

IN THE MATTER OF THE INTELLECTUAL PROPERTY REGULATION BOARD
APPEAL AGAINST DECISION/ORDER OF THE DISCIPLINARY BOARD

BETWEEN:

ANTHONY BURROWS

Appellant

-v-

THE INTELLECTUAL PROPERTY REGULATION BOARD

Respondent

DETERMINATION OF APPEAL BY ADJUDICATOR

INTRODUCTION AND PRELIMINARY MATTERS

1. On 9 May 2021, I was appointed by the Intellectual Property Regulatory Board [hereafter ‘the IPReg Board’ or, where acting as the prosecutor/respondent in this matter, ‘IPReg’] to act as an Adjudicator under Rule 20.4 of the Disciplinary Rules of the IPReg Board [‘the Rules’] and determine the appeal in this matter brought by Anthony Burrows [‘the Appellant’].
2. The appeal is against the determination of the Joint Disciplinary Board [‘the Disciplinary Board’] on 30 March 2022 that the charges brought by IPReg against the Appellant were proved, and against the Disciplinary Board’s orders that (i) the Appellant be removed from the Register of the IPReg Board (and to make appropriate ancillary recommendations/notifications to other relevant bodies), and (ii) that costs be paid from the Appellant to IPReg in the sum of £22,793.89
3. I have been provided with the following documents by the parties:
 - a. the Notice of Referral by the Complaint Review Committee, dated 28 September 2021
 - b. the 85-page bundle for the original hearing of the Joint Disciplinary Board
 - c. a bundle of correspondence between the Appellant and IPReg, dating from 12 October 2021 to 29 March 2022.
 - d. the 20-page Determination of the Joint Disciplinary Board, served 7 April 2022 (and the accompanying Order)
 - e. the Notice of Appeal from the Appellant dated 26 April 2022 which states that *“I hereby appeal against the Decision or Order, under grounds a) to e), inclusive, of Rule 20.3.”*
 - f. a 6-page letter from IPReg dated 9 May 2022 appointing me as Adjudicator in this matter
 - g. a 1-page letter from the Appellant dated 17 May 2022 to IPReg

- h. a 1-page email from IPReg dated 19 May 2022 to me, copying in the Appellant, responding to the above letter
 - i. a 1-page letter from IPReg dated 23 May 2022 to the Appellant, enclosing a hard copy version of the above email
 - j. a 4-page letter from the Appellant dated 9 June 2022 to me applying for an extension of time to provide submissions in support of his appeal
 - k. a 1-page letter from IPReg dated 13 June 2022 to me regarding the Appellant's failure to respond to my directions (which letter crossed with the above)
 - l. a 2-page letter from IPReg dated 14 June 2022 to me regarding the Appellant's application for an extension of time to provide submissions
 - m. a 1-page letter from IPReg dated 18 July 2022 to me regarding the Appellant's failure to respond to my directions
 - n. Various proofs of postage from IPReg of some of the above correspondence from IPReg to the Appellant
 - o. Further written applications from the Appellant to me regarding extensions of time to provide submissions (set out in detail below), and correspondence from IPReg in response formally objecting to some of those applications.
4. I have to date issued three sets of directions in this case.
5. The first set of directions was issued on 16 May 2022. Those directions were:
- a. *The Appellant is to be sent these Directions by email and by signed-for postal delivery by IPReg (in both cases to the last-known addresses for the Appellant) by **20 May 2022***
 - b. *The Appellant is to provide any further written submissions that the Appellant wishes to make in support of the appeal by email to info@ipreg.org.uk and/or by signed-for postal delivery to IPReg at 20 Little Britain, London, EC1A 7DH by **10 June 2022***
 - c. *The Appellant should include within those written submissions:*
 - i. *details of any fresh evidence that the Appellant wishes to rely on under Rule 20.3(c), and, if so, should also set out within the submissions how the evidence meets the requirements of Rule 20.3(c)(i) and (ii)*
 - ii. *any observations the Appellant has as to whether there should be any preliminary hearing in this matter under Rule 20.6*
 - iii. *any observations the Appellant has as to how the Adjudicator should dispose of the Appeal under Rule 20.7*
 - iv. *any observations the Appellant has regarding any potential award of costs under Rule 20.8*
 - d. *If the Appellant provides any further written submissions, then the Respondent must provide written submissions in response to the Adjudicator and to the Appellant (in the same manner as above) by **24 June 2022***
 - e. *If the Appellant does not provide any further written submissions, then further submissions are not required from the Respondent, but may still be provided by **24 June 2022***
 - f. *If no further written submissions are received from either party, and the Appeal is not withdrawn by the Appellant, the Adjudicator will move to determine the*

appeal on the papers (as detailed in paragraph 3 above), by reference to each of the grounds a) to e) set out in Rule 20.3.

6. The second set of directions (issued after the Appellant's 9 June 2022 application for an extension of time for him to comply with (b) and (c) above) was issued on 20 June 2022. Those directions were:
 - a. *The Appellant is to be sent these Directions by email and by signed-for postal delivery by IPReg (in both cases to the last-known addresses for the Appellant) by **20 May 2022***
 - b. *The Appellant is to provide any further written submissions that the Appellant wishes to make in support of the appeal by email to info@ipreg.org.uk and/or by signed-for postal delivery to IPReg at 20 Little Britain, London, EC1A 7DH by **10 June 2022***
 - c. *The Appellant should include within those written submissions:*
 - i. *details of any fresh evidence that the Appellant wishes to rely on under Rule 20.3(c), and, if so, should also set out within the submissions how the evidence meets the requirements of Rule 20.3(c)(i) and (ii)*
 - ii. *any observations the Appellant has as to whether there should be any preliminary hearing in this matter under Rule 20.6*
 - iii. *any observations the Appellant has as to how the Adjudicator should dispose of the Appeal under Rule 20.7*
 - iv. *any observations the Appellant has regarding any potential award of costs under Rule 20.8*
 - d. *If the Appellant provides any further written submissions, then the Respondent must provide written submissions in response to the Adjudicator and to the Appellant (in the same manner as above) by **24 June 2022***
 - e. *If the Appellant does not provide any further written submissions, then further submissions are not required from the Respondent, but may still be provided by **24 June 2022***
 - f. *If no further written submissions are received from either party, and the Appeal is not withdrawn by the Appellant, the Adjudicator will move to determine the appeal on the papers (as detailed in paragraph 3 above), by reference to each of the grounds a) to e) set out in Rule 20.3.*
7. On 21 July 2022, IPReg received a copy of a 3-page handwritten letter from the Appellant to me dated 19 July 2022. In that letter, the Appellant stated that due to recent medical issues he was unable to comply with my directions and requested an extension of time until 20 August 2022.
8. I issued a further set of directions that day, 21 July 2022, and in providing my reasons for making those directions as stated as follows:

“Despite the Appellant’s apparent health issues, I am not prepared to have this matter drag on indefinitely. The Appellant lodged his Notice of Appeal on 26 April 2022 – now three months ago. This is his appeal, and it is his responsibility to progress it. Even with the problems he has outlined, the Appellant should have been able to formulate his submissions as to his grounds of appeal, and how he wishes me to approach the matter, by now.

*“I will provide **one final and further** opportunity for the Appellant to provide submissions to me in support of his appeal, if (and only if) the Appellant also provides to me independent medical evidence to support the account of his difficulties that he given in his most recent letter. Even if that medical evidence is provided, I am not prepared to give him the full period of an extension that has been requested, given the amount of time that he has already had.”*
[emphasis added]

9. I accordingly issued the following directions:

- a. *The Appellant is to be sent these Directions by email and by signed-for postal delivery by IPReg (in both cases to the last-known addresses for the Appellant) by **26 July 2022***
- b. ***The Appellant must provide independent evidence of his recent medical difficulties (for example hospital or GP notes/letters) by email to info@ipreg.org.uk and/or by signed-for postal delivery to IPReg at 20 Little Britain, London, EC1A 7DH by **9 August 2022**.***
- c. *If such evidence is provided, the Appellant may also provide any further written submissions that the Appellant wishes to make in support of the appeal by email to info@ipreg.org.uk and/or by signed-for postal delivery to IPReg at 20 Little Britain, London, EC1A 7DH by **9 August 2022***
- d. *The Appellant should include within those written submissions:*
 - i. *details of any fresh evidence that the Appellant wishes to rely on under Rule 20.3(c), and, if so, should also set out within the submissions how the evidence meets the requirements of Rule 20.3(c)(i) and (ii)*
 - ii. *any observations the Appellant has as to whether there should be any preliminary hearing in this matter under Rule 20.6*
 - iii. *any observations the Appellant has as to how the Adjudicator should dispose of the Appeal under Rule 20.7, including whether there should be any in-person hearing*
 - iv. *any observations the Appellant has regarding any potential award of costs under Rule 20.8*
- e. *If the Appellant provides any further written submissions, then the Respondent must provide written submissions in response to the Adjudicator and to the Appellant (in the same manner as above) by **19 August 2022***
- f. *If the Appellant does not provide any further written submissions, then further submissions are not required from the Respondent, but may still be provided by **19 August 2022***
- g. *If no further written submissions are received from the Appellant, or sufficient medical evidence to support the Appellant’s recent medical difficulties is not provided, and the Appeal is not withdrawn by the Appellant, the Adjudicator will move to determine the appeal on the papers, by reference to each of the grounds a) to e) set out in Rule 20.3.*

10. Further to those directions, the Appellant sent a typed 2-page letter to me dated 28 July 2022, attaching some evidence of those recent medical issues in accordance with direction (b) above.

11. The Appellant then sent a further 2-page typed letter to me dated 8 August 2022, requesting a further extension of time for his written submissions to 16 August 2022, on the grounds that there had been further medical issues. I also received a typed 2-page letter from that assistant to the same effect, attaching some evidence of what had occurred.

12. I was away but indicated by email on 16 August 2022 to IPReg and the Appellant that I would allow a short further extension of time to 23 August 2022 for the Appellant to provide his written submissions (and accordingly extended the period of time for IPReg to respond to 30 August 2022). I asked that IPReg write to the Appellant informing him of that. In that email of 16 August 2022 granting the extension, I stated:

*“In the circumstances I will allow an extension of time for Mr Burrows’ submissions to 23 August **and no further.**”* [emphasis added]

13. Despite that, I then received further applications for extensions of time from the Appellant:

- a. In a typed 1-page letter dated 22 August 2022, the Appellant asked for an extension to 30 August 2022 on the grounds of the continued medical issues. A typed 1-page letter of the same date was provided from the assistant in question to the same effect, but no independent evidence was provided.
- b. In a typed 2-page letter dated 29 August 2022, the Appellant asked for an extension to 5 September 2022 on the grounds of the continued medical issues. Again, no independent evidence was provided.
- c. In a typed 2-page letter dated 5 September 2022, the Appellant asked for an extension to 13 September 2022 for similar reasons.

14. I was busy with other matters at that time, so I did not respond to any of those requests when I received them.

15. However, the Appellant’s repeated requests for extensions, continually putting the delivery of submissions and evidence just over the horizon, have led me to the conclusion that, despite his assertions to the contrary, the Appellant has no real intention to provide any substantive material to me. He may of course protest that he has indicated to me that he is just about to provide that material, but (as the history above makes clear) he has indicated that time and again and consistently failed to deliver.

16. I indicated clearly on 21 July 2022 that there would be no further extensions of time.

17. Despite that indication, on 16 August 2022 I even granted one further extension of time to 23 August 2022 *“and no further”*.

18. I will keep to that last indication - the end of the line has been reached. Five months have now elapsed since the decision the Appellant seeks to challenge was made. That is more than enough time for anyone, even someone with challenges of the nature

the Appellant has described to me, to collate and submit material they wish to rely on in support of their appeal. In order to maximise the appearance of fairness to the Appellant, I consider that I have gone way beyond what was required in order to provide any necessary 'reasonable adjustments'. The five months that has gone by since the decision of the Disciplinary Board constituted more than enough time for the Appellant to have progressed his appeal by the provision of evidence and submissions, even taking account of periods of medical issues.

19. I therefore proceed to determine this appeal. I do so on the basis of the papers provided to me, and the submissions, such as they are, that I have received from the parties, as set out above at §2. Although the Appellant has not particularised or expanded upon his grounds of appeal, I have analysed the judgement of the Disciplinary Board by reference to each of the stated grounds in his 26 April 2022 Notice of Appeal, namely those appearing at Rule 20.3 (a) to (e) - which constitute *all* of the available grounds of appeal provided for in the Disciplinary Rules.

20. Those grounds, as set out in Rule 20.3, are as follows:

- a. *the decision of the Disciplinary Board was wrong in that the Board gave insufficient weight to or drew incorrect conclusions from any material before it, which was or should have been material to its decision;*
- b. *the decision was flawed because of a serious procedural or other irregularity in the proceedings before the Disciplinary Board;*
- c. *the Appellant has acquired new evidence that:*
 - i. *could not previously have been obtained with reasonable diligence; and*
 - ii. *if it had been before the Disciplinary Board, would have had an important influence upon the determination of the matter;*
- d. *the Disciplinary Board did not have the power to make the order appealed against;*
- e. *the penalty imposed by the Disciplinary Board, or the order made for costs was excessive in light of the Disciplinary Board's decision on the facts or the Appellant's circumstances.*

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

21. The allegation against the Appellant [hereafter, 'the Charge'] before the Disciplinary Board was as follows:

"1. Between 1 July 2019 and 29 February 2020:

(a) You were in private practice as

(i) A registered trade mark attorney;

(ii) A registered patent attorney;

(b) You failed to take out and/or maintain a policy of Professional Indemnity Insurance with a participating insurer.

2. As a result of 1 above, you acted contrary to Rule 17 of the Rules of Conduct for Patent Attorneys, Trade Mark Attorneys and Other Regulated Persons.]

22. On 30 March 2022, the Board determined that the Charge was proved in its entirety

23. As a result of that determination, the Board determined to:

- a. Remove the Appellant's entry from the Register
- b. Notify UKIPO, EPO and/or OHIM as applicable of its decision and recommend that the Appellant's recognition or authorisation be withdrawn from that body or bodies.
- c. Make a recommendation to the Councils of CIPA and/or CITMA that the Appellant be expelled from either or both Institutes as applicable
- d. Award costs to IPReg in the sum of £22,793.89.

24. On 26 April 2022, the Appellant lodged a Notice of Appeal against the decision of the Disciplinary Board, as set out above.

APPEAL ANALYSIS

Ground (a) – ‘the decision of the Disciplinary Board was wrong’

25. The test in the Rules dealing with this available ground of appeal appears at Rule 20.3 (a) as follows:

“the decision of the Disciplinary Board was wrong in that the Board gave insufficient weight to or drew incorrect conclusions from any material before it, which was or should have been material to its decision”

26. I take it from the wording of the Rules that this must refer to the Disciplinary Board's overall decision to find the charge against the Appellant proved. The Appellant has not suggested to me any other ‘decision’ that he submits was wrong, and issues as to the lawfulness and appropriateness of the determination on sanction are dealt with by Rules 20.3(d) and (e) (see below).

27. The Appellant has not identified to me any particular way in which he says that the decision of the Board was wrong. Nevertheless, I have sought to consider the Board's decision myself by reference to the test in Rule 20.3(a). I remind myself however in so doing that under Rule 20.5: ‘an appeal shall be by way of a review and shall not be by way of a rehearing’ (save in the limited circumstances provided for under Rule 20.3(c) – provision of fresh evidence – which I have concluded do not apply here, see below).

28. I have had some cause to consider what would be the correct approach for me to take in determining whether the Disciplinary Board's decision was ‘wrong’, and the potential tension between the wording of Rule 20.3(a) and Rule 20.5 in this regard. There are to my mind at least three possible approaches:

- a. I should simply substitute my own view of the ‘correct’ conclusion for that of the Disciplinary Board, if mine differs from the Board’s for the reasons set out in Rule 20.3(a);
 - b. I should show an appropriate degree of deference to the decision of the Disciplinary Board, which should carry ‘considerable weight’, (particularly where the complained-of behaviour relates to the failure properly to carry out of the business of the profession rather than e.g. dishonesty, sexual misconduct etc.¹), and only interfere if the decision was ‘plainly wrong’² (the test in a statutory appeal by way of a rehearing at the High Court of a decision of a professional regulator such as the MPTS, SDT etc – which is a broader basis for interfering with a decision than that for judicial review³); or
 - c. I should, given the wording of Rule 20.5, only interfere if the Disciplinary Board’s conclusion was one that no reasonable decision-maker could have reached (the basis of intervention applicable in cases of judicial review⁴).
29. I understand that this is the first ever internal appeal to an adjudicator under the IPReg Disciplinary Rules, and so this issue does not appear to have been addressed directly before. Ultimately however, I have concluded that on the facts of this case the question is moot, otherwise I would have specifically asked for the parties’ assistance on this point.
30. The reason why I do not need to resolve the point is because I have come to the conclusion that, on any of the above bases, I would decline to interfere with the decision of the Disciplinary Board. Even if I were to take the most favourable interpretation towards the Appellant of the correct legal test - namely option (a) above - I would still not overturn the Disciplinary Board’s decision. This is because I agree with the decision and I would have made the same determination based on the same material.
31. This is because the evidence was overwhelming, and it was indisputable that the charges, as drafted, were made out.
32. Firstly, the Appellant was indeed in private practice as a registered trade-mark attorney and a registered patent attorney between 1 July 2019 and 29 February 2020. He remained present on both registers throughout the period. As stated by the Disciplinary Board, “*It was clear from the nature and extent of the Respondent’s practice as a sole trader and from his own correspondence in that regard, that he was in “private practice” within the terms of the Legal Services Act 2007 and the [Conduct] Rules.*”

¹ *CRHP v GMC and Southall* [2005] EWHC 579 (Admin), para. 11; *Khan v General Pharmaceutical Council* [2016] UKSC 64, para. 36

² *Siddiqui v GMC* [2015] EWHC 1996 (Admin), para. 30

³ *Cheatle v GMC* [2009] EWHC 645 (Admin), para. 12

⁴ *Associated Provincial Picture Houses Ltd. v Wednesbury Corporation* [1948] 1 KB 223, *Council of Civil Service Unions v Minister for the Civil Service* [1983] UKHL 6 at para. 410

33. Secondly, the Appellant indeed did not have in place a policy of Professional Indemnity Insurance [‘PII’] with a participating insurer during the relevant period. That was proven by the evidence from the chief executive officer of Mr Burrows’ previous participating insurer, PAMIA, who set out that the Appellant’s PII lapsed on 30 June 2019. There was no suggestion that the Appellant had obtained any other PII, whether from a participating insurer or even a non-participating insurer.
34. There was also material from the Appellant himself admitting that he did not have PII in place for that period. For example
- a. exhibit SE/3, a message from the Appellant to IPReg on 17 April 2020 wherein the Appellant stated, “*PAMIA has refused to insure me again (starting from the very near future and leaving me carry any risks from the 30th June 2019, which I am happy to do)*”
 - b. exhibit RC/2, an email from the Appellant to PAMIA on 2 April 2020, stating “[I] should wish to renew as soon as possible and as from the expiry date of the 30th June 2019”.)
35. This absence of PII was a ‘failure’ of the Appellant’s because it was a requirement of Rule 17 of the Rules of Conduct for Patent Attorneys, Trade Mark Attorneys and Other Regulated Persons [‘the Conduct Rules’] that a registrant in private practice should take out and maintain a policy of PII with a participating insurer.
36. It is apparent from the evidence considered by the Disciplinary Board that the cause of the Appellant’s misconduct was that he had failed to renew a policy he had in place with PAMIA. He had been insured by them from 1 June 2002 to 30 June 2019 (statement of Redvers Cunningham). He was sent reminder emails (exhibit RC/2) by PAMIA on 30 April 2019 and 5 June 2019. He simply did not submit any renewal application and so his PII lapsed. He was informed of this on 11 July 2019 and 16 August 2019. It appears that the Appellant only responded to that last email on 2 April 2020, some 10 months after his insurance had lapsed, when he asked for his policy to be renewed, and to be made retrospective from 30 June 2019. He suggested in correspondence (though not of course in evidence that could be tested) that he had not received those emails. Even if that were true, it would make no difference to whether the charge was proved – the positive obligation under the Conduct Rules was on *him* to ensure a policy of PII was in place.
37. Further repeated complaints by the Appellant (including complaints made to his local MP, the Rt Hon Sir Oliver Heald QC) about (i) the unreasonableness of PAMIA in refusing from 2 April 2020 onwards to insure him either retrospectively or for the future and (ii) how PAMIA had an unfair ‘monopoly’ over the provision of PII for his profession are also irrelevant to whether the charge was proved or not. The Appellant only ever made any attempt to put PII in place with PAMIA from 2 April 2020 onwards and the charge related to the period before that: 30 June 2019 to 29 February 2020.
38. The Appellant suggested in correspondence with IPReg (though, again, not in evidence that could be tested by the Disciplinary Board) that he had

“very serious problems with a Firm of Accountants who became very unreliable, such that I could not get any proper advice from them nor were they up-to-date with my work, so that I had to appoint someone else in August 2019, who had to go back three years to bring my accounts into proper order such that only very recently have I [had] the information essential for completion of PAMIA's Application Form.” (ex. SE/3)

39. That issue (if true) could only ever provide grounds for possible mitigation, rather than a defence to the charge – any difficulties with accountants could not displace the positive obligation on the Appellant to have his affairs in order and to have in place a policy of PII at all times.

40. In my judgement, the case against the Appellant was amply proved on the evidence.

41. It follows that this ground of appeal fails.

Ground (b) – ‘the decision was flawed’

42. The test in the Rules dealing with this available ground of appeal appears at Rule 20.3 (b) as follows:

“the decision was flawed because of a serious procedural or other irregularity in the proceedings before the Disciplinary Board”

43. The Appellant has not formally identified to me any particular serious procedural or other irregularity in the proceedings before the Disciplinary Board. Nevertheless, I have examined those proceedings carefully to see if there appeared to me to be any such irregularity. Again, I will treat any potential issues regarding the imposition of sanction and costs separately under the grounds of appeal under Rules 20.3(d) and (e) (as to which, see below).

44. Notably, the Disciplinary Board made a series of rulings at the outset of the hearing, which I have considered in detail.

45. The first was an application on behalf of IPReg to have parts of the hearing held in private under Rules 11.10 and 12.1 where need to protect the private life of the Appellant or others was engaged, namely in relation to discussion of health issues. The Disciplinary Board’s decision to go into private session when dealing with such matters was unimpeachable and also had no impact on the ultimate decision to find the charged proved.

46. Secondly, the Disciplinary Board considered two applications for adjournment of the hearing made in writing by the Appellant on 24 and 29 March 2022. The first was for the hearing date of 30 March 2022 to be adjourned to 30 April 2022, and the second was for the start time of the hearing on 30 March 2022 to be moved back from 10.30 am to 1 pm, both on the ground of health issues affecting the Appellant and/or those assisting him. Those applications had to be seen in the light of the four previous

applications by the Appellant for extensions of time to prepare and serve his evidence. The Disciplinary Board had specifically stated in relation to those previous applications that “further applications for extensions or postponements would need to be accompanied by compelling evidence and reasoning, without which any further application would be likely to be refused”. In relation to the evidence of a health issue regarding those assisting the Appellant, the Disciplinary Board found that evidence to be partial at best, and that there had been no evidence as to why someone else could not assist the Appellant. Furthermore, the Disciplinary Board was unpersuaded that the Appellant required the assistance of others, given the evidence. All of the material which the Appellant stated he wanted, but had been unable, to provide went to mitigation rather than the facts. The Disciplinary Board noted the Appellant’s admission that he was still working for clients despite his suspension. That posed a risk to the public which caused particular concern to the Disciplinary Board and militated in favour of proceeding without delay, whereas the Appellant appeared to be trying to draw proceedings out for as long as possible. In the circumstances the Disciplinary Board refused both applications.

47. Connectedly, the Disciplinary Board also heard an application by IPReg to proceed in the absence of the Appellant. The Disciplinary Board received and accepted advice from the legal advisor. That advice stated the Appellant had, as a matter of general principle, a right to be present and represented. The legal advisor correctly cautioned the Disciplinary Board to proceed with care, and consider the relevant case law, namely *R v Jones*⁵ and *GMC v Visvardis and Adeogba*.⁶ The principles derived from those authorities were that the Disciplinary Board had to consider the nature and circumstances of the absence, whether the Appellant had deliberately absented himself, the risk of reaching a wrong conclusion about the Appellant’s absence, whether postponement would likely result in attendance, the likely length of any postponement, the public interest in matters occurring expeditiously, the main objective of the regulator to protect the public, the need to not let the disciplinary process be frustrated by a deliberate failure to engage, and the duty on the part of the Appellant to engage with his regulator and the disciplinary process.
48. The Disciplinary Board considered that the rules for service had been complied with. It noted that all other parties had been content to have a remote hearing, whereas the Appellant had been the one who wanted an in-person hearing. There had been a concerning lack of compliance by the Appellant with the directions of the Disciplinary Board throughout, and the Appellant gave the impression of wishing matters to proceed on his own terms. The Appellant had indicated that he knew that he had to attend, and so was deliberately absent. The Disciplinary Board had no confidence, given the history of the matter, that the Appellant would turn up at any later hearing. The public interest in hearing the matter expeditiously was enhanced by the information that the Appellant was continuing to work whilst suspended. On balance it was fair and just to proceed in the absence of the Respondent, in all the circumstances.

⁵ [2001] QB 862

⁶ [2016] EWCA Civ 162

49. It is apparent from the above that the Disciplinary Board received accurate legal advice as to the relevant factors and considered them all with scrupulous care. I can find no serious procedural or other irregularity in the Disciplinary Board's approach to the important issue raised by these applications, namely whether to proceed despite the Appellant's lack of proper compliance and attendance.
50. In relation to the Disciplinary Board's substantive decision to find the charge proved, I have again considered whether there was any serious procedural or other irregularity in that regard. I have already found that the decision was plainly correct on the merits (see above). In relation to *how* the Disciplinary Board reached that decision, I can identify no error of procedure or substance. The Disciplinary Board was only provided with evidence from two witnesses and their appended exhibits - Shelley Edwards, Head of Registration for IPReg, and Redvers Cunningham, CEO of PAMIA. The Disciplinary Board did not accept their evidence unquestioningly but examined it to see if it was contradicted by other evidence. It was not. The Disciplinary Board received, and accepted, legal advice that the burden of proof was on IPReg to the civil standard, and that any allegation of a 'failing' must mean a 'culpable failing' in the sense of IPReg establishing there was a duty which had been breached by the Appellant. That advice was correct.
51. Overall, the Disciplinary Board appears to have acted with scrupulous care and did not fall into any error, serious or otherwise, in its approach to deciding whether the charge was proved to the requisite standard or not.
52. It follows that this ground of appeal fails.

Ground (c) – ‘the Appellant has acquired new evidence’

53. The test in the Rules dealing with this available ground of appeal appears at Rule 20.3 (c) as follows:

“the Appellant has acquired new evidence that:

- i) could not previously have been obtained with reasonable diligence; and*
- ii) if it had been before the Disciplinary Board, would have had an important influence upon the determination of the matter”*

54. I can deal with this ground of appeal shortly. Simply put, the Appellant has not provided any new evidence at all for me to consider, let alone addressed the requirements of Rule 20.3(c)(i) and (ii).

55. It follows that this ground of appeal fails.

Ground (d) – ‘no power to make the order’

56. The test in the rules of the Rules dealing with this available ground of appeal appears at Rule 20.3 (d) as follows:

“the Disciplinary Board did not have the power to make the order appealed against”

57. This ground of appeal is only concerned with whether the Disciplinary Board had the legal power to make the orders that it did. The question of whether any penalty or order for costs was excessive or disproportionate falls to be determined under Rule 20.3(e), dealt with below.

58. Following the making of their determination that the charge against the Appellant was proved, the Disciplinary Board made four orders, namely to:

- a. Remove the Appellant’s entry from the Register
- b. Notify UKIPO, EPO and/or OHIM as applicable of its decision and recommend that the Appellant’s recognition or authorisation be withdrawn from that body or bodies.
- c. Make a recommendation to the Councils of CIPA and/or CITMA that the Respondent be expelled from either or both Institutes as applicable
- d. Award costs to IPReg in the sum of £22,793.89.

59. Rule 16.1 of the Disciplinary Procedure Rules provides, insofar is relevant, as follows:

16.1 After considering any such explanation under rule 15.3, the Disciplinary Board may impose on the Respondent any one or more of the following sanctions as applicable:

[...]

(d) a direction that the Respondent’s entry be removed from the Patent Attorney Register and/or the Trade Mark Attorney Register, either permanently or for such period and subject to such conditions (as to restoration or otherwise) as may be specified in the direction;

[...]

(f) notification of the decision to the UKIPO, EPO and/or OHIM together with a recommendation that the Respondent’s recognition or authorisation be withdrawn;

[...]

(i) a recommendation to the Councils of CIPA and/or ITMA that the Respondent be expelled from either or both Institutes;

60. As can be seen plainly, the Disciplinary Board did indeed have the power under Rule 16.1 to make each of the three substantive orders that it made.

61. In relation to the fourth, ancillary, order relating to costs, Rule 18 states as follows:

18.1 The Disciplinary Board may make such order as to costs as it thinks fit including an order:
a) requiring the Respondent to pay IPReg's costs of undertaking an investigation which gave rise to a Complaint made under Rule 5.3;

b) disallowing costs unnecessarily incurred; or

c) that costs be paid by any Party judged to be responsible for wasted or unnecessary costs, whether arising through that Party's unreasonable, unnecessary or disproportionate conduct, non compliance with time limits or otherwise.

18.2 The Disciplinary Board may order that any Party bear the whole or a part or proportion of the costs.

18.3 The amount of any costs to be paid by a Party shall be determined by the Disciplinary Board subject to any scales or limits published by IPReg from time to time.

62. I am not aware that there are any published scales or limits under Rule 18.3. It is therefore the case that the Disciplinary Board indeed had the power to make the order of costs it did.

63. It follows that this ground of appeal fails.

Ground (e) – 'the penalty, or the order for costs, was excessive'

64. The test in the Rules dealing with this available ground of appeal appears at Rule 20.3 (e) as follows:

"the penalty imposed by the Disciplinary Board, or the order made for costs was excessive in light of the Disciplinary Board's decision on the facts or the Appellant's circumstances"

65. Regarding statutory appeals against the sanction of removal from the medical register, it has been held at the highest level that the relevant question was whether the sanction *"was appropriate and necessary in the public interest or was excessive and disproportionate"*.⁷ The use of the word 'disproportionate' reflects the requirements as a matter of common law/natural justice, and under Article 6 of the European Convention on Human Rights, as enacted into English law by the Human Rights Act 1997. I have therefore also considered whether both the penalty and the costs order were 'proportionate'.

66. I have considered what, if any, mitigation was available to the Appellant.

67. In relation to the Appellant personally, the Disciplinary Board took account of the following:

- a. The Appellant had no previous disciplinary record
- b. The Appellant had an extremely lengthy career of some 50 years in the profession

⁷ *Ghosh v General Medical Council* [2001] UKPC 29, [2001] 1 WLR 1915, para 34

- c. There were some relevant health issues
68. In relation to any mitigation of the professional misconduct itself, the Appellant stated in correspondence that the cause of his failure to have PII in place was the need by him to replace his accountants in order to be able to obtain the necessary information for completion of PAMIA's form to renew his PII. As I have stated above, that was a potential ground of mitigation. However, even if that assertion as to the cause of his difficulties had been properly put forward by way of evidence from the Appellant before the Disciplinary Board, my view is that it could have been properly rejected even as a ground of mitigation as:
- a. the Appellant himself admits that he only appointed new accountants in August 2019, well *after* the expiry date of 30 June 2019
 - b. the responsibility was on the Appellant to have his affairs properly in order and to take whatever steps were required in this regard *before* the policy was due for renewal
 - c. the evidence shows the Appellant in fact made no efforts to renew his policy with PAMIA until 2 April 2020
 - d. there is no evidence of any contact by him with PAMIA to tell them of any difficulties with accountants before 2 April 2020, and
 - e. the trigger for the Appellant only seeking PII as late as 2 April 2020 in truth appears to have been him belatedly realising that he needed to be able to demonstrate a policy was in place in order to reactivate his registration (following his suspension on 1 March 2020 for non-payment of his practicing fee and non-submission of his individual annual return, see ex. SE/1).
69. The Disciplinary Board nevertheless stated that *'it did not doubt that he [the Appellant] had made every effort to obtain such cover from April 2020 onwards, and that he had been unable to do so, in part due to the paucity of insurers in the market, something for which [the Appellant] could not be held responsible'*.
70. There was however no remorse, contrition or acceptance of the serious nature of his failings as found proved, and so those potential areas of mitigation were not available to him.
71. In relation to aggravating features, the Board noted the serious nature of failing to have PII for a period 9 months, the Appellant's refusal to acknowledge the risk he posed to clients by uninsured working, the ignorance of reminders/warnings, and his conduct before his regulator in his persistent failure to comply with the disciplinary process.
72. The Disciplinary Board received, and accepted, legal advice that they should take into account the principle of proportionality and consider the available sanctions in ascending order from least to most serious, only moving up if it was satisfied that the level of sanction it was considering was insufficient to safeguard the public interest. That advice is standard in cases of professional regulation and was correct. It is clear that the Disciplinary Board appropriately followed that process. It found that the

conduct was too serious for there to be either no action, a public notice/warning or a conditions of practice order, and in my view was right to do so.

73. In respect of whether an order suspending the Appellant's registration would suffice to mark the seriousness of his conduct, the Disciplinary Board said that:

"the Board concluded that a period of suspension did not provide adequate protection to the public in circumstances where the Respondent had so overtly and without any compunction put, and continued unrepentantly to put, his own interests ahead of those of the public. The risk of repetition was both real and high."

74. The Disciplinary Board found that the Appellant's conduct was incompatible with continued membership of the professions and the necessary sanction was removal of his entry on the Registers. It stated that the risk to the wider public interest was high because clients had the right to expect that regulated professionals had in place a PII policy which would protect them in the event of a claim, and that the public confidence in the profession would be 'severely undermined' if he retained his registration 'when he unrepentantly put clients in harm's way'.

75. It is my judgement that the Disciplinary Board's decision as to sanction, although undoubtably severe in its effect, was justifiable, proportionate and not excessive. The Appellant's actions were very serious and went to the heart of responsible practice of his profession. It was aggravated by his conduct about his failings, notably his behaviour about the panel and his unrepentant attitude, which dramatically increased the risks of repetition. Although there was impressive personal mitigation provided by his 50 years of unblemished practice, as the Disciplinary Board was told by the legal adviser such matters are of less importance in the context of professional discipline than in (for example) criminal cases.⁸

76. In relation to costs, the Disciplinary Board ruled as follows:

"80. The Board was invited by Mr Granville-Stafford, to consider the award of costs. It carefully considered the costs schedule provided by the Claimant. It reminded itself that the usual principle was that costs follow the cause and could see no reason to depart from that course."

81. The Board noted that the Respondent had chosen not to provide financial information in spite of being provided with the opportunity to do so and that therefore it had no information available to it that might reduce the costs award."

82. The Board therefore determined that a costs order should be made in favour of the Complainant for the full amount of £22,793.89."

77. In my view, the Disciplinary Board was right to make the order that it did regarding costs. The starting position is indeed that costs should normally follow the event

⁸ *Bolton v Law Society* [1994] 1 WLR 512

where there is an unfettered discretion available to the decision-maker.⁹ In the absence of any other reason to indicate another course (such as information about the financial circumstances of the Appellant) then the Disciplinary Board had no reason to depart from that general principle. The Appellant had contested the matter, causing costs to be incurred, but then failed to progress his defence at all, leading to avoidable expenditure being made by IPReg, and it was therefore right that the Appellant pay IPReg's costs as ordered.

78. It follows that this ground of appeal fails.

CONCLUSION AND ORDERS

79. As set out above, I have determined that the Appellant appeal is unsuccessful on each and every ground pursued. The decision and sanctions of the Disciplinary Board are accordingly affirmed.

80. I move to consider the issue of costs under Rule 20.8, which empowers me to '*make such order to costs as [I] see fit*'. In their letter to me of 13 June 2022, IPReg requests an order that the Appellant pays its costs in the amount of £4,200, in addition to affirming the order about the costs made by the Disciplinary Board in relation to those proceedings. That £4,200 figure represents the cost incurred by IPReg in appointing me as the independent adjudicator – no other external costs have been incurred, and IPReg has appropriately not claimed its internal costs.

81. In my judgement, given the Appellant has brought, and lost, this appeal, it is appropriate that he pays IPReg's costs: costs should follow the event. Furthermore, because I consider that this appeal was without any merit when it was brought, and because of the Appellant's failure to progress his appeal in the way he should and could have done, I believe it is appropriate to order that he pays the full amount requested – £4,200 – in addition to the original costs order - £22,793.89 - made by the Disciplinary Board which remains in place. I am not aware of any reasons to depart from that course, for example any relevant information about the Appellant's financial circumstances.

82. The Appellant is therefore ordered to pay to IPReg a total of £26,993.89 (£4,200 plus £22,793.89).

83. I direct that the Appellant is to be provided with notice of my decision by being sent these written reasons, and the accompanying order, by email and by signed-for postal delivery by IPReg (in both cases to the last-known addresses for the Appellant) within one week of today's date.

84. Under Rule 20.9, this decision must be pronounced 'publicly'. That in my view can be done via publication on the IPReg website. In accordance with Rule 20.9, I have considered whether any parts of this judgement, or the orders made by me, should

⁹ See *CMA v Flynn Pharma Ltd and others* [2022] UKSC 14

be excluded from publication on the grounds of public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the Parties so require, or to any extent strictly necessary in my opinion in special circumstances where publicity would prejudice the interests of justice. I have concluded that there are no such parts. I have in particular sought to avoid including in these written reasons for my decision any explicit reference to the various medical issues that were referred to by the Disciplinary Board in their decision, or by the Appellant in his various applications for an extension. My failure to include them in detail in these written reasons is for that reason alone and does not mean that I have not considered those medical matters with care and in full in coming to my decision – I have.

85. I therefore direct that these written reasons, and the accompanying order, should be published in full. I direct that this should be done by publication of both documents on the IPReg website within one week of today's date, and that those documents should remain publicly available on that website for a period of not less than 24 months.

Philip Stott

9 September 2022

Barrister-at-law