



Intellectual Property Regulation Board

# Regulation and Ethics-A UK View Where is it all heading? 17<sup>th</sup> April 2015

Bruce Alexander  
IPReg Board Member

# IPReg

Why regulation?

Why Statutory Regulation?

What's it all about?

Some key areas

UK decided cases

Differences between UK and Australia

Where's it all going?

Why is Regulation a Good Thing?

# Why Regulation?

- **Professional people and those working in acknowledged professions exercise specialist knowledge and skill. How the use of this knowledge should be governed when providing a service to the public can be considered a moral issue and is termed “professional ethics”.**
- **Professionals are capable of making judgements, applying their skills and reaching informed decisions in situations that the general public cannot, because they have not received the relevant training. One of the earliest examples of professional ethics is probably the Hippocratic oath to which medical doctors still adhere to this day.**

# Why Regulation? (cont)

- **Professional ethics is a set of standards adopted by a professional community. Professional ethics are regulated by standards, which are often referred to as codes of ethics or (more simply) conduct.**
- **This provides a uniform standard for ethics**
- **A code of conduct is very important because it gives boundaries that we have to stay within in our professional careers. The one problem with any code of conduct is that we can't always have the answers in black and white. Sometimes there are grey areas where answers aren't so simple.**

# Why Regulation (cont)

**Professional organisations generally define their ethical approach as a number of discrete components. Typically these are:**

- **Honesty**
- **Confidentiality**
- **Integrity**
- **Objectivity**
- **Transparency**
- **Respectfulness**
- **Accountability**
- **Obedience to the law**

# Why Regulation (cont)

- Most professions have internally enforced codes of practice that members of the profession must follow, to prevent exploitation of the client and preserve the integrity of the profession. This is not only for the benefit of the client but also the benefit of those belonging to the profession.
- Disciplinary codes allow the profession to define a standard of conduct and ensure that individual practitioners meet this standard by disciplining them if they do not practice accordingly.
- This allows those professionals who act with conscience to practice in the knowledge that they will not be undermined commercially by those who have fewer ethical qualms.
- It also maintains the public's trust in the profession, encouraging the public to continue to seeking their services.

# Why Statutory Regulation?

- **Because the public do not trust “self regulation”**
- **A recent problem – most professions were self regulating until about 20 years ago**
- **BUT public trust broke down – high profile cases, perceived lack of action by professional bodies, cronyism**
- **Resulting in pressure to impose independent statutory regulation**
- **The Legal Services Act 2007**

# What's it all about?

## The IPReg code

- The Code is the short name for the Rules of Conduct for patent attorneys, trade mark attorneys and other regulated persons
- The Code is principles based – it is not a long list of “rules” (despite the formal name!)
- Individual registrants AND registered entities are subject to the Code
- At IPReg we say that Rule 5 is at the “heart” of the Code
- “Regulated persons shall at all times act with integrity putting their clients interests foremost subject to the law and an overriding duty to any Court or Tribunal”
- If you start there .....





# Working through the IPReg Code

- The Code could be regarded as having two main elements:
- Professional
- Practice

# Professional

- These are the rules within the Code which generally regulate **professional competence**.
- They could be grouped thus:
  - Scope (2) Competence (4) Integrity (5) Client care (6) Conflicts (7) Confidentiality (8) Duty to act in the interests of Justice (14)
  - Continuing Professional Development (16).

# Practice

- These are the rules within the Code which generally regulate **practice management (i.e. managing the client relationship)**
- They could be grouped thus:
  - Relationships with other professionals (9) Anti discrimination (15) Publicity(18)
  - Fees (10) Financial matters (11) Liens (13)
  - Professional Indemnity Insurance (17) Complaints Handling (12)



# Some Key Areas

- Courts and Tribunals
- Conflicts
- Confidentiality
- Competence
- “Economic pressures”
- What to do if something goes wrong

# Key Areas – The Rule of Law and Duty to the Court (Rule 14)

Regulated persons exercising any right to appear before a court or tribunal or to conduct litigation must comply with their duties to the court or tribunal and **act with independence in the interests of justice**. Regulated persons **must not knowingly deceive or mislead** a court or tribunal. Regulated persons exercising any right to appear before a court to conduct litigation shall observe the Special Rules of Professional Conduct applicable to Litigation Practitioners



# Key Areas – The Rule of Law and Duty to the Court (Rule 14)

- Oral Proceedings
- Client pressure
- Unsubstantiated assertions

# Key Areas – Conflicts (Rule 7) aka “can a Chinese Wall ever be the answer”?

- A regulated person must not act where his interests **conflict with those of a client or of a former client**, or where he knows or has reasonable grounds for suspecting that the interests of any partner or regulated person or staff of his firm, conflict with those of a client or of a former client.

# Key Areas – Conflicts aka “can a Chinese Wall ever be the answer”?

## (Rule 7 cont)

- Hard to define a conflict, but if you think you have a problem, it’s quite likely you have!
  - Technological conflict
  - Business conflict
  - Conflict checking procedures
- Senior clients vs new clients
- Chinese wall
  - What does this mean?
  - Can a Chinese wall even be implemented in a modern firm?
  - Can help with obtaining informed consent
- Care needed over “former client” restriction



# Key Areas – Confidentiality (Rule 8)

- Regulated persons must keep the affairs of clients and former clients **confidential** except where disclosure is required and permitted by law or by the client or former client.
- Subject to this duty of client confidentiality and any circumstance where disclosure of information is prohibited by law, unless a client expressly agrees that no duty to disclose arises or a different standard of disclosure applies, a regulated person should disclose all relevant information of which he is aware to a client.
- Regulated persons must not put any clients' confidential information at risk by **acting, or continuing to act for another client where that information may be material**, unless both clients provide informed consent and in all of the circumstances it is reasonable to do so.

# Key Areas – Confidentiality (Rule 8)

**MoD loses a staggering 340 laptop computers in TWO YEARS...and most of them were not encrypted**

By [DAILY MAIL REPORTER](#)  
UPDATED: 14:59, 22 July 2010

**Stolen Laptop Exposes Boston Hospital Patient Data**

An email attachment containing patient data was unencrypted and accessible

May 24, 2012 | 05:35 PM | 1 Comment

**Children details on lost USB stick**

A council has launched an investigation after the private details of thousands of children were found on a memory stick.

**Patent Attorney loses laptop with billion dollar AIDS drug formulation ... and the laptop wasn't even encrypted!**

By [DAILY MAIL REPORTER](#)  
UPDATED 16:59 17 July 2012

IPReg

# Key Areas – Confidentiality (Rule 8)

- General considerations
  
- IT systems
  - Portable devices
  - Memory sticks
  - Taking work home
  - Email
  
- Link to conflict provisions
  - Document management systems

# Key Areas – Competence (Rule 4)

Regulated persons shall carry out their professional work with due skill, care and diligence and with proper regard for the technical standards expected of them.

A regulated person should only undertake work **within his expertise or competence.**



# Key Areas – Economic Pressures (Rule 6)

- Rule 6 (standards of professional service and client care)
- Bad debts and difficult credit control situations
- What if you're asked to “work to a price”?

# Key Areas – Something goes wrong? (Rule 6)

- Requirements:
  - Ethical conduct
  - PI Insurance
  - Client care
  - Responsibility to firm or department
  
- Who to tell
  
- When to tell them
  
- What to do next



# UK Reported Cases

- Rickard
- Brookes

# IPReg v David John Rickard

- Client engagement terms including right to assign IP if attorney fees not paid
- Rickard assigned client's IP to himself and recorded assignment at IPO
- Case settled by undertakings from Rickard
- Costs awarded
- IPReg Practice Note issued





# IPReg v Nigel Samuel Brooks

- Complaint by client following acrimonious correspondence
- Lack of complaints procedure
- Case settled by Regulatory Settlement Agreement
- Brooks fined

# UK v Australia – Differences

- The climate and the cricket team!!
- Composition of the Regulation Board
  - Lay chairman, lay majority to ensure independence
- Compulsory PII
- Compulsory complaints procedure
- Other attorney's clients
- Publicity – “Regulated by IPReg”
- Disciplinary procedures and sanctions

# UK v Australia-Differences(cont)

- Complaints/disciplinary procedures
- The Legal Ombudsman (LeO) for service complaints
- IPReg for breaches of the Code of Conduct
- Complaint Review Committee (CRC)
  - Summary Procedure
  - Proportionality
- Disciplinary Board (not IPReg)
  - Wide range of sanctions
  - Regulatory Settlement Agreements

# Where's it all going?

- More proactive regulation
- Regulated firms to provide more information
- Risk assessment of firms by the Regulator
- Review/Inspection/Supervision where necessary
  
- Alternative Business Structures (ABS)
- cf Incorporated Attorneys
- Outside ownership/management
- HOLPs and HOFAs



# Why is Regulation a Good Thing?

- Certification Mark/Badge of Quality
- Strong INDEPENDENT Regulator
- Patent/Trade Mark Attorney monopoly areas?
- Erosion of business by unregulated entities



---

# Thank you and Questions

IPReg