

IPReg Action Plan to implement recommendations in CMA Legal Services Market Study Report (“Market Study Report”)

June 2017

1. Introduction

This is IPReg’s action plan required to be produced by all the Approved Regulators (including IPReg) by 30th June 2017 (the “Action Plan”) reflecting IPReg’s obligations to implement the recommendations of the Market Study Report (the “Recommendations”). The Action Plan is in the format recommended by the LSB.

2. Principles to govern the Action Plan

The following principles have governed IPReg’s consideration and implementation of the Recommendations and the Action Plan, in that implementation:

- must be governed by the regulatory objectives set out in s.1 Legal Services Act 2007 (the “Act”)
- must reflect the professional principles required to be followed by attorneys (“authorised persons”) under the Act
- must reflect an outcomes-focused risk-based approach to regulation, particularly bearing in mind the Market Study Report Theme 3 (para 15) that current regulations and regulatory framework may go beyond what is necessary to protect consumers and may weaken or distort competition for the supply of legal services
- must have regard to functionality, efficiency, proportionality and be fit for purpose, enabling attorneys to introduce changes in a cost-effective manner and enhance the services they offer to consumers (see in particular s.3 of the Act).

3. Background, Context and Introductory Observations

The following information and observations provide a useful context within which IPReg has developed its Action Plan:

Background Information

- The relatively small size of the patent attorney and trade mark attorney community: **1,898** patent attorneys, **604** trade mark attorneys, **284** dual qualified (total **2,810**) on the IPReg register¹; some **225** registered firms². **519** attorneys are employed in-house (**402** patent attorneys, **92** trade mark attorneys and **25** dual qualified) and therefore outside the scope of Recommendations
- The contribution of IP to the UK economy:
 - In 2014, firms in the UK market sector invested an estimated **£133 billion** in knowledge assets, compared to **£121 billion** in tangible assets
 - In 2014, 53% (**£70 billion**) of knowledge investment in the UK market sector was protected by Intellectual property rights (“IPRs”)
 - Global trade in IP licences in 2014 was worth more than **£220 billion**: 1.6% of global trade and rising
 - The UK IP system was rated no.3 by business in the 2016 Taylor Wessing Global IP Index in respect of obtaining, exploiting and enforcing the main types of IPRs
 - UK investment in intangible assets protected by IPRs has risen from **£47 billion** in 2000 to **£70 billion** in 2014³

Actions taken in response to the Market Study Report must therefore avoid harming IP’s contribution to the UK economy as far as possible.

Observations

- The main scope of the Market Study Report is predominantly “domestic” legal services, including divorce, conveyancing, wills and probate. Intellectual Property falls within “commercial” legal services and barely receives a mention specifically

¹ All as at 1.04.17

² As at 31.12.16

³ All from IPO Fast Facts 2017

- The scope of the Market Study Report is primarily aimed at legal services provided to consumers (defined in the Market Study Report as “individual consumers and small businesses”). The activities of attorneys are primarily in contrast B2B, although attorneys’ clients will include consumers (as defined)
- The Market Study Report itself acknowledges that it is desirable to avoid a “cliff-edge” approach (“all or nothing”) of the applicability of the Recommendations relating to transparency to attorneys, as most legal services provided by attorneys will not (typically) be provided to consumers (as defined)⁴
- The only “reserved legal activities” under the Act which are carried out by attorneys are the exercise of a right of audience, the conduct of litigation and reserved instrument activities, compared to other branches of the legal profession, particularly solicitors and barristers. The core activities of attorneys of filing and prosecuting trade mark and patent applications are not therefore reserved legal activities
- Most of the work of UK patent and trade mark firms consists of representing overseas (notably US) clients at the European Patent Office (for patent matters) and at the European Union Intellectual Property Office (for trade mark and design matters). In respect of this work it should be noted that patent and trade mark attorneys’ main competitors in the legal services export market are European trade mark and patent firms which of course will not be subject to the Market Study Report and which would welcome unilateral total transparency of UK attorneys’ costs which they would be able to exploit to their own advantage

Timing of Actions

- Timing of introduction of transparency measures is critical - implementation by IPReg before any similar measures by SRA/BSB (given overlap between attorneys’ activities and commercial work undertaken by solicitors and barristers) risks an uneven playing field and potential distortion of the market
- The imminence of Brexit presents additional opportunities for European trade mark and patent firms to exploit any transparency measures, particularly in relation to international corporate clients
- To ensure proportionality, IPReg would seek to piggy-back on any research or pilots carried out by other regulators, particularly to test the most effective ways of complying with the Recommendations relating to transparency

⁴ CMA slide pack on recommendations, slide 6

IPReg has in development of this Action Plan considered and taken into account the Legal Services Consumer Panel – Criteria for success⁵ and has produced a separate analysis of its Action Plan benchmarked against the Criteria⁶.

4. Action Plan: High Level Outcomes (using LSB’s Action Plan Template)

LSB high-level outcome	Current and planned actions by the frontline regulator	Timings for each action with key milestones	Review date
Action to deliver a step change in standards of transparency to help consumers (i) to understand the price and service they will receive, what redress is available and the regulatory status of their provider and (ii) to compare providers	<p><u>Current actions (current position):</u></p> <ol style="list-style-type: none"> 1. Note IPReg Rules of Conduct for Patent Attorneys, Trade Mark Attorneys and other Regulated Persons⁷ (the “Rules”) that <ul style="list-style-type: none"> • Written terms of business to be given to clients at the outset of a relationship (Rule 6 Guidance) • Clients to be given explanation on issues, progress, timescale of each matter and periodic updates on costs (including expenditure updates) (Rule 6 Guidance) • Fees must be justifiable (Rule 10) and “Fees charged should be based upon the information provided in any letter of engagement or on the basis of any amendment thereto” (Rule 10 Guidance) • Attorneys must have a complaints handling process and must inform clients of their right to complain to the Legal Ombudsman (Rule 12) 		

⁵ Legal Services Consumer Panel research: The development of information remedies in legal services - March 2017

⁶ Attached as Appendix 1

⁷ Attached as Appendix 2

	<p>2. Rules requirement that attorneys must indicate that they are regulated by IPReg (Rule 18)</p> <p><u>Planned actions:</u></p> <p>Planned additional guidance to be issued under Rule 10 of the Rules (subject to appropriate consultation which is intended to commence immediately) to enhance transparency of costs to clients and potential clients.</p> <p>Rule 10 as currently stated:</p> <p><i>“Regulated persons’ fees must be justifiable”</i></p> <p><i>Guidance Rule 10.1</i></p> <p><i>“Fees charged should be based upon the information provided in any letter of engagement or on the basis of any amendment thereto.”</i></p> <p>The additional guidance is intended to establish an expectation under Rule 10 that:</p> <ul style="list-style-type: none"> all clients would receive written and suitably detailed scoping information in line with the examples of good practice set out in Market Study Report Schedule D (D12 paras. 28-29): <p><i>(a) “Seeking to offer services where possible on a fixed fee basis, either covering the entire service or at least some elements of the service.</i></p>		
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	<p>(b) <i>Clearly setting out what is included in the fixed fee and how the fee structure will work for service elements that are outside this scope e.g. hourly fees</i></p> <p>(c) <i>Identifying key cost drivers that might lead to a difference in the price e.g. a standard will as opposed to a will involving a trust.</i></p> <p>(d) <i>Separately reporting any mandatory fees that the consumer will have to pay e.g. stamp duty, court fees.”</i></p> <p>with the level of detail and frequency (for repeat clients) to depend on the relative experience or vulnerability of the client</p> <ul style="list-style-type: none"> • registered attorneys’ practices would identify (via their website) the availability (or not) of fixed fee scoping meetings to potential clients making clear the cost (or costs parameters) of that meeting and expected outcomes. <p>3. But given some attorneys’ activities in the legal services domestic market overlap with commercial work done by solicitors, timing of introduction of any transparency measures is critical – unilateral implementation by IPReg before any similar measures by SRA risks an uneven playing field and potential distortion of the market</p> <p>4. Review approach of SRA e.g. in relation to conveyancing, wills and probate, divorce to ensure consistency with any proposed IPReg approach</p> <p>5. Consult with other Authorised Regulators about piggybacking on pilots or research they carry out to ensure most effective and consistent actions</p>	<p>Consultation process commencing July 2017</p> <p>Review timing of consultation and implementation post-publication of SRA Action Plan July 2017 (see 3 below)</p> <p>Post-publication of SRA Action Plan July 2017</p> <p>Post-publication of SRA Action Plan July 2017</p>	
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	<p>6. Any regulatory changes or guidance to follow outcome of pilots and research</p> <p>7. Any consumer research to follow introduction of changes and where possible and appropriate, to be consistent with other Authorised Regulators</p>	<p>Post-publication of Authorised Regulators' Action Plans July 2017</p> <p>Dependent on timing of any pilots and research</p> <p>Dependent on timing of any specific consumer research</p>	
<p>Promotion of the use of independent feedback platforms to help consumers to understand the quality of service offered by competing providers</p>	<p><u>Current actions (current position):</u></p> <p>1. Note Rules requirement (Rule 12) for attorneys to have a complaints handling process and that attorneys must indicate that they are regulated by IPReg (Rule 18)</p> <p><u>Planned actions:</u></p> <p>2. IPReg supports the use of independent feedback platforms, particularly the feedback functionality of the Legal Choices website, and will encourage attorneys to participate in any third party independent feedback platforms. However, it views the introduction of specific feedback sites for attorneys as disproportionate and going beyond what is necessary to protect consumers for the following reasons:</p> <ul style="list-style-type: none"> • the size of the attorney community in the context of the size of the legal advisory market generally • given the small overlap between the specialist services offered by attorneys and the key domestic legal services 	<p>Implementation of Approved Regulators' 3-year plan for Legal Choices and social media, led by SRA</p>	

	<p>addressed by the Market Study Report, feedback is likely to be intermittent and could therefore cause distortion</p> <ul style="list-style-type: none"> • the very low level of historic complaints to IPReg and the Legal Ombudsman suggests that there is no ill to be cured • the existence of data publicly available e.g. on IPO website of attorneys' clients as the identity of the firm/attorney needs to be included in trade mark and patent applications <p>3. IPReg to encourage attorneys to use IPReg logo (which many already do) as an assurance of standards</p>		
<p>Facilitation of the development of a dynamic intermediary market through making data more accessible to comparison tools and other intermediaries</p>	<p><u>Current actions (current position):</u></p> <p>1. Note current availability of spreadsheet with attorneys' details held by IPReg available on IPReg website</p> <p><u>Planned actions:</u></p> <p>Given the current availability of attorneys' details (see above) it is difficult to justify on proportionality grounds any further specific actions for attorneys - IPReg will carry out a watching brief and contribute with other Approved Regulators to the joint co-ordinated proposals (led by SRA) to develop a single joint online register</p>	<p>Implementation of joint co-ordinated 3-year plan (led by SRA) to develop joint online digital register</p>	
<p>Making better information available to assist consumers when they are identifying their legal needs and the types of legal services providers (both</p>	<p><u>Current actions (current position):</u></p> <p>1. Information already available on IPReg website on descriptions of patent and trade mark attorneys together with signpost to Legal Choices ("Need a different type of lawyer?") and sections "Got an Idea – Do I Need an Advisor?" which includes "How do I keep on</p>		

<p>regulated and unregulated) who can help them.</p>	<p>top of costs?” dealing with matters such as the difference between an estimate and a quote</p> <p>2. Information already available on IPO https://www.gov.uk/government/organisations/intellectual-property-office and Cracking Ideas http://crackingideas.com/ websites on IP specifically</p> <p>Planned actions:</p> <p>3. Key here is Legal Choices website: IPReg’s view is that it and the other Approved Regulators must work to increase awareness and use of it, as to do so successfully would potentially help to deliver all of the Recommendations. Market Study Report itself only mentions Legal Choices website under this heading/outcome</p> <p>4. IPReg supports Approved Regulators’ co-ordinated joint Three Year Objectives plan for Legal Choices (led by SRA) to increase consumer engagement in the legal market, including the need for targeted research on how Legal Choices can be made more relevant and useful, so that it becomes the default access to information about the provision of legal services, building on existing success⁸. In particular, such research should concentrate on the degree to which social media is critical for helping consumers (particularly younger consumers) identify their legal needs. It is difficult to see how any independent action by IPReg alone will deliver this outcome, given the amount of information on attorneys’ services and IP already generally available. IPReg has already committed funds accordingly.</p>	<p>3. and 4. - Authorised Regulators’ co-ordinated joint development and implementation of 3-year plan for Legal Choices led by SRA</p>	
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⁸ CMA slide pack on recommendations, slide 8: “Scope for engaging with consumer groups in developing content and engaging with vulnerable customers and those without internet access”

	<p>5. IPReg will propose the addition of more relevant content on IP matters particularly on branding and trade mark protection.</p> <p>6. IPReg to recommend signpost to IPO and Cracking Ideas sites on Legal Choices.</p> <p>7. IPReg has created a dedicated reserve of £35,000 to fund its share of the Legal Choices upgrade and the digital register.</p>	<p>5. and 6. Appropriate input to Legal Choices Editorial Board consistent with 3-year plan as above</p>	
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