidence themselves and/or call their own witnesses. Any witnesses giving oral evidence may be cross examined by *IPReg* and may have questions asked of them by the *Panel*.
45. As the *Panel* has wide powers to conduct the hearing in whatever manner it deems appropriate, the precise order in which witnesses may be called, evidence may be given or whether submissions can be made, can change depending on the case.
46. Once all the evidence has been heard, the *Panel* may receive legal advice from the *legal adviser* before retiring in private to consider the evidence. The standard of proof to be applied in the assessment of facts, is the civil standard. That is, whether on the balance of probabilities, the facts as alleged have been proved. Whether those facts amount to misconduct is a matter of judgement for the *Panel*.
47. Decisions on whether any of the allegations are found proved will be announced publicly. Where the *Panel* finds that *IPReg* has not proved any part of its case to the civil standard, and/or the proven facts do not amount to misconduct, that aspect of the case will be dismissed and the case will proceed on only those aspects of the case where the facts have been found proved and misconduct found.
48. If the *Panel* finds that the proven facts amount to misconduct, it will then go on to consider whether a sanction is warranted and if so, the appropriate sanction. The *Panel* will invite the respondent to provide submissions and any evidence in mitigation and may also invite *IPReg* to provide submissions on the appropriate sanction.
49. The *Panel* must take into account *IPReg's* Sanctions Guidance which sets out how the *Panel* should approach the issue of sanctions in the regulatory context.

Appeals

50. The applicable timeframes and process that must be followed is set out in the standard operating procedure and the Appeal Form can be found here.
51. Where the respondent appeals a decision made against them, the onus is on the respondent to show that the decision was wrongfully made based on one of the specified grounds set out at 4.2 of Chapter 4 (Investigation and disciplinary

requirements) of the Core Regulatory Framework. IPReg may respond to any submissions made in the appeal, but does not need to prove that the decision reached was correct.

Costs

52. Other than in exceptional cases, *IPReg* will apply for its costs in bringing cases where the findings made by the *Case Examiners*, the *Disciplinary Panel* or the *Independent Adjudicator* are in totality or in part, in *IPReg's* favour. This is because it is desirable that the costs of disciplining a *regulated person* who has committed proven misconduct should be borne by them, and not by the rest of the regulated community who otherwise comply with *regulatory arrangements*.
53. There may be rare cases where *IPReg* decides it is not in the public interest to seek its costs, such as where the issue at the heart of the proceedings is a novel matter of wider application and where it is accepted that the case will result in general policy development for the benefit of all *regulated persons* and consumers.

| Version | Date | Author | Rationale |
|---------|---------|--------|--------------------------------|
| V1.0 | 24.3.23 | IPReg | Submitted with LSB application |
| V1.1 | 24.4.23 | IPReg | Update links |