

## The Patent Regulation Board and the Trade Mark Regulation Board

### Minutes

Thursday 11 July 2024 at 1.00 p.m.

Gatehouse Chambers, Gray's Inn, 1 Lady Hale Gate, London WC1X 8BS

#### Attending:

Rt Hon Lord Smith of Finsbury / Chris Smith (IPReg Chair and Education Working Group)  
Justin Bukspan (Risk Working Group, Education Working Group, Technology and Innovation Working Group)  
Alan Clamp (Education Working Group)  
Katerina Kolyva (Education Working Group)  
Victor Olowe (Risk Working Group Chair)  
Samantha Peters (Risk Working Group, Technology and Innovation Working Group)  
Henrietta Rooney (Education Working Group) – attending remotely  
Harpreet Dhaliwal  
Gary Wilson (Technology and Innovation Working Group)

**In attendance:** Fran Gillon (CEO), Shelley Edwards (Head of Registration), Victoria Swan (Director of Policy), Karen Duxbury (Finance Officer – for items 3 and 5), Gurdas Sully (Education and Diversity Officer – for item 8)

**Guest speaker:** Griffin Stone Moscrop & Co (External Auditors – for item 3)

1. No apologies had been received.
2. No conflicts of interest were declared.

#### **Items for Decision/Discussion**

#### **3. Presentation of IPReg Limited 2023 Accounts**

- 3.1. The Finance Officer presented the paper. Two material adjustments had been made: one related to an under-provision of an accrual for disciplinary costs, and another to an over-provision on the cost of the CRM enhancement.
- 3.2. The auditor stated that IPReg had detailed notes in place so that somebody else could take over day-to-day accounting in the absence of the Finance Officer. The publication of the governance handbook demonstrated an attention to detail and a recognition of the importance of good governance.
- 3.3. The auditor explained that the company remained in a strong financial position. The income increase was in line with expectations. Consultancy costs had decreased from £51,000 the previous year to £20,500 this year; this was because a member of staff who had been working on a fixed term contract had reached the end of her contract. The IT systems overhaul was responsible for a significant increase in costs, as the project had still been ongoing at the end of 2023. The organisation's accounting policy was to make a full

provision against any disciplinary cost awards made; while a provision had been made in 2023, the disciplinary costs had been recovered. Due to the cash held in bank accounts, the organisation had received a significant level of interest income.

3.4. The Board discussed the following matters:

3.4.1. A Board member noted that the reference to the minutes of management and shareholder meetings should be removed from the letter of representation. The Chair stated that the appropriate wording would be 'including minutes of all relevant meetings'.

3.4.2. A Board member queried the statement in the letter of representation that the Board had disclosed the results of its risk assessment relating to fraud. The statement seemed to indicate that there remained the possibility of fraud. The auditor explained that, in the pre-audit communications, the Board had been asked for an assessment of the extent to which the organisation had been exposed to fraud. The audit had then considered the override of controls and checked that procedures had been appropriately followed. While an audit could not check everything, the auditors were comfortable that there was nothing fraudulent occurring.

3.5. The Board decided:

3.5.1. To approve the 2023 financial statements and the letter of representation (subject to the agreed amendment), for signature.

**Action: Finance Officer to return signed documents to the auditor for their signature and subsequent filing of the financial statements at Companies House.**

**4. Minutes of May 2024 Meeting and Matters Arising**

4.1. The minutes were approved.

**5. 2025 Business Plan, Budget and Practising Fees**

5.1. The CEO presented the paper. No new activities were proposed given the volume and nature of the existing activities and in particular the education project. The paper proposed linking the fee increase to the current rate of CPI, which was 2%. The move to a smaller office would save about £15,000 per year, and £14,000 had been added to the 'other income' category. Therefore, a 2% fee increase would still result in a projected surplus of £50,000.

5.2. There was concern among frontline regulators about the potential cost of the Regulatory Information Service. This was work that the LSB was insisting needed to be carried out and would mean significant changes to the Legal Choices website, providing additional information about those being regulated. The Legal Choices budget had been adjusted to enable £43,000 to go towards the next stage of the project and no additional contribution was currently needed from IPReg, but the cost of future work could be disproportionate to the benefit to consumers in the IP sector.

5.3. The paper also proposed abolishing the 'sole trader employing others' category, which currently included only one attorney. The CEO suggested that it was no longer necessary to proceed with a planned review of the remaining practice fee categories. The consultation would be published on 15 July, with a consultation period of just over six weeks. It was necessary to consult during summer so that the fees could be approved by the LSB in time for collection to begin in early December.

5.4. The Board discussed the following matters:

5.4.1. A Board member stated that it was important to consider the level of the litigation reserve, as legal costs were increasing. The CEO stated that litigation reserve was already at a high level to act as a deterrent, although increasing them further could be considered.

5.4.2. Board members noted that the proposed fee increase of 2% was low, particularly given the potential risks relating to cyber, AI, legal costs and the education project. The Regulatory Information Service was difficult to budget for and could cost considerably more than expected. Last year, the Board had discussed the need to avoid always tying fee increases to CPI. The CEO stated that IPReg had sufficient reserves; the LSB had previously indicated that IPReg should use those reserves in order to keep fee increases low. All legal regulators would have difficult decisions to make if the costs of the Regulatory Information Service were significant.

5.4.3. A Board member asked how the LSB levy would be impacted if the SRA took over regulation of CILEx members. The CEO explained that the levy was determined by the number of authorised persons each regulator had each year, so IPReg would be unaffected.

5.4.4. A Board member queried the rationale behind postponing the review of practising fee categories. The CEO stated that an overhaul of the practising fee categories was originally proposed as part of the review of regulatory arrangements because IPReg had received feedback that the categories did not reflect all current ways of working. However, any overhaul would involve a significant amount of work on the CRM system, and the relatively small number of attorneys affected did not justify the cost. The Head of Registration explained that the original intention had been to review the categories as the IT system moved from Drupal 7 to Drupal 10, but this had not proved possible. The current fee categories were not set in any regulatory arrangements, giving IPReg greater flexibility. Aligning fee categorisation with risk and PII had been considered, but this was not urgent as people were accustomed to the current categories.

5.4.5. A Board member suggested that the Executive team could consider whether a poll could be set up to capture responses via email. The CEO stated that the feasibility of capturing such comments could be looked at.

5.4.6. A Board member stated that consultation should reflect the fact that the Board proactively took responsibility for performance assessment; it was not just a case of responding to the LSB's requirements. The CEO agreed that performance assessment was the Board's responsibility. However, a performance assessment framework that was specific to IPReg would probably differ from the framework imposed by the LSB. IPReg would be able to draw up more targeted and sector-specific performance requirements if it had the freedom to do so. The Head of Registration noted that some trade mark attorneys had asked in previous years why they were paying for work that was targeted towards patent attorneys.

5.4.7. A Board member asked whether benchmarking against fee increases at other regulators had been conducted. The CEO stated that the SRA was the only regulator to have consulted so far. The paper referenced the proposed increase in SRA compensation fund contributions.

5.4.8. Board members discussed whether the proposed 2% increase would be sufficient to finance all the business plan activities. Board members emphasised the need to ensure that the planned work on education was sufficiently well funded to enable external expertise to be used. They also noted that the cost of external legal support for conduct and disciplinary cases was increasing generally and that we could not rely on always being awarded costs. Board members also discussed the reaction that a larger increase might generate from the regulated community. Overall the Board considered that proposing an increase of 3% in the consultation would be proportionate.

5.4.9. A Board member asked if there was an overdraft facility. The CEO stated that there was no overdraft facility. If IPReg overspent, it would then have to use its reserves. Any decision whether to get an overdraft was reserved to the Board.

5.4.10. A Board member asked if enough money was being spent on research. The CEO stated that David Bish could provide support on any smaller pieces of additional research that were identified.

5.4.11. A Board member noted that the impact assessment was still reliant upon 2021 diversity data and that it was important to explain why that data was still reliable. The CEO stated that the results from the 2024 survey were not yet available but that they would be incorporated into the final impact assessment which would form part of the application to the LSB.

5.4.12. The Finance Officer explained that the paper proposed a £90,000 adjustment to the reserves. The Board considered a further £50,000 adjustment.

5.5. The Board decided to:

5.5.1. Approve consultation on the business plan with a 3% fee increase;

5.5.2. Agree the adjustments to the reserves to transfer £140,000 from Income and Expenditure and reassigning £50,000 to the General Contingency Reserve, £35,000 to

Assurance Disciplinary & Litigation Reserve, £35,000 to IT/Website Reserve and £20,000 to the General Operational & Research Reserve.

**Action: CEO to finalise consultation document and publish.**

## 6. IT System Update

- 6.1. The Head of Registration explained that the new Drupal 10 platform had gone live the previous week. There were some minor issues ongoing, but IE Digital was acting responsively to fix them. Within the next four weeks, it was likely that everything would be resolved and the project could be concluded.
- 6.2. A Board member asked whether the Board would be informed of any compliance-related issues. The Head of Registration confirmed that they would be informed but the issues that had been identified so far were user-related.

## 7. Education

*Education review project*

*Recruitment to Head of Review project*

- 7.1. The CEO explained that interviews had taken place. The post had been offered to someone who had extensive experience of the education sector, apprenticeships, competency frameworks and excellent stakeholder engagement skills. Her experience would help reinforce IPReg's commitment to apprenticeships and increasing inclusion. The appointment would be for three days a week, initially for two years

*EQE mapping and exemptions*

- 7.2. The CEO reported that the IPReg staff would be working with Julia Gwilt to map the changes made to the EQE exams against IPReg's competency framework.

*Patent Examination Board (PEB)*

- 7.3. A meeting with the PEB had taken place to discuss concerns that had been raised with IPReg about the impact on trainees of the possible changes to all four final diploma exams from 2025; these included concerns about the lack of transitional arrangements. The PEB had agreed to publish a summary of each proposed change. A further meeting between IPReg and the PEB would be arranged to discuss the ongoing concerns.

- 7.4. A Board member asked if the PEB was obliged to notify IPReg in advance of any significant changes. The CEO stated that it would be reasonable to expect an examination provider to flag potential changes in advance. The Head of Registration explained that the accreditation handbook set out the goals of the accreditation exercise. IPReg also had an accreditation withdrawal procedure. A Board member noted that, unlike in the case of the final examinations, there were existing alternatives to the PEB for the foundation

examinations. The views of trainees would contribute to a better understanding of current sentiments among those preparing for examinations.

### *Apprenticeships*

7.5. The CEO explained that the trailblazer group to discuss a potential apprenticeship route to qualify as a patent attorney had been paused to allow the involvement of more people. A meeting had taken place about two weeks ago, attended by some regulated firms, people with experience of developing apprenticeships, and a representative from IfATE. The firms in attendance had been enthusiastic about developing a graduate-level apprenticeship. IPReg would be attending a further meeting later in July. While this was an employer-led process, IPReg would facilitate and support the work where possible.

## **8. Diversity Action Plan 6-month Review**

8.1. The Education and Diversity Officer presented the paper. The diversity survey was currently live. IPReg was part of a senior leaders' diversity thinktank that was discussing a profession-wide approach to gathering diversity data. The experiences from IPReg's diversity survey would feed into that process. The LSB had appointed a new diversity lead and was proposing wider discussions about diversity monitoring across the sector. The LSB's aim was to review its expectations of regulators. This had been put on hold due to the general election, but updates were likely to be provided at the upcoming diversity forum meeting. The LSB would also present the results of a recent neurodiversity survey undertaken by Neurodiversikey and the implications and possible learnings for the regulated legal sector.

8.2. The Head of Registration noted that the diversity survey had gone live on 2 July and would remain open for a month. She provided the Board with the most recent results. There had been a 26% response rate so far. Following suggestions made by Enventure who were conducting the survey, some questions had been added or adjusted since the 2021 survey, including new questions about neurodiversity and geography. Enventure was providing updates every few days and headline reports once a week.

8.3. The Board discussed the following matters:

8.3.1. The Chair noted that the figures in the survey for those who were the first people in their family to attend university had been high in the previous survey and looked similarly high this time.

8.3.2. A Board member noted that it was unclear whether deadlines had been missed on the action plan. It was also unclear how inclusion was being achieved through these actions. The Education and Diversity Officer stated that the diversity action plan was an ongoing document; some actions were due to be addressed later this year. The aim was for the diversity work to influence other workstreams; this could be measured by seeing how stakeholder engagement changed the thinking across all workstreams.

8.3.3. A Board member stated that it would be useful for the Board to see more precise dates relating to the action plan. The Education and Diversity Officer stated that expected implementation dates could be provided at the next Board meeting.

**Action: Education and Diversity Officer to update the action plan with dates prior to September Board meeting.**

## 9. Risk Working Group

### *Analysis of Board and Team priorities exercise*

9.1. The CEO presented the paper which was based on responses to Board and Team members being asked what their three main concerns about IPReg's work were. There was significant overlap between the concerns of the Board and the Team. The exercise had been a useful sense check against the new draft risk register.

9.2. The Board noted the paper.

### *New risk policy and risk register*

9.3. The Director of Policy presented the paper. As part of the comprehensive governance review undertaken by the Governance and Transparency Working Group, the Board had decided that there should be a review of IPReg's approach to risk. The Risk Working Group had begun by considering a list of almost 50 risks. Following several iterations, there were 12 proposed risks for the new risk register. Sayer Vincent had recommended the use of a traffic light system to encourage transparency on each risk. Planned controls for mitigating each risk had been identified. The purpose of the risk management policy was to enable stronger accountability regarding the approach to risk. While the risk policy was public facing, the risk register would be brought to the Board every six months to ensure that the risks remained relevant. Red risks would continue to be considered at each Board meeting and then shared with CIPA and CITMA as part of the arrangements under the Internal Governance Rules.

9.4. The Board discussed the following matters:

9.4.1. The Chair asked whether red risks would be shared with CIPA and CITMA even where there were planned controls to reduce the risk level. The Director of Policy confirmed this. If there was a residual red risk, this would be identified to CIPA and CITMA as well as to each Board meeting.

9.4.2. The drafting of the risk that considered the Board's obligations under section 28 of the Legal Services Act 2007 that it must, so far as is reasonably practicable, act in a way (a) which is compatible with the regulatory objectives, and (b) which IPReg considers most appropriate for the purpose of meeting those regulatory objectives. The CEO explained that the Risk Working Group had followed the advice of Sayer Vincent that drafting should be clear as to the nature of the risk to facilitate appropriate management of it.

9.4.3. The Chair thanked the Risk Working Group, including former Board members, for its work on the new risk policy and risk register.

9.5. The Board decided:

9.5.1. To approve the new risk policy and risk register, subject to the addition of an action about working with other front-line regulators.

**Action: Director of Policy to finalise the risk register and publish the risk policy on the website.**

## **10. IPReg 2023 Annual Report**

10.1. The Director of Policy presented the paper. The publication of the report this year was timed to coincide with finalisation of the 2023 accounts. The report included new performance data, including on complaints handling times by IPReg. Such information had previously been collated for the performance management dataset based on each financial year, as had been required by the LSB. The intention was to continue reporting performance management data in the annual report, comparing directly against previous years. Other new features included in the report were a Board members' expenses report and information about Board meeting attendance. LSB requirements throughout the calendar year had been identified so that a comparison could be made with IPReg's work programme. The report would be professionally redesigned and published on the website.

10.2. The Board discussed the following matters:

10.2.1. A Board member noted that the Board attendance data should include information about when members had joined the Board, making it clearer how many meetings they could have been reasonably expected to attend.

10.2.2. A Board member asked whether the report should also look forward to the key focus areas for next year. The Chair noted that this was reflected in his foreword. The Director of Policy added that strategic priorities had been set out and these were linked to working group summaries where appropriate. Board members suggested that in future reports it might be worth considering whether there should be a forward look section.

10.2.3. A Board member asked who the main readers of the report were likely to be. The Director of Policy stated that a news item would be published on the website to draw the attention of all stakeholders. The primary readers of the report were the regulatory community; the report should provide them with transparency on how their practising fees had been spent.

10.2.4. A Board member asked if IPReg had received any feedback on its annual reports in recent years. The Director of Policy stated that no specific feedback had been received. It might be possible to gather data on how many times documents had been opened on the website.



10.3. The Board decided:

10.3.1. To approve the adoption and publication of the 2023 annual report.

**Action: Director of Policy to arrange for the report to be finalised and published.**

## 11. Complaints Update

11.1. The Head of Registration presented the paper. A decision had been made on one additional case; the closure documents for that case had been drafted. Following the recent disciplinary case and the findings of an independent panel, the registrant's removal from the register had been ordered. The registrant had engaged a solicitor, and an appeal based on the costs award was possible. IPReg would resist the appeal and legal counsel was currently drafting IPReg's grounds for that.

11.2. A Board member asked whether an applicant who lost an appeal could then appeal against the appeal costs. The Head of Registration explained that, although the final right to appeal was to the First Tier Tribunal, nobody had ever pursued that option.

11.3. A Board member asked if there had been any opportunity for mediation and settlement. The Head of Registration explained that the regulatory arrangements (including those for disciplinary hearings) had been changed during the course of the investigation into this complaint. While consensual disposal was possible at the independent case examiner stage, it would normally be the case that only the full independent disciplinary panel would make decisions in cases of alleged dishonesty given the serious nature of those allegations and the likely higher sanction that would be imposed.

## 12. CEO's Report

*MoJ – increasing judicial diversity – expanding opportunities for attorneys*

12.1. The CEO presented the paper. IPReg had a positive meeting with the Ministry of Justice (MoJ) to discuss expanding the eligibility for judicial appointments. The Regulatory Forum with CIPA and CITMA had agreed to make a joint submission to the MoJ.

*CIPA and CITMA*

12.2. CIPA had recently conducted a diversity survey; once the results had been analysed, they would be shared with IPReg for the purposes of a comparison. CIPA and CITMA had set up AI taskforces and were considering how AI might impact their membership. CITMA had identified that the *pro bono* recognition list set up by the attorney general's *pro bono* committee was currently limited to barristers and solicitors; CITMA was keen to see whether eligibility could be broadened.

*IPReg Limited – Articles of Association*

12.3. The CEO stated that the Articles of Association should be brought to the September Board meeting.

12.4. The Board discussed the following matters:

*Technology and innovation working group terms of reference*

12.4.1. A Board member asked whether it was necessary to specify tangible deliverables for the Technology and Innovation Working Group. The CEO stated that, when the Working Group convened, it could develop suggested deliverables for consideration by the Board.

*Regulatory performance*

12.4.2. A Board member noted that the LSB's letter on regulatory performance assessment referred to high levels of transparency. Perhaps the LSB could be asked for advice on what those high levels of transparency should look like. The Director of Policy noted that IPReg's approach to drafting Board papers was considered to be an area of strength in relation to transparency of decision making. The LSB's board papers had been used as a source of information in the governance review. The CEO stated that the LSB's letter might have been aimed at other organisations, but IPReg could ask the LSB whether any improvements were needed.

### **13. LSB Consumer Empowerment Policy – Progress Update**

13.1. The Director of Policy presented the paper. The LSB was requesting that, by the end of September, all regulators should undertake a regulatory performance assessment assurance mapping against the 20 characteristics in its performance management framework and its consumer empowerment policy statement. The LSB considered that collectively the regulators had failed to deliver the Regulatory Information Service and any meaningful quality indicators. Although the SRA, CLC and CILEx Regulation regulators had previously taken forward a pilot study on the feasibility of developing quality indicators for conveyancing, this had not been pursued.

13.2. In the LSB's recent performance assessment, IPReg had been commended for its consumer transparency leaflet which had been developed with advice from the Legal Services Consumer Panel. IPReg would conduct a thematic review of the new transparency provisions that had been introduced in July 2023. A desktop benchmarking exercise against the Consumer Panel's good practice indicators had also been undertaken.

13.3. In 2022, IPReg provided the LSB with an action plan which set out how it would meet the LSB's requirements on consumer empowerment. A progress update on that action plan had also been provided at various meetings since then. All IPReg's specified timeframes had been achieved. The five outcomes and the specific items listed in the LSB's policy statement had also been reviewed. The LSB wanted all regulators to help develop quality indicators in the context of a single digital register which would be accessed through Legal Choices. However, quality indicators had presented challenges for all the legal regulators. The LSB had recently issued a first-tier complaints policy statement which set out new requirements for regulators including requiring them to collect data from the firms they

regulate about how many first-tier complaints had been resolved within an eight-week timeframe. IPReg currently collects first-tier complaint themes annually and publishes a summary of them in the annual report.

13.4. The paper suggested engaging with firms to explore their insights into what information about quality could be useful for consumers. We would also set you the LSB's new requirements on first-tier complaints.

13.5. The Board discussed the following matters:

13.5.1. A Board member noted that complaints data could demonstrate where there were problematic areas within the sector. It would be useful to consult more widely than firms and to put out a broader call for evidence, as regulators in other industries might have valuable feedback.

13.5.2. Board members discussed various approaches that might be used to gather information about what users of IP legal services might find useful as a quality indicator. However, as a regulator which operated in a predominantly business to business sector, it was unlikely that firms would want to share commercially confidential information which they would view as giving them a competitive edge.

13.5.3. The Director of Policy noted that firms could be asked about what clients were indicating was important to them. Putting out a call for evidence would be a useful starting point. A Board member noted that IPReg's approach needed to be more bespoke than other regulators because of its sector.

13.6. The Board decided:

13.6.1. To conduct a broader discussion with stakeholders about what quality indicators could be helpful to users of IP legal services.

#### **14. Board Effectiveness Review – Appointment**

14.1. The CEO presented the paper. IPReg had committed to undertaking an externally conducted review. Discussions had taken place with four firms. Although the costs of the quotes varied widely, the approaches were broadly similar. A review would normally include questionnaires and interviews with Board and senior team members and external stakeholders. The costs tended to increase depending on the number of interviews conducted. A Board meeting would be observed; a working group meeting could be observed as well. A report including recommendations would be provided at the November strategy morning. The firms offered varying levels of subsequent support to review the implementation of recommendations.

14.2. The Board discussed the following matters:

14.2.1. The different levels of experience in the legal sector that each firm had;

14.2.2. The cost quoted by each firm and the value for money that it represented;

14.2.3. The value of existing experience with frontline legal services regulators and the consequent ability to benchmark IPReg's effectiveness against other similar organisations.

14.3. The Board decided:

14.3.1. To appoint Independent Audit to conduct the Board effectiveness review.

## **Items to Note**

### **15. Action Log**

15.1. The action log was noted.

### **16. Finance Report**

16.1. The finance report was noted.

### **17. Regulatory Statement**

17.1. It was confirmed that, except where expressly stated, all matters were approved by the Patent Regulation Board and the Trade Mark Regulation Board.

### **18. Any Other Business**

18.1. There being no other business, the meeting closed at 16.27.