

Regulation F - Disciplinary procedures & requirements

Reference within Charter and Bye-Laws

Bye-Law 80: Regulations may lay down professional and ethical standards to be observed by members and the procedure to be followed by the Disciplinary Committee in dealing with complaints of alleged misconduct, provided that such procedure embodies a requirement for written notice to be given to a member concerned of the matters raised against him or her and for him or her to have the right, either in person or through a legal representative, of appearing before the Disciplinary Committee, to make representations.

Regulations

1. Introduction

- (1) Bye Law 80 allows the Chartered Institute of Trade Mark Attorneys (CITMA) to set out, in Regulations, the ethical and professional standards to be observed by members. This is in addition to the Core Regulatory Framework set by the Trade Mark Regulation Board (TRB), acting as The Intellectual Property Regulation Board (IPReg) for all Registered Trade Mark Attorneys, who may also be members of CITMA.
- (2) These regulations apply to all members of CITMA.
- (3) Before any complaint is made to CITMA under these regulations, it is expected that the matter will have been raised with the member in question and/or his or her firm, as appropriate.
- (4) A disciplinary case under these regulations may be raised by CITMA without receiving a formal complaint from a third party.

2. Professional and ethical standards

- (1) All members of CITMA who are regulated by IPReg must adhere to the Core Regulatory Framework and regulatory requirements set down by IPReg.
- (2) All members of CITMA must:
 - i) act in a fair and honest manner, with due care and attention;
 - ii) act in the best interests of their clients;
 - iii) provide a professional standard of service to clients, acting with integrity at all times; and
 - iv) behave in a way which maintains the trust of the public, the profession and members of CITMA.
- (3) All members must comply with any request for information from IPReg, the Legal Ombudsman or any other regulator and cooperate with that body who are investigating a complaint.

- (4) No member should undertake any action in the course of their dealings with clients, colleagues or members of the public, including business colleagues, which might be deemed to be detrimental to the interests of CITMA.
- (5) In relation to Regulation 2(1), any complaint which is upheld against a member by a regulator may be considered by CITMA as falling within the scope of Regulation 2(4).
- (6) All members must report to CITMA if they are:
 - i) adjudged bankrupt or enter into a deed of arrangement with his or her creditors:
 - ii) convicted by any court or tribunal of an offence.

Failure to report these matters will be considered a breach of these Regulations.

- (7) All members must notify CITMA if they become subject to Sections 15 or 16 of the Mental Capacity Act 2005. All members have a duty to inform CITMA in the event that a colleague becomes subject to those provisions of the Act and is unable to notify CITMA himself or herself.

3. Disciplinary Committee

- (1) All complaints made, or cases within 1(4) above, will be considered by a Disciplinary Committee of the Council of CITMA.
- (2) The Disciplinary Committee will consider all complaints and notifications in accordance with the disciplinary procedures set out in Regulation 5, which provide for the member to make representations. The Disciplinary Committee will be required to reach a decision on these matters and communicate that decision, together with its reasons and a recommendation to the Council of CITMA.

4. Council of CITMA

- (1) All decisions reached by the Disciplinary Committee, after considering all representations, will be forwarded to the Council of CITMA together with a recommendation. In the event that the finding is against the member of CITMA the Disciplinary Committee will be required to provide a recommended penalty.
- (2) The Council of CITMA may remove membership from the member or impose such lesser penalty as they consider appropriate.
- (3) The decision of the Council of CITMA will be final.

5. Disciplinary procedure

- (1) Only complaints arising from events which took place in the preceding 12 months may be considered.
- (2) At any stage of the procedure the complainant or the member may represent themselves or be represented by a representative of their own choosing.

5.1 Receipt of complaint

- (1) Any complaint against a member of CITMA must be a written notice setting out the matters the complainant wishes to raise against a member. The written notice should generally be no more than 10 sides of A4 pages / 5,000 words in length.
- (2) When a complaint in respect of a member is received by CITMA, it will be examined by the nominated secretary to the Disciplinary Committee (the secretary) to determine that it falls within the scope of the Regulations. If the complaint does not it will be rejected.
- (3) The outcome of the examination will be notified to the complainant by the Secretary.
- (4) The Secretary may ask the complainant for further details if necessary.
- (5) If the complaint is not sufficiently detailed and the complainant does not provide any additional details as requested, within the time specified by the Secretary, which will be no less than 14 days, the complaint will be rejected.
- (6) If the examination results in a complaint being accepted as within the scope of the Regulations, it will be passed to the Disciplinary Committee of CITMA.
- (7) A copy of the complaint, including any additional details, will be sent by the Secretary to the member to whom the complaint is made against. The member will have one calendar month to respond to the complaint. Any response should generally be no more than 10 sides of A4 / 5,000 words in length. On receipt the response will be copied to the complainant by the Secretary.
- (8) If both the complainant and the member agree that the complaint can be considered by the Disciplinary Committee at that stage, on the basis of the material submitted, the papers will be forwarded to the Disciplinary Committee for consideration.

5.2 Full case determination

- (1) If either side wishes to continue to a full case determination of the issue, the complainant will be asked to provide any additional material on which they wish to rely to pursue their case. The complainant will have one calendar month in which to provide this material. Any additional material submitted should generally be no more than 10 sides of A4 / 5,000 words in length. On receipt the additional material will be copied to the member by the Secretary.
- (2) The member will have one calendar month in which to submit their additional material which, on receipt, will be copied to the complainant by the Secretary. Any additional material submitted should generally be no more than 10 sides of A4 / 5,000 words in length.
- (3) Any of the time periods set out in Regulation 5 may be extended by up to 14 days, if there are considered, by the Secretary, good reasons for doing so. Only one such extension of any time period may be allowed by each party to the proceedings.

- (4) In exceptional circumstances either side may request to extend the length of submissions. Any request must be made in writing and provide good reasons why an extension is required.

5.3 Determination of case

- (1) At the end of the period set for filing additional material under Regulation 5.2 the Secretary will notify the complainant and the member of the date on which the complaint will be determined by the Disciplinary Committee. This date will not be more than 3 months after the end of the period set out in Regulation 5.2(3).
- (2) An oral hearing will take place only if either the complainant or member makes a request in writing within 14 days of the notification of the date of the determination of the case.
- (3) If no oral hearing is sought, the Secretary will invite the complainant and the member to provide written arguments no later than 7 days before the date on which the Disciplinary Committee is to determine the case. Written arguments must be no more than 4 sides of A4 / 2,000 words in length.
- (4) If an oral hearing is requested, at the hearing the complainant and the member (or their representatives) will be given the opportunity to make their submissions to the Disciplinary Committee – the complainant, then the member, with the complainant having the opportunity to make any final response in reply. Submissions must be no more than 4 sides of A4 / 2,000 words in length.
- (5) Cross examination of the complainant, or any other person, by the member, and vice versa, will not be allowed.

5.4 The decision

- (1) Following the conclusion of the procedure, including a hearing, or in respect of those cases where, under Regulation 5.1(8), the complainant and the member agreed that the case may be determined on the basis of material filed at that stage, the Disciplinary Committee will give, within 14 days, a written decision setting out the complaint, the facts established and its conclusions as to whether the complaint is upheld or not.
- (2) In the event that the complaint is upheld, the Disciplinary Committee will include in its conclusions a recommendation to the Council of CITMA as to the penalty that should be imposed.
- (3) The Disciplinary Committee's written decision and recommendations will be considered by the next meeting of the CITMA Council. The written decision and the Council's decision will be sent to the member and the complainant.
- (4) The CITMA Council's decision will be final.

5.5 Notification to CITMA of decisions by the Trade Mark Regulation Board

- (1) Where the TRB (IPReg) issues a written decision upholding a complaint against a Registered Trade Mark Attorney who is a member of CITMA and CITMA is formally notified of the decision, the Disciplinary Committee will consider any recommendation made. If there is a recommendation as to the continuance or otherwise of the member's membership of CITMA the member will be invited to provide any written submission within one calendar month as to why that recommendation should not be endorsed by the Disciplinary Committee and acted upon by the Council.
- (2) If a written decision does not make any recommendation as to the continued membership of CITMA but nevertheless the Disciplinary Committee considers that the action or actions of the member may have brought CITMA or the profession into disrepute they will inform the member accordingly and invite him or her to provide written submissions within one calendar month. Submissions should generally be no more than 4 sides of A4 / 2,000 words in length.
- (3) Once written submissions sought under Regulation 5.5(1) and 5.5(2) have been received (or if no written submissions are received within period allowed) the member will be notified by the Secretary of the date on which the Disciplinary Committee will determine the matter of the member's membership of CITMA. This date will be no more than 3 months after the end of the period set out in Regulations 5.5(1) and 5.5(2).
- (4) An oral hearing will take place only if the member makes a request in writing within 14 days of the notification of the date of the determination of the case.
- (5) If no oral hearing is sought, the Secretary will invite the member to provide written arguments no later than 7 days before the date on which the Disciplinary Committee is to determine the case. Written arguments must be no more than 4 sides of A4 / 2,000 words in length.
- (6) If an oral hearing is requested, at the hearing the member (or their representatives) will be given the opportunity to make their submissions to the Disciplinary Committee. Submissions must be no more than 4 sides of A4 / 2,000 words in length.
- (7) Following the conclusion of the procedure, including any hearing, the Disciplinary Committee will, within 14 days, issue a written decision. This will set out its conclusions on the recommendation by the TRB, or its views as to whether the complaint upheld by the TRB because of the action or actions of the member brought CITMA or the profession into disrepute. This decision will include a recommendation to the Council of CITMA as to any penalty to be imposed.
- (8) The Disciplinary Committee's written decision and recommendations will be considered by the next meeting of the CITMA Council. The written decision and the Council's decision will be copied to the member.
- (9) The decision of the Council of CITMA will be final.

5.5 General

- (1) At any point in the proceedings the Disciplinary Committee can request either party to provide additional information.
- (2) Any decision of the Council can be subject to judicial review.
- (3) No costs will be awarded to either a complainant or member in respect of any of the procedures outlined in these regulations.
- (4) Any document required to be sent from one party to another, including the Secretary, under these Regulations can be sent by electronic means where relevant email addresses are known. If documents are sent by post they should be sent with guaranteed and acknowledged delivery.
- (5) The action to put into effect any decision of the Council in relation to any of the matters set out in these procedures will be undertaken within 7 days of the written decision and the Council's decision being copied to the member.