

Response to the LSB's consultation on proposed guidance for the new regulatory objective on economic crime

February 2025

Introduction

1. The Intellectual Property Regulation Board (“IPReg”) is the regulatory body of Patent Attorneys & Trade Mark Attorneys in the UK. We set the education and training requirements for entry into these professions, and the requirements for ongoing competence. We also authorise the registration and licensing of firms providing IP services. We work to protect consumers of legal services in the UK by setting and maintaining a Code of Conduct, and principles of ethical behaviour, which those regulated by us must comply with. We investigate complaints and take appropriate disciplinary and enforcement action where required.
2. We welcome the opportunity to respond to the LSB’s consultation on its proposed guidance in relation to the new regulatory objective on economic crime. We are supportive of the need for guidance to assist the legal regulators with introducing a proportionate and targeted response to any identified risks relating to the facilitation of economic crime by those they regulate.

Our response to the consultation

Question 1. Do you agree that guidance with outcomes is the right approach to take to assist regulators to pursue the new regulatory objective alongside the others in section 1 of the Act?

3. We agree that the provision of guidance with outcomes is the correct approach for the LSB to take to assist regulators to pursue the new regulatory objective.

Question 2. Are the four outcomes we have identified in the guidance the rights ones? Are there any others we have missed?

4. We have some specific comments in relation to outcome two, but we agree that the four outcomes in the aggregate cover the range of responses necessary to assist the regulators, including IPReg, in complying with the obligations imposed by the new regulatory objective. We do not consider that any other outcomes are necessary.

Question 3. How might the LSB, approved regulators and/or regulators better support the sharing of case studies? What other information should also be shared to support meeting the new regulatory objective?

5. It is likely that the individual regulators will from time to time identify case studies that relate to economic crime which they wish to make public. However, there may also be

situations where a relevant case study, or other type of learning, cannot be published, and so a facilitated way of sharing these would likely be beneficial. One approach would be for the regulators to share such case studies and learning (whether otherwise published or not) by email. Another more involved approach could be for the LSB and the regulators to collaborate on establishing a platform for information sharing.

6. We note the expectation in paragraph 20 of the draft guidance that regulators work both collaboratively with other legal and non-legal regulators as well as others who are experts in risks relating to economic crime. We consider it would assist for information to be shared that relates particularly to risks being identified by other regulators and actors.
7. We also note the expectation in paragraph 22 of the draft guidance that regulators work collaboratively where possible, with the aim of standardising approaches to addressing instances or risks of economic crime. Given this, it would be beneficial for the LSB to proactively share with regulators any relevant 'best practice' it considers has been established.
8. It may also be helpful for a cross-regulatory group to be established which has a particular focus on sharing information regarding economic crime risks and the approaches being taken by each regulator in line with the final guidance.

Question 4. Do you know of any case study examples that would be useful to share, that point to how legal professionals may knowingly or unknowingly facilitate economic crime?

9. We are not currently aware of any case studies that relate specifically to IPReg's regulated community.

Question 5. Do you agree that undertaking a risk analysis will enable regulators to target their approaches for their regulated communities most effectively?

10. Undertaking a risk analysis may be the appropriate first step for IPReg to take. It will be for other regulators to decide what is the most appropriate way for them to meet this particular objective. It might be beneficial for the regulators to share their initial risk assessments with each other, together with subsequent updates to the analysis as and when these are available. A cross-regulatory group (see paragraph 8, above) may facilitate this.

Question 6. Do you have any other comments on this proposed outcome?

11. No, we consider that the proposed outcome and the expectations set out in paragraphs 19 and 20 of the proposed guidance are appropriate and proportionate.

Question 7. Do you agree with the proposed outcome for regulators to help their regulated communities understand the risks they may face concerning economic crime, and support them to avoid facilitating economic crime?

12. We agree that the wording of outcome 2 is appropriate, as we consider our regulated community (in common with those of the other legal regulators) cannot fail to benefit from information and support in acting in a manner that upholds the rule of law and adhering to the professional principles and other regulatory obligations.
13. However, we think that the expectations set out in paragraphs 21 and 22 of the draft guidance imply that new standards must be developed in response to the risk assessment conducted in line with outcome 1. For our regulated community, where appropriate analysis and evidence is likely to demonstrate that the risks of the community facilitating economic crime are low, we may consider that imposing new standards is disproportionate.
14. We consider our existing overarching principles are sufficiently broad in scope so as to set the appropriate standards for our regulated community. We offer our regulated persons guidance, which helps inform them in more detail about expectations on specific topics. We therefore would suggest that the wording of the expectations is broadened to include the possibility that providing guidance and information to authorised persons, rather than solely introducing new standards, would be sufficient to evidence pursuit of this outcome that is in line with the expectations of guidance. This approach would reflect the statutory requirement in LSA s28 that it is the IPReg Board (not the LSB) that must decide what is the most appropriate way to meet the regulatory objectives.

Question 8. Do you have any other comments on the proposed outcome?

15. No, we have no further comments on the proposed outcome.

Question 9. Do you agree that an outcome relating to monitoring and enforcement will help regulators detect and prevent economic crime?

16. We agree that where standards are introduced, monitoring compliance in respect of those standards as well as taking enforcement or disciplinary action in relation to any breaches is a proportionate outcome. Where new standards are not introduced, such as where existing standards or obligations are relied upon to obtain the same outcome, proportionate monitoring will also be possible to implement. We anticipate that monitoring and enforcement action are likely to assist in the overall objective of detecting and preventing economic crime.

Question 10. Do you have any other comments on the proposed outcome?

17. No, we have no further comments on the proposed outcome.

Question 11. Do you agree that an outcome around continued monitoring and evaluation will help ensure any measures regulators decide to put in place are effective to address economic crime into the future?

18. We agree that proportionate and targeted monitoring and evaluation of our approach should provide evidence that it is effective in preventing and detecting economic crime.

Question 12. Do you have any other comments on the proposed outcome?

19. No, we have no further comments on the proposed outcome.

Question 13. Do you agree with our proposed plan for implementation?

20. Given the proposed plan to monitor and assess the use of the proposed guidance via the LSB's Performance Assessment Framework, and in consideration of the fact that there may be changes to the draft guidance following analysis of the consultation responses, we consider it would be reasonable for the LSB introduce a delay to the guidance coming into effect following publication of the final version of the guidance.

Question 14. Do you have any comments or concerns about the equality impacts of our proposed guidance?

21. We have no comments or concerns about the equality impacts of the proposed guidance.

Question 15. Do you consider we have identified the right groups, or do you have any evidence relating to the potential impact of our proposals on other groups with certain protected characteristics, and any associated mitigating measures that you think we should consider?

22. We consider that the right groups have been identified. We have no evidence in relation to other groups.

Question 16. Are there any wider equality issues and interventions that we should take into account?

23. We do not think there are any wider equality issues that should be taken into account.

Question 17. Do you have any comments on the potential impact of the draft guidance, including the likely costs and anticipated benefits?

24. We agree that the introduction of new outcomes has the potential to increase burdens on authorised persons and so we are pleased to see that the LSB has recognised, both as part of its impact assessment and also within the statement of purpose within the draft guidance itself, that any activities that are introduced under this guidance should be proportionate to any specific risks identified within our regulated community. We welcome the implication that where a regulator identifies through its risk assessment that the risks of facilitation of economic crime within its regulated community are low, it would not be appropriate or proportionate to require authorised persons to comply with additional monitoring and evaluation activities.

25. We accept and agree that where any additional burden is introduced, this will be offset by the public interest goal of helping to reduce the wider cost and burden of economic crime activities.

Question 18. Do you have any other comments about the proposed guidance?

26. We have no other comments to make about the proposed guidance.