

The Patent Regulation Board and the Trade Mark Regulation Board**Minutes****Thursday 8 December 2022 at 12.00 pm**

Orwell Room, 20 Little Britain and online

Attending:

Rt Hon Lord Smith of Finsbury (IPReg Chair)
Justin Bukspan – attending remotely
Sam Funnell (Data Working Group Chair)
Alan Kershaw (Review Working Group Chair)
Victor Olowe
Samantha Peters (Governance Working Group Chair)
Emma Reeve
Caroline Seddon (Education Working Group Chair) – attending remotely
Nigel Robinson – attending remotely

In attendance: Fran Gillon (CEO), Shelley Edwards (Head of Registration), Victoria Swan (Director of Policy)

1. Apologies - no apologies were received.
2. Notification of any conflicts of interest - no conflicts of interest were declared. The Chair of the Governance Working Group declared working with another organisation using Equantiis but this was not considered to be a conflict.
3. Minutes of November meeting - the minutes of the November meeting were agreed.

3.1 Matter Arising – the Board clarified that when considering the responses to IPReg's information request on compliance with the sanctions framework, it noted that there are a small number of regulated sole traders and that, whilst they may not have systems checks and processes in the same way that larger firms do, they know their clients well and their approach is therefore proportionate. The Board noted that the SRA has published its sanctions guidance which was helpful and that we had included a link to it on our website.

Items for decision/discussion**4. Website upgrade**

Janice Chasmer and Simon Adams (Equantiis) joined the meeting.

4.1 The Board noted the paper that set out that in February 2022 we were informed by the firm that built our new CRM and website (MillerTech (MT) – now part of ClearCourse) that the platform on which it is built (Drupal 7) would not be supported after November 2022 and would be replaced by Drupal 9 (although this has subsequently been put back by 12 months). The change meant that a full

re-write of the website would be required (i.e. it is significantly more complex than a migration). In addition, because the website links through a portal (also built on Drupal 7) to the CRM, the portal would also need to be replaced by a Drupal 9 portal. MT said that the cost of this work would be around £40k. IPReg consulted on this in the context of the 2023 practising fees.

4.2 The Board meeting agreed that we should work with Equantiis (who as Purple advised us on the new CRM and website) to establish our options. A presentation by Equantiis was considered by the Board. It identifies the business need to consider the replacement of Drupal 7 and an initial analysis of the possible options for IPReg to move forward, including the identification of high-level costs, benefits and risks.

4.3 Equantiis went through the 3 main options:

Option 1 - No immediate action: given the financial and operational impact of this work, which had not been anticipated, this would give IPReg time to plan, prepare and consider its approach. However, there would be an increased risk of cyber attack given that the Drupal community would not be supporting Drupa 7 with security patches.

Option 2 – Migrate to Drupal 9 with MT: this would be a project of around 6-9 months. The benefit of this approach is that MT knows our current systems and have recently improved their level of engagement with IPReg. However, the updated cost of around £47k is for a lift and shift exercise only; any improvements to the user journey would cost more. In addition, MT are CRM specialists, CMS support and websites are not their main focus.

Option 3 - Wholesale change: this option would move the website to a firm with more specialist website focus. It would probably not use an open source product which was likely to mean a more commercially focused solution where changes are incremental and do not cause significant upheaval and cost. However, the overall cost is likely to be much higher. In addition, there is a risk that managing another party could introduce additional challenges for the IPReg team. When approached, potentially interested parties had suggested the Umbraco platform to link in with the existing Civi CRM.

Option 4 - a further option was suggested during the Board's discussion which was to undertake a lift and shift with MT and then look at alternative providers.

4.4 The Board discussed:

- a) The risk of taking on too much too quickly (Option 3 in particular) and the strain it would place on IPReg's resources during 2023;
- b) The fact that the website looks outdated and the user journey could be improved. In particular the Board was keen to improve the way in which information about the new regulatory arrangements is displayed and accessed;
- c) Whether there was any risk that the Civi CRM and/or Drupal would no longer be supported. Equantiis assured the Board that this was extremely unlikely given the number of users of both

platforms and their use by the not for profit sector in particular. The Board also noted that Drupal 10 was being developed but that moving from Drupal 9 to Drupal 10 would be less disruptive than the change from Drupal 7 to Drupal 9;

- d) Option 4 would provide a supported platform for the website, portal and CRM while providing more time to consider the significant cost of a new website (given the need to integrate with the Drupal portal and the CRM) and desirability of changes to the website. It would also mean working with an organisation that was familiar with the website and the CRM and the portal that links them;
- e) That changes to fee paying categories that had been consulted on as part of the Review of regulatory arrangements had been postponed due to the complexity of making such changes on the CRM and the need for further consultation;
- f) Getting user input on the website usability which would inform our decisions. Research done by Legal Choices could be helpful.

4.5 The Board agreed that Option 1 should not be pursued. The Board asked the CEO and Head of Registration to consider further what approach would be preferable in terms of budget and staff time. The Board agreed to reconsider the matter at future meetings.

Equantiis left the meeting.

Action: CEO and Head of Registration to consider further what approach would be preferable in terms of budget and staff time.

5. Compensation Fund – 1 year review report

John Birkenhead (IPReg's actuarial adviser) joined the meeting.

5.1 The Board noted the paper that set out that IPReg, in October 2021, established a compensation fund to ensure that we had compensation arrangements in place to enable claims from consumers and micro-businesses which had suffered a loss as a result of fraud or failure to account by a registrant.

5.2 The Board had considered it prudent to conduct a one-year review of the compensation fund. John Birkenhead (who advised us on setting up the fund) had drafted the actuarial report which the Board considered.

5.3 Mr Birkenhead reported that, as expected, there had been no claims on the fund. He noted that was now much more information about client money held by firms and the nature of the client base of most firms. He also drew to the Board's attention that Third Party Managed Accounts raised a number of risks and should be considered carefully before they are used by firms as an alternative to holding client money. Mr Birkenhead suggested to the Board that the SRA's recently published principles in relation to compensation arrangements - viability, stability, manageability, transparency

– with the addition of proportionality - would be appropriate for adoption by IPReg as part of its upcoming wider review.

5.4 The Board ask why, if higher levels of client money are held, the risk profile of the regulated community has not increased. Mr Birkenhead explained that the risk to the compensation fund remains low because it has a limit of £25k per claim and is capped at £100k. The Board also noted that the proposed change to the definition of client money in its new arrangements was likely to lower the overall total of client money being held in the sector.

5.5 The Board noted the one year report. It agreed to re-visit (as part of the wider review) whether obtaining a further report from another actuary would be proportionate to the size of the fund.

6. Governance Action Plan Implementation

6.1 The CEO presented the paper that updated the Board on progress implementing the Governance Action Plan.

6.2 The Board considered a draft Publication Policy which would enhance organisational transparency and support delivery of LSB's current well-led requirements in the performance framework on decision-making and regulatory approach.

6.3 The Board discussed the draft policy and agreed:

- a) That there was a need to distinguish between the overall policy on publications and the actual scheme of what we would publish. Subject to that, the document could be published;
- b) That there should be a review date for the policy/scheme once it had been finalised;
- c) That the approach set out in the draft did support the case for change to the website;

Action: CEO to make changes to the draft document and publish

7. Review of Regulatory Arrangements update

7.1 The CEO advised the Board that we have received an extension notice from the LSB. This was expected given the scale of the changes and meant that its final decision should be made by 7 February 2023. No follow-up queries had been received.

8. Complaints update

8.1 The Head of Registration presented the paper that provided an update on complaints received and processed by IPReg. The total number of complaints received in 2022 was 10 and the number closed for year was also 10. It is anticipated that there will be 4 cases being carried into the new calendar year, with 1 further case to be closed between now and the new year.

8.2 The Board agreed that it should follow its normal approach of pursuing the costs award in the decision on Mr Burrows.

The Board noted the paper.

9. LSB engagement

9.1 The CEO reported on:

- a) LSB's Ongoing Competence Statement of Policy – an update would be brought to the January 2023 Board meeting;
- b) LSB's Market Transparency Coordination and Oversight Group (2 December):
 - Consumer Empowerment Statement of Policy - the meeting had provided regulators with the opportunity to discuss their progress. IPReg had received a positive mention about its regulatory arrangements review and transparency work
 - Quality indicators, the LSB reported that it is working with the Solicitors Regulation Authority, the Council for Licensed Conveyancers and the Chartered Institute of Legal Executives with an emerging findings report expected in early 2023;
 - There had also been a Consumer Panel presentation on the importance of contextualisation of consumer information;
 - IPReg had offered to discuss with another regulator our approach to regulating sole practitioners;
 - The Legal Services Board had not received any tender responses for its proof of concept single digital register work.
- c) Performance Management Report – the first hybrid report has been delayed; the LSB is now planning to share this for fact checking by 12 December. The Board noted that we had advised the LSB that we would not consider it appropriate if IPReg was given an adverse rating for an element of the performance management framework for which it had not been asked for evidence from the LSB and that we would be happy to provide the LSB with any additional evidence it required to assist it in coming to a decision;
- d) The Board noted press reports about the possibility of LSB enforcement action against the BSB.

10. Sanctions

10.1 The CEO presented the paper which set out the progress that has been made on implementing IPReg's Sanctions Action Plan to ensure that its regulated firms are compliant with the Office of Financial Sanctions Implementation sanctions framework. An updated version of the Action Plan was considered by the Board which showed how the plan has been implemented and progress/evidence.

10.2 The key action that has been undertaken was to discuss with the Intellectual Property Office on issues raised by the responses to IPReg's information request to registrants.

10.3 The Board discussed the following:

- a) Additional expenditure may be needed to analyse publicly available IPO data on address for service. David Bish, our external market analysis and data expert may be able to provide support;
- b) Patent applications may be pending for a number of years and there is an additional time lag of around 18 months before they can be searched/seen. Pending applications would therefore not show up on publicly available data.

The Board noted the paper.

Items to note

11. Action Log

The Board noted the action log.

12. CEO's report

12.1 The CEO presented the paper which set out the main issues to bring to the Board's attention that are not subject to a full Board paper.

12.2 The Head of Registration reported that as of Monday 5 December, around £48,000 2023 practising fees had been collected through the annual renewal of registrations. Already 26.6% of individual attorney annual returns have been made and around 20% of entity returns (which can only be submitted after all attorneys in a firm have completed their individual annual returns). The Board noted that this was good progress in fee collection.

12.3 The Board discussed whether IPReg should renew the licence for its office. The CEO reported that she had visited other offices to compare price and services. Her negotiations with OSiT had resulted in an offer not to increase the licence and service fees. The Board agreed that the OSiT licence should be renewed for a further 12 months from 1 April 2023.

12.4 The Small Business Survey slides had been updated by David Bish to take into account further information from the LSB's 2021 survey. This indicated little change in the data between the 2017 and 2021 datasets. However, information about low legal confidence was not available in the 2017 survey. The new data indicated a significant difference between small businesses in the IP sector and the general population of small businesses. In the IP sector 2% reported having low legal confidence compared to 20% overall. In addition, 35% of small businesses in the IP sector had internal legal expertise compared to 6% in the general population. The Board noted that 28% of respondents had reported that their IP legal need concerned copyright; this is quite a specialist area and it may be

something worth considering in more detail in due course. The Board agreed to consider further its research priorities at the January strategy meeting.

12.5 The Board agreed that the year-end finance report should be deferred from the January 2023 meeting of Board to the March 2023 meeting of Board to allow sufficient time for its preparation given that January is in the midst of the fee collection process.

The Board noted the paper.

13. Working group reports

Education Working Group (EWG)

13.1 The Chair of the EWG presented the paper which provided an update on the activities and outputs of the EWG since those reported to the July Board meeting.

13.2 The Director of Policy informed the Board that the Patent Examination Board accreditation had been delayed at the request of the PEB to enable it to finalise its response to the assessors' draft report. The final report by the assessors is scheduled for the January 2023 Board meeting. The Board discussed whether there was any conflict with the new Patent Regulation Board member (currently an examiner for the PEB FD4 examination). The Board noted that she would have stepped down from her role at the PEB before joining the Board and that the risk of conflict was therefore minimised.

13.3 The Chair reported that Queen Mary University London, with a new Programme Director, are proactively improving their approach to dealing with the concerns that have been raised.

13.4 The Board noted that the PEB had queried the EWG's terms of reference and its status in requesting information to enable the assessors to draft their accreditation report. The Board was concerned that the PEB appeared to have resisted a number of requests for information including about the online examination paper uploading process which had reportedly caused problems for candidates. The Board considered it appropriate to review in due course the EWG's terms of reference and the scheme of delegation to ensure that it is clear that it acts on behalf of the Board.

The Board noted the paper.

Action: Review EWG terms of reference and the scheme of delegation.

Data Working Group

13.5 The Data Working Group Chair reported that it would be helpful for the January 2023 strategy session to discuss the role of the Group and the Board's priorities for data gathering.

14. Risk Register

The Board noted the red risk.

15. Complaints about IPReg

In terms of the Board's annual review of complaints about the organisation, the CEO reported that there have been no complaints about IPReg in previous 12 months.

16. Preparation for the January strategy morning

The Board noted the paper which set out the agenda and some suggested reading for Board members prior to the strategy morning in January 2023.

17. Regulatory Statement

Confirmation that, except where expressly stated, all matters are approved by the Patent Regulation Board and the Trade Mark Regulation Board.