

IPReg

**The Intellectual Property Regulation Board -  
Annual Report 2017**

**August 2018**

## 1. Introduction

1.1 This report gives an overview of the Intellectual Property Regulation Board (IPReg) and what it does. It sets out the work that IPReg did in 2017 in the context of significant change in the organisation.

1.2 The report sets out for stakeholders the commitments identified in the IPReg Business Plan 2017 and progress against them, regulatory and business activities undertaken, admissions and complaints data, as well as financial information pertaining to the 2017 calendar year.

1.2 IPReg was set up in 2010 by the Chartered Institute of Patent Attorneys (CIPA) and the Institute of Trade Mark Attorneys (CITMA, ITMA having been afforded Chartered Status since then) to be the independent regulatory body for registered patent attorneys and trade mark attorneys. IPReg is responsible for all aspects of the regulation of the attorneys registered, and firms registered or licensed, with IPReg including:

- education and training requirements for qualification as an attorney;
- requirements for admission to the register for attorneys and firms;
- keeping the registers of attorneys and firms;
- setting the requirements for continuous professional development in order that the knowledge, skills and expertise of attorneys are maintained at an appropriate level;
- setting and maintaining a Code of Conduct and other rules and regulations which set out the standards required of those we regulate; and
- handling complaints of professional misconduct made against an attorney or firm regulated by IPReg.

1.3 IPReg's strategic direction is overseen by a Board, composed of a Chair (currently an Acting Chair) and four lay members (non-lawyers) along with three patent attorneys and three trade mark attorneys.

1.4 The IPReg executive team which takes forward IPReg's day-to-day operational work is a small team led by the Chief Executive Officer, Fran Gillon, and Head of Registration, Shelley Edwards. These roles are in turn supported by a Chief Finance Officer, an Assurance Officer, an Authorisation Officer, an Administrative Officer and a Director of Policy.

## 2. Acting Chair's Report

2.1 As I sit and write my 2017 introduction, I cannot help but observe that I didn't expect to be providing this input when I took on the role of Acting Chair in November 2016.

2.2 However, 2017 has been characterised by a series of senior personnel and organisational changes, (both at executive and Board level), a raft of externally-driven consultations (excluding the inevitable Brexit issues), the identification of a number of opportunities for improvement in our internal processes (driven by "fresh management eyes") and an urgent need to build a more constructive and collaborative relationship with our two Approved Regulators, CIPA and CITMA. In short, the need to ensure continuity and underpin our business-as-usual activities, whilst identifying and prioritising substantive changes, meant that we deferred the recruitment of a new permanent Chair. We have recently announced the appointment of The Rt. Hon. Lord Smith of Finsbury as our new Chair and we look forward to him taking over the reins in September.

2.3 The IPReg Board has been delighted to secure the services of Fran Gillon (CEO) and Shelley Edwards (Head of Registration). They have not only strengthened a much under-resourced executive

team but have also brought a wealth of regulatory experience and expertise to our operation. With their appointment comes the double-edged sword of fresh views and the identification of a number of opportunities to improve our systems and tighten our processes. They have also confirmed the need to renew our (now very old) database system.

2.4 Throughout 2017, all of the regulators have been diligently working to implement the recommendations of the 2016 CMA legal services market study. There has been considerable thought about how best to address the transparency requirements and the need for pre-engagement consumer information identified by the CMA. I therefore found it interesting that the analysis of “first tier” complaints made to our regulated firms (see item 4:6) confirms that the four main issues complained about are: cost information, failure to advise, failure to keep informed and delay/failure to progress; in total these account for 147/183 (80%) of all the complaints reported to us.

2.5 Our Board membership has also undergone a considerable change in 2017/early 2018. We lost the services of four time-served and experienced experts: David Bream, Dave Musker, Deborah Seddon and James Turner. We are extremely grateful for their contribution to the foundation, activity and success of IPReg and thank them for their willing and extensive participation. We welcome four new members: Caroline Seddon, Samantha Funnell, Emma Reeve and Alan Kershaw; these appointments bring additional expertise and have greatly improved the Board’s diversity.

2.6 It is also appropriate that I recognise the efforts and contribution of the existing Board members: Jonathan Clegg, Nick Whitaker, Nigel Robinson, Keith Howick and Alicia Chantrey. Throughout this very challenging and dynamic period in IPReg’s history, they have all been very active in supporting the Board and the executive on numerous tasks, projects and ad-hoc panels. I thank them for the considerable time, effort and personal commitments they have made.

2.7 Despite a very challenging and different year to the one envisaged in the 2017 Budget submission, our income exceeded expenditure by just under £7k. We have identified a number of opportunities for improvements to our regulatory processes. For 2019, we believe that these will require additional resources in the executive office, underpinned by major changes to our IT systems. Some of this can be financed by drawing on our historically high reserves but, during the summer we will be consulting on the impact that the work we need to do could have on practice fees.

2.8 Finally, I must take the opportunity to thank CIPA and CITMA. Without the active support and encouragement of the presidents: Stephen Jones (CIPA), Kate O’Rourke (CITMA) and Tania Clark (Kate’s successor) we would not have made the substantive progress in rebuilding the relationship between our organisations. There are now regular CEO meetings which complement the quarterly Chair/President sessions and we have developed a much more effective working relationship which recognises the Chartered Institutes’ role in the legal regulatory framework without compromising our regulatory independence.

### **3. Chief Executive’s Report**

3.1 The first thing that struck me when I became Chief Executive on 1 August 2017 was what a high quality, experienced and committed team I would be working with. The Board has also been very supportive and engaged, with a wealth of experience in the IP industry and beyond - an invaluable support network for me as a new CEO.

3.2 As well as getting to know the team and the Board, one of my priorities has been to establish a good working relationship with CIPA and CITMA; the Chief Executives of the three organisations now meet regularly. I have also had meetings with the IPO and the IP Federation to understand what they do and how we can work together.

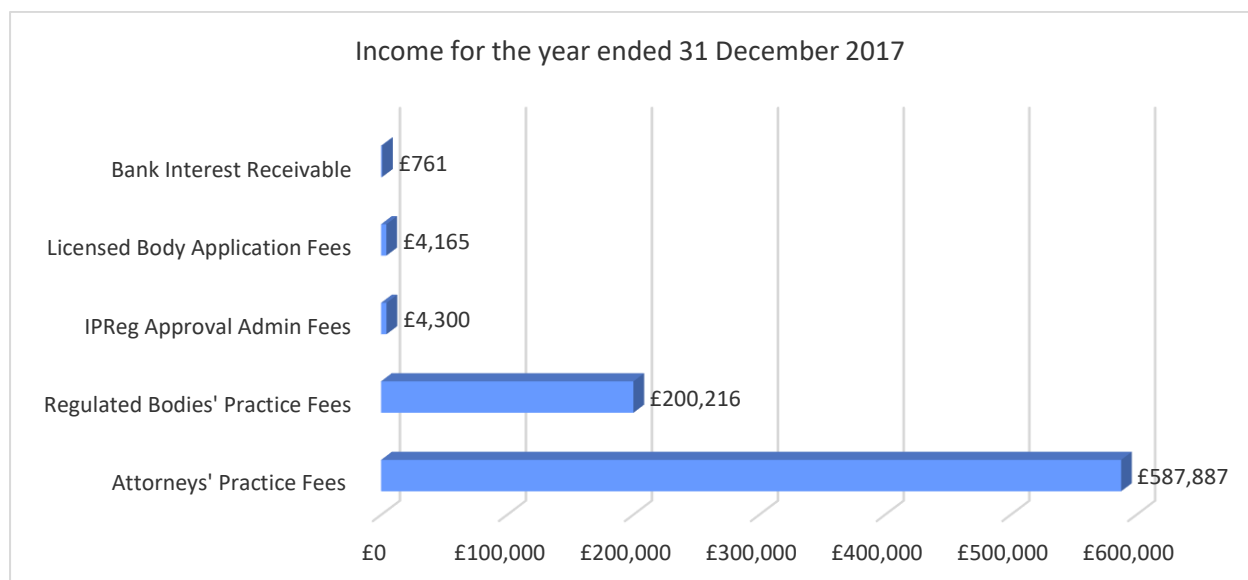
3.3 The advantage of being new to an organisation is the ability to ask “why do we do it like that”? I have asked that question a lot – as has Shelley Edwards, who started in October as Head of Registration. The answers, together with the many constructive suggestions from the team about better ways of working, led me to the view that we need to review the way we conduct our core regulatory functions in order to improve our overall effectiveness and efficiency. This will help to ensure that we understand the market(s) that we regulate, identify areas where consumers are most at risk and target our regulatory activity. Inevitably, this means that some of the work that had been planned for 2017 (and 2018) has not taken place. The [draft 2019 Business Plan](#) sets out in more detail what we plan to do next year.

3.4 The team has nevertheless been very busy and this report sets out the highlights of what they have achieved during what has been a difficult year for all concerned.

#### 4. 2017 – Key Facts and Figures

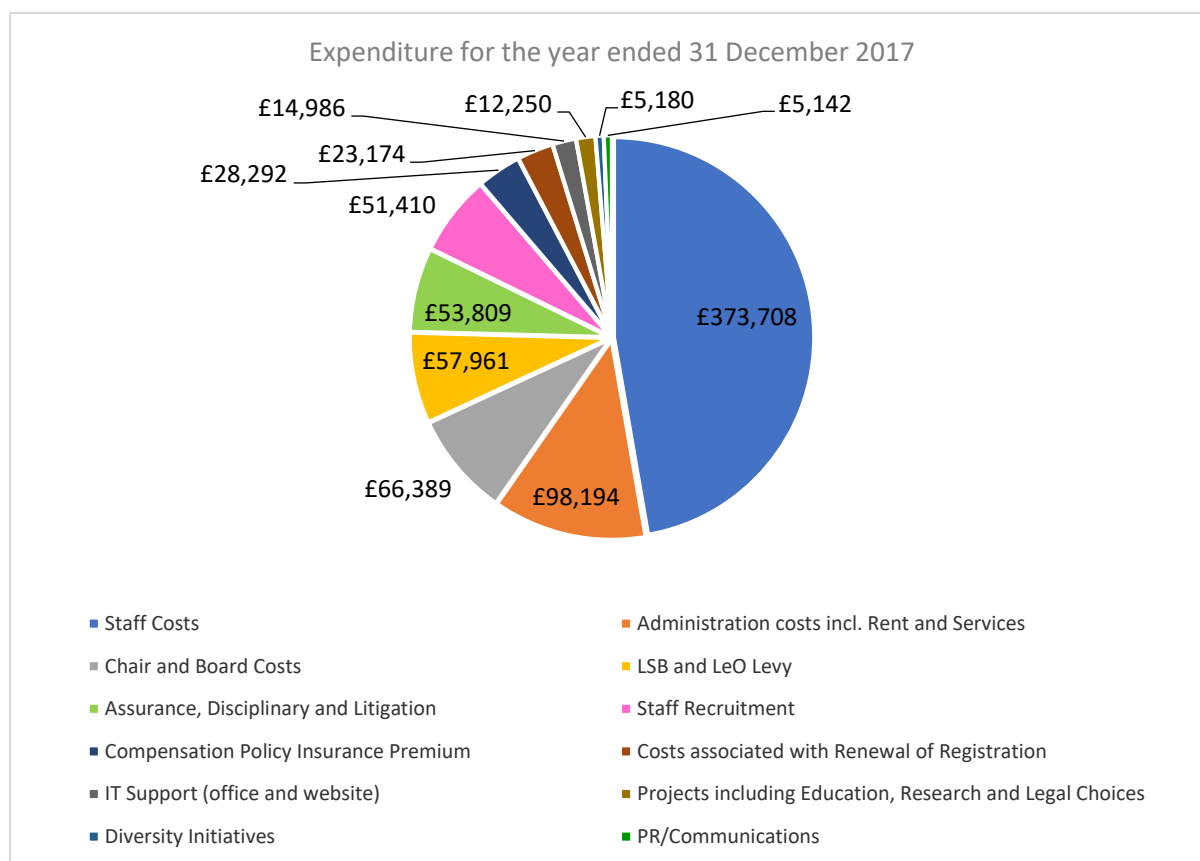
##### Financial

**4.1 Income:** IPReg’s income derives mainly from practice fees paid by registered attorneys and firms, with some limited additional income from (for example) application fees from firms applying to be licensed. IPReg is financially independent. Since January 2010, IPReg has received no financial assistance from either CIPA or CITMA; nor does IPReg remit any practising fees to either CIPA or CITMA. A breakdown of Income for the year ended 31 December 2017 is shown below:



The “IPReg Approval Admin Fees” include fees that we charge for approving certain roles such as Head of Legal Practice and Head of Finance and Administration, as well as issuing Higher Courts Litigation/Advocacy Certificates.

## 4.2 Expenditure



A short explanation of each of these expenditure types is provided in the following section.

### Staff Costs

Staff costs include salaries, employer National Insurance and pension costs. Additionally, staff costs for temporary administrative support during the annual re-registration process are also included.

### Administration Costs incl. Rent & Services

This includes general office costs, rent, rates and service charges and legal costs not associated specifically with regulatory matters.

### Chair and Board Costs

Chair and Board members' fees and expenses as well as associated costs for the recruitment of new Board members.

### Legal Services Board & Legal Ombudsman Levy

In common with other legal regulators, IPReg pays a "levy" to cover the costs of the Legal Services Board (LSB), the body with statutory oversight of the legal regulators. The levy is based on IPReg's proportion of the total number of regulated legal professionals.

Additionally, the running costs of the Legal Ombudsman are met by regulated lawyers using a three-year reference period ending 31 March to calculate the average number of complaints made to the Ombudsman. Each regulator contributes a minimum of £5,000 unless there were 10 complaints or

more in the rolling three-year period in which case the cost increases. IPReg pays the minimum £5,000.

#### Assurance, Disciplinary & Litigation Costs

This encompasses both external legal costs and internal costs (such as Board member fees and expenses for committee hearings as well as associated costs such as photocopying and room hire etc.) associated with assurance and disciplinary matters as well as external legal costs associated with licensing firms.

#### Staff Recruitment

As noted in the Chair's Report, Fran Gillon was appointed as CEO following Ann Wright's resignation. At this time a new role, Head of Registration, was created to strengthen and increase the resilience of the executive team. Other recruitment costs included cover for maternity leave and an officer on a short-term contract to deal with the development of IPReg's Action Plan in response to the Competition Market Authority's Report (see item 5.7) as well as assisting with other regulatory matters.

#### Compensation insurance policy premium

This expenditure relates to an insurance premium for the Compensation Policy which IPReg maintains. Through this policy, grants may be made to compensate for losses or hardship suffered by consumers as a result of fraud or other dishonesty, or a fraudulent or dishonest failure to account for money by a registered firm or its employees and managers or a registered attorney; such losses are not covered or required to be covered by professional indemnity insurance.

#### IT Support (office and website)

Support, maintenance of the office IT platform as well software licences. Also included are costs to maintain and develop the website and IPReg Pro.

#### Projects including Education, Research & Legal Choices

This includes costs associated with education projects, the contribution towards the client care letters study undertaken by legal regulators in 2016 and first funding instalment for the Legal Choices website (a joint project undertaken by all the legal regulators to provide information for consumers about the type of legal services that are available).

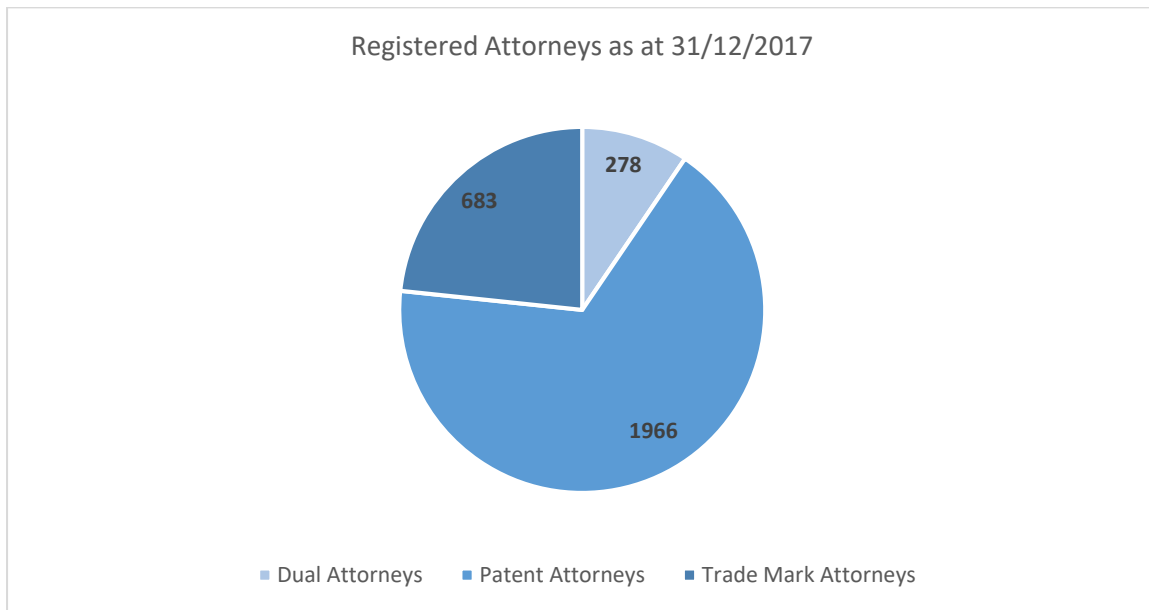
#### Diversity Initiatives

IPReg has a statutory objective to promote a diverse legal profession and accordingly supports initiatives aimed at promoting this objective. See item 5.5 for information on diversity initiatives that we have funded.

#### PR/Communications

Costs associated with Board members meeting external parties including the profession and students.

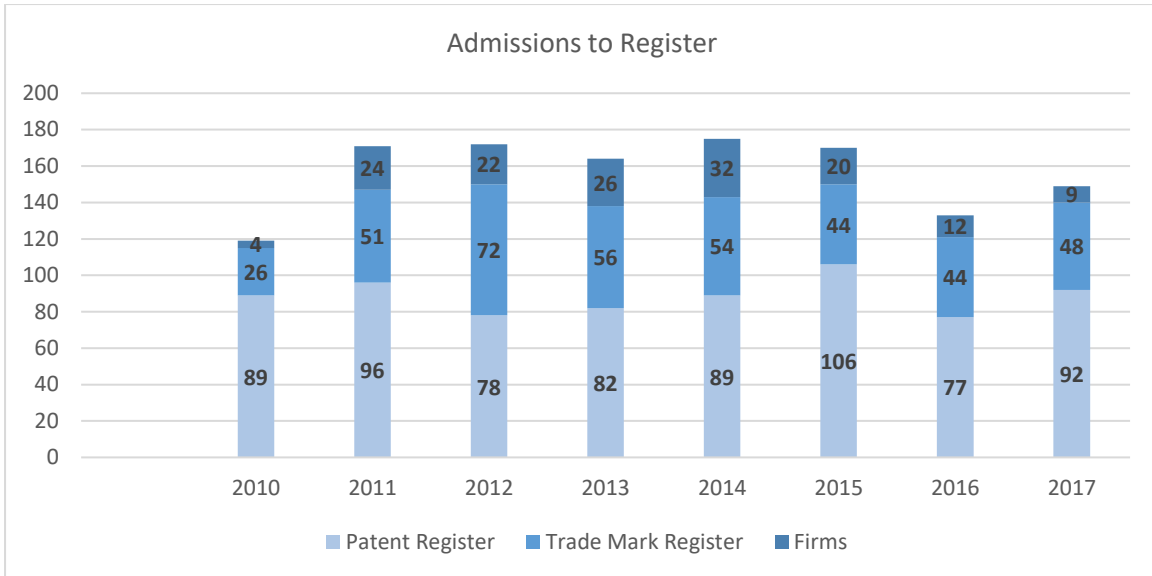
**4.3 Who we regulate:** as at 31/12/2017 there were 2927 registered attorneys:



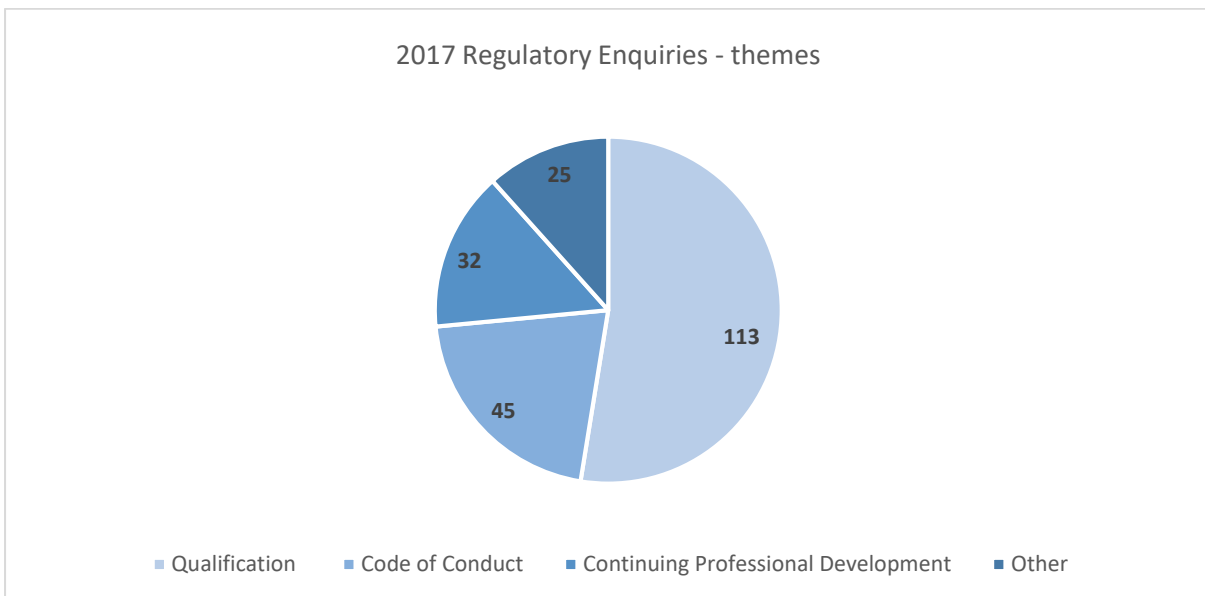
There were 278 (9.5%) dual-registered attorneys, 1966 patent attorneys (67.2%) and 683 trade mark attorneys (23.5%). Additionally, there were 229 registered firms providing intellectual property legal services.

**4.3 Admissions**

The bar chart below sets out the number of applications from individuals received by IPReg each year over the last eight years for admission to the patent attorney register and the trade mark attorney register. The number of applications received annually by firms that applied for entry onto one or both Registers is also set out. To be admitted to the register, attorneys must complete a rigorous examination and training programme; to remain on the register they must undertake further professional training each year. Successful admission to the patent and/or trade mark attorney register means that an individual or firm is registered with and regulated by IPReg and is subject to its rules and regulations. From a consumer protection perspective, using an IPReg-regulated attorney or firm affords consumers the confidence that in the event of any problem arising from the work carried out they will be protected by professional indemnity insurance and in some cases can complain to the Legal Ombudsman and/or IPReg. In addition, there are certain types of work (e.g. conduct of litigation) that only attorneys and firms registered with IPReg or another legal regulator can carry out.



**4.4 Enquiries to IPReg** - Annually more than 2500 emails are sent to the IPReg Info in-box ([info@ipreg.org.uk](mailto:info@ipreg.org.uk)). The majority of these are ‘business as usual’ administrative contacts, though approximately 200-250 of those emails each year are substantive regulatory enquiries. By this we mean enquiries relating to regulatory responsibilities and qualification and education pathways. In 2017, 215 substantive regulatory enquiries were received (an 18% decrease on the 2016 enquiry numbers):



IPReg replied to 95% of the enquiries within its 4-5 days target turnaround time. Of the 5% (11 enquiries) which did not meet the target, there were various reasons for the longer turnaround, including (but not limited to): the enquiry being a complicated/non-standard one, the individual best placed to make the response being on leave, elements of the enquiry needing to be referred to other bodies.



## 4.5 Complaints made to IPReg

IPReg's Code of Conduct and its other rules and regulations set out the standards it expects those it regulates to meet. If we receive information that a regulated person may not have met those standards, may have breached one of our rules, or whose character and suitability has been called into doubt, we consider whether action needs to be taken under the Disciplinary Procedure Rules. We do not investigate or take action in relation to disputes about billing or service-related complaints unless those concerns raise serious misconduct issues. We can deal with complaints about registered attorneys, registered bodies (including alternative business structures), as well as managers and employees of registered bodies.

The disciplinary process is governed by the Disciplinary Procedure Rules 2015. Complaints are considered by a Case Administrator who may seek additional information before closing a complaint or referring it to the Complaints Review Committee. The Complaints Review Committee considers whether there is a *prima facie* case to be answered and may close the case or deal with it summarily if it would be disproportionate to refer it to a full disciplinary hearing before the Disciplinary Board. The Disciplinary Board is an independent Board made up of lay and professional members of the Joint Disciplinary Panel and has a wide range of sanctioning powers up to and including imposing fines of up to £5 million and removal from the register(s).

In 2017, IPReg received six complaints against registered attorneys or firms:

- Acting in a conflict of interest (3)
- Unprofessional practice (1)
- Poor service standards (including delay, failure to inform, overbilling and/or poor communication) (2)

Of these, one complaint is still under investigation. The remaining five were closed due to:

- Not falling within IPReg's jurisdiction (2 – with 1 case referred to CIPA for consideration)
- The complainant not exhausting the regulated person's complaints procedure (1)
- The complainant not making a formal written complaint and /or not providing further additional information as requested (2)
- The Complaints Review Committee considered one case which was dealt with summarily. There were no hearings before the Joint Disciplinary Board.

During 2017, IPReg sought external legal advice about some complaints that it received; this cost £36,089. We anticipate that our reliance on external support will be reduced following the appointment of the Head of Registration given the experience of the post holder.

## 4.6 First Tier Complaints

### First Tier complaints

Registered persons and firms must have effective procedures in place to deal with complaints. IPReg's Code of Conduct requires all regulated persons in private practice to have an established procedure for dealing with complaints. Clients must be informed at the point of engagement that the complaints-handling procedure exists, and written details of the complaints procedure must be provided to the client upon request. A complaint made by a client to the registered person or firm, is known as a "first tier complaint".

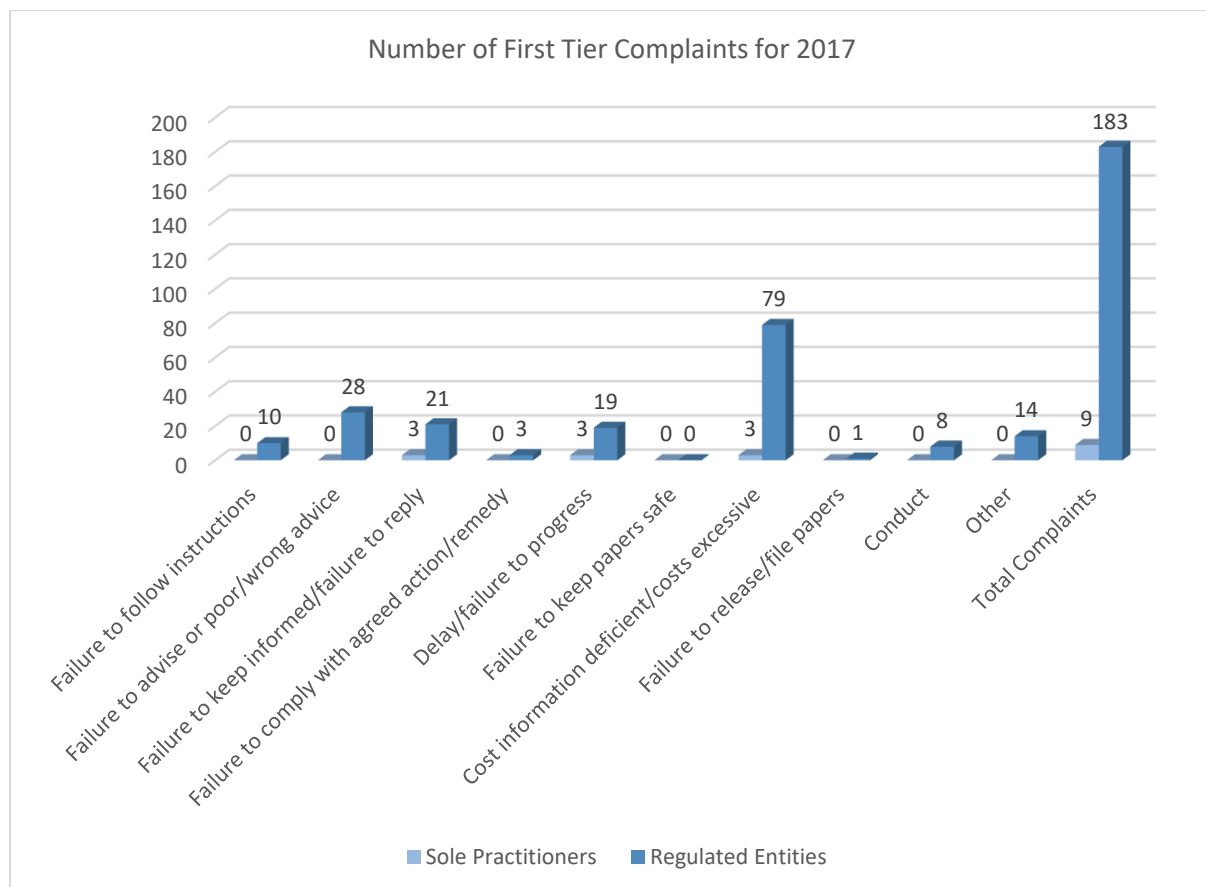
During our annual registration renewal process, we require all firms or sole practitioners in private practice to provide us with information about the number of complaints they have received during the previous year. This allows us to ensure that we can identify good practice and address systemic and specific issues in first-tier complaints handling. If we identify what appears to be widespread or systemic issues, we can require the firms or sole practitioners to provide us with information to allow us to investigate this. The data did not indicate a need to exercise this power in 2017.

The Legal Ombudsman ultimately has the jurisdiction for dealing with service complaints when a complainant is not satisfied with the way a regulated attorney or firm has handled their complaint (IPReg has the jurisdiction only to deal with professional misconduct complaints).

Complaints statistics for the reporting year ended 31 December 2017, were collected from:

- Firms – 228 firms were registered, of which 47 reported one or more complaints to us
- Sole practitioners -137 sole practitioners were registered, of which 3 reported one or more complaints to us.

The bar chart below shows the breakdown of these complaints:



The four main areas of recorded complaints:

- Costs information deficient/costs excessive (82 total complaints)
- Failure to advise or poor/wrong advice (28 total complaints)
- Failure to keep informed/failure to reply (21 total complaints)
- Delay/failure to progress (19 total complaints)

As noted in the Acting Chair's introduction, this data supports the Competition and Market Authority's recommendation for increased transparency of costs and service prior to instructing an attorney (see item 5.7). The reported very low level of complaints against sole practitioners is an issue that, in due course, we will consider further.

## 5. Highlights from 2017's Business Plan activities

### 5.1 Introduction

With the arrival of a new Chief Executive and a Head of Registration, the 2017 Business Plan activities were re-evaluated and new priorities were determined. This meant that resources were necessarily deployed to other activities, such as reviewing the way we conduct our core regulatory functions. In addition, the inevitable disruption caused by both the previous Chair and CEO resignations, a vacant post during much of 2017, together with recruitment of the new CEO, Head of Registration and new Board Members meant the focus of our resources was on education, training and annual registration. Consequently, not all Business Plan activities could be taken forward. This section highlights some of the work that we have undertaken:

### 5.2 Competency training

This work looked at whether guidance was needed for supervised pre-qualification training. In late 2016, a small steering group of attorneys, Board members and IPReg staff was set up to explore this. Following research and (informal) consultation, ultimately the group determined there was need for a [Draft Practical Training Protocol Template](#), which included promotion of the [Competency Frameworks](#) setting out the general and technical skill sets within which a trainee attorney is expected to work when undertaking IP legal services.

The Draft Protocol was developed as a voluntary guidance tool for trainees in, and supervisors of, the pre-qualification practical training experience. Its aim is to help those who consider they would benefit from having a written framework in which to train/be trained and which can be altered and added to as required by the parties signing up to it. In July-August 2017, the draft protocol template was shared with CIPA, CITMA and the IP Federation, and in the autumn with trainees via the CIPA Informals Committee and the Trade Mark Professional Practice Skills Certificate. Trainee feedback was enthusiastic and constructive, reinforcing the need for such a template. We published the template for use in May 2018.

### 5.3 Research

In keeping with the Business Plan, we published research undertaken for the LSB in 2016 by Economic Insight into [unregulated legal service providers](#). This research included investigating the types and numbers of unregulated providers of intellectual property services.

We also published some guidance on [Cyber Security](#) including examples of cyber-attacks, their potential consequences on business and the steps that can be taken to prevent such attacks. We also provided links to online resources that advise on preventing cyber-crime.

We said that we would look to provide resources to small and newly set up businesses with intellectual property to protect. Accordingly, we created a dedicated webpage for [small businesses](#) linking to resources and information particularly relevant to these consumers.

## 5.4 Continuing Professional Development

Our Business Plan indicated that we would benchmark the IPReg CPD obligations against those of other legal and non-legal providers, review and publish our findings and consider (and consult on as necessary) any proposed changes. Although some desktop benchmarking against the CPD arrangements of the legal providers was undertaken in spring 2017, resource constraints meant that we have been unable to undertake any further work on this issue to date.

## 5.5 Diversity initiatives

The IPReg Diversity Initiatives Fund was increased to £30,000 (from £10,000). In spring 2017, we awarded a £5,000 grant to [Generating Genius](#), which works with young people from disadvantaged backgrounds who are talented in STEM (Science, Technology, Engineering, Mathematics), sponsoring two “STEM in Actions” Days. This links into the Patent Attorney qualification route which typically requires the individual to have successfully completed a STEM degree before qualifying as a patent attorney.

With other legal regulators, we also sponsored a logo on the July 2017 London Pride parade bus.

## 5.6 Patent examinations

In August 2017, the [FD4-P6 Infringement and Validity Exam Research Report](#) was published. This independent research was funded by IPReg and jointly commissioned by IPReg, CIPA and the Patent Examination Board (PEB) to investigate the poor candidate success rate over a number of years in this examination. IPReg has commended the report’s suggestions to both the PEB and CIPA. We welcome the PEB and CIPA work in taking the suggestions forward. We are pleased to note that the PEB Self-Assessment Report, published in July 2018, reports the FD4 Study Guide has been edited and updated for the 2018 examinations and there is a planned webinar for mentors who support FD4 students.

## 5.7 Improving transparency for consumers

We still have a significant amount of work to do to implement the recommendations of the [Competition and Markets Authority’s Legal Services Market Study Report](#). The report called upon legal regulators 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”.

We want relevant attorney firms to increase the breadth and transparency of pre-engagement online information – such as costs and service descriptions - to help inform the purchasing decisions of individual and small business consumers.

In October 2017, IPReg published its [Transparency Consultation](#) setting out its proposals on how best to implement the CMA’s recommendations. We will be consulting soon on the next steps, including draft guidance for firms.

## 5.8 Accreditations

We said we would continue the cycle of the accreditation of the examination agencies that are currently approved by IPReg for providing attorney qualification pathways: Bournemouth University,

Brunel University, Queen Mary University London, Nottingham Trent University and the PEB. In keeping with our rolling reaccreditation programme, we arranged for independent specialist assessment of the educational provision of Queen Mary London. We received the PEB's application for accreditation in late summer. However, due to extenuating circumstances beyond IPReg's and the PEB's control, the assessment itself had to be deferred to 2018.

## 5.9 Events and networking

Board members have continued to attend events and conferences to promote awareness of IPReg, its regulatory approach and to help gain market insight. In 2017, Board members attended ten events including student induction days and multi-stakeholder meetings with business and industry representatives.

## 5.10 Other activities

### Independent regulation

In November 2017, the LSB published a consultation on whether changes were needed to its [Internal Governance Rules \(IGRs\)](#). These are rules that the LSB has made setting out requirements that must be met to ensure the independent exercise of regulatory functions. The consultation explored various options for enhancing regulatory independence. [IPReg's response to the consultation](#) was published in February 2018. We consider that new and clearer, outcomes-focused IGRs are needed, supplemented by a Statement of Policy.

### Proportionate enforcement action

In reviewing how we conduct our core activities, we identified that we had no power to suspend individual registrants. Following [consultation, launched in December 2017](#), IPReg applied to the LSB to seek approval for a power to suspend individuals from the register in the certain circumstances: non-payment of practice fees; non-compliance with (or failure to provide evidence of) CPD requirements; non-compliance with (or failure to provide evidence of) professional indemnity insurance. The LSB approved the application in February 2018. The change has already helped to improve the rate at which annual returns are completed and information about CPD and PII compliance is provided to us. We are considering whether we need to tighten up further and improve overall compliance in future.