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

BETWEEN:

THE INTELLECTUAL PROPERTY REGULATION BOARD

Complainant

-and-

ANTHONY BURROWS

Respondent

DETERMINATION

Board Members:	Mrs Lucy Melrose (Chair) Ms Veronica Thompson (Lay) Ms Rebecca Kaye (Attorney)
Legal Adviser to the Board:	Mr Tim Grey
Representation for the Claimant:	Mr Andrew Granville-Stafford
Representation for the Respondent:	Mr Burrows did not appear and was unrepresented
Date of Hearing:	30 March 2022

Summary of Determination:

The Board determined that the Charge was proved in its entirety.

The Board determined to:

- Remove the Respondent's entry from the Register.

- Notify UKIPO, EPO and/or OHIM as applicable of its decision and recommend that the Respondent's recognition or authorisation be withdrawn from that body or bodies.

- Make a recommendation to the Councils of CIPA and/or CITMA that the Respondent be expelled from either or both Institutes as applicable.

- Award costs to the Complainant in the sum of £22,793.89.

Summary of Allegations against Mr Burrows

It is alleged that:

1. Between 1 July 2019 and 29 February 2020:

   (a) You were in private practice as
      (i) A registered trade mark attorney;
      (ii) A registered patent attorney;

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

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

Preliminary Applications

Hearing in Private

1. At the outset of proceedings Mr Granville-Stafford, on behalf of the Complainant, made an application for certain parts of the hearing to be held in private. He submitted that those should be, specifically, parts of the hearing dealing with matters of a personal nature to any party. In so saying he invited the Board to make such a direction pursuant to its powers under Rule 11.10 and Rule 12.1 of the Disciplinary Procedure Rules 2018.

2. The Board received and accepted the advice of the legal adviser. It was advised that the general principle was that hearings should be heard in public in order to ensure transparency and access to justice. However, at its own discretion, the Board was entitled to consider whether the interests of the parties in relation to personal and

private information overrode such a presumption. If it considered it was fair to all parties for the hearing to be held in private, or for parts of the hearing to be held in private it should make such an order.

3. The Board determined to hear some parts of the hearing in private in light of the nature and extent of certain parts of the evidence it was considering.

Adjournment and Proceeding in Absence

4. The Board noted that the Respondent was not in attendance. It therefore determined that it should consider the written application the Respondent had made for an adjournment of the proceedings. In so doing the Board noted that, arguably, the Respondent had made two such applications, one by letter of 24 March 2022 and one by letter of 29 March 2022, the day before the hearing. The Board determined that in order to ensure fairness to all parties it should consider both applications individually and determine them accordingly.

First Application to Adjourn (24 March 2022)

5. The Board first considered the application made by the Respondent in correspondence with the Complainant on 24 March 2022, six days prior to the hearing. **[PRIVATE]** That application read as follows:

"Unfortunately, I have only just this week had Mr. Langley available for his full 4 days, so I need at least until the end of next week to be able to prepare and file my evidence, so that I am afraid that the proposed hearing on 30th March will have too be postponed until, say, the 30th April, to give a fortnight for response to my evidence, as well as to give me a chance to prepare a financial report.

I am very upset that I seem to be totally disbelieved when I explain the difficulties which I have suffered through the absence of Mr. Langley from my Office over some weeks now, necessitating the postponements which I have justifiably requested. Please find attached a letter from him explaining his illness problems over that period, which have of course seriously impacted my ability to work."

6. The application was accompanied by a letter from Mr. Langley concerning his health condition and a further letter from Mr. Langley's GP concerning a sinus conditions from which Mr. Langley had been suffering.

7. **[PUBLIC]** On behalf of the Complainant, Mr Granville-Stafford responded to the application and took the Board through the history of the proceedings to date. He outlined the fact that the Respondent had made four previous applications for extensions of time to prepare and file his evidence. The first of these was made at the Case Management Hearing on 19 January 2022. The Board proposed a further 14 days

for Mr Burrows to serve his evidence. He requested 28 days and although at this date he was already out of time, pursuant to the Disciplinary Rules, nonetheless the Board allowed him a further 28 days to serve his evidence.

8. On 11 February the Respondent made another application to extend. A further seven days was allowed, taking the deadline for service to 23 February 2022. By this stage the Respondent had been given 78 days in addition to the 28 days envisaged in the Rules to serve his case. On 15 February 2022 the Respondent made a further application for an extension beyond the 23 February 2022 deadline, which was refused. A final application made on 24 February 2022 was refused on 28 February 2022.

9. Mr Granville-Stafford submitted that the Respondent had chosen to prioritise his work for clients over his regulatory obligations albeit the nature of that work was unclear, given he was supposedly suspended from regulated practice. Nonetheless he continued to "firefight" on behalf of clients or so he had contended in his various applications for extensions.

10. Mr Granville-Stafford further submitted that the Respondent had already been provided with ample time to serve his evidence and had demonstrated a history of reluctance to abide by the Board's directions. **[PRIVATE]** His current application provided no information as to how his own health had impacted on his ability to prepare his case, only that one of his assistants, Mr. Langley had been unwell for a short period of time.

11. **[PUBLIC]** Mr Granville-Stafford took the Board to the determination refusing the application for an extension out of time, made by letter of 24 February 2022. At that stage the Chair had directed that if the Respondent sought to introduce evidence which would now be out of time he would need to make an application to the Board on the first day of the hearing, in order to do so. Mr Granville-Stafford further noted that the Chair had made it clear that any further application to rely upon evidence would require the Board to be told why evidence could not have been served in time, the nature of the evidence the Respondent sought to introduce, why it would not impact on the hearing estimate, how it impacted on the issues in this case and how it could be admitted without unfairness to the Complainant. Mr Granville-Stafford submitted that the application before the Board addressed none of those points and, worse still in the context of the history of the proceedings to date, it was an application not to introduce evidence, but seeking even more time to obtain and serve evidence.

12. **[PRIVATE]** Mr Granville-Stafford reminded the Board that it had indicated that any further application for an extension of time would have to be accompanied by compelling evidence or reasoning. He submitted that the only new material before

the Board in this regard, was a letter from Mr. Langley's GP of 21 March 2022. That letter showed that Mr. Langley was working reduced hours between 24 January and 9 February 2022. He had been advised not to work for a "week or two" at the beginning of February, but had certainly been working 4 days a week since 22 March 2022.

13. **[PUBLIC]**None of the new information before the Board, or indeed any previously-provided information demonstrated why it was that Mr. Burrows required Mr. Langley's attendance in order to provide his evidence to his Regulator. None of the evidence before the Board indicated that even if he did need assistance why that assistance could not have been provided by one of his other assistants referred to in correspondence, either Mr. Singh or Mr. Burton.

14. Mr Granville-Stafford further submitted this was particularly striking in circumstances where the Respondent was still working and "firefighting" for clients. There was no explanation as to why the Respondent had not himself complied with his obligations as a Regulated professional.

15. Thereafter, Mr Granville-Stafford submitted that, even if there were grounds for adjourning the case to allow further time for the Respondent to provide his evidence, the nature and extent of the evidence the Respondent had indicated he was seeking to obtain, did not touch upon the central issues in the case. Whilst the material might go to mitigation, it did not address the central questions to be determined by the Board, namely whether the Respondent was in practice at the material time and whether during that time he had professional indemnity insurance ("PII").

16. Finally Mr Granville-Stafford submitted that the nature and conduct of the Respondent in the proceedings to date had been that of someone who believed he could hold the Regulatory process to ransom and dictate when he would attend, when he would serve evidence, and when he would co-operate. To allow the proceedings to continue on that basis was, he submitted, contrary to the public interest.

Second Application to Adjourn (29 March 2022) **[PRIVATE]**

17. On 29 March 2022, having been told by the Complainant that the 24 March 2022 application was opposed and had been listed to be heard at the outset of the hearing at 10.30am on 30 March 2022, the Respondent emailed the Complainant in the following terms:

> *"Please explain to the panel tomorrow that my bronchiectasis is quite bad at the moment which slows me down a lot so that I will not be able to be in London be 10.30 am tomorrow, although I could probably manage 1pm and could take along with me at least Mr. Langley and Gurmit Singh as Witnesses. I might also*

be able to have Mr. Sean Burton and Mr. Christopher Brothers available. Please let me know today whether the Panel wishes to hear them tomorrow."

18. No further explanation was provided. In addressing this second application to adjourn, Mr Granville-Stafford submitted that the evidence concerning the Respondent's health was woefully inadequate. It was only in circumstances where the Tribunal receives evidence which convinces it that the Respondent cannot attend and take part in the hearing that the Tribunal should grant an adjournment on health grounds. Any such application should, he submitted, be supported by medical evidence provided by someone qualified to give that opinion. At no point had the Respondent indicated what his bronchial condition was, how it affected him, when it had become worse and for how long it might be that way. Indeed it appeared that the condition did not mean he was unable to attend, given the email went on to say he could attend at 1pm. It was therefore not at all clear why he could not attend at 10.30am by reason of the same condition.

19. Mr Granville-Stafford further submitted that the medical evidence should be sufficient to satisfy the Tribunal that he is unable and unfit to take part in the process and in its absence the adjournment should be refused.

20. **[PUBLIC]** The Board received and accepted the advice of the Legal Adviser. It was advised that the Disciplinary Procedure Rules (2018) at Rule 12.1 and 12.3(b) provided the authority for the Board to adjourn the case if it considered it just to do so.

21. In assessing whether to adjourn the case or not the Board should consider a number of factors summarised in the case of *CPS v Picton [2006] EWHC 1108 (Admin):* the reasons for the Respondent seeking an adjournment; whether the reasons for the request are sufficient to justify the adjournment; whether the evidence provided supports the request; whether the other party has any objections to the adjournment and their reasons for those objections; any potential inconvenience caused to a party or witness if an adjournment is allowed; how much notice was given to the parties before the PCC hearing**;** the previous history of the case and whether the case has previously been adjourned**;** what an adjournment will achieve**;** whether a decision not to allow the adjournment would create a potential injustice; the public interest in the expeditious consideration and disposal of the case.

Determination of Applications to Adjourn

22. The Board first considered the application made on 24 March 2022 by the Respondent for additional time to serve his evidence, and thereby require the hearing to be adjourned. The Board noted its previous directions in this regard, specifically that further applications for extensions or postponements would have to be accompanied by compelling evidence and reasoning, without which any further application would likely to be refused. It noted that this was part of its previous two determinations and

was against a backdrop of a lengthy and concerning history of the Respondent failing to comply with the timetable pursuant to the Disciplinary Rules and with the previous directions of the Board, whether at CMCs or administratively.

23. **[PRIVATE]** The Board therefore turned to consider what evidence it had been provided with in support of the application. It carefully considered the letter from Mr. Langley's GP and noted that Mr. Langley had attended his GP on 7 February 2022 at which point he was prescribed a nasal spray and recommended to take "a week or two" off work. At no point previously had this information been made known to the Board in spite of the numerous applications for extensions. Nor did it account for the period since the beginning of March, when by all accounts Mr. Langley was fit to return to work. The Board considered the evidence to be at best partial in terms of Mr. Langley's inability to assist the Respondent over the period from the date of the Case Management Conference ("CMC") in January 2022, when a new timetable was set, and today's date. In any event, there was no evidence before the Board explaining why Mr. Langley's assistance was required for the Respondent to comply with directions made by his Regulator, and no evidence as to why someone other than Mr. Langley could not have assisted, if indeed assistance was required.

24. **[PUBLIC]** The Board was unpersuaded that there was any evidence that the Respondent required the assistance of others in involving himself in Regulatory proceedings, in circumstances where by his own account he was visiting his assistants at their home addresses, providing one of those assistants with emotional support, and still working in some capacity for clients. The Respondent had been capable of applying for extensions and adjournments without the active assistance of Mr. Langley, if indeed the latter was medically indisposed at any points. He could therefore have obtained and served evidence.

25. The Board next considered what an adjournment might achieve in the proceedings. It noted the Respondent's history of failing to engage substantively with the proceedings and considered that any adjournment it might accede to was unlikely in the circumstances to yield any further co-operation from the Respondent. In so saying the Board also considered the nature of the evidence the Respondent had previously outlined he would be obtaining. All of that evidence, from his assistants, from his MP and from others, was solely concerned with issues of mitigation, and did not touch upon the facts the Board would have to consider in terms of the Allegation.

26. The Board then considered the public interest. It noted that by his own admission the Respondent was still working for clients. It was unclear to the Board whether he was undertaking reserved legal activities in spite of his suspension and whether his clients had been informed that he was suspended and had no current PII. Clearly, if he were working for clients and undertaking reserved legal activities and/or working for clients who were unaware of his current status, that posed a real risk to the public at large and the wider public interest. That risk was of particular concern to the Board.

27. In the circumstances, with a lengthy and unhappy history of partial compliance, with a paucity of evidence favouring an adjournment and with an extant and real risk to the public and the wider public interest, the Board determined to refuse the Respondent's first application to adjourn the hearing.

28. **[PRIVATE]** The Board then went onto consider the second application to adjourn. It noted that there was no evidence before it concerning his bronchial condition, its effect on his ability to take an active part in proceedings and his ability to travel. It noted also that the Respondent had chosen to wholly ignore the position regarding service and was seeking to secure the attendance of witnesses in relation to whose evidence no witness statement had ever been served and in relation to whom, by reason of the Board's previous directions, an application would need to have been made in writing by 25 March 2022 to adduce their evidence.

29. **[PUBLIC]** The Respondent's continued neglect of his obligations and duties to abide by directions led the Board to the conclusion that the Respondent was indeed seeking to dictate the progress of the proceedings in order to draw them out for as long as possible. His motivation in doing so was opaque, but ran entirely contrary to the public interest in securing an expeditious and efficient disposal of the case.

30. **[PRIVATE]** The Board further noted that the Respondent's medical condition did not prevent him attending the hearing and that he had been made fully aware of the start time of 10.30am. In the circumstances there was no good reason why he could not have been present to start the hearing on time.

31. **[PUBLIC]** In all the circumstances the Board therefore determined to refuse the second application to adjourn.

Application to Proceed In Absence

32. Mr Granville-Stafford made an application for the hearing to proceed in the absence of the Respondent. In so submitting, he took the Board through the service arrangements within the Disciplinary Rules and the Rules and submitted that those had been fully complied with.

33. He further submitted that the Respondent had been present when the hearing date had been set at the CMC in January, that he had been sent formal notification of the date, time and place of the hearing in good time prior to the hearing and that the email correspondence giving rise to the applications to adjourn made it clear that the Respondent was well aware of the date, time and place of the hearing.

34. Thereafter, Mr Granville-Stafford submitted that the Board should exercise its discretion to proceed in absence, as it was fair and just to do so, in circumstances

where the case had been ongoing for a lengthy period of time, there was no guarantee as to the length of any adjournment should the Board accede to the application and the Respondent had, in any event, given an account through his own various correspondence.

35. The Board received and accepted the advice of the legal adviser. It was advised that, as a general principle, a Respondent has the right to be present and represented at their hearing if they so choose. The Board should therefore proceed with the utmost care and caution and in accordance with the principles in *R v Jones [2001] QB 862 CA*. The elements to be considered in assessing whether to proceed in absence are as follows: the nature and circumstances of the absence, whether the Respondent can be said to have deliberately or voluntarily absented themselves, the risk of reaching the wrong conclusion as to why a Respondent is absent, whether a postponement would result in attendance and, if so, the likely length of any such postponement. The Board must also consider the public interest that hearings take place expeditiously and within a reasonable time. The Board was also advised to consider the additional case of *GMC v Visvardis & Adeogba [2016] EWCA Civ 162,* in which it was said that a fitness to practise decision must be guided by the main statutory objective of the regulator to protect the public and that it would run counter to the public interest if a practitioner could frustrate the disciplinary processes by deliberately failing to engage. There is a duty on regulated professionals to engage with their regulator in the conduct of investigations. The Rules require practitioners to provide a current registered address in order for it to be able to comply with its duties and keep the Registers up to date.

Determination of Application to Proceed in Absence

36. The Board carefully considered the documents before it and noted that the Respondent had been present during the CMC when the hearing date had been set. He had agreed to the date. The Board noted the Respondent had been sent a number of letters reminding him of the date and setting out the start time and venue for the hearing. He had acknowledged receipt of those letters. The Respondent had explicitly referred to the hearing in his most recent correspondence and was therefore clearly aware of the hearing date. In terms of the service of documents, this had been accomplished in November 2021 when the Complainant had first served its statement of case and accompanying evidence. This process was repeated shortly after the CMC in January 2022. It was therefore clear the Respondent had been provided with all the evidence the Complainant sought to rely upon, in good time before the hearing. In consequence, the Board determined that the Complainant had complied with the service requirements set out within the Rules in reasonable time.

37. The Board thereafter considered whether in the circumstances it was fair and just to continue in the absence of the Respondent. The Board noted that the Respondent had requested an “in person” hearing, in circumstances where all other parties had been

content to proceed remotely. In the circumstances, it could not be said that the Board had required the Respondent to attend in a manner not convenient to him. It further noted that he had demonstrated a concerning lack of compliance with the Board's directions for service and provision of information throughout proceedings. His recent correspondence had been couched in terms suggesting he was only prepared to be involved in proceedings on his own specific terms. In the circumstances both of his clear knowledge of the date, time and place of the hearing and his apparent lack of willingness to engage in the process in a meaningful way, the Board considered the Respondent could be said to have voluntarily absented himself from the Hearing. It noted that his most recent correspondence suggested he might be available at 1pm rather than 10.30am. That did not provide the Board any consolation, given the previous assurances the Respondent had given about complying with deadlines and directions during the course of proceedings.

38. The consequences of the Respondent's behaviour to date, meant the Board had no confidence that even if it did not proceed in his absence today, any further period of adjournment would result in his compliance and attendance in the future.

39. The Board was conscious that there were a number of points raised in the Respondent's own correspondence during the proceedings that suggested he had continued to work and was potentially undertaking reserved legal activities. That meant the need to resolve the question of his current PII position was all the more urgent. Putting that into the context of the public interest the Board determined it was both fair and just to proceed in the absence of the Respondent, in all the circumstances.

Substantive Determination

Submissions of the Complainant

39. On behalf of the Complainant Mr Granville-Stafford submitted that there was clear evidence that the Respondent had been reminded of his requirement to renew his PII by PAMIA on 12 April 2019 but he failed to renew.

40. Mr Granville-Stafford drew the Board's attention to the correspondence from PAMIA thereafter. On 9 April 2020, 10 months after his PII had lapsed, the Respondent sought cover from PAMIA who refused it on the basis that not only had the Respondent failed to renew his policy in time, but that he had apparently continued to practise in the absence of such a policy in the interim.

41. Thereafter, Mr Granville-Stafford drew the Board's attention to the Respondent's position. The Respondent had contended he could not get PII in time for the deadline due both to his accountants letting him down, which in turn meant he could not complete the paperwork required for renewal, **[PRIVATE]** and also to a sinus infection that he was suffering from in February/March of 2019, which required an operation and time off work later on that year. Mr Granville-Stafford submitted that notwithstanding the nebulous nature of the medical condition and the time at which it occurred being significantly in advance of the time for renewal, **[PUBLIC]** there was nothing that obviated the duty of a Registrant to obtain and maintain a policy of PII if he/she was in practice.

42. Mr Granville-Stafford took the Board to a number of documents and submitted that having failed to obtain PII and in spite of also being suspended for failing to renew his registration with the Complainant, from 1 March 2020 onwards the Respondent apparently continued to work uninsured. It was this latter fact that had in part led to PAMIA refusing to insure the Respondent when he sought retrospective PII in April 2020.

43. Mr Granville-Stafford therefore submitted that the Respondent had failed to have a policy of PII in place during the period 1 July 2019 - 29 February 2020, and had in part brought about his own inability to obtain retrospective PII thereafter, by having continued to work unabated.

44. In the circumstances Mr Granville-Stafford submitted that the Board should find the facts as alleged proved.

Legal Advice

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

46. In approaching the evidence the Board was reminded that it should pay careful attention to the Allegations and how the Claimant had pleaded them in the Statement of Case, in order to assess whether a particular Allegation was made out.

47. The Board was further advised that when the word failed appears in an allegation that means a culpable failing. That is to say IPReg must prove there was a duty upon the Registrant to do or not do something and that he has failed in that duty.

48. Finally, the Board was advised that in the absence of the Respondent it should ensure it considered all the documents and evidence before it provided by him, and take into account any points in his favour, where necessary should give him the benefit of any doubt.

Evidence

49. The Board carefully considered the evidence before it, which comprised two witness statements and appended exhibits. The first statement was from Mrs Shelley Edwards, Head of Registration for the Complainant and the second from Mr Redvers Cunningham, Chief Executive Officer of PAMIA Limited.

50. The evidence provided by Mrs Edwards was not contradicted by anything else the Board had seen. Much of Mrs Edwards' evidence was based upon documents she exhibited before the Board. The Board therefore considered it could properly place reliance upon that evidence.

51. The evidence provided by Mr Cunningham was also not contradicted by any other evidence before the Board, and was based almost entirely on documents exhibited before the Board by Mr. Cunningham. The Board therefore considered it could properly place reliance upon that evidence.

Allegation 1(a)

52. It noted from Mrs Edwards' statement that the Respondent had been admitted to the register of Patent Attorneys on 1 December 1970, and to the register of Trade Mark Attorneys on 8 January 1991. He had remained on both registers throughout. The Board also noted from Mr. Cunningham's statement that the Respondent had PII in place until the end of June 2019. It was clear from the nature and extent of the Respondent's practice as a sole trader and from his own correspondence in that

regard, that he was in "private practice" within the terms of the Legal Services Act 2007 and the Complainant's Rules. The Board also noted that, when in 2020 the Respondent had sought PII, he did so initially retrospectively, indicating he must have needed such a policy and consequently must have been in practice for the period 1 July 2019 - 29 February 2020. In the absence of any evidence to the contrary the Board therefore determined that between 1 July 2019 and 29 February 2020 the Respondent had been in public practice as a registered trade mark attorney and as a registered patent attorney. The Board therefore found paragraph 1(a) of the Allegation proved in its entirety.

Allegation 1(b)

53. In relation to Allegation 1(b) the Board noted that the word *"failing"* had been used. It noted that in so alleging the Complainant was required to prove to the required standard that there was a culpable failing, in other words that the Respondent had a duty to do something and had failed in that duty.

54. The Board considered the evidence provided by Mr Cunningham, and in particular noted that PAMIA had provided PII to Mr Burrows from 1 June 2002 to 20 June 2019. It noted that from 2012 onwards Mr. Burrows had submitted his claim form late. For the period beginning 1 July 2019, the Respondent failed to provide his renewal documentation. A chasing email was sent by PAMIA on 5 June 2019 but no renewal application was submitted and his PII cover therefore expired on 30 June 2019. Emails were sent by PAMIA to the Respondent on 11 July and 16 August 2019, confirming his policy had lapsed.

55. The Board noted that in spite of having been informed of the lapse in his PII in June 2019 and again in August 2019, the Respondent did not communicate his lack of PII to the Complainant until 17 April 2020. Thereafter, the Respondent was asked to provide details of his practice during the period he was uninsured and a copy of his client care letter. He was also asked to confirm that his clients knew of his PII status. At no point has the Respondent ever provided the information sought by the Complainant.

56. The Board took careful note of the entirety of the written material the Respondent had put before them, whether in the form of letters or emails. It noted that he accepted not having PII in the relevant period but that he had struggled to address the issue by reason of the actions of his accountants, albeit it was unclear precisely what his accountants had done or omitted to do that caused such difficulties. **[PRIVATE]** It noted the Respondent's ill-health in general terms, and specifically during February and March 2019.

57. **[PUBLIC]** The Board also took account of the difficulties the Respondent had in obtaining PII, specifically retrospective cover for the period in question. It noted that

when the Respondent engaged with his PII position, in or around April 2020, PAMIA had refused his attempts to obtain cover, whether prospectively or retrospectively, and no other broker he contacted was able to assist. Whilst the Board considered this to be regrettable, it did not provide a defence to the duty the Respondent was under to obtain PII. That duty was set out clearly for all Registrant's at Rule 17 of the Rules of Conduct for Patent Attorneys, Trade Mark Attorneys and Other Regulated Persons ("The Rules of Conduct").

58. In light of the lack of any evidence demonstrating the contrary, the Board therefore determined that the Respondent had not taken out and/or maintained a policy of PII with a participating insurer during the period 1 July 2019 - 29 February 2020. The Board further determined that there was a duty upon the Respondent to have such a policy, in light of Rule 17 of the Rules of Conduct, such that he could be said to have failed to have such a policy and that such a failure amounted to a culpable failing. The Board therefore found Allegation 1(b) proved.

Allegation 2

59. In light of its findings at 1(b) above, the Board therefore found allegation 2 proved.

Sanction

60. Having found the Allegation proved in its entirety the Board invited submissions from the Complainant as to the issue of sanction.

61. On behalf of the Complainant, Mr Granville-Stafford made no positive submission as to the appropriate sanction in the case. He 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* and should apply the principles of proportionality and the need to protect the public and the wider public interest.

62. Thereafter, Mr Granville-Stafford submitted that the following mitigating factors were present in the case: the Respondent had no previous disciplinary record, and had had a lengthy career. He had demonstrated some engagement with the process. In correspondence he had not asserted he had a defence to the Allegation, albeit that had not been his position when he was asked at the CMC.

63. In terms of aggravating factors, Mr Granville-Stafford submitted the Respondent had practised for a lengthy period of nine months without PII, thereby putting clients at risk of harm. In so doing he had made it quite clear he was prepared to put his own financial interests ahead of the protection that should be afforded to all clients. He continued unabated in practising even after PAMIA had confirmed to him that he was

uninsured. The Respondent continued throughout to minimise his own conduct and to shift the blame onto others.

Legal Advice

64. The Board received and accepted the advice of the Legal Adviser. It was advised that pursuant to Rules 16 and 17 of the Rules the Board should consider what sanction if any to impose upon the 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.

65. The Board was advised to approach the question of sanction bearing in mind the principle of proportionality and considering the available sanctions in relation to the Respondent in ascending order from least serious to most serious, moving 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.

66. 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.

67. 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

68. The Board took account of all it had read and heard on the Respondent's behalf. **[PRIVATE]** In particular, it noted the ill-health from which the Respondent suffered and the disability he had alluded to in correspondence.

69. **[PUBLIC]** The Board noted that the Respondent had practised for over 50 years and had hitherto had no disciplinary involvement. That was to his great credit. It noted that he had tried to obtain PII cover after the event and been significantly hampered in all his attempts to do so. It did not doubt that he had made every effort to obtain such cover from April 2020 onwards, and that he had been unable to do so, in part due to the paucity of insurers in the market, something for which the Respondent could not be held responsible.

70. In spite of the mitigation it found, the Board could not ignore the serious nature of the Respondent's behaviour in failing to have PII for a period of nine months. It considered his behaviour was serious and considerably aggravated by his apparent refusal to acknowledge the risk he posed to clients if working when uninsured. This was a risk he continued to run in spite of notification from PAMIA that he was no longer insured. It was not until April 2020 that he attempted, unsuccessfully, to correct the position.

71. The Board was unable to give the Respondent credit for his apparent admissions in his correspondence, in light of his denial of the Allegation at the CMC. Such a denial had required a full hearing of the factual issues in the case and led to the Regulator and Board requiring more time to conduct the proceedings. The Board was extremely troubled by the Respondent's attitude to the regulatory process and to the nature of the Allegation he faced. In the circumstances the Board was unable to give him any meaningful credit for his engagement in the process. The extent of his engagement had been marked by attempts to subvert and delay the regulatory process and by persistent failure to answer queries and questions asked of him by the Complainant and by the Board.

72. The Board found it of real concern that the Respondent appeared to consider the Regulatory process to be something of an annoyance and a process aimed at persecuting him. At no stage had he acknowledged that his conduct in failing to have PII when in practice was serious and had implications for his clients and the public at large. Nor had he at any point shown any contrition or remorse. Instead he had invested his time and effort in compiling antagonistic correspondence to his Regulator.

73. This in turn demonstrated a Respondent who the Board considered had sought to obfuscate and avoid responsibility for his own conduct, preferring instead to blame others. At no point had the Respondent taken any responsibility or shown any insight into his own failings. The Board noted that this was in spite of PAMIA refusing to insure retrospectively because the Respondent had persisted in practising when uninsured. In the circumstances the Board considered that notwithstanding the extremely difficult PII market for Attorneys, the Respondent had no one to blame but himself for his failings and his persistent and repeated refusal to accept such responsibility meant the likelihood of continued serious misconduct of a similar sort was high.

74. The Board considered what sanction if any it should impose. The Board had no hesitation in concluding that the protection of the public and the wider public interest of upholding the reputation of the profession and declaring and maintaining standards, required the imposition of a sanction.

75. 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 and the context in which it had occurred, was too serious for such a notice to meet the needs in this case.

76. 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.

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

78. The Board likewise considered the risk to the wider public interest was high. It is a cornerstone of the professions that the conduct of professionals should enable the public to repose faith in the Regulator and the professionals to provide a profession in which membership obligations and duties provide protection to clients and the public at large. Clients have the right to expect that regulated professionals will have in place a policy of PII and that such a policy will protect them for loss in circumstances requiring them to make claims. The public confidence in the profession would be severely undermined in circumstances if a Registrant was enabled to continue in membership, when he unrepentantly put clients in harm's way.

79. In all the circumstances of this case, the Board determined that the Respondent's conduct was incompatible with continued membership of the profession and that therefore the necessary sanction was that the Respondent's entry on the Registers should be permanently removed. The Board also determined that:

- Notification of its decision should be given to UKIPO, EPO and/or OHIM as applicable together with a recommendation that the Respondent's recognition or authorisation be withdrawn from that body as appropriate;

- That a recommendation should be made to the Councils of CIPA and/or CITMA that the Respondent be expelled from either or both Institutes as applicable.

Costs

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

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

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

IN THE MATTER OF THE INTELLECTUAL PROPERTY REGULATION BOARD

JOINT DISCIPLINARY BOARD

BETWEEN:

THE INTELLECTUAL PROPERTY REGULATION BOARD

Complainant

-and-

ANTHONY BURROWS

Respondents

ORDER

IT IS ORDERED THAT:

With effect from 21 days following service of this order the following action be taken in relation to the Registration of **ANTHONY BURROWS:**

- Pursuant to Rule 16.1(d) that his entry be permanently removed from the Patent Attorney Register and Trade Mark Attorney Register;

- Pursuant to Rule 16.1(f) that notification of this decision be made to UKIPO , EPO and/or OHIM as applicable, together with a recommendation that his recognition or authorisation be withdrawn;

- Pursuant to Rule 16.1(i) that a recommendation be made to CIPA and/or CITMA as applicable that the Respondent be expelled from membership;

ANTHONY BURROWS shall pay to the Intellectual Property Regulation Board the sum of £22,793.89.