

# IPReg Complaints Handling and Enforcement Strategy



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**IPReg is a legal regulator. We regulate the conduct of trade mark and patent attorneys. IPReg has a Code of Conduct and detailed Disciplinary Rules. We set out below our policy in relation to complaints handling and enforcement.**

IPReg's Code of Conduct is principles based. IPReg endeavours, wherever possible, not to prescribe detailed rules. IPReg has confidence in the ability of those it regulates to apply the principles of the Code in their professional activities.

## Key Principles

1. The Code sets out 14 key principles. Those individuals and firms who are regulated by IPReg must:
  - act with due skill and care and only within their own competence
  - act with integrity, putting their clients' interests foremost
  - work in a timely manner with proper regard for standards of professional service and client care
  - not act in situations of conflict
  - keep client and former client matters confidential
  - work with other lawyers in a professional manner
  - ensure fees are justifiable and ensure that arrangements for liens are transparent
  - manage their professional finances appropriately; ensuring that client monies are kept separately
  - ensure a complaints procedure is in place
  - act in the interests of justice
  - not unfairly or unlawfully discriminate against any person
  - ensure personal continuing professional development
  - maintain professional indemnity insurance
  - ensure publicity is fair, honest, accurate and not misleading.

## Constructive Engagement

2. IPReg sees the role of enforcement as being:
  - to influence positively behaviours, in order to ensure that legal services are provided to the right standard and that clients and the general public are protected;
  - to create a credible deterrent against behaviour that jeopardises or harms clients and the general public.
3. IPReg's primary strategy for delivering the first of these is through education and maintaining strong links with our regulated community.
4. Since IPReg was established on 1st January 2010 IPReg has undertaken a targeted campaign of presentations about the Code and IPReg's role. In all its presentations since 1st January 2010 IPReg has described its approach thus:
  - Not "light touch" but high level regulation
  - Not interventionist
  - Setting guidelines – not rules for rules' sake
  - Observing a well-run profession, self-regulating
5. The profession consists of some 2,300 individuals. There are fewer than 200 firms. In the context of these small numbers "relationship management" can be achieved across the profession.

6. IPReg provides guidance on the Code and other professional matters on a “live time” basis by email. Email is used to ensure consistency and a formal record of the advice given. Email enquiries are generally answered within 3 working days. A log of the emails has been kept from the outset.
7. Where we find issues, we are likely to address these via “Dear Senior Partner” letters sent by the IPReg Chairman.
8. IPReg aims to encourage and support compliance.

## Supervision and Enforcement

9. To date IPReg has not been required to take enforcement action against any firm regulated by IPReg.
10. Complaints against individual attorneys are limited.
11. IPReg’s full enforcement strategy is, therefore, still in development; nevertheless, even at this stage, IPReg is clear that it will take a proportionate approach and will seek to deal with any issues without formal enforcement action, except where it is in the public interest to do so.
12. CIPA and ITMA (the former regulators) and PAMIA (a mutual association and insurers to 95% of the profession) report that interventions have been limited and have only occurred where a sole practitioner has been unable to practise due to ill health. There have been, to date, no instances of insolvency.
13. Intervention has taken the form of the urgent transfer of files to another local firm. IPReg intends to adopt this approach and, in relevant circumstances, IPReg will work with PAMIA, CIPA and ITMA to achieve this.
14. Properly received guidance, supervision and monitoring of firms, coupled with an open co-operative and constructive approach by a firm may lead IPReg to decide against taking formal action. IPReg would expect

the firms to take prompt remedial action, agreed with IPReg where necessary. The firm would need to demonstrate an understanding and acceptance of the issue and the outcome being sought by IPReg. Failure to take prompt remedial action would be considered an aggravating factor in any subsequent disciplinary proceedings.

## Protecting the Consumer – Proportionality

15. Complaints under IPReg’s Disciplinary Rules can arise in one of three ways:
  - through enforcement action taken by IPReg;
  - a complaint from another firm;
  - a complaint by a member of the public.
16. IPReg’s Disciplinary Rules provide for an initial review by a Complaints Review Committee first to ensure that, prima facie, there is a case to answer and second to determine whether it is proportionate to pursue the case.
17. In determining whether it would be proportionate to progress a complaint further, Rule 8.3 of the Rules provides that the CRC are to:
  - “a) have regard to the public interest, the Code of Conduct, the Regulatory Objectives and the Professional Principles; and
  - b) take account of all the circumstances of the case including, without limitation:
    - 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 involves 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 his 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".*

## The Regulatory Objectives:

- 18.** The Regulatory Objectives and the Professional Principles are both defined in the Legal Services Act 2007 and are:

- "a) protecting and promoting the public interest;*
- b) supporting the constitutional principle of the rule of law;*
- c) improving access to justice;*
- d) protecting and promoting the interests of consumers;*
- e) promotion competition in the provision of services within subsection (2);*
- f) encouraging an independent, strong, diverse and effective legal profession;*
- g) increasing public understanding of the citizen's legal rights and duties;*
- h) promoting and maintaining adherence to the professional principles"*

- 19.** All regulatory objectives have equal "weight" under the Legal Services Act and to uphold the professional principles is, therefore, as important as protecting the consumer. But

enshrined in this, expressly within the Legal Services Act, is the understanding that the Regulatory Objectives have to be promoted by regulators in a proportionate way and regulatory action is targeted at cases where there is a genuine need to do so.

- 20.** These statutory principles have been adopted by IPReg in relation to its own activities and are the basis for the inclusion of Rule 8.3.
- 21.** In considering how "proportionality" as stipulated in Rule 8.3 ought to be tested, IPReg has had regard to the rules of the Legal Ombudsman and also the Solicitors Regulation Authority. IPReg considers that the CRC might, although they would not be obliged to, dismiss or discontinue all or part of a complaint as being disproportionate if, in the opinion of the CRC:
- the Complaint does not have any reasonable prospect of success, or is frivolous or vexatious;
  - the Complainant has not suffered (and is unlikely to suffer) financial loss, distress, inconvenience or other detriment;
  - the Legal Ombudsman, IPReg, another professional regulator or a comparable independent complaints scheme or a court has already dealt with the same issue;
  - the complaint would be more suitable for the issue to be dealt with by a Court or by another complaints scheme;
  - the issue involves someone else who has not complained and the CRC considers that it would not be appropriate to deal with the issue without their consent;
  - It is not practicable to investigate the issue fairly because of the time which has elapsed since the act/omission;
  - the issue concerns an act/omission outside the United Kingdom and the circumstances do not have a sufficient connection with the United Kingdom.

## Complaint from a Member of the Public

22. In a case where the complainant is a member of the public any other circumstances where to progress a case would be disproportionate are likely to be limited.
23. A possible exception would be in relation to technical or trivial matters under Rule 8.3 (i) above. However, even in those cases, the appropriate course is more likely to be via the prescribed summary procedure rather than dismissal.
24. The summary procedure (as opposed to dismissal) may also be the correct course in relation to complaints where 8.3 (v) applies.

## Complaint from an Attorney or Other Regulated Person/Firm

25. Where a complaint is brought by one registrant against another there are additional considerations. Here the question of proportionality becomes highly significant.
26. In the absence of client detriment or gross misconduct, the CRC will specifically consider whether, in the context of the role of IPReg in delivering the regulatory objectives, referring a complaint by an attorney against another attorney to a full disciplinary hearing will uphold the regulatory objectives in a proportionate way, particularly when this is balanced against the significant cost burden such a reference will impose on the profession as a whole.
27. Complaints brought by one firm or attorney against another are unlikely to fulfil these considerations particularly where there is no apparent client detriment (established by the client being, at least, a co-complainant).
28. Where a complaint is being brought by opposing attorneys in the course of litigation proceedings, the CRC will consider

extremely carefully whether the complaint is being brought to interfere with or delay those proceedings.

29. If the CRC has established that there is, prima facie, a case of gross misconduct or client detriment, proportionality will cease to be the determining factor.

## Transparency

30. The Disciplinary Rules require access for the public and the press to any oral disciplinary proceedings except where the Disciplinary Board require exclusion to all or part of the hearing for reasons of public order, national security, protection of juveniles and the private life of the parties and also “to the extent strictly necessary in the opinion of the Disciplinary Board in special circumstances where publicity would prejudice the interests of justice”.
31. Our agreed publication policy for cases is:
  - prior to a complaint being referred to a full disciplinary hearing by the CRC no notice is given;
  - on reference to a disciplinary board the name of the attorney will be published together with the relevant rules within the Code in respect of which the complaint has been made;
  - the written decision of the disciplinary board will be published in full although parts may be excluded using the same test which is applied to the exclusion of persons from oral hearings (set out above).

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# IPReg

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