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Consultation on withdrawal of accreditation

By email

Dear Fran

The Chartered Institute of Patent Attorneys (CIPA) is the professional body for patent attorneys in the UK and is the Approved Regulator for the profession under the Legal Services Act 2010. CIPA has delegated its regulatory responsibilities to the Intellectual Property Regulation Board (IPReg). This response to IPReg's consultation on the withdrawal of accreditation of a qualification pathway draws on CIPA's extensive experience as a professional body, supporting its members as they work toward the UK qualifying examinations and entry to the Register of Patent Attorneys, leading to Fellowship of CIPA. This response has been prepared by the Education Committee, on behalf of CIPA Council.

It is important to our members that suitable standards are applied to the qualification process to become a patent attorney. It is important to our members that those who are accredited to teach and examine those aspiring to this profession do so in a way which leads to good professionals. It is also important that, where our members seek university input into the education of their trainees, they get value for money.

Both the giving and withdrawing of accreditation is important. We would have expected that the ability to withdraw accreditation was already included (even implicitly) within the current procedures set out in the accreditation handbook. However, greater clarity and transparency around such a procedure is to be welcomed.

Where IPReg identifies a weakness, then we support the review and remedying of such a weakness. We are not currently aware of any issues which have given rise to this review and whether this consultation proposes outcomes that are proportionate to any issues raised.

Additionally, given that a loss of accreditation carries not only the loss of future income, whilst the relevant body may still have overheads to carry, but may also carry serious reputational damage and lead to calls for refunds or damages from trainees or their trainers, if IPReg is going to take this route, then the procedure needs to reflect that there is a transition between the role of IPReg in working with an accredited body to remedy any deficiencies and the role of IPReg to make a decision which can carry serious consequences. IPReg is a public body. The procedure set out in the Consultation Paper does not seem to take account of the potential remedy of judicial review by a body losing accreditation.

QUESTION 1: WHAT ARE YOUR VIEWS ON THE CIRCUMSTANCES IN WHICH ACCREDITATION WOULD BE WITHDRAWN?

CIPA considers that it is a matter for IPReg to define the circumstances in which it would wish to trigger application of the procedure defined in the Consultation Paper. To that end, it might have been helpful to see a proposed revision of the Accreditation Handbook, which includes more details on the relevant standards and for the inclusion of the withdrawal procedure within that document. We have noted that section 1 of the proposed Accreditation Withdrawal Procedure deals with accreditation and not with withdrawal, which may be confusing.

IPReg accredits different bodies for different matters. The PEB provides only examinations, providing the freedom for the profession to provide teaching at lower cost than attending a full course, whereas the other providers also provide teaching as well as examinations. If the examinations are testing students at the right standard, would IPReg also consider removal of accreditation if there an issue with style of teaching? Students do not necessarily understand the different roles of IPReg and any QAA body. Although this is mentioned in the Accreditation Handbook, this is not referred to in the Annex.

The circulation for comment of the Consultation Paper suggests that IPReg is sufficiently concerned by the standards of certain courses/exams that it is obliged to take remedial action in the guise of the Paper's procedure. CIPA considers that IPReg as regulator should provide some appropriately anonymised examples to enable CIPA and other interested parties to comment properly.

With reference to paragraph 13 of the Consultation (paragraph 3.5 of the procedure), we can think of no circumstances where there should be interruption of a candidate's progress through a course and examination. IPReg accredits the examinations and courses. Each of these run on an annual cycle, but only for part of the year. We would have expected that IPReg would be able to manage the process of the informal part of the review over a time frame which would enable one annual cycle to be completed. IPReg will already be aware how stressful students find the process of qualification and their reactions when there are changes in timetables, unexpected announcements or re-calculations of pass marks.

CIPA's members require certainty as they plan the training routes for their trainees. Any suggestion that an accredited course or examination might not take place is not acceptable to a trainee who has embarked on that course or enrolled for that examination – particularly in those instances where there is only one route to qualification. It is unacceptable that anyone who has taken an examination might not be entitled to their qualification if they have reached the accepted pass mark. There can be no extenuating circumstances which should interfere with the progress of candidates through their examinations. We trust that IPReg will find a different way to intervene in any such cycle and ensure that tuition and/or examinations are provided as contracted for by the students and their trainers.

QUESTION 2: DO YOU HAVE ANY COMMENTS ON THE PROPOSED PROCEDURE?

It is CIPA's view that the procedure described contains some potentially serious flaws which IPReg needs to address. The most significant of these are as follows:

- The procedure (paragraph 2.1) refers to a concern raised between accreditation periods. It is suggested that the IPReg Office or the IPReg Education Group determine whether there is a prima facie case justifying any action at all. Some concerns raised might be insubstantial or even the result of a complaint from a dissatisfied student which should be dealt with in a more appropriate forum.

- The Annex distinguishes “concerns” (paragraph 2.2) from “significant concerns” (paragraph 2.3). It would be helpful for that distinction to be clarified by way of example, not least as those complaining should have some idea as to which complaints would be actioned and which would not be taken further.

- How the paragraph 12 (paragraph 3.1 of the Annex) decision to withdraw accreditation operates needs to be clarified. Paragraph 3.1 refers to a decision to withdraw requiring the approval of the IPReg Education Group and the IPReg Board. Paragraph 3.3 refers only to a Board decision. Precisely what role does the IPReg Education Group play in decision making? What are its powers and function? These are unexplained – but this might be remedied if its remit and membership were published on the IPReg website. Is this a majority decision of the Group and the Board or does the Board’s decision have precedence? If the latter, is the decision a majority or a unanimous decision? Will the IPReg Chair have a role or be reserved to deal with any appeal? This needs to be set out.

- Notice (paragraph 3.1) to a course provider of a Board “discussion” (a proposal to withdraw accreditation) should be sufficiently detailed to allow the provider to submit a full and detailed response and should include the precise grounds of concern, with reference to the accreditation standards and requirements. The notice should make it clear who representations should be made to (the Education Group or the Board) and how those representations should be made. There should be a reasonable period (28 days is suggested) to allow this to happen. IPReg should also give serious consideration to allowing a course provider to attend the Board meeting to make representations, to answer any questions and to ensure the process is transparently fair.

- Any decision to withdraw accreditation should be a written reasoned decision with reference to the evidence on which it is based.

- Paragraph 3.3 provides for publication of a withdrawal decision potentially in advance of any decision to appeal (paragraph 3.8). That publication could have serious adverse consequences for a provider even if the decision is reversed on appeal. There should be no publicity until the procedure has run its full course.

- There is some confusion between the first part of the Consultation Paper and its annex over an appeal. The main part of the document refers (paragraph 14) to a “review”. The annex refers to an “appeal” which we take to be a reference to the “review” mentioned in paragraph 14. An appeal would normally be made on the basis that the decision (i.e. the paragraph 3.3 decision) was wrong, for example, because it gave insufficient weight to a provider’s evidence. In this case, however, something completely different is envisaged. A course provider faced with a decision to withdraw accreditation is obliged to present a “… case different and additional to that provided at item 3.1” (paragraph 3.8). This is not an appeal. It is an invitation to present something entirely new. That being so, should the Board not consider this as a new decision to be taken under paragraph 3.3?

- The procedure should allow a provider to appeal a decision to withdraw accreditation, where there are reasonable grounds to do so and without presenting a “… case different and additional to that provided at item 3.1”. Reasonable grounds may include the belief that the accreditation withdrawal procedure was not duly followed or that the evidence presented by the provider was not properly considered. Failure to provide a full and proper appeals procedure may increase the risk of a provider seeking Judicial Review of a decision to withdraw accreditation.

- Paragraph 14 of the main part and paragraph 3.8 of the Annex provide than any "review" (paragraph 14) or "appeal" (paragraph 3.8) will be undertaken by the IPReg Chair "in discussion with" the IPReg Executive team. If this is seen by IPReg as an appeal mechanism and if the Chair (as the Chair of the IPReg Board with a casting vote) or any members of the IPReg executive team were involved in the first decision to withdraw accreditation, this would amount to a fundamental flaw in basic procedural fairness. This part of the procedure dealing with an appeal is confused and needs to be re-thought.

QUESTION 3: IS FIVE WORKING DAYS AN APPROPRIATE TIMEFRAME FOR AN ATTORNEY QUALIFICATION PROVIDER TO PUT TOGETHER A (DIFFERENT) CASE FOR CONSIDERATION ON APPEAL?

On this, please see our comments above on the "appeal" part of the procedure.
In any event, 5 working days is unlikely to be enough time for a provider to assemble an entirely new case, which would probably entail contributions from many people and the drafting of a detailed and evidenced document. A six-week period is suggested as a more reasonable period.

I hope that you find CIPA's comments helpful in arriving at your final recommendations for the withdrawal of accreditation. Please do not hesitate to come back to me if you require any amplification or clarification.

Yours sincerely

Lee Davies
Chief Executive