

IPReg Character and Suitability Guidance

Who is this guidance for?

1. Those IPReg regulates and those who may wish to become regulated by IPReg.

Purpose of this guidance

2. This guidance sets out:
 - a. the factors IPReg will take into account when considering an application from an individual to become a regulated person. This includes applications for:
 - i. admission to the registers;
 - ii. the authorisation of role holders such as Head of Legal Practice (“HoLP”) and Head of Finance and Administration (“HoFA”)
 - iii. the authorisation of non-attorney individuals to own or manage licensed firms
 - b. the types of conduct that should be declared to IPReg in order that a full risk assessment can be made.
3. Those wishing to become regulated persons who fall within the categories above will need to make a declaration as to their good character and suitability to be regulated at the point of application. This guidance and the obligation to declare relevant matters, should be considered by individuals at the point of application¹ and where relevant, annually at the point of renewal of registration.

General principles

4. One of IPReg’s fundamental roles is to ensure that individuals entered in the patent attorney and trade mark attorney registers, those holding authorised roles such as HoLP and HoFA, and those non-attorney individuals who work within or own or manage licensed firms, have the levels of honesty, integrity and professional conduct expected by the public. IPReg must ensure that by granting authorisation, such regulated persons:
 - a. do not pose a risk to the public or the professions
 - b. will not diminish the public’s confidence in the professions
5. In making decisions about authorisation, IPReg must have confidence that the applicant is:
 - a. honest and trustworthy
 - b. willing to comply with IPReg’s regulatory arrangements and have in mind associated guidance
 - c. capable of responsibly managing financial affairs for themselves and clients
6. In making decisions about authorisation, IPReg will take into account the nature of the authorisation being sought (e.g. for admission to the register as a registered attorney or as a HoFA) and the applicant’s individual circumstances.
7. When assessing any application, IPReg will take into account all information it holds and may consider any failure by the applicant to provide information material to its assessment, as an attempt to mislead IPReg and refuse the application accordingly.

¹ Application to the register(s) including an application for restoration if an individual had previously been a registered attorney, and upon application to be a role holder or other authorised person.

8. IPReg will consider any information which is relevant to the assessment of an individual's character and suitability, and this includes behaviours or conduct inside and outside of professional practice.
9. In finalising this guidance, IPReg has had regard to its obligations in relation to the regulatory objectives set out in section 1 of the Legal Services Act 2007. By ensuring only those of appropriate character and suitability can become regulated persons, the following regulatory objectives are particularly engaged:
 - a. Protecting and promoting the public interest
 - b. Protecting and promoting the interests of consumers
 - c. Encouraging an independent, strong, diverse and effective legal profession
 - d. Promoting and maintaining adherence to the professional principles

Honesty and trustworthiness

10. Absent exceptional circumstances, IPReg is unlikely to be confident that an applicant has the requisite honesty and trustworthiness where they:
 - a. Have been convicted of, or accepted a caution for, a criminal offence involving dishonesty
 - b. Have been found dishonest or have had their integrity called into question in any civil judgement made by a Tribunal or Court
 - c. Have been found to have deceived or sought to have deceived others, such as an education provider or employer
 - d. Have knowingly used a protected professional title when not authorised to do so

Compliance with legal and regulatory requirements

11. Absent exceptional circumstances, IPReg is unlikely to be confident that an applicant will be able to comply with legal and regulatory requirements where they:
 - a. Have been convicted of an offence, particularly if it is associated with obstructing the course of justice
 - b. Have failed to disclose information to a regulatory body, including the Legal Ombudsman, or where they provided information which is false or misleading
 - c. Have breached a material requirement of a regulatory body, including the Legal Ombudsman
 - d. Have failed to comply with a reasonable request of a regulatory body, including the Legal Ombudsman

Management of financial affairs

12. Absent exceptional circumstances, IPReg is unlikely to be confident that an applicant is capable of managing responsibly their own or their client's financial affairs where:
 - a. They have been convicted of fraud or have been found liable for fraud in the civil jurisdiction
 - b. They have been made bankrupt, entered into individual voluntary arrangements or have unmanageable debts arising out of their own reckless, dishonest or incompetent behaviour
 - c. They have deliberately sought to avoid responsibility for their debts, including having a county court judgment or debt relief order imposed against them
 - d. There is evidence of recklessness, dishonesty or incompetence in relation to the management of finances, whether for themselves or another

Other public interest concerns

13. There may be other circumstances in which wider public interest concerns are raised because the applicant may pose a risk to the public or where their authorisation may damage the reputation of the professions. This might include where the applicant has previously acted in a way that is discriminatory or has demonstrated violent, threatening or harassing behaviour.

Mitigating and aggravating factors

14. Each application will be assessed on its own merits, considering the individual circumstances of the applicant, the role applied for or the nature of the application. Where there is any doubt as to the applicant's suitability to be a regulated person, the mitigating and aggravating factors in relation to the concerning behaviour will be weighed up.
15. The table below sets out some examples of what might be considered mitigating or aggravating factors when it comes to applying to be a regulated person:

Mitigating	Aggravating
Evidence that applicant has insight into behaviour and there is very little risk of behaviour being repeated	Applicant displays no insight into behaviour and there is little confidence that behaviour won't be repeated
Evidence that applicant has taken steps to remedy the behaviour	No evidence that applicant has taken steps to remedy behaviour
Evidence of remorse and where appropriate, reparation	Applicant has not demonstrated remorse or made reparation
Behaviour happened a long time ago	Behaviour is recent
Behaviour was a one-off incident	There was a pattern or several incidences of such behaviour
The behaviour was 'spur of the moment', opportunistic or as a result of a mistake or oversight	The behaviour was premeditated and intentional
The applicant was junior or of a young age	The applicant was senior and/or in a position of trust and/or involved misusing their position
No harm was caused to clients or others as a result of the behaviour	The behaviour caused harm to others, particularly clients

Applicant admitted poor behaviour and engaged appropriately with authorities	Applicant sought to cover up any wrongdoing, or to mislead or hinder any investigation into their behaviour
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Disclosure

16. When applying to be entered on the register of patent attorneys or trade mark attorneys, or when asking to be authorised as a HoLP, HoFA or a non-attorney owner or manager of a licensed entity, applicants will be asked to confirm that they have read this guidance.
17. As part of their application, applicants must disclose any information which might be relevant to their application including anything that suggests:
 - a. Their trustworthiness and honesty may be in question
 - b. They have previously failed to comply with legal and regulatory requirements
 - c. They have previously failed to responsibly manage their financial affairs or those of another
 - d. They may reasonably be considered to pose a risk to others
 - e. Their authorisation may damage the reputation of the profession(s)
18. This might be because of any of the examples set out above, or for any other reason which is not otherwise covered in this guidance.
19. If any behaviour is disclosed which calls into question an applicant's character or suitability, the applicant should provide such evidence as IPReg requires in order to make a proper risk assessment in considering the application for authorisation. Failure to provide sufficient information may result in the application being declined.
20. Applicants are entitled to provide any mitigating material they consider appropriate to assist IPReg with making its assessment, and this might include the following:
 - a. A personal statement from the applicant, providing an account of the behaviour and why they consider that notwithstanding it, they have the appropriate character and suitability
 - b. Sentencing remarks following a conviction and any probation reports
 - c. References from at least two independent people who know the applicant well and are aware of the behaviour in question and who are able to attest to the applicant's good character. Ideally, at least one such reference would be from a registered patent or trade mark attorney, solicitor or barrister
 - d. References from an employer or mentor
 - e. Certificates of good standing from any other professional or regulatory body
 - f. Credit score information
 - g. Recent medical reports, including psychiatric reports where relevant
21. At the point of renewal of registration annually, registered patent and trade mark attorneys will be required to confirm that in the last 12 months, they are not aware of any matter which might call into question their suitability to remain registered by IPReg. Where any attorney is unable to confirm this, they will be asked to provide such information as may be necessary for IPReg to consider whether any disciplinary or enforcement action should be taken.

Failure to disclose relevant information

22. Where an applicant to the register of patent or trade mark attorneys fails to disclose relevant information which is material to the assessment IPReg must make and is

subsequently admitted to the register, IPReg may rely upon this previous conduct in bringing disciplinary proceedings.

Suitability to be a Head of Legal Practice and Head of Finance and Administration

23. In addition to the general criteria above as regards suitability to be a regulated person, there are additional requirements in place for applicants to the role of HoLP and HoFA. These are set out in the [Admission and Authorisation Standard Operating Procedures](#) at paragraphs 57 – 59.