IN THE MATTER OF THE INTELLECTUAL PROPERTY REGULATION BOARD
JOINT DISCIPLINARY BOARD

BETWEEN:

THE INTELLECTUAL PROPERTY REGULATION BOARD
(THE TRADE MARK REGULATION BOARD)

Complainant

-and-

(1) DUNCAN WELCH

(2) MANISH JOSHI

Respondents

DETERMINATION

Board Members:	Ms. Veronica Thompson (Chair) Mrs. Lucy Melrose (Lay) Mr. Esmond Hitchcock (Attorney)
Legal Advisor to the Board:	Mr. Tim Grey
Representation for the Complainant:	Mr. Philip Ahlquist
Representation for Mr Welch:	Appeared on his own behalf
Representation for Mr. Joshi:	Mr. Brian Dean
Date of Hearing:	28 - 29 November 2019 & 16 - 17 January 2020

Summary of Determination:

Both Respondents admitted Allegations 1, 2 and 3, but did not admit that any of the 3 Allegations amounted to a breach of Rule 5 - a lack of integrity.
In addition the Second Respondent admitted Allegation 4 where he alone was charged.

The Allegations as admitted were thereby found proved.

The Board determined the following:

The First Respondent

Allegation 1: Proved

The First Respondent's conduct does amount to a lack of integrity and a breach of Rule 5

Allegation 2: Proved

The First Respondent's conduct does amount to a lack of integrity and a breach of Rule 5

Allegation 3: Proved

The First Respondent's conduct does amount to a lack of integrity and a breach of Rule 5

The Second Respondent

Allegation 1: Proved

The Second Respondent's conduct does amount to a lack of integrity and a breach of Rule 5

Allegation 2: Not Proved

The Second Respondent's conduct does not amount to a lack of integrity and a breach of Rule 5

Allegation 3: Proved

The Second Respondent's conduct does amount to a lack of integrity and a breach of Rule 5

Summary Allegation and Facts

1) From 1 June 2015 onwards, each Respondent failed to take out or maintain a policy of professional indemnity insurance, commensurate with the risks at large arising from the extent and size of their practice, contrary to Rule 17 of

the Rules of Conduct For Patent Attorneys, Trade ark Attorneys And Other Regulated Persons ('the Rules of Conduct'), thereby placing clients at risk if they had a valid claim or claims against J&W Ltd. In so doing, the Respondents failed to act with integrity and breached **Rules 5 and 17** of the Rules of Conduct.

2) Each Respondent failed to account to their client, Client A for client money paid on account by Client A to J&W Ltd in relation to third party costs. Client A paid a bill of £7390.80 of which £6200.55 was charged to the client in respect of the costs of an overseas agent, but was then retained by J&W Ltd. In so doing, the Respondents failed to act with integrity and breached **Rules 5 and 11** of the Rules of Conduct.

3) Each Respondent failed to comply with a decision of the Legal Ombudsman dated 19 October 2017 and in so doing, failed to act with integrity in putting clients' interests foremost. The Respondents breached **Rules 5 and 12** of the Rules of Conduct.

4) The Second Respondent failed to cooperate with the Complainant during its investigation by failing to respond properly or at all to correspondence between November 2015 and August 2016. (**Rule 20** of the Rules Conduct)

Preliminary Applications

1. At the outset of proceedings Mr. Dean, on behalf of Mr. Joshi, applied to adduce his latterly prepared and served witness statement out of time. He submitted that the statement, whilst late, was a useful document in bringing together the various strands of the Second Respondent's case, added nothing new, save for crystallising his admissions, and was in no way prejudicial to the positions of the Complainant or the First Respondent.

2. On behalf of the Complainant, Mr. Ahlquist remained neutral on the admission of the statement. He accepted that it might make the presentation of the Second Respondent's case easier, and therefore assist the Board. He identified no prejudice arising to the Complainant in its admission, albeit he did not accept that there was no novel material in it. Indeed he noted there were a number of new exhibits appended to it. However, it was the Complainant's position that neither the content of the statement or the additional exhibits materially affected the scope and nature of the case.

3. The First Respondent submitted that to admit the Second Respondent's statement so late in the proceedings was neither fair nor just. He submitted that it was an example of the last minute non-engagement the Second Respondent

had demonstrated throughout the course of the events leading to the proceedings, and during the proceedings themselves. However, when pressed, the First Respondent was unable to specify the exact prejudice to his own case by admission of the statement or additional exhibits.

4. The Board received and accepted the advice of the Legal Advisor. It was advised that the Disciplinary Procedure Rules ('the Rules') required service of witness statements by Respondents in accordance with the timetable set out in Rule 11.1(c). It was agreed by all parties that the Second Respondent was out of time for such service, and had indeed failed to meet a further direction to serve his witness statement by no later than 22 November 2019. The statement was in fact served on 25 November 2019, the next working day. The Board was reminded that notwithstanding the Second Respondent's failure to comply with Rule 11.1 and with the Board's case management direction, it did have a wide discretion under Rule 11.6. Such discretion was to be exercised only if the Board considered it *fair and appropriate* to allow admission of evidence at a late stage.

5. In assessing fairness the Board was advised it should keep high in mind the fairness to the Complainant and to the First Respondent. If the Board concluded that admitting the evidence would prejudice the cases of either of the other parties it should consider very carefully whether such prejudice would or might render the hearing "unfair." Equally, it should balance any such prejudice against the right of the Second Respondent to adduce such evidence as was necessary for him to properly assert his defence, whilst bearing in mind he had a good deal of time to gather and serve such evidence previously and had chosen not to do so. The Board was further advised to consider whether the additional evidence was, as was submitted, helpful in understanding the Second Respondent's case, such that its admission might help all parties. If that were the case then it might well be possible to admit the evidence without concern, but even in such circumstances the Board would need to remain vigilant and ensure it was robust in the hearing process in addressing any unforeseen unfairness that might arise to either the Complainant or First Respondent from the admission of the evidence. In considering the question of appropriateness the Board was advised that it should consider the nature of the proposed new evidence and ask itself whether the evidence was relevant to an issue or issues in the case. Given it was the Second Respondent's own witness statement it was highly likely to be relevant to the issues in the case, but that was a matter for the Board's judgment as was the question of fairness.

6. The Board determined that whilst it was deeply disappointing that the Second Respondent had failed to engage in a meaningful way with proceedings until a very late stage, such that he only produced a witness statement 3 days before the hearing, there could be little doubt that its content was relevant to the issues in the case. The Board noted that whilst there were a number of new documents exhibited, the statement had not raised or appeared to raise novel issues, and

all were within the knowledge or contemplation of the other parties. In consequence the Board could identify no prejudice to the Complainant or First Respondent in its admission of the witness statement and appended exhibits, even at such a late stage. The Board concurred with Mr Dean's submission that the statement itself was a useful document for all parties in collating, as it did, the various disparate strands of the Second Respondent's case. It considered that its case management powers were sufficient to ensure that all parties would receive a fair hearing. It therefore determined to admit the statement pursuant to its discretion under Rule 11.6 of the Rules.

Background

7. The Respondents are registered trade mark attorneys. On 23 December 2009 the Respondent incorporated Joshi & Welch Limited ('J&W Ltd'), of which each Respondent was a director.

8. The First Respondent was entered in the Register of Trade Mark Attorneys ('the Register') on 1 July 1994.

9. The Second Respondent was entered in the Register on 17 June 2003. His name was removed from the Register on 16 December 2016 due to non-payment of fees but was restored on 12 May 2017.

10. The Respondents set up J&W Ltd for their joint practice as trade mark attorneys. At some point prior to 2011, J&W Ltd was also registered as a trade mark attorney practice. In or around April 2015, the Respondents ceased trading through J&W Ltd as a result of disagreements between them. J&W Ltd was removed from the register on 16 December 2016.

11. On its incorporation, the Respondents were the only directors of J&W Ltd. In May 2010, Kelli Welch ('Mrs Welch') and Darshini Joshi ('Mrs Joshi') (each the wife of the relevant Respondent) were appointed as directors of J&W Ltd.

12. Neither Mrs Welch nor Mrs Joshi is or was a trade mark attorney or other authorised or exempt person under the Legal Services Act 2007. J&W Ltd remained at all times under the effective control of the Respondents. At the time of the hearing, J&W Ltd was in compulsory liquidation, having been restored to the register of companies by an order the High Court dated 20 February 2019, having been dissolved on 27 November 2018.

13. Following the Complainant's authorisation as a licensing authority under the Legal Services Act 2007 which came into effect on 1 January 2015, the Complainant corresponded with J&W Ltd with a view to J&W Ltd obtaining licensed body status. As a result of the disagreement between the Respondents no application for licensed body status was made by J&W Ltd.

14. Pursuant to Rule 2 of the Rules of Conduct the Respondents, as directors of J&W Ltd and/or the individuals who in practise controlled J&W Ltd, were personally responsible for the actions and omissions of J&W Ltd.

Indemnity Position

15. On 31 May 2015, J&W Ltd's existing policy of professional indemnity insurance, held with PAMIA Ltd ('PAMIA') came to an end, because J&W Ltd and the Respondents failed to apply for its renewal. No other application for a policy of professional indemnity insurance was made, whether to PAMIA or otherwise. J&W Ltd's professional indemnity insurance cover accordingly lapsed.

16. On 16 September 2015 PAMIA wrote to J&W Ltd indicating that it had made no application for renewal but offering to provide continuous cover with effect from 1 June 2015 if a renewal form was received no later than 30 September 2015. J&W Ltd did not apply for the renewal of its insurance.

17. On 9 November 2015, IPReg wrote to the Respondents as managers of J&W Ltd specifically drawing their attention to Rule 17 of the Rules of Conduct and indicating that in IPReg's view, it was 'essential' that run off cover be obtained under Rule 17. The First Respondent responded by email the same day, noting the letter.

18. By a further email dated 16 November 2015, the First Respondent stated that whether run-off cover was required would depend on the outcome of a pending unfair prejudice petition brought by him against the Second Respondent. Thereafter, there was continued correspondence between the First Respondent and IPReg. On 21 March 2016, the First Respondent updated IPReg on the status of the petition and further confirmed: '*I am well aware that PI Cover is <u>not</u> in place and that some cover, whether run off cover or other is required.'* Mr Welch expressed the same view in a further email dated 9 May 2016.No PI Cover was put in place.

19. On 9 November 2016, IPReg wrote to each of the Respondents drawing attention to J&W Ltd's unpaid fees and also confirming that if J&W Ltd was to remain on the Register, IPReg would require evidence that Rule 17 of the Rules of Conduct was being satisfied. IPReg stated that for *'a firm which is no longer trading, this would be satisfied by the obtaining of run-off cover in an appropriate amount. Please note that if no such run-off cover is in place, [J&W Ltd] cannot remain on the register and will be removed'*.

20. On 10 November 2016 the First Respondent replied confirming that J&W Ltd did not have professional indemnity insurance cover. The Complainant wrote to Mr Welch on 23 December 2016 confirming that J&W Ltd had been removed from the Register. By a letter of the same date, the Complainant wrote to Mr

Joshi informing him of the same and further informing him that he had himself been removed from the Register.

21. J&W Ltd did not make an application for professional indemnity insurance from 1 June 2015 onwards, whether in the form of run-off cover or standard professional indemnity insurance from PAMIA or any other insurer.

22. On 27 October 2017 the Legal Ombudsman wrote to IPReg seeking details of J&W Ltd's professional indemnity insurance as a result of J&W Ltd and the Respondents not having complied with the Legal Ombudsman's decision as set out fully at paragraphs 30 to 34 below. As a result of the Respondents' failure to obtain run-off cover, IPReg was required to respond confirming that J&W Ltd's latest period of insurance expired on 31 May 2015, i.e. that J&W Ltd had no insurance covering the claim.

Client A

23. In December 2014 Client A instructed J&W Ltd to make a trade mark application in Kenya. An equivalent trade mark application had already been made in the United Kingdom. J&W Ltd instructed Agent B, a firm of attorneys in Pretoria, South Africa, to make the application.

24. On 25 February 2015 J&W Ltd sent an invoice to Client A for £7390.80 including VAT. The invoice was settled on or by 14 October 2015.

25. In early April 2016, Agent B emailed Client A seeking information in respect of their invoice to J&W Ltd, which remained unpaid. Client A replied on 12 April 2016 confirming that J&W Ltd had been provided with the funds to settle the invoice. On 22 April 2015, Agent B replied seeking the First Respondent's contact details.

26. On 9 May 2016 Client A emailed the First Respondent informing him that Agent B had emailed in respect of its unpaid fees and sought confirmation from him that it had paid its invoices in full. The First Respondent replied by email the following day, saying that the fees had not been paid. He also sent an email to like effect direct to Agent B on 9 May 2016.

27. By an email dated 15 June 2016, Client A emailed the First Respondent (copying in the Second Respondent) and made a formal complaint. As part of that complaint Client A demanded that Agent B be paid from the funds which Client A had provided for that purpose.

28. The First Respondent replied by email the same day and accepted that Agent B had not been paid, noting that there were many creditors.

29. By a further email dated 15 June 2016, the Second Respondent confirmed that the fees had been paid to J&W Ltd and agreed they should be paid on to Agent B. He also made proposals for how the payment should be made. Agent B was not paid until days before the hearing in November 2019.

30. As a result of Agent B not having been paid, Client A was required to pay further costs in order to keep its application active.

The Legal Ombudsman

31. On or before 30 March 2017, Client A complained to the Legal Ombudsman in respect of the service it had received from J&W Ltd. A preliminary decision dated 20 September 2017 indicated that the complaint would be dismissed. However, on further consideration by the Legal Ombudsman, the complaint was upheld.

32. By a final decision dated 19 October 2017 the Legal Ombudsman concluded that J&W Ltd had provided an unreasonably poor level of service and directed that J&W Ltd:
    - Pay Client A £444 to cover the cost of the amendments needed for the Kenyan trade mark application.
    - Release the full legal file to Client A by recorded delivery to the company's registered address.
    - Pay Mr A (an employee of Client A) £200 to reflect the impact of their poor service on him.

33. The Legal Ombudsman sent a letter or letters to J&W Ltd informing it of the acceptance by Client A of the Legal Ombudsman's decision on 19 December 2017, requiring J&W Ltd to comply with the Ombudsman's directions.

34. Until November 2019 none of the Legal Ombudsman's directions had been complied with. In November 2019 the Second Respondent complied with the first and third directions on behalf of J&W Ltd.

The Second Respondent's Failure to Engage with the Complainant

35. The Complainant sent the Second Respondent letters and/or emails on the following dates none of which were responded to: 9 November 2015; 16 November 2015; 30 November 2015; 21 March 2016; 29 June 2016; 12 August 2016; 9 November 2016; 16 November 2016.

Evidence

36. The Board had before it a good deal of documentary evidence from all parties, including witness statements from one witness on behalf of the Complainant, and one from each of the Respondents.

37. The Board heard oral evidence from Mark Barnett, Assurance Officer, on behalf of the Complainant, although that evidence was extremely limited and simply identified a number of documents exhibited before the Board. No party had any additional questions for Mr. Barnett and his evidence was thereby largely agreed.

38. The Board next heard oral evidence from the First Respondent. It bore in mind throughout its deliberations that the First Respondent was representing himself, and made necessary allowance for that, in considering how his case was presented.

39. The Board was struck with the overall tenor and nature of Mr Welch's evidence. At times he was candid to the point of admission, for example when referring to his proximity to the events in Allegation 1, and his day-to-day management of J&W's indemnity provision. However, at other points the Board considered him to be less than straightforward in his answers, to the point of lacking any real credibility. In particular the Board was entirely unconvinced by his assertion that he had no access to the J&W Ltd business account after it had been 'frozen.' Upon closer interrogation, he appeared to concede he may have had access but did not fully investigate the position. The Board considered that the First Respondent was at times evasive and attempting to dissemble in an effort to escape a greater level of culpability than might otherwise have been the case.

40. The Board was therefore left with the impression of a witness whose credibility was partial and affected by self-interest.

41. The Board bore in mind that the First Respondent had dealt with an enormous amount of material, as well as separate litigation and dispute ,associated with J&W Ltd since the period in question, and in so far as his evidence was genuinely confused rather than demonstrating a deliberate or artful attempt to represent a particular position, it was sympathetic to the difficulties he might have in remembering particular dates and events. In the circumstances it found him to be a reliable witness when he chose to be.

42. The Board also heard oral evidence from the Second Respondent. The Board found the Second Respondent to be a witness whose recollection was coloured by attempts to distance himself from what was occurring at J&W Ltd in the latter days of his involvement. Such attempts to distance himself were in part a reflection of his state of mind at the time and since the events, and demonstrated an alarming lack of awareness about his responsibilities to clients, to the business and to the First Respondent as his partner/former partner/co-director. Whilst many of those recollections were clearly genuinely held beliefs at the time, the Board was not able to accept that the Second Respondent could possibly have believed he didn't owe a greater degree of

responsibility when exiting the business than he purported to know of in his evidence.

43. At points his attempts to distance himself therefore appeared to be less than credible in all the circumstances, in particular his reliance on a document entitled “Heads of Agreement” to show that he had *de facto* exited J&W Ltd on or around 20 April 2015. The document was presented to the First Respondent, never signed by either and never enacted. The Board considered it an example of the Second Respondent attempting in his evidence to unilaterally step away from culpability, in a manner that lacked credibility. The Board was similarly unimpressed by the Second Respondent’s inability to provide any credible explanation for his singular failure to answer correspondence from his Regulatory body on 8 separate occasions. That correspondence in terms set out his responsibility for the events giving rise to the Allegations in this case. The Board determined that the Second Respondent demonstrated sporadic credibility, in light of his clear, deliberate, and at times unreasonable attempts to distance himself from events, and from culpability.

44. The Board bore in mind that there had been considerable litigation and dispute around the affairs of J&W Ltd for some time, and that it was unsurprising if the Second Respondent could not remember precise dates or events clearly. Similarly, it found the Second Respondent to be a reliable witness when he chose to be, albeit he was clearly less inclined to involve himself at points, so necessarily had a less acute sense of what was occurring than the First Respondent.

45. What was clear to the Board was that there had been a great deal of bad blood between the Respondents during and since the break up of their business relationship in J&W Ltd. That bad blood and the consequent litigation had become all encompassing for both, and had drawn focus from the duties owed by both as members of IPReg.

Submissions of the Parties

Complainant

46. As well as helpful skeleton arguments provided by all parties the Board also heard oral submissions from each.

47. On behalf of the Complainant, Mr. Ahlquist submitted that the opening submissions made in his skeleton argument could and should be adopted, nothing having materially affected those submissions, with one exception. He accepted that the Second Respondent could not be said to have been lacking in integrity in Allegation 1 before 9 November 2015, when he became aware of the issues around J&W Ltd’s lack of PI cover. Whilst he was responsible before

that point he did not have such knowledge as to enable him to be described as lacking in integrity.

48. Mr. Ahlquist further submitted that there was an important link between the concept of recklessness and a lack of integrity. In so saying he relied upon the authority of *Wingate and Others v SRA [2018] 1 WLR 3969* and submitted that it was a starting point but that Rule 5 of the Rules of Conduct goes further in its definition of a lack of integrity. It characterises it as *"putting clients' interests foremost."* This, he submitted, was an attempt to formulate a primary feature of what the ethical code should involve. It basically means a steady adherence to the ethics of the profession, but gives a more specific example of what that might look like. Further, acting recklessly against clients' interests would amount to a lack of integrity, but a lack of integrity did not require recklessness to be demonstrated. In so submitting Mr. Ahlquist took the Board to the authorities of *R v G [2003] UKHL 50* and *Brett v SRA [2015] PNLR 2* for the test for recklessness.

49. Mr. Ahlquist formulated the test in the instant case as *"risking some harm to your client in circumstances where it is unreasonable to expose your client to such risk."* Given that Rule 5 requires acting in one's client's best interests when one is aware that the risk will occur and it is an unreasonable action to take, such behaviour must necessarily amount to a lack of integrity, he argued.

50. In relation to Allegation 1 as against the First Respondent, Mr. Ahlquist submitted that he had denied recklessness but accepted the necessary elements of recklessness. Mr. Ahlquist relied upon the correspondence passing between the First Respondent and the Complainant in which the former accepted PI cover was necessary. He further submitted that it was clear the First Respondent must have known of the need for PI cover because he accepted at an early stage that there was a risk of claims after J&W Ltd stopped practising. Secondly, Mr. Ahlquist submitted that the First Respondent was continuing to practise as an attorney when he had no PI cover in place and knew he had no PI cover in place. This continued even after he was reminded of the need for PI cover by the Complainant.

51. Such behaviour was clearly reckless and therefore amounted to a lack of integrity.

52. In relation to the Second Respondent and Allegation 1, Mr. Ahlquist submitted that before 9 November 2015 he knew nothing about run-off cover and how it worked. That was clearly of some concern.

53. From 9 November 2015 onwards Mr. Ahlquist submitted that the Second Respondent had been notified by the Complainant that he needed cover and did nothing. There was no excuse for this lapse. If the Second Respondent had been acting ethically and showing proper regard to his clients' interests he

would have done something about it. Instead he waited until these proceedings had commenced and sought run-off cover, by which time it was far too late. Such behaviour was reckless and thereby amounted to a lack of integrity.

54. In relation to Allegation 2 so far as the First Respondent was concerned, Mr. Ahlquist submitted that the First Respondent only admitted the payment had been made by Client A under cross-examination. Mr. Ahlquist further submitted that his failure to admit payment had been made until the hearing did him no credit, regardless of whether payment was in fact made in February or October 2015. It had taken until 2019 for the First Respondent to admit the payment had been made. This was in spite of him being made explicitly aware of the issue by May 2016, if not before.

55. The failure to pay the fees was also causing problems in getting the trade mark to registration and both the first and Second Respondents knew that to be the case. The Second Respondent agreed to pay and asked the First Respondent to do so. In spite of that he did not. The Respondents did pay other creditors and, Mr. Ahlquist submitted, paid those who were threatening formal proceedings, namely HMRC and the J&W Ltd accountants.

56. Mr. Ahlquist therefore submitted that in relation to Allegation 2 the First Respondent had acted recklessly in failing to pay Agent B on behalf of his client and thereby was guilty of demonstrating a lack of integrity.

57. In relation to the Second Respondent and Allegation 2, Mr Ahlquist submitted that he had agreed to the payment being made to Agent B but neither of them did anything to make the payment. More importantly the Second Respondent did nothing to check whether the payment had been made, nor did he himself make the payment. That was a reckless exposure of the client to risk and could not be said to be acting within the ethical standards of the profession. His conduct thereby amounted to recklessness and demonstrated a lack of integrity.

58. Whilst he did not submit that the failure to comply with the Ombudsman's decision was an act of recklessness, Mr. Ahlquist did submit that it amounted to a lack of integrity and that lack of integrity was common to both Respondents. In so saying he submitted that the decision was binding on J&W Ltd and both knew of it and yet failed to do anything about it.

59. The First Respondent did suggest it should be paid, yet nothing happened until November 2019 when the Second Respondent paid, in contemplation of the hearing.

60. This was, Mr. Ahlquist concluded, a clear failure to act consistently with the ethical standards of the profession and thereby demonstrated a lack of integrity.

First Respondent

61. In his submissions, the First Respondent submitted that the payments to Client A and Agent B, and any premium for PI cover could have been satisfied out of money in J&W Ltd accounts but, he submitted, this could not happen due to the behaviour of the Second Respondent.

62. The plan had originally been that the Second Respondent would leave J&W Ltd, and sign control of the business over to the First Respondent. The First Respondent asserted that the Second Respondent's failure to do so had been to blame for the First Respondent's inability to obtain PI cover, pay clients or satisfy the Legal Ombudsman's decision.

63. The First Respondent further submitted that although he accepted some responsibility it did not absolve the Second Respondent from responsibility. Moreover, the Second Respondent had a greater level of culpability as he was preventing the First Respondent from operating J&W Ltd for the benefit of clients.

64. In relation to the question of PI cover, the First Respondent submitted that the guidance issued by the Complainant at the time was confused as to whether run-off cover was necessary or not, and this at a time when the First Respondent was managing the breakdown of the business relationship with the Second Respondent. That dispute was all consuming. The Second Respondent simply "buried his head in the sand" which, submitted the First Respondent, meant nothing could be achieved, whether paying creditors or satisfying the Legal Ombudsman's decision.

65. In summation, the First Respondent apologised for his breaches and for anything he had done wrong, but submitted that given the exigencies at the time, he had done all he reasonably could, and all any professional could to comply with his obligations.

Second Respondent

66. On behalf of the Second Respondent, Mr. Dean submitted that he had very little involvement in the PI provision for the business of J&W Ltd. He submitted that the guidance issued by the Complainant was confused as to when or how run-off cover should be obtained and this had an effect on the Second Respondent's state of mind as to whether PI cover generally was necessary.

67. Mr. Dean further submitted that at the time of the initial complaint being communicated to him the Second Respondent was not told of these issues, and the apparent confusion around the PI guidance and requirements. By the time he was made aware of the need for PI cover on 9 November 2015, the Second Respondent believed there to be a successor practice, which had

taken over the original J&W Ltd under the management and control of the First Respondent, as demonstrated by the Heads of Agreement document.

68. Mr Dean took the Board to the new exhibits and sought to demonstrate that they showed the Second Respondent trying to obtain PI cover retrospectively, and the fact that this was not available after September 2015. This, Mr. Dean submitted, demonstrated that in the operative period (up to September 2015) the Second Respondent was not aware of the issue so could in fact at no point have done anything about it. By the time he found out in November 2015 it was, as a matter of fact, too late for him to do anything about it.

69. Mr. Dean submitted that albeit late in the day, the Second Respondent had ensured that the various parties were paid and that PI cover was sought albeit it was by then too late, and that was demonstrative of his good character and good intent.

70. In addressing the submissions on the Case Law made by the Complainant, Mr. Dean reminded the Board that for recklessness to be shown the Respondent in question must be aware that a risk exists or may exist. Secondly, he must understand the circumstances and take the risk unreasonably. In so saying Mr. Dean relied upon the further case of *Newell-Austin v SRA [2017] EWHC 411 (Admin)*.

71. Mr. Dean went on to remind the Board of the Second Respondent's good character. In so doing he submitted that his evidence had been credible particularly when compared with that of the First Respondent. It had been impossible for the First Respondent to move past the dispute and had therefore meant the issues had arisen in the first place. In so far as propensity was concerned Mr. Dean submitted that having been in business many years, at no point in the past or since had the Second Respondent behaved in a reckless or deliberately wrongful manner, and so it was far less likely than might otherwise be the case for him to have done so on this occasion.

72. Mr. Dean then turned to the allegations in turn dealing first with Allegation 1. He noted that the Complainant had changed the scope of its case in relation to the Second Respondent and submitted this demonstrated that even on the Complainant's case there was a clear distinction between the behaviour of the two Respondents. After 9 November 2015 it was ambiguous as to how and when something should happen in terms of PI cover, and the guidance said as much. The phrase "as and when it's wound up" demonstrated that the Second Respondent was waiting for J&W Ltd to be in some way ended and did not in the circumstances appreciate that run-off cover was necessary. Indeed Mr. Dean went further and submitted that there is some ambiguity as to whether obtaining run-off cover is a regulatory obligation in any event.

73. As a matter of fact, Mr. Dean submitted, the PI cover had ceased on 31 May 2015. So far as the Second Respondent was concerned the company had ceased trading in or around April 2015 as demonstrated by his Heads of Agreement document.

74. In relation to the complaint founding Allegations 2 and 3 and its interaction with Allegation 1, Mr. Dean drew the distinction between a negligence case in relation to which PI cover would have been relevant, and a costs dispute as in Allegations 2 and 3, where it was not. From 2006 - 2015 there was no complaint requiring PI cover. The only identifiable claim was the £600, that was owed to Client A and had now been paid.

75. Mr Dean further submitted that Allegation 1 was faulty for a lack of particularisation. He accepted that the breach of Rule 17 had been properly pleaded but noted that nowhere in the Allegation had the Complainant pleaded the nature of the evidence giving rise to a lack of integrity and had not particularised how that was made out. It could not be said that every breach of Rule 17 was necessarily a Breach of Rule 5.

76. Mr. Dean went further and submitted the Statement of Case was bad for duplicity, and that the Complainant had sought to charge both Respondents in a single allegation when the case against each was distinct and different.

77. Mr. Dean then addressed Allegations 2 and 3. He submitted that until May 2016 the Second Respondent could not have shown a lack of integrity as before that he had no knowledge about the relevant transaction or the First Respondent's relationship with Client A or Agent B.

78. The money should have been paid in 2015 before J&W Ltd "ceased trading" or stopped operating in its original form. Had that been done the Second Respondent would never have been involved at all.

79. By May 2016, when he became aware of the issue, the Second Respondent was in no position to force payment from the company account. He did however ask the First Respondent to make the payment. This, Mr. Dean submitted, demonstrated the wholly differing roles of the two Respondents and again demonstrated that they should have been charged separately. Indeed, many of the facts relied upon in the Statement of Case could not apply to the Second Respondent.

80. In relation to the payment of the Legal Ombudsman Mr. Dean submitted that the Second Respondent had done all he could to ensure the decision was honoured. He had latterly paid it himself but could not facilitate J&W Ltd paying it. Once again Mr. Dean submitted that Allegation 3 was inaccurately particularised and had failed to properly identify his client's purported culpability.

81. In all the circumstances he submitted that the Board could not be satisfied to the requisite standard that the Second Respondent had demonstrated a lack of integrity in relation to Allegations 1, 2 or 3.

Legal Advice

82. The Board received and accepted the advice of the Legal Advisor. It was reminded that the burden of proving a particular allegation remained on the Complainant throughout. The standard of proof, in common with almost all Regulators was now the civil standard, namely the balance of probabilities.

83. In approaching the evidence the Board was reminded that it should consider the case against each Respondent separately, and pay careful attention to the Allegations and how the Complainant had pleaded them in the Statement of Case, in order to assess whether a particular Allegation was made out in relation to a particular Respondent.

84. The Board was advised that it should treat both Respondents as of 'good character' and that in so doing that fact should be taken into account in favour of each in assessing their credibility both in written and oral evidence. Secondly, the Board was advised that good character could also be taken into account in assessing the propensity the particular Respondent may have to act in the manner alleged, having never acted in such a manner before.

85. The Board was advised to adopt the definition of integrity as set out in the case of *Wingate & Others v SRA [2018] 1 WLR 3969*, whilst paying close regard to Rule 5 of the Rules of Conduct for further definition in the context of IPReg proceedings. It was advised that whilst the Complainant's submissions as to recklessness might be of some assistance, the application of the legal test for recklessness was unnecessary to making a finding of a lack of integrity in any given situation. Recklessness might indicate a lack of integrity but it might not, the two were not universally synonymous. In this case the Board was advised to pay heed to recklessness only if it assisted it in reaching a decision on the question of integrity in the particular allegation it was considering.

Determination

Allegation 1

First Respondent

86. J&W Ltd had first obtained PI cover in 2010 when required to do so by IPReg. Since that time the day to day administration of J&W Ltd's PI cover was handled by the First Respondent.

87. The First Respondent did not dispute that he knew that the renewal of PI cover was due at the end of May 2015.

88. On or around 16 September 2015 the First Respondent had been notified by the insurer PAMIA that J&W Ltd's cover was going to lapse by 31 September 2015 if nothing were done to renew it. Any failure to renew would mean PI cover would be cancelled retrospectively to 1 June 2015. The First Respondent acknowledged the position but did nothing to rectify it.

89. On 7 September 2015 the First Respondent wrote to IPReg regarding a separate licensing requirement. In that email he notified IPReg that J&W Ltd was proposing to cease trading. In fact, it did not cease trading at that point and the First Respondent knew it did not.

90. Whilst the Board was conscious that the Respondents' business relationship had, by this stage deteriorated, and the running of J&W was in some disarray, it could not overlook the First Respondent's disregard for his clear obligation, as a director of J&W Ltd, to ensure suitable insurance cover was in place, regardless of the likely demise or otherwise of J&W Ltd.

91. On 9 November 2015, no action having been taken by J&W Ltd to resolve the PI cover position, IPReg wrote to both Respondents by hard copy and/or electronic means. The Board considered the letter, sent on 9 November 2015 and received by both Respondents later in the month, to be unambiguous. It was absolutely clear from the content of the letter that J&W Ltd's PI cover position needed urgent resolution, whether by means of run-off cover or otherwise. This was regardless of whether the company was being dissolved or not.

92. Whilst it was not clear to the Board when the First Respondent had contacted PAMIA by phone, it was clear from questions asked of PAMIA that he had contacted them and had a conversation about run-off cover. No formal application for run-off cover was ever made.

93. By email the First Respondent confirmed receipt of IPReg's letter to J&W of 9 November 2015 and commented that it was *"a sensible notification of our responsibilities but the situation is currently changing."*

94. The Board had little doubt that that the First Respondent's stance was in part due to the ongoing and all consuming dispute between him and the Second Respondent. However, the Board considered the First Respondent's stance to be wholly unsatisfactory and to represent a complete abrogation of the responsibility he owed as a director of J&W Ltd. to the clients of the firm.

95. In his evidence, both written and oral, the First Respondent maintained that he could not have obtained run-off cover or full cover as he did not know which

was required, given the uncertain future of J&W Ltd. In the Board's view, such a contention ignored the overriding duty upon J&W Ltd to hold insurance commensurate to the risk level of the company. It was not enough to say *"I didn't know which type to get so got nothing."* The positive duty owed by the First Respondent was to maintain cover where the future was uncertain. The uncertainty itself made the protection of clients all the more important and simply allowing cover to lapse was a gross breach of the trust placed in the First Respondent by clients of J&W Ltd.

96. It was impressed upon the Board by the Second Respondent that the period during which run-off cover could have properly been obtained ceased at a point in or around September 2015. It was submitted that if the Respondents had not known of the PI cover position during that period they could not have been in a position to attend to the risk to clients until it was impossible to obtain cover and thereby after they could have negated the risk. Whilst this was not an argument advanced by the First Respondent, the Board considered it could be said to have some applicability to both Respondents. However, the Board was not persuaded by the argument in relation to the First Respondent for two reasons. Firstly, there was clear evidence before the end of the period during which run-off over could have been obtained that the First Respondent knew PI cover needed to be attended to. Secondly, there was no evidence before the Board that showed the First Respondent at the time had any knowledge of the time limits involved in obtaining retrospective cover, and as such he had made no attempt to obtain cover. Even if such an attempt might ultimately have proved futile, he did not know and had made no attempt to find out the position such that he would have known that retrospective or run-off cover could not have been obtained beyond a certain point.

97. The First Respondent himself adduced no evidence of any sort tending to show that he was aware of the time restriction. Consequently, the Board considered his palpable failure to do anything to protect the interests of former or existing clients of J&W Ltd to be a serious and profound failing.

98. The failure was allowed to persist until J&W Ltd was dissolved, and until it was ultimately put into liquidation some years later. There was no evidence before the Board that demonstrated any efforts made by the First Respondent to attend to the position, even at times when he intended to keep J&W Ltd. going, after the departure of the Second Respondent.

99. The First Respondent's apparently *laissez-faire* attitude to PI cover and the consequent risks, was exemplified by his oral evidence to the effect that when he did set up a new company, 'Iceni,' he initially failed to take out PI cover for that company.

100. Whilst it is right to say that the dispute concerning the client and 3rd party giving rise to Allegations 2 and 3 was not strictly a negligence claim but a claim

for disputed fees, it would, in the Board's judgment, have necessitated in the reasonable practitioner an enquiry to insurers and a re-focussing on the PI cover position of the company. This did not happen at any point.

101. In assessing the First Respondent's state of knowledge, the Board took account of the evidence it had read and heard. It was conscious that in order to find an allegation proved it needed to have cogent evidence before it. The Board was not able to identify evidence that showed the First Respondent acting with a lack of integrity in the period May to September 2015. Whilst he had been charged with ensuring J&W Ltd had PI cover and had not renewed it when required, there was no evidence before the Board to show he had understood the profound nature of the position before September 2015. However, in September 2015 he had been notified by PAMIA that PI cover would lapse if something were not done urgently to correct the position. From that point on the Board concluded the First Respondent had singularly failed to put the interests of clients ahead of his own interests, and indeed had paid no heed to the risks associated with not having some form of cover.

102. In the Board's judgment the First Respondent's failure to act to prevent a breach of Rule 17 had clear implications for clients, went on for a significant period of time, was characterised by a lack of care and diligence and could not be said to show a steady adherence to the ethical standards of the profession. In the circumstances his behaviour demonstrated a lack of integrity and a breach of Rule 5.

Second Respondent

103. By contrast the Complainant accepted that the Second Respondent was not intimately involved with the provision of PI cover for J&W Ltd. and it was accepted that before November 2015 he had no knowledge of the PI cover position. However, having had sight of the letter of 9 November 2015 he can have been in no doubt as to the position. It was impressed upon the Board that the letter of 9 November 2015 was ambiguous in its terms. The Board is entirely unpersuaded of that. It was clear from the terms of the letter sent by the Respondents' regulator that the PI cover position needed urgent attention.

104. From this point on, the Second Respondent, as a director of J&W Ltd had a clear duty to inform himself of the PI cover position and take steps to rectify it. He did not. There was and remains no sound explanation before the Board as to why he did not. During his evidence the Second Respondent explained that there was enough liquidity in J&W Ltd to meet any potential claims from clients. In the Board's view not only was this no defence to the need to have PI cover as enshrined in Rule 17, but showed a grave lack of risk assessment.

105. Whilst the Board noted and accepted that, by the time the Second Respondent had notice of the situation, the time for obtaining retrospective

cover had passed, as with the First Respondent the Board was not persuaded that this materially affected the Second Respondent's regulatory position. At no point had he informed himself of the position regarding PI cover, nor made himself aware of the timetable for obtaining retrospective cover and it was that profound failing that put clients at risk. The risk did not simply subsist when it could be mitigated. It subsisted whether it could be mitigated or not. Of far more importance in assessing the Second Respondent's integrity was his state of knowledge and his actions or omissions regarding the protection of clients and the upholding of standards in the profession. In both respects his conduct was wanting.

106. The Board further noted the proposed 'Heads of Terms' document prepared by the Second Respondent on 20 April 2015. It was said on his behalf that this crystallised his position and thoughts on the company, such that he considered it had ceased trading. The Board did not consider this submission rang true. The Heads of Terms had never been agreed, in spite of the fact a payment of £75000 had been made from the company to the Second Respondent. At no point could it be said that the company ceased trading in April 2015, nor could it sensibly be contended this was the Second Respondent's honest belief, when in November 2015 he was contacted by his regulator and told that the PI cover position needed urgent attention.

107. The Board was conscious of IPReg's recent consultation on the need for Registrants to obtain run-off cover. Whilst it accepted this demonstrated there was a lack of clarity in the profession around the issue of run-off cover, the Board considered it in no way obviated the Respondent's duty to attend to the issue of appropriate PI cover of whatever sort at the requisite time, when it had been explicitly brought to his attention by his Regulator.

108. The Second Respondent's continued refusal to engage with the issue persisted over a period in which numerous items of correspondence were sent to him and which it is acknowledged he received (whether directly or circuitously, whether immediately or shortly after). Knowing he was still a director of J&W Ltd he did nothing to meet his duties and obligations regarding PI cover, when he was on notice of an ongoing problem and breach of his Regulator's rules.

109. The attitude of the Second Respondent to PI cover was exemplified by his failure to set up initial cover for his new company.

110. Not only did he fail in his duties as a director but he failed in his duties as a Registrant of IPReg. Such failure was profound and long-lasting, put clients at risk and demonstrated a remarkable lack of care. It showed no attempt to adhere to the ethical standards of his profession. In the circumstances the Board found he had demonstrated a lack of integrity from November 2015 onwards. His behaviour thereby amounted to a breach of Rule 5.

Allegation 2

First Respondent

111. Allegation 2 related to a client of J&W Ltd which more specifically was a client solely dealt with by the First Respondent in the sense that he had the professional relationship with the client, did the work and was responsible for billing and disbursements.

112. It was clear on the evidence before the Board that, in 2015, J&W Ltd had received payment from the client, including fees payable to the 3rd party. It remains unclear if this was in February or October but in the Board's view little turns on the point. Having received the fees there is no dispute that the sums payable to the 3rd party should thereafter have been paid. The fees to Agent B were due for payment in any event.

113. The First Respondent contended at various points in the evidence that he could not pay for a number of reasons, most if not all attributable to the breakdown in his professional relationship with the Second Respondent. First, he asserted he could not check the bank account as it had been frozen and so he could not see whether the payment had been received. He also asserted he was in mediation with the Second Respondent and so had to await the outcome of that, and finally he could not release funds in any event without the co-operation of the Second Respondent.

114. The Board was not persuaded by any of the reasons given by the First Respondent for not paying the 3rd party even though funds had been received from the client and particularly after the client had been at pains to point out the oversight. During the course of his oral evidence the First Respondent accepted that he could have made some attempt to access the bank account and should have checked statements. He also accepted that two payments had been made from the account, one to HMRC and one to the company accountants. In addition, the First Respondent had access to other sums of money in the business including the FX account that could have been used to settle the debt owed to the 3rd party, without requiring the company bank account to be unfrozen or requiring the Second Respondent's authority.

115. In any event on 15 June 2016, if not before, the First Respondent had written authority from the Second Respondent to pay the 3rd party fees from the FX account. Any obstacle to making payment that the First Respondent contended may have existed, had by that point palpably dissipated. The First Respondent still did not pay, in spite of the possible commercial effect not paying might have on his client's interests in obtaining a trade mark.

116. During the period the First Respondent's attitude moved from the provision of excuses to truculence, exemplified in correspondence he sent to the client

on 11 May 2016: *"I refer to your email. The payment was NOT made to Iceni, you paid Joshi & Welch Limited as that firm did the work. If you made the required payment(s) why do you need me to confirm the same?"*

117. Whilst the Board was in little doubt that the First Respondent was under significant and persistent pressure by reason of the breakdown in relations with the Second Respondent and was struggling to operate professionally, it could not excuse his at times belligerent communications with the client.

118. In the circumstances the First Respondent's behaviour was unprofessional and demonstrated a total disregard for the interests of his client and the payment of the 3rd party. Whilst the conduct undoubtedly amounted to a breach of Rule 11 it went further and marked a clear departure from the ethical standards required of a trade mark or patent attorney, such that it did amount to a lack of integrity and a breach of Rule 5.

Second Respondent

119. The evidence before the Board demonstrated that the Second Respondent was aware of the dispute between the client and J&W Ltd. in or around June 2016. The Second Respondent communicated with the First Respondent and asked him to make payment from the FX account to the 3rd party.

120. Whilst the Board was clear that the Second Respondent, as a director of the company, should have made further attempts to follow up on the payment, his failure to do so could not, in the circumstances amount to a lack of integrity. The Board therefore found his behaviour in this regard did not amount to a breach of Rule 5.

Allegation 3

121. On 19 October 2017 the Legal Ombudsman determined that J&W Ltd:

- Pay the client £444 to cover the cost of the amendments needed for the Kenyan trade mark application;
- Release the full legal file to the client by recorded delivery to the company's registered address;
- Within 14 days after posting, the firm shall provide to the Legal Ombudsman proof of postage of the legal file;
- The cost of sending the file by recorded delivery and providing proof of postage to the Legal Ombudsman to be borne by the firm; and,
- Pay Mr A (of the client) £200 to reflect the impact of their poor service on him.

122. It is not disputed that until November 2019 no payment was made. The file has never been provided to the client.

First Respondent & Second Respondent

123. It is clear from the Rules of Conduct and it is clear in the Board's view, that compliance with the Legal Ombudsman is a mandatory and unambiguous duty borne by all Registrants.

124. Not only did the Respondents fail to comply, they failed to take any steps to attempt to comply, until over two years after the determination and in the face of these proceedings. But for these proceedings, it is doubtful as to whether any attempt would ever have been made to comply.

125. Whilst the duty to comply may arise out of a relationship ostensibly between the First Respondent and the client, as a director of J&W Ltd, the Second Respondent bore a positive duty to comply with the Legal Ombudsman, every bit as much as the First Respondent.

126. The failure to comply is underpinned by the client who had done all in its power to find a resolution of the issue before having to resort to making a complaint to the Legal Ombudsman. It had approached the First Respondent on several occasions over the course of a lengthy period and been unable to resolve the issue. It had involved the Second Respondent and again been unable resolve the issue. It had then approached both together and still not been able to resolve the issue. The Board was troubled by the lengths this client had to go to seek a resolution of his complaint.

127. This was not a complaint made against the background of a single instance but was a course of conduct. The client had done all in its power to give the Respondents every opportunity to co-operate and resolve the issue without recourse to the Legal Ombudsman. The total preoccupation with their own internal squabbles and problems which both Respondents demonstrated, resulted in them not only failing to resolve a justifiable client complaint, but also failing to comply with a determination aimed at resolving that complaint, by the Ombudsman. This blatant disregard for the interests of their client meant that the client file has now been lost and the Legal Ombudsman's determination can never be given its full effect.

128. The Board was in no doubt that Allegation 3 exemplified a palpable disregard on behalf of both Respondents that was far from demonstrating adherence to the ethical standards of the profession. In the circumstances it had little difficulty in concluding that in relation to both Respondents their conduct in failing to comply with the determination of the Legal Ombudsman amounted to a lack of integrity and thereby a breach of Rule 5.

Summary of Determination

129. The Board therefore found the First Respondent had breached Rule 5 in relation to all 3 Allegations he faced. It further found that the Second Respondent had breached Rule 5 in relation to Allegations 1 and 3 but not in relation to Allegation 2.

Sanction

130. Having found proved by admission and upon evidence Allegations, 1, 2, 3 and 4 (save for breach of Rule 5 in relation to the Second Respondent in Allegation 2) the Board invited submissions from the parties as to the appropriate sanction to be imposed.

Complainant's Submissions

131. On behalf of the Complainant, Mr. Ahlquist made no positive submission as to the appropriate sanction in the case. He submitted that given the separate findings in relation to each Respondent, and as a matter of principle, sanction in relation to each should be considered separately.

132. Mr. Ahlquist further submitted that the Board should pay close attention to the over-arching purpose of professional regulation and sanctions imposed in such proceedings, as set out in the case of *Bolton v Law Society [1994] 1 WLR 512.* He commended the Solicitors Disciplinary Tribunal ('SDT') sanctions guidance to the Board, whilst accepting it could be nothing more than indicative in proceedings before another Regulator.

First Respondent's Submissions

133. The First Respondent submitted that he had accepted the facts underlying the conduct complained of and should retain some credit for doing so. He repeated his contrition for his actions, and submitted that he had done nothing to bring him before his Regulator either before or since these events. He explained what the potential consequences of exclusion or removal might be for him, his family and his current employee.

134. The First Respondent further submitted that he had done all in his power to try and get the Second Respondent to acknowledge the responsibility they had jointly owed to former clients of J&W Ltd, as well as to other creditors and the Legal Ombudsman. The process of the break-up of J&W Ltd and ensuing litigation had taken a huge toll on him physically, financially and mentally, but appearing before his Regulator was the most humbling experience of all. It was this, he submitted, that would give the Board the comfort of knowing the behaviour would not be repeated in the future.

135. The First Respondent provided the Board with a witness statement from his wife attesting to his good character, the effect of the breakdown of his relationship with the Second Respondent, and the likely effect of a draconian sanction upon him and his family.

136. In the circumstances, he therefore submitted the Board could keep the sanction towards the lower end, given he posed no current risk to the public.

Second Respondent's Submissions

137. On behalf of the Second Respondent, Mr. Dean submitted that he was a man of hitherto good character, and had demonstrated a general steady adherence to the ethical standards of his profession over his 27 years in practice. He had trained initially and qualified as a solicitor. His new business had been trading since 2015, and J&W Ltd had traded for 9 years without issue.

138. Mr Dean invited the Board to consider the pro bono and charitable work undertaken by the Second Respondent, his devotion to his family and the fact that he has a staff of 3 all dependent upon him for their careers and employment. He invited the Board to give considerable weight to the Second Respondent's character and the damage any sanction may occasion to others reliant upon him.

139. Mr. Dean provided the Board with a further bundle of documents relating to sanction, including references and testimonials. He further relied upon the apparent perception of Client A regarding the Second Respondent, whom he considered to have been as helpful and straight forward as he could be.

140. Mr Dean further submitted that the whole situation had had a profound effect on the Second Respondent, not least on his physical and mental health, occasioned by the unexplained delay on the part of the Complainant in bringing proceedings to a Hearing. He submitted that although some delay was caused by the Second Respondent's failure to engage, this was minimal when compared with the delay occasioned by the Complainant.

141. In addressing the question of insight, Mr Dean submitted that the Second Respondent had shown significant levels of insight having made payments to those requiring payment and having sought at all times to resolve issues for Client A and Agent B.

142. Mr. Dean invited the Board to pay close regard to the SDT sanctions guidance and submitted that knowing everything about the case, the informed member of the public would not consider permanent removal from the Register a proportionate or necessary sanction to impose in this case. He further submitted that temporary removal might also be avoidable and that conditions

could be framed in such a manner as to make them specific, measurable, attainable, relevant and time-based.

143. In the circumstances, Mr. Dean submitted, the bar for removal had not been reached, no actual harm had been caused, no act of dishonesty had been occasioned and in the circumstances the Board should impose the minimum sanction necessary to protect the public interest, which in the circumstances, was conditions.

Legal Advice

144. The Board received and accepted the advice of the Legal Advisor. It was advised that pursuant to Rules 16 and 17 of the Rules the Board should now turn to consider what sanction if any to impose upon each Respondent. It was advised that imposition of a sanction was not mandated but was discretionary, although in cases where allegations of a serious nature were proved against a Respondent it was likely a sanction would be necessary.

145. The Board was advised to approach the question of sanction bearing high in mind the principle of proportionality and considering the available sanctions in relation to each Respondent in ascending order from least serious to most serious, moving on from one to the next only if the sanction it was considering was insufficient to fulfil its over-arching duty, namely to safeguard the public interest. The Board was reminded that there are three broad elements that make up the public interest, namely, the protection of the public, the maintenance of public confidence in the profession of patent and trade mark attorneys and the declaring and upholding of standards in the profession.

146. The Board was advised that in relation to the question of delay, it was permissible to consider delay a mitigating factor in a case involving professional discipline (*Selvarajan v GMC [2008] EWHC 182*) but it was entirely a matter for the Board's judgment as to whether in this case there was any mitigation attracted by the purported delay alleged on behalf of the Second Respondent.

147. The Board was further advised that personal mitigation should be borne in mind but it was made clear in the case of *Bolton v Law Society [1994] 1 WLR 512* that personal mitigation was of less importance in the context of professional discipline than it might be in criminal cases, for example.

148. Finally, the Board was advised that sanction was a matter for its own judgment and that there was no strict burden or standard of proof at this stage.

Determination on Sanction

First Respondent

149. The Board took account of all it had read and heard on the First Respondent's behalf including the submissions made in mitigation and the additional evidence provided by the First Respondent's wife. In particular it noted the likely effect of any sanction upon the First Respondent's professional and personal position, his employee and his family.

150. The Board noted what it considered to be the First Respondent's genuine and heartfelt expressions of remorse and his insight, albeit the Board considered his insight to be limited.

151. In spite of the mitigation it found, the Board could not ignore the serious nature of the behaviour the First Respondent exhibited. In particular it could not ignore the lack of integrity he had demonstrated in relation to all the breaches that were admitted. That lack of integrity was particularly striking in his approach to and interactions with Client A. At points his communications were abrupt and belligerent in circumstances where he had retained client money and refused to pay it out to creditors.

152. Nonetheless the Board did give the First Respondent credit for his admissions and for his co-operation with the Complainant throughout.

153. The Board first considered whether it could satisfy the public interest by issuing a public notice/warning. It concluded that the conduct it had found proved was too serious for such notice to meet the needs in this case.

154. The Board next considered whether there were conditions that could be formulated to meet the needs as identified in this case. The Board concluded this was a case in which there was no clear need for professional remediation of the sort usually reserved for conditions. In any event it considered the conduct complained of to be too serious to be met by the imposition of conditions of practice.

155. The Board next considered the question of temporary removal from the Register. It concluded that suspension would be a clear indicator to the public and the profession alike that conduct of the sort found proved in this case was not to be tolerated, and that a sufficiently lengthy suspension would meet the public interest in this case.

156. In all the circumstances the least sanction necessary to uphold the public interest is as follows:

- Pursuant to Rule 16.1(d) of the Rules that his entry be removed from the Register for a period of 8 months;

- Pursuant to Rule 16.1(f) of the Rules that notification of this decision be made to UKIPO and OHIM together with a recommendation that his recognition or authorisation be withdrawn for a period of 8 months;

- Pursuant to Rule 16.1(h) of the Rules that a recommendation be made to CITMA that his membership be suspended for 8 months;

- Pursuant to Rule 16.1(k) of the Rules that he be disqualified from being an employee and/or manager of a Registered Person pursuant to Rule 17 and that such disqualification shall remain in force for 8 months at which time it should be reviewed by IPReg pursuant to the provisions of Rules 17.2 and 17.5 of the Rules.

Second Respondent

157. The Board took account of all that it had read heard about Second Respondent, including the submissions made by Mr Dean on his behalf.

158. The Board paid close attention to the mitigation presented and in particular the effect of a sanction not only on the Second Respondent but on his family and employees of his new business. The Board also took account of the nature and extent of the Second Respondent's admissions albeit they were made only 3 days before the hearing commenced.

159. Nonetheless the Board did give the Second Respondent credit for those admissions, as well as his demonstrable remorse and latterly developed insight although as with the First Respondent, the Board considered that insight remained limited. The Board read and gave weight to the testimonials and references provided, which spoke of the Second Respondent's professionalism, diligence and trustworthiness.

160. Notwithstanding the mitigating factors it found present the Board could not ignore that the Second Respondent's conduct was serious. In part it demonstrated a lack of integrity. In addition the Second Respondent failed to co-operate with his Regulator for a period of time, which itself frustrated the Regulatory process and had the effect of undermining the nature of the Regulatory function.

161. As with the First Respondent, the Board first considered whether it could satisfy the public interest by issuing a public notice/warning. It concluded that the conduct it had found proved was too serious for such notice to meet the needs in this case.

162. The Board next considered whether there were conditions that could be formulated to meet the needs as identified in this case. The Board concluded this was a case in which there was no clear need for professional remediation

of the sort usually reserved for conditions. In any event it considered the conduct complained of to be too serious to be met by the imposition of conditions of practice.

163. The Board next considered the question of temporary removal from the Register. It concluded that this would be a clear indicator to the public and the profession alike that conduct of the sort found proved in this case was not to be tolerated, and that a sufficiently lengthy removal would meet the public interest in this case.

164. In all the circumstances the least sanction the Board felt able to impose in order to uphold the public interest was as follows:

- Pursuant to Rule 16.1(d) of the Rules that his entry be removed from the Register for a period of 6 months;

- Pursuant to Rule 16.1(f) of the Rules that notification of this decision be made to UKIPO and OHIM together with a recommendation that his recognition or authorisation be withdrawn for a period of 6 months;

- Pursuant to Rule 16.1(h) of the Rules that a recommendation be made to CITMA that his membership be suspended for 6 months;

- Pursuant to Rule 16.1(k) of the Rules that he be disqualified from being an employee and/or manager of a Registered Person pursuant to Rule 17 and that such disqualification shall remain in force for 6 months at which time it should be reviewed by IPReg pursuant to the provisions of Rules 17.2 and 17.5 of the Rules.

Costs

165. The Board was invited to consider the award of costs and carefully considered the costs schedule provided by the Complainant. It reminded itself that the usual principle was that costs follow the cause and could see no reason to depart from that course.

166. The Board was addressed by Mr. Dean on behalf of the Second Respondent as to the appropriate apportionment of costs. Mr. Dean argued that given the Second Respondent was found to be less culpable than the First Respondent in Allegation 2 and received a lesser period of removal overall, his costs apportionment should reflect that lesser role.

167. The First Respondent disagreed and invited the Board to make a costs order apportioned equally between the two Respondents.

168. The Complainant was neutral as to the apportionment of costs.

169. The Board determined that to seek to apportion costs in anything other than an even manner would be unfair to the parties. Both Respondents were equally culpable for the manner in which proceedings had unfolded, and costs should therefore be apportioned in equal measure between them.

170. The Board therefore determined that a costs order should be made in the sum of £52,782.44 with each Respondent being severally liable for 50%. Each Respondent is therefore ordered to pay £26,391.22.

IN THE MATTER OF THE INTELLECTUAL PROPERTY REGULATION BOARD

JOINT DISCIPLINARY BOARD

BETWEEN:

THE INTELLECTUAL PROPERTY REGULATION BOARD
(THE TRADE MARK REGULATION BOARD)

Complainant

-and-

(1) DUNCAN WELCH

(2) MANISH JOSHI

Respondents

ORDER

IT IS ORDERED THAT:

With effect from 17th day of January 2020 the following action be taken in relation to the Registration of **DUNCAN WELCH:**

- Pursuant to Rule 16.1(d) of the Disciplinary Procedure Rules ('the Rules') that his entry be removed from the Register for a period of 8 months;

- Pursuant to Rule 16.1(f) of the Rules that notification of this decision be made to UKIPO and OHIM together with a recommendation that his recognition or authorisation be withdrawn for a period of 8 months;

- Pursuant to Rule 16.1(h) of the Rules that a recommendation be made to CITMA that his membership be suspended for 8 months;

- Pursuant to Rule 16.1(k) of the Rules that he be disqualified from being an employee and/or manager of a Registered Person pursuant to Rule 17 and that such disqualification shall remain in force for 8 months at which time it should be reviewed by the Intellectual Property Regulation Board pursuant to the provisions of Rules 17.2 and 17.5 of the Rules.

With effect from 17th day of January 2020 the following action be taken in relation to the Registration of **MANISH JOSHI:**

- Pursuant to Rule 16.1(d) of the Rules that his entry be removed from the Register for a period of 6 months;

- Pursuant to Rule 16.1(f) of the Rules that notification of this decision be made to UKIPO and OHIM together with a recommendation that his recognition or authorisation be withdrawn for a period of 6 months;

- Pursuant to Rule 16.1(h) of the Rules that a recommendation be made to CITMA that his membership be suspended for 6 months;

- Pursuant to Rule 16.1(k) of the Rules that he be disqualified from being an employee and/or manager of a Registered Person pursuant to Rule 17 and that such disqualification shall remain in force for 6 months at which time it should be reviewed by the Intellectual Property Regulation Board pursuant to the provisions of Rules 17.2 and 17.5 of the Rules.

DUNCAN WELCH shall pay to the Intellectual Property Regulation Board the sum of £26,391.22 pursuant to Rule 18 of the Rules.

MANISH JOSHI shall pay to the Intellectual Property Regulation Board the sum of £26,391.22 pursuant to Rule 18 of the Rules.