

IPReg Assurance Policy

Introduction

IPReg's role is to promote the regulatory objectives set out in the Legal Services Act (**LSA**). The LSA defines the regulatory objectives as:

- protecting and promoting the public interest;
- supporting the constitutional principle of the rule of law;
- improving access to justice;
- protecting and promoting the interests of consumers;
- promoting competition in the provision of services within subsection (2) of Pt 1, Section 1 of the LSA (broadly, legal activities);
- encouraging an independent, strong, diverse and effective legal profession;
- increasing public understanding of the citizen's legal rights and duties;
- promoting and maintaining adherence to the professional principles.

This Assurance Policy sets out how IPReg will achieve the promotion of these Regulatory Objectives by setting out:

- its overall approach to assurance and supervision
- the risk model used
- how the policy will work in practice; and
- its work with other legal regulators.

In pursuing the regulatory objectives including the delivery of its Assurance Policy, IPReg adheres to the principles of better regulation as defined by the Better Regulation Executive in 2000. These principles are:

- proportionality
- accountability
- consistency
- targeted
- transparency

IPReg has always had an outcomes-focused approach to regulation (OFR). This is a regulatory regime that focuses on the high level principles and outcomes that should form the operational foundation for regulated firms in their provision of services to clients.

This principles-based approach underpins IPReg's Code of Conduct (the **Code**) and avoids the setting of detailed or prescriptive rules whenever possible.

IPReg's core message since 2010 has been:

"High-level regulation" of "a well-run and self-regulating profession."

Overall Approach

IPReg will also adopt this OFR approach in relation to risk assessment, assurance and (where necessary) supervision.

Broadly, the regulatory objectives can be put at risk by:

- the firms that IPReg authorises and regulates;
- IPReg's own operations and decisions;
- economic and other external conditions or influences that affect the way that the legal services market functions, such as the sophisticated clients and business world which shape IP activity.

The risk assessment model which IPReg has developed is designed to identify and mitigate risks to the regulatory objectives caused by firms. The challenge for IPReg is to use the intelligence it generates effectively, to improve risk assessment and the allocation and prioritisation of its regulatory efforts.

IPReg intends to use the risk assessment model at both the strategic level to set overall priorities and to allocate resources, and at the frontline to identify those firms and individuals requiring its specific focus. Such focus does not equate to immediate intervention by IPReg. Rather the identification of risks and the subsequent regulatory and

supervisory strategies devised to mitigate those risks requires a sound base of evidence to ensure that proportionate regulation is supported by appropriate safeguards.

This means that, in practice, any intervention will be focused upon the specific issue raised, with the remedy being proportionate to the risks posed.

IPReg recognises that a key element of its activity is to allow, and indeed encourage, innovation and economic progress, whilst ensuring that the regulatory framework is still complied with. IPReg is non-prescriptive in its view of changes in IP business models (e.g. the advent of Alternative Business Structures (**ABS**)) as long as the underlying requirement for public protection remains intact or is enhanced.

IPReg will intervene only once other regulatory options have been exhausted and where there is a clear case for public protection. IPReg's approach to formal enforcement is contained within the IPReg Complaints Handling and Enforcement Strategy¹.

The Risk Model

At the level of the individual firm, it is of course the job of business owners and managers to identify and control any risks arising from their activities. It is the job of the regulator, however, to assess whether those controls are appropriate in the light of the risks posed, taking account of the probability of an adverse event and the impact of its potential consequences.

IPReg's assessment of how these factors will be weighted in its risk assessment is a matter of judgment of

- the potential harm to the client or the wider public; and
- the firm's ability to manage the risks posed.

However, in IPReg's view, the firm's regulatory compliance history is of equal importance, including how constructively it has engaged with IPReg and the approach it takes to addressing any issues raised.

Consequently, IPReg places great importance on having open and constructive relationships with ABS firms' Heads of Legal Practice (HoLPs) and Heads of Finance & Administration (HoFAs), and the equivalent roleholders in non-ABS firms. IPReg has the right to introduce the roles of HoLP and HoFA for all firms, in view of its potential, and is keeping this closely under review.

¹ Please see <http://ipreg.org.uk/wp-content/files/2012/07/Enforcement-Strategy-Final.pdf>

In autumn 2012 IPReg carried out an extensive audit of registered firms and their activities. Wide ranging questions covered matters including finance and management, business models, client relationships and professional competencies.

The information obtained served three purposes:

- To underpin the risk based approach to assurance, supervision and enforcement of firms
- To identify any areas where there were concerns
- To provide a base line against which IPReg can measure the success of its OFR approach going forwards.

This information is confidential and will not be published.

There are no current plans to repeat this exercise.

The risk model which was developed identifies categories of risk. The categories of risk are then prioritised or weighted in terms of the extent of the risk to the regulatory objectives. Firms are initially risk assessed by applying a probability and impact score across each risk category, which then forms part of the overall regulatory performance review, and thereby informs the decision as to whether any further assurance-related steps are required.

The probability score consists of an assessment primarily of the likelihood of risk outcomes on delivery of the regulatory objectives, and subsequently on the IP market, of a regulatory failure at the firm. IPReg will identify the factors that would ultimately need to be present to lead to a low/medium/high outcome on the various categories of risk including business model risk, governance and operational risk, and staff competence or fitness and propriety.

Neither the risk model itself nor the risk assessment of each firm is therefore static. The risk model will be reviewed over time to ensure that it is accurate based on market developments, IPReg's experience of authorising and supervising firms, and economic developments. For instance, IPReg's experience of 'ABS-like' firms and transitioning firms indicates that ABS structures do not in themselves present any new or additional regulatory risk. However, new risks will emerge particularly with further changes to the legal services market and some risks will become less or more significant.

What might trigger engagement?

Engagement with firms may be triggered by events generated within or potentially impacting on a firm that mean that IPReg needs to check whether a firm's compliance might be at risk, or as a part of a piece of broader thematic work with a number of firms or even the entire regulated community.

An **event** includes such things as:

- a report of misconduct against a firm and/or individual,
- significant change to a firm's composition or structure, and
- a downturn in a firm's financial indicators.

A **theme** might be a particular aspect of the work being undertaken, for example, the holding of client money or an issue such as complaints handling. These are areas where IPReg's interest lies in the approach of a number of firms to that particular activity. For example, we are aware that recent changes in the Code to the holding and management of client monies are likely to require some upgrading of accounting records and additional staff training. Another example is the introduction of the key compliance roles of the Head of Legal Practice and the Head of Finance and Administration in ABS firms and the ways in which firms embed the new requirements related to these appointments.

Put into Practice

In broad terms, IPReg will take a two-step approach:

Desk-based

At present, transitioning firms and firms submitting new licensing and registration applications, have to provide a package of documentation including:

- Business plan (including details of cover arrangements in the event of incapacity and any outsourcing plans)
- Terms of Business
- Complaints Policy
- Anti-Money Laundering Policy
- Conflicts Procedures
- Training Procedures for regulated individuals

This gives some indication of the types of information that IPReg requests when conducting a review, though depending on the issues raised, it may also request other items.

The review may then involve engagement with firms by telephone to discuss issues and request information. That information will be analysed and pertinent questions asked about what has been provided.

Visit-based

Visits to firms to address both discrete events and thematic risks. We will visit firms when we consider this necessary in order to properly assess the risks or issues identified.

Thematic work undertaken will include individual correspondence and meetings, together with making FAQs and 'lessons learnt' sections available on our website. Training seminars may also be made available to firms on relevant topics.

IPReg officers have analysed the information provided and risk-assessed firms/groups of firms to identify what we consider to be any key risks or issues.

IPReg recognises that there is no such thing as a “no failure” regime. Firms fail because of their own decisions, not due to regulation. Within the intellectual property profession, no firm has ever failed due to insolvency. This suggests that insolvency risk is very small. However, given the scope being afforded to firms to diversify ownership and management structures, this risk must be pro-actively and effectively managed.

Working with other Legal Regulators

In developing its assurance and supervision policy, IPReg has drawn considerably on the stated approach of the SRA. IPReg makes no apologies for that decision. Firms employ solicitors and other legal professionals as well as attorneys and it is right that a consistent approach across the professions be adopted wherever possible.

IPReg does not work in isolation. IPReg has signed a Memorandum of Understanding with other legal regulators to provide a framework for information sharing and a cohesive approach to supervision.

Although PAMIA (a mutual insurance society) is not a regulator, IP Reg notes that by far the vast majority of the profession is insured through it and where possible (within the bounds of confidentiality for example) IPReg will also work with PAMIA to resolve issues.

To this end there may need to be changes in the attitude and behaviour of firms so that firms:

- constructively engage in the supervisory process and with IPReg generally
- recognise that there may be times when IPReg may make a decision to formally contact a firm which in hindsight might be found to be unnecessary or premature
- recognise that this new approach may require greater resources and expertise than a reactive model

However the constructive response of the vast majority of registered firms to the 2012 audit leads IPReg to believe that the profession strongly endorses IPReg's OFR and proactive approach to regulation.

However, IPReg will take enforcement action if:

- there is serious misconduct;
- we identify a risk to the public that cannot be mitigated promptly and appropriately by working with the firm;
- the firm in question does not engage constructively with IPReg so that the matter can be addressed under supervision and formal investigation is required.

Enforcement itself may not always take the form of disciplinary proceedings.

Enforcement may take the form of formal regulatory undertakings given by attorneys and firms under Rule 20 of the Code of Practice which will enable close monitoring of the attorney and/or the firm.

Equally, enforcement may be in the form of conditions attached to registration and any licensing application.

For more information on “thematic reviews” follow this link:

<http://www.fca.org.uk/about/what/regulating/how-we-supervise-firms/thematic-reviews>

Approach to assurance and supervision

