

## **CIPA REGULATORY AND DISCIPLINARY PROCEDURES**

### **1. PREAMBLE**

- 1.1 Having regard to the provisions of the Human Rights Act 1998, there is a need to introduce a new regulatory and disciplinary framework for the handling by the Chartered Institute of Patent Attorneys (CIPA) of complaints against its members.
- 1.2 This document sets out such a framework. It is intended that the detailed procedure followed in each case may, within the framework, be determined according to the needs of the case.

### **2. INTRODUCTION**

- 2.1 These Regulatory and Disciplinary Procedures (RDPs) are intended to deal with matters arising under Clause 32 of the Charter of CIPA and By-Laws 14 and 15, including complaints against patent and trade mark practitioners (Practitioners) who are members, including student members, of CIPA. They replace the former procedures of CIPA.
- 2.2 The complaint may be in respect of work carried out, or instructed to be carried out, by the Practitioner in the field of intellectual property, including rights obtained through organisations other than the UK Intellectual Property Office.
- 2.3 Many complaints are of a minor nature and can be dealt with by discussion between the Complainant and the Practitioner concerned. Therefore, firms of patent and trade mark attorneys in private practice are strongly recommended to set up an internal procedure for dealing with complaints by clients, and also to advise clients of the existence of the procedure and how to invoke it. Such a procedure may involve a review of the matters under dispute by another member of the firm who would advise the client of his views following that review.
- 2.4 Discussion and firms' internal procedures may not resolve all complaints and these RDPs provide a route by which a client or other interested party may take further any point of dissatisfaction.

### **3. SCOPE OF THE RDPs**

- 3.1 These procedures will deal with complaints made against Practitioners from any source including:
  - (i) a client of the Practitioner or of the Practitioner's firm;
  - (ii) a member of the public;

- (iii) CIPA or a Member of the Institute;
  - (iv) the Registrar in respect of the Register of Patent Agents;
  - (v) the UKIPO (all branches);
  - (vi) the Secretary of State for Innovation, Universities and Skills
  - (vii) any international body or national IP Office before which the practitioner practises; and
  - (viii) any member of the judiciary or a judicial tribunal.
- 3.2 These procedures will deal with complaints relating to any aspect of a Practitioner's work, including litigation and rights obtained through organisations other than the UK Patent Office.
- 3.3 A complaint may be of poor service or of professional misconduct, the latter being behaviour lacking in probity and integrity.
- 3.4 A complaint alleging poor service will not be investigated unless it is made by a client of the Practitioner or of the Practitioner's firm. A complaint alleging professional misconduct will be investigated whatever the source of the complaint.

#### **4. DEFINITIONS**

- 4.1 Complainant – any person (including a body) making a complaint against a Practitioner.
- 4.2 Disciplinary Panel – a Disciplinary Body appointed by the Council pursuant to By-Law 15(1) from which will be appointed Disciplinary Boards to determine complaints and impose sanctions under By-Laws 15(1) and 15(2).
- 4.3 Appeal Tribunal - the disciplinary body appointed by the Council pursuant to By-Law 15(1) to determine appeals from the Disciplinary Panel.
- 4.4 Case Manager – Any person appointed by Council with the duty of investigating complaints and, where appropriate, preparing a formal Statement of Case and Formal Complaint to be put before a Disciplinary Board and presenting the case.
- 4.5 Review Manager – A person appointed by Council to review on request any decision by the Case Manager not to proceed with a complaint.
- 4.6 Practitioner – a person who has any class of membership, or is a Student, of CIPA.

4.7 Fellow – a member of CIPA having the class of Fellow.

## **5. THE CASE MANAGER, THE DISCIPLINARY PANEL AND THE DISCIPLINARY BOARD**

5.1 If the complaint reaches the Case Management stage, the case will be allocated to a Case Manager, to be chosen by the Secretary of CIPA from a Case Manager Panel appointed by Council.

5.2 The Disciplinary Panel will consist of at least five Fellows as well as at least three lay and at least three legally qualified persons, all appointed by CIPA. The Panel will elect a Chairman selected from the Fellows on the Panel.

5.3 Each member of the Disciplinary Panel will serve for an initial period of two or three years and may be reappointed for one or more periods of three years.

5.4 If the complaint reaches the Board Stage, the Chairman of the Disciplinary Panel will appoint a Disciplinary Board drawn from the members of the Panel to handle a particular complaint. A Board will consist of five persons being one lay person, one legal member and three Fellows. One of the Fellows will be appointed Chairman of the Board by the Chairman of the Panel

5.5 The Disciplinary Panel will have a Secretary appointed by CIPA. The duties of the Secretary will include the transmission of and receipt of communications between the Panel, the Boards, CIPA, Complainants and Practitioners. The Secretary will not be a member of the Disciplinary Panel or Boards.

## **6. OUTLINE OF THESE RDPs**

6.1 Complaints will be handled on a step-by-step basis according to the following stages.

6.2 Conciliation Stage. The aim is to see whether there is scope for the complaint to be resolved on an informal basis. The Conciliation stage will be handled by CIPA.

6.3 Case Management Stage. If the conciliation stage is unsuccessful or if, despite the complaint having been resolved to the satisfaction of the Complainant and the Practitioner, there remains a public interest issue of professional misconduct to be addressed, the case is referred to a Case Manager. The Case Manager prepares a case for presentation to a Disciplinary Board and sends it to the Chairman of the Panel. However, he may also attempt to facilitate resolution of the matter, at least between the parties, where this seems to him/her to be appropriate.

6.4 Disciplinary Board Stage. Once the case is referred by the Case Manager to the Disciplinary Panel, a Board will be appointed by the Chairman of the Panel. A Hearing may be held and the Board will conclude the proceedings at

this stage with a reasoned, written decision including a statement of any sanctions to be applied against the Practitioner complained of.

- 6.5 Appeal Stage. An appeal to a Appeal Tribunal may be made by the Practitioner from a decision of the Disciplinary Board.

## **7. THE COMPLAINT**

- 7.1 A complaint made more than **six months** after the Complainant became aware of the facts complained of will not be investigated unless the Complainant shows good reason for the delay or the complaint is an allegation of serious professional misconduct.
- 7.2 Where the complaint is the subject of litigation between the Complainant and the Practitioner, the procedure under these RDPs may be stayed pending the outcome of the litigation.

## **8. CONCILIATION STAGE**

- 8.1 This stage is dealt with by CIPA.
- 8.2 CIPA will attempt to resolve the complaint by conciliation expeditiously and according to whatever method it considers appropriate in the circumstances including the appointment by CIPA of one or more persons from within or outside the body to handle the conciliation.
- 8.3 If resolution does not take place within a period of **3 months**, or if it is agreed between the Complainant and the Practitioner in less than 3 months from receipt of the complaint that resolution is not possible, then the matter will proceed to the next stage, both the Complainant and the Practitioner being informed at the same time of this step and being provided with a copy of any documentation sent to the Case Manager.
- 8.4 The documentation sent to the Case Manager should consist of or include a complaints form which is completed by the Complainant at the outset of the Conciliation Stage. The intention of the complaints form is to reduce the risk of the Complainant being misunderstood, or aspects of the complaint being overlooked. There is no requirement for the Complainant to identify on the complaints form any specific disciplinary or other rules which may have been breached.
- 8.5 Although the primary aim at this stage is to resolve the complaint to the satisfaction of the Complainant and the Practitioner, it may be clear from the outset that, even if such resolution is possible, there remains a matter which, in the public interest, should be considered further. In that case the body handling the matter may decide to omit the Conciliation stage and move directly to the Case Management Stage.

## 9. CASE MANAGEMENT STAGE

- 9.1 The Case Manager shall within 21 days of his appointment, or such longer period as may be permitted by the Chairman of the Disciplinary Panel, investigate the Complaint and act in accordance with 9.2, 9.3 or 9.4.
- 9.2 During the period referred to in 9.1 above, the Case Manager will give consideration to the possibility of resolving the complaint at this stage. However even if resolution between the Complainant and the Practitioner is achieved at this stage, the Case Manager may, if he considers it appropriate, take the matter to the next Stage (the “Board Stage”).
- 9.3 If the Case Manager considers that there is no *prima facie* case or that the complaint is frivolous or vexatious but is unable to reach agreement with the Complainant that the complaint should be withdrawn, the Case Manager will nonetheless proceed no further with the matter and will issue a written decision to that effect.
- 9.4 If the Case Manager determines that there is a prima facie case, or if in his opinion the case is one of public importance, he shall prepare a Statement of Case and a Formal Complaint which shall be sent to the Respondent, the Practitioner, the Complainant and the Chairman of the Disciplinary Panel [the Notification].
- 9.5 If the Case Manager has determined that there is no *prima facie* case the Complainant within 14 days of notification of this determination may request a review by a Review Manager, to be chosen by the Secretary of CIPA from a Review Manager Panel appointed by Council. The Review Manager shall within 21 days, or such longer period permitted by the Chairman of the Disciplinary Panel, determine whether the complaint should be heard by the Disciplinary Panel. If the complaint is to proceed, it shall be put before a new Case Manager who will be appointed by the Secretary of CIPA, in accordance with 5.1. The new Case Manager will prepare the Statement of Case and Formal Complaint which shall then be notified in accordance with 9.4.
- 9.6 At any stage the Case Manager, the new Case Manager or the Review Manager may seek legal advice.

## 10. BOARD STAGE

- 10.1 After the Notification of the Statement of Case and Formal Complaint, the Chairman of the Panel will appoint a Disciplinary Board to consider the case. The Chairman of the Board will notify the Complainant and the Practitioner of the composition of the Board, inviting each party to submit in writing within a period of **one month** any further matters it may wish to raise and, at the same time, appointing the date of any hearing during a period between **two and three months** from the Notification.

- 10.2 The Complainant or the Practitioner may, on request, obtain an extension of up to **three months** both for the making of written submissions and for the appointment of the Hearing if he provides a reasonable justification for such an extension.
- 10.3 The Hearing will take place only if the Case Manager or the Practitioner so requests by a date no later than **one month** before the date appointed for the Hearing. Otherwise the complaint will be decided by the Board on the basis of the papers it has received.
- 10.4 The Chairman of the Board may extend any time limits mentioned in 10.1 to 10.3. If a hearing is requested, it will be heard in public unless the Practitioner requests that it be held in private and the Board agrees. If held in public the press and other members of the public may be excluded from all or part of the Hearing in the interests of morals, 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 the extent strictly necessary in the opinion of the Board in special circumstances where publicity would prejudice the interests of justice.
- 10.5 Subject to the express provisions of these RDPs the Disciplinary Board shall have full powers to adopt such procedures as it thinks fit for the fair determination of the issues before it including powers to amend the Formal Complaint and to adjourn its proceedings.
- 10.6 At the Hearing the Practitioner may represent himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, he will be given it free when the interests of justice so require. He may examine or have examined witnesses against him and may obtain the attendance and examination of witnesses on his behalf. The Complainant, though not a party to the proceedings, may attend the Hearing and may be heard if he or the Board so wishes. The Case Manager may be invited by the Board to present the case at the Hearing. The Board may appoint its own legal adviser. In cases where the Board finds a Complaint proved it shall not determine a penalty without having given the Respondent Practitioner an opportunity of putting forward mitigation.
- 10.7 After completion of the matter, including any Hearing which may be held, the Board shall give a reasoned written decision setting out the complaint, the facts, and its conclusion as to what should follow, the decision being forwarded to the Case Manager, the Complainant and the Practitioner. The decision shall be pronounced publicly on the Institute's website and in its journal, either in whole or in part, once it has become final, i.e. no Appeal has been made, save where all or part of the Hearing was held in private and such publication would frustrate the legitimate reasons for which it was so held. The notice of publication of the decision will in all cases include the names of the Practitioner and the Complainant, save where exceptional circumstances exist.

10.8 The reasoned written decision may include the imposition of any one or more of the following sanctions:

- (i) a reprimand;
- (ii) a suspension for a limited period of the Practitioner from membership (including as a student) of CIPA;
- (iii) exclusion of the Practitioner from membership (including as a student) of CIPA;
- (iv) an order to pay a fine to CIPA up to Level 5 of the standard scale of fines for summary offences as set out in section 37 of the Criminal Justice Act 1982 as amended from time to time (Level 5 is at present £5000);
- (v) an order to take remedial action;
- (vi) an order to forego or, if appropriate, to re-pay some or all of the charges rendered in connection with the work complained of;
- (vii) an order to pay compensation to the Complainant up to Level 5 as in (iv) above; and
- (viii) an order to pay a proportion of or the full costs of the disciplinary procedure.

If the Practitioner does not comply with any of sanctions (iv) to (viii), if imposed, the Board can make an order suspending or excluding the Practitioner from membership (including as a Student) of CIPA.

10.9 The sanctions set out in 10.8 above are the only sanctions which may be imposed.

## **11. APPEAL STAGE**

11.1 The Practitioner has a right of appeal to an independent Appeal Tribunal from an adverse decision of the Disciplinary Board. An appeal must be filed within **28 days** from the notification of the written decision of the Disciplinary Board.

11.2 An Appeal Tribunal will be constituted to handle an appeal. The Appeal Tribunal will consist of three persons, being a Fellow, a lay member and a legally-qualified Chairman. The members will be chosen from an Appeal Panel appointed by Council pursuant to Bye-Law 15(1). The Appeal Panel shall have a Secretary who shall convene the Appeal Tribunal. The Appeal Tribunal shall have all the powers of the Disciplinary Board.

- 11.3 The Appeal Tribunal may admit, or invite, further submissions from any party to the proceedings and from the Complainant. However an appeal is not by way of a full rehearing and fresh evidence may only be considered if the Appeal Tribunal is satisfied that:
- (i) it could not previously have been obtained with reasonable diligence; and
  - (ii) if it had been before the Disciplinary Board it would have had an important influence upon the determination of the matter.
- 11.4 In each appeal the Appeal Tribunal will determine the procedure to be followed and may hold a preliminary hearing for determining issues relating to the production of fresh evidence and the conduct of the appeal.
- 11.5 The Appeal Tribunal may impose any of the sanctions set out in 10.8 above and may vary or set aside any such sanctions imposed at the Board Stage.
- 11.6 At the end of the Appeal Stage, if the appeal has not been withdrawn by the appellant, the Appeal Tribunal will issue a reasoned, written decision. The decision shall be pronounced publicly, either in whole or in part, save where all or part of any Hearing of the appeal was held in private and such publication would frustrate the legitimate reasons for which it was so held.