

The Patent Regulation Board and the Trade Mark Regulation Board

Agenda

Thursday 9 December 2021 at 12 noon

By Video Conference

1. Apologies
2. Notification of any conflicts of interest

PART A – NON-CONFIDENTIAL ITEMS

3. Minutes of November 2021 meeting and matters arising
4. Action Log (FG)
5. Consultation on Review of Regulatory Arrangements (AK/EL/FG/SE)
6. Other activities (not covered elsewhere):
 - a. 3 x CEOs (FG)
 - b. Regulatory Forum 2 December (Chair/FG)
7. Mercer Review – Proposed IPReg Response (CS/VS)

PART B –CONFIDENTIAL ITEMS

8. Complaints update (SE)
9. LSB issues (FG)



10. Regulatory Statement

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

IPReg Board Meeting Actions Log - New and Outstanding Actions

Date of Meeting in which action arose	Agenda Item	Action	Responsibility	Status	Notes/Update
November 2021 Board Meeting					
Nov-21	Compensation arrangements – rule change submission to the LSB	Chair to write to the LSB	Chair	Ongoing	December Board
Nov-21	Mercer Review	EWG to draft response to Mercer Review	EWG	Ongoing	December Board
Nov-21	Governance Matters	Chair and Board to programme in appraisals	Chair/Board	Ongoing	
Nov-21	Governance Matters	FG to develop an Escalation Policy/Procedure (similar to “Speak Up Guardian”) and share with Team and Board	FG	Ongoing	
Nov-21	Governance Matters	FG to amend risk profile wording regarding management and oversight responsibilities	FG	Ongoing	
Nov-21	Governance Matters	FG to ask auditors to review financial controls and report to Board	FG	Ongoing	
Nov-21	Governance Matters	Governance documents to be published	FG	Ongoing	
Nov-21	Governance Matters	Governance documents to be reviewed in 2 years’ time	FG	Ongoing	
Nov-21	Progress on Review of Regulatory Arrangements	EL to arrange meeting with LSB prior to consultation	EL	Closed	Meeting scheduled for 16 December 2021

IPReg Board Meeting Actions Log - New and Outstanding Actions

Nov-21	LSB Issues	FG and Chair to finalise regulatory performance assessment response	FG/Chair	Closed	
September 2021 Board Meeting					
Sep-21	Covid Impact upon IPReg Team	Liaise with OsIT regarding IPReg office options	FG	Ongoing	
Sep-21	Progress on Review of Regulatory Arrangements	Update LSB on the regulatory arrangements review progress	FG	Closed	See above – update to be provided before consultation document published
Sep-21	Complaints Review Committee Decisions – Issues Raised	Review approach to PAMIA renewal cycle	SE/MB	Closed	We liaised with PAMIA and already have the list of attorneys who did not renew insurance and have been in contact with them. Reminders will go out to STs and small businesses about paying insurance in May 2022.
July 2021 Board Meeting					
Jul-21	Progress on Review of Regulatory Arrangements	Map key policy proposals with risk it seeks to address	EL	Closed	We have structured the draft consultation document to set out the risks to consumers each proposal is intended to address. Board sub-group members reviewed this analysis on 20 October. We have also been through the process of mapping the draft Code requirements against the risks each provision seeks to address. This analysis was shared with sub-group members ahead of a meeting with Kingsley Napley (to discuss the draft Code) in 8 December.

IPReg Board Meeting Actions Log - New and Outstanding Actions

Jul-21	Compensation Arrangements	Develop risk profile	FG/SE/MB	Ongoing	To be developed over next 2 years
May 2021 Board Meeting					
May-21	Consumer Bodies Engagement	Take forward engagement with consumer bodies	EL/ER	Ongoing	We have contacted a number of industry organisations (by email) that are likely to provide a consumer perspective of the IP legal market. We will write to these bodies as part of the consultation and hope to obtain some feedback.
May-21	Diversity - next steps - workshop feedback	Implement the diversity initiatives	FG	Ongoing	
May-21	Diversity - Inclusive Language	Adopt and publish Inclusive Language Policy	FG	Open	
May-21	Complaints Update - debt recovery	Pursue bankruptcy petition	SE	Closed	
March 2021 Board Meeting					
Mar-21	Mutual Recognition of Qualifications		SE	Ongoing	

IPReg Board Meeting Actions Log - New and Outstanding Actions

January 2021 Board Meeting					
Jan-21	Covid-19 – Impact on IPReg team	Report any relevant issues to LSB	FG	Ongoing	
Jan-21	LSB - Regulatory Performance Framework	Formalise process of considering whether to expedite complaints	SE/MB	Closed	
Jan-21	LSB - Regulatory Performance Framework	Continue to liaise with LSB on its survey on small businesses	VS/FG	Ongoing	Contacted Tom May on 8 October, who advised a slight delay on delivery of the dataset to the LSB, expects to provide IPReg with access well ahead of Christmas
July 2020 Board Meeting					
Jul-20	Risk registers	Discuss how cyber risks should be added to the risk register and arrange for IPReg to undertake the Cyber Essentials programme.	IPReg team and SF	Ongoing	
January 2020 Board Meeting					
Oct-19	LSB CEO Meeting	Invite Matthew Hill to Board meeting	FG	Open	Date TBC
April 2019 Board meeting					
Apr-19	Queen Mary University London - progress report	Continue to monitor and take action as required	Education Working Group	Ongoing	Reaccreditation application to be made in December 2021, anticipate assessor report to be brought to March 2022 Board meeting.

Board Meeting 9 December 2021

Consultation on review of regulatory arrangements

Agenda Item: 5

Author: Emily Lyn, Head of Regulatory Review (emily.lyn@ipreg.org.uk)


Summary

1. The Board is presented with a package of documents for consultation including the consultation paper, draft regulatory arrangements (Annexe A) (including Glossary of defined terms (Annexe B)), example Standard Operating Procedure (SOP) (Annexe C) and initial impact assessment (Annexe D). Subject to the Board's views, our aim is to publish these documents and launch the consultation on Thursday 16 December. The consultation will run for 13 weeks (rather than the usual 12 weeks) to take account of Christmas. We therefore expect the consultation to close on 17 March 2022.

Recommendation(s)

2. The Board is asked to agree to launch the consultation on our proposed regulatory arrangements and associated policy proposals.

Risks and mitigations

<p>Financial</p>	<p>We expect to receive the invoice for the second stage of legal work before the end of the year. This amounts to a fixed fee of £19,000 plus VAT.</p> <p>The final stage of legal work - finalising the regulatory arrangements post consultation – will take place next year (fixed fee of £5,500 plus VAT).</p> <p>This brings us within our allocated budget of £40k.</p> <p>We now have in place a small panel of expert advisors to provide challenge and support in key areas including PII, diversity and inclusion, and assessing the likely impact of alternative forms of regulation. The cost is anticipated to be c. £20k over the next 12 months (2 budget years).</p>
<p>Legal</p>	

<p>Reputational</p>	<p>This is a high-profile project for IPReg and we expect the consultation to attract substantial attention from our stakeholders. The period of pre-consultation engagement has undoubtedly informed the proposals we have put forward so we hope to see many of the proposals welcomed by respondents.</p> <p>The area that is most likely to prove controversial with those we regulate is the requirement regarding transparency of costs information (which would be a mandatory requirement for the first time). We may also receive principled opposition to the now clear position in the draft Code that the Principles apply to an attorney’s private life outside of work. Our proposals in relation to MDPs and the broadening of services IPReg regulated entities may also attract comment due to the potential competition impacts. Finally, we can expect that our proposal to introduce a regulatory sandbox for PII may prove controversial as we would be effectively allowing certain firms or individuals to provide services to the public with PII cover that does not meet our MTCs. For instance we might expect opposition from the Consumer Panel and also from PAMIA – particularly if we proceed with opening the sandbox to all (as opposed to those who are ineligible for PAMIA membership).</p> <p>We have meetings scheduled with the LSB and PAMIA to discuss the proposals before the consultation goes live. In relation to the transparency requirements we are planning to send a copy of the consultation to the CMA.</p> <p>The Board should also note that the proposals in relation to our disciplinary policy and process, while not controversial in nature, represent a significant change and one which will have a number of operational impacts for IPReg.</p>
<p>Resources</p>	<p>The appointment of expert advisors has enabled us to fill the gaps in our resources identified so far, most recently in helping with the development of our regulatory sandbox idea. The remaining area to consider getting external advice is on the economic impacts of any fee changes at the appropriate point. We have made clear in the consultation that any fee changes are unlikely to come into effect until 2024 at the earliest.</p>
<p>Regulatory Objectives</p>	<p>The overall aims of the review balance all of the regulatory objectives and in particular:</p> <ul style="list-style-type: none"> • Protecting and promoting the public interest - by ensuring adequate standards are in place for all regulated persons • Promoting competition in the provision of services - by removing unnecessary barriers to competition and enabling new business models • Protecting and promoting the interest of consumers - by providing an appropriate level of consumer protection and ensuring that consumer needs can be serviced by a suitably diverse market of legal services providers. <p>All of our proposals for consultation have been assessed against the regulatory objectives. A high level analysis is included in the consultation paper and in more detail in the draft impact assessment.</p>

Approach to consultation

3. Subject to the Board's views we aim to publish the consultation on Thursday 16 December. All the documents will be made available on our website and we will notify all attorneys by email. We will also inform all those that responded to the Call for Evidence, including those we subsequently met with to discuss our early thinking.
4. As discussed with the sub-group and with the Board, the consultation paper focuses on the key policy changes as well as setting out our overall approach. It does not go into detail as to every provision nor does it seek to map the new arrangements to the old. Rather, respondents are encouraged to read the full set of regulatory arrangements which amount to around 20 pages. We have included a number of questions in the consultation where it would be particularly helpful for respondents to comment. We have drafted these questions to be as open as possible to help us to capture views of how they might operate in practice to help us assess the impacts of our proposals and identify any unforeseen consequences. We have also made it clear that we are seeking views on the regulatory arrangements and the draft impact assessment.
5. At this point we do not envisage a further written consultation but depending on the outcome of the consultation, we may decide to do some further engagement (for example via a reference group). This sort of approach may be helpful as we develop the guidance that will sit alongside the revised regulatory arrangements as it will help us to build in real world examples.

Communications and engagement activity

6. We have already agreed with a number of stakeholders to promote the consultation to their members (IP Inclusive, CIPA, CITMA and IP Federation) via the usual channels.
7. In the new year once stakeholders have had a chance to read the consultation we plan to set up a focused series of webinars addressing specific topics or aspects of the review. We can tailor this to any initial reactions we receive.
8. We have also made clear that we welcome individual discussions as well as written responses from both firms and individual attorneys.
9. We have meetings scheduled with the Legal Services Board and PAMIA on or before the day the consultation launches to make sure they are briefed on the proposals. We will also send copies to the Consumer Panel, CMA and other relevant stakeholders such as providers of Third Party Managed Accounts and Lawtech UK.

Impact Assessment and Post-implementation review

10. The consultation provides a good opportunity to get feedback on our initial impact assessment. This document will then be finalised to reflect what people have told us and our final policy positions, before being submitted to the LSB as part of the application for approval of the new regulatory arrangements.

11. At this stage we anticipate that a post implementation review at an appropriate point after the new arrangements have been implemented will need to be completed. This will help us to determine whether any of the potential risks identified have come to pass and whether any changes in approach will be needed. It will also be an opportunity to assess compliance with the new requirements. A full plan for post implementation review will be developed following consultation once the Board has decided on next steps. For instance, if the Board decides to proceed with our proposals in relation to transparency we would expect to assess progress in that area as a priority due to the potential consumer detriment. Whereas a change such as CPD would more than likely be on a longer timescale. We would expect the LSB to require details of any such plans in our application for approval.

Next steps

12. We will keep the Board updated during the consultation as to any emerging issues arising from the feedback received.
13. We are scheduling a meeting of the sub-group for the Spring to discuss the responses to the consultation and consider next steps. We anticipate bringing a post consultation report to the Board in May 2022.

Board Meeting 9 December 2021

Information paper: Mercer Review

Agenda Item: 7

Lead Board Member: Caroline Seddon, Chair of Education Working Group

Author: Victoria Swan, Director of Policy (victoria.swan@ipreg.org.uk)

1. Summary

1.1 Concerns regarding the Final Diploma (FD4) Infringement and Validity Examination provided by the Patent Examination Board (PEB), led, in March 2019, to the Chartered Institute of Patent Attorneys (CIPA), commissioning the Mercer Review¹. The review was much broader in scope than the examination, covering the education, training and assessment arrangements for entry as a Registered Patent Attorney. Its Call for Evidence closed on 14 February 2020.

1.2 The [Mercer Review](#) report itself was published 20 months later in October 2021. Its Foreword advises that “CIPA Council welcomes comments from all stakeholders...and asks that written responses are sent to CIPA’s Chief Executive, Lee Davies, by 31 December 2021”. The proposed IPReg response to the report is provided at Annex A to this paper.

2. Recommendation(s)

2.1 The Board is asked to confirm it remains content with the following:

- the Education Working Group’s work plan commitment to maintain and encourage more qualification providers so as there is a diverse offer of assessment pathways for qualifying as a patent (or trade mark) attorney; and
- the case remains for independent governance arrangements between the professional membership body, CIPA, and the PEB, one of the IPReg accredited qualification agencies.

2.2 The Board is asked to approve, subject to any amendments it may suggest, the proposed IPReg response to the Mercer Review, as provided at Annex A.

3. Risks and mitigations

Regulatory Objectives	<u>Encouraging an independent, strong, diverse and effective legal profession</u> – the report will inform the scheduled review of the IPReg Accreditation Handbook and the accreditation assessment of the PEB Final Diploma Examinations, seeking to continue to promote qualification pathways which encourage the profession(s) being independent, strong, diverse and effective.
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¹ Steering Group chaired by Chris Mercer

	<p>Currently, there are a small number of IPReg accredited qualification providers at Foundation Level (FLQ)² and only one provider of the Advanced Level Qualification (ALQ)³ for each of the pathways. The ALQ monopoly situation on both pathways is due to historic arrangements rather than design and IPReg would wish to see more options available to those on the attorney pathway and accordingly has been in very preliminary, informal discussions, with a couple of agencies regarding provision of ALQs.</p> <p>A centralised examinations pathway, essentially provided by CIPA, the professional membership body, as is recommended by the Mercer Review⁴, is considered a risk to the regulatory objective of encouraging an independent, strong, diverse and effective legal profession. IPReg considers a diversity of qualification pathways affords opportunity for equity of outcomes, allowing for an individual’s preferred learning style and training circumstance.</p>
<p>Financial</p>	<p><u>Independent governance and financial control</u>: historically, the professional membership bodies of ITMA (Institute of Trade Mark Attorneys, as it was then, prior to Chartership status) and CIPA, acted together as the Joint Examination Board (JEB), administering qualifying examinations for entry on to the attorney registers. The A Sherr, November 2002 Review, ‘Where Science Meets Law’, included a recommendation that these education and examination systems move away from the professional bodies, as was actioned through the 2010-11 winding down of the JEB. Whilst ITMA no longer had involvement in delivery of examinations, the PEB was established as a Committee of CIPA and continued to administer some of the qualifying pathway for patent attorneys. The PEB operates from the CIPA office and its staff are employed by CIPA (and its website is part of the CIPA website). IPReg required the PEB to have independent governance and financial control to remove the conflict of interest inherent in a professional membership body overseeing the examinations and effectively determining entry on to the register of the independent legal regulator.</p> <p>The Mercer Review Governance Chapter states the following “IPReg should review, with CIPA, the requirement for the PEB to be independent of CIPA in terms of its governance and financial control.</p>

² The universities of Bournemouth, Brunel, Queen Mary University London and the examination agency of the PEB.

³ The PEB Final Diploma Examinations for patent attorneys and Nottingham Trent University for trade mark attorneys.

⁴ Chapter 3, Recommendation 2, “Qualification for the Foundation Certificate should be via the PEB FC examinations, with all course providers teaching to the same syllabus”; and Chapter 4, Recommendation 1 “IPReg should review, with CIPA, the requirement for the PEB to be independent of CIPA in terms of its governance and financial control”.

	<p>The review should include the extent to which the requirement for the PEB to be independent contributes to the financial viability of the UK patent attorney qualifying examinations and perceptions of a lack of transparency or openness. The review should evaluate other models, such as the professional examinations for legal executives, when considering what, if any, improvement could be made”.⁵</p> <p>IPReg considers the independence arrangements are fundamental to mitigating the risk of conflict of interest inherent in the professional membership body essentially providing the qualifying examinations. The risk is compounded by the report’s recommendation that all who wish to qualify as a patent attorney would need to sit those examinations.</p> <p>[REDACTED]</p> <p>The proposed IPReg response to the Mercer Review welcomes the recommendations relating to the FD4 examination with the aim it becomes a more targeted assessment (4 hours instead of 5, removes overlap with other examinations, more narrowly defines the scope of the examination, remains online [as had been dictated by the pandemic]) and hopefully means more candidates pass at first or second attempt.</p>
<p>Legal</p>	<p>IPReg’s preferred position of a diversity of qualification pathways supports both:</p> <p>Outcome 2 of the LSB Guidance on regulatory arrangements for education and training issued under section 162 of the Legal Services Act 2007: <i>Providers of education and training have the flexibility to determine how to deliver training, education and experience which meets the outcomes required;</i></p> <p>and the Legal Services Act 2007 Regulatory Objective, “Encouraging an independent, strong, diverse and effective legal profession”.</p>
<p>Reputational</p>	<p>Currently the FD4 Infringement and Validity examination is a long (5 hours) examination - handwritten, until the pandemic necessitated online examinations - with a historically, and consistently, low pass rate. Back in 2016, IPReg, CIPA, and the PEB jointly commissioned Middlesex University to</p>

⁵ Page 22, Recommendation 4.1.

	<p>undertake research into the examination and the possible reasons for its consistently low pass rate. The research report, published in 2017, suggested consideration of the following⁶: preparing mentors and trainees; shadowing a real life validity and infringement opinion; review the appropriateness of hand writing for examinations; whether a conventional exam is sufficient to judge the desired learning outcomes; reviewing the FD4 exam marking design scheme for upcoming exams; and aligning learning outcomes to the assessment criteria. IPReg recommended the report and its findings to both CIPA and the PEB. It was agreed that the accreditation of the Final Diploma Examinations⁷ would be scheduled for a time that allowed a period of consideration of these, with a hope that implementation might be made in 2018-2019.</p> <p>Then in the 2018 round of examinations, FD4 candidate success was even lower than normal, triggering the PEB to lower the pass rate in response (though even then, only a third of candidates passed); the announcement of this “borderlining process” triggered much social media discussion, discontent and concern⁸, ultimately prompting CIPA to announce the Mercer Review. Again, IPReg and the PEB agreed to defer the accreditation exercise of the Final Diploma Examinations until the Mercer Review report was published, given its scope would likely impact upon the framing of FD4 and the other FD examinations and would be one of the evidence sources to inform that assessment exercise (admittedly, this agreement had been based upon an anticipated much earlier publication of the Mercer Review).</p> <p>Both the IPReg accreditation assessment exercise of the Final Diploma Examinations and the review of the Accreditation Handbook – through creation of a specified syllabus for the Advanced Level Qualifications (and review of the already specified syllabus for the Foundation Level Qualifications) - will seek to help the PEB address the reputational risk regarding the consistently low pass rate and assessment processes relating to the FD4 examination.</p>
<p>Resources</p>	<p>The report will inform the accreditation exercise of the Final Diploma Examinations, to be undertaken by independent specialist assessors (the costs for which will be, as with all accreditations, recharged to the qualification</p>

⁶ Our response to the Mercer Review Call for Evidence drew attention to this report and its findings (as well as our requirement for the PEB to have the Quality Assurance Agency, or a similar body, to undertake a review of the policies, procedures and processes of the PEB).

⁷ The Foundation Certificate Examinations provided by the PEB were accredited against the IPReg Accreditation Handbook in 2018. S

⁸ Please see [Gantry-Gate: Have your say in the Mercer Review - The IPKat \(ipkitten.blogspot.com\)](http://ipkitten.blogspot.com) for a flavour of the social media activity regarding FD4.

	agency), as well as the independent specialist root and branch review of the IPReg Accreditation Handbook.
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4. The Mercer Review – IPReg Board Meeting of 2 November

4.1 A summary of the Mercer Review, its findings, conclusions and recommendations, was presented to the 2 November meeting of the IPReg Board⁹. Comments made in, and following, that meeting, included:

- recommendations do not always appear to flow from or correlate with findings, which would make it difficult for IPReg to rely on it as a key driver or regulatory form, regrettably would struggle to justify the evidential basis as the primary catalyst for change;
- some inaccuracies to address;
- not a particularly accessible document with some seeming contradictions and inconsistencies;
- whilst triggered by FD4 examination issues the review is much broader in its scope and has far reaching and prescriptive recommendations (including for IPReg which had not been involved in the review), can make it difficult to sense whether the report has addressed the original issue of the consistently low pass rate of the FD4 examination;
- the report has been written by different Committee members, rather than one individual;
- concerns regarding the suggestion that governance and financial independence should not be a requirement between CIPA, the professional body, and the Patent Examination Board, the examination agency.

4.2 The 2 November meeting of the IPReg Board delegated drafting of the IPReg response to the Education Working Group, to be informed by its scheduled dedicated 8 November meeting. The proposed response to be brought back to the 9 December meeting of Board for approval.

5. Education Working Group Meeting of 8 November 2021

5.1 Points made at the dedicated meeting of the Education Working Group included:

a) General

- welcome the review and all that has gone into it;
- acknowledge the effort of volunteers in this work and that of administrating the examinations;
- arrived at a very different place from where it all started, gone beyond the FD4 remit;
- Executive Summary disconnected from the rest of the report;

⁹ Please see the online Board meeting documents [insert hyperlink].

- a vast array of recommendations, often lacking evidence, that the prescriptive recommendations are possible/appropriate, not sufficiently informed on all recommendations;
 - IPReg deliberately detached from involvement so can reply fully on this, and need to be clear and robust when we do not agree with a recommendation;
 - the need to make clear that we are happy to engage and contribute where it relates to our regulatory responsibilities and standards;
- b) FD4 Examination (concerns regarding this examination being the original issue which ultimately triggered the much broader review)
- look favourably on recommendations regarding FD4 examination, the 2022 IPReg accreditation assessment of the PEB Final Diploma Examinations to include these points (with the PEB to set out its position on these recommendations, and those relating to the wider Final Diploma Examinations within its application);
- c) Recommendation for Centralised Foundation Examinations (with courses to be wholly optional)
- FD1/FD4 pass rate used as reason for common Foundation examinations, weak case given the limits of the statistical analysis and the continual low FD4 pass rate;
 - taking the foundation examinations likely more of a barrier, addressing an unproven problem; from a higher structural level, control of entry into profession in one body should not be concentrated anywhere other than IPReg;
 - Professional Board members reported the dedicated CIPA webinar¹⁰ had been informative and clear that consultation provided a range of conflicting responses meaning it had been very difficult to arrive at a point; webinar also useful for how different/unequal training is in different firms;
 - practitioners with experienced training make contributions to university courses, providing time and dedication an individual might not obtain from their firm;
- [REDACTED]
- equality of opportunity means equality of outcome, not input, what suits some people won't suit others.

Governance

- concerns regarding the recommendation to review the requirement for the PEB to be independent of CIPA in terms of its governance and financial control; the legal executives profession is cited as an example where the representative body sets and administers the qualifying examinations and as a case for CIPA/PEB doing the same – agreed for IPReg to obtain information on the legal executives position.

¹⁰ Post-meeting, IPReg requested, and was provided with, access to the CIPA Webinar for all members of the Education Working Group.

6. Governance/Legal Executives Qualifying Examinations

6.1 The Mercer Review recommends that IPReg should review, with CIPA, the requirement for the PEB to be independent of CIPA in terms of its governance and financial control. The framework for the relationship between IPReg and CIPA is set out by the requirements of the Legal Services Board's Internal Governance Rules and the Legal Services Act 2007. The relationship between IPReg and the PEB arises from IPReg's regulatory arrangements including the requirements of the IPReg Accreditation Handbook. The report cites the Chartered Institute of Legal Executives Limited (CILEx Limited) as an example where the professional membership body sets and administers the examinations. It uses this as providing a case for IPReg to rescind its requirement for the PEB to have independent governance arrangements from CIPA.

6.2 A discussion with [REDACTED] found that:-

- the legacy qualification, the knowledge component of the Legal Executives admissions requirements, currently sits with CILEx and is being phased out¹¹;
- a member of CILEx Regulation Ltd (CRL) sits on the CILEx Qualifications Committee;
- there is a vast array of reporting requirements upon CILEx which cannot make any amendments without the express permission of CRL;
- the new CRL Education Standards, approved by the LSB in June 2021, cover separate areas of skills, knowledge and competence, and remove the monopoly of CILEx, with CRL to accredit bodies who adhere to these standards.

7. Key Points of Proposed IPReg Response

7.1 The proposed IPReg response to the Mercer Review is provided in full at Annex A. Its key points are:

- acknowledge the vast effort and good work that has gone into this piece;
- frame our response as limiting comments to those areas as a regulator we should be commenting on and not on those which are a matter for the profession;
- welcome the report which will inform our scheduled accreditation assessment of the Final Diploma examinations and the root and branch review of the IPReg Accreditation Handbook;
- welcome the FD4 examination recommendations and will ask the PEB to set out their response to these, and the wider Final Diploma examinations recommendations as part of their accreditation application;
- do not agree with the recommendation that all who wish to qualify as a patent attorney should take the PEB's Foundation Examinations, consider this risks the regulatory objective of encouraging an independent, strong, diverse and effective legal profession;
- do not agree with the recommendation that there should not be independent governance and financial requirements between the representative body and one of the qualification

¹¹ The last such examinations to take place in 2026.

pathway providers, consider this risks the regulatory objective of encouraging an independent, strong, diverse and effective legal profession.

8. Recommendation(s)

8.1 The Board is asked to confirm it remains content with the following:

- there should be a diverse offer of assessment pathways for qualifying as a patent attorney; and
- the case remains for independent governance arrangements between CIPA and the PEB.

8.2 The Board is asked to approve, subject to any amendments it may suggest, the proposed IPReg response to the Mercer Review, as provided at Annex A.

Annex A – Proposed IPReg Response to the Mercer Review

Annex B – Mercer Review Conclusions and Recommendations

ANNEX B – MERCER REVIEW CONCLUSIONS AND RECOMMENDATIONS

CHAPTER 1 SKILLS AND KNOWLEDGE

1. The FC examinations should focus on the core knowledge and skills required by a patent attorney. This will include some basic knowledge of trade mark, design and copyright law, but this should be commensurate with what a patent attorney is likely to face in day-to-day practice. However, the syllabus should include all the 'black-letter' law (basic standard elements or principles) which is relevant for the LSC, so that this law does not need to be duplicated by the LSC.

- The scope of the International Law syllabus be revised to focus on core areas (EP, PCT, US, JP, CN) and instances where there are significant/important differences in patent law (e.g. 30 vs 31-month national phase entry, allowability of method of treatment or second medical use claims, allowability of computer programs as such). Questions should be structured to give sufficient choice for candidates working in different sectors, where the relative importance of countries may differ. We also questioned to what extent it is necessary to examine international law relating to trade marks, designs and copyright.
- All candidates should have a good knowledge of professional ethics prior to registration, and before undertaking the LSC.
- All candidates should have a good knowledge of evidence for the UK court system as it applies to patents and before undertaking the LSC.

5.2. We considered whether the Foundation Certificate should include any elements of drafting or invention spotting, but concluded that:

- candidates were unlikely to have obtained much practical experience by the time of sitting the examinations;
- it would increase the amount of subject matter examined at this stage; and
- it can be adequately examined at Finals/EQE level.

5.3. On the basis of the responses, we concluded that the FD examinations generally cover the relevant areas and are set at an appropriate level, but that they have become overcomplicated and too long, in particular FD4. Thus, we recommend that:

- FD2 should be limited to drafting a patent application, relating to generally-accessible technology, suitable for filing at the IPO in a form where the claims are clear, novel and arguably inventive over the prior art presented in the question and where the description is sufficient;
- FD3 should be limited to answering an official letter from the IPO which raises novelty and inventive step objections and providing a set of claims which deals with the objections and which does not add matter or lack clarity;
- FD4 should be limited to requiring the candidates to demonstrate that they can construe a set of claims according to the case law in the UK, evaluate prior art, determine whether the claims as construed are novel and inventive over that prior art and determine whether the

activities of a potential infringer are infringing acts under UK law and should not require detailed advice on points not relevant to the main topics;

- FD1 should not cover any of the areas covered by the other examinations but should include at least one question about a situation which could arise in litigation of a patent in the UK courts, involving application of the black-letter law on litigation which should be part of the FC syllabus (see above); and
- Similarly, FD2, FD3 and FD4 should not require advice on points which are examined in FD1; there should be less overlap between the content of the syllabi and examinations.

5.4. Any changes to the syllabi for the Foundation and Final examinations should be reviewed to ensure that, as far as possible, they encourage an increase of diversity and inclusion in the profession”.

CHAPTER 2 TRAINING

“8.1. The issues raised by the responses were discussed to see if a consensus position could be found.

8.2. We consider that more information should be given to those who are entering the profession so that they understand what they are getting into. In this respect, we recommend that:

- CIPA should provide better information on its website about what is required to enter the profession and to progress in the profession and keep such information under review;
- CIPA should provide such information to careers services;
- the PEB should make its website easier to navigate;
- IPReg should support registrants
- in making available to any possible recruit details of the training scheme which the recruit will follow, preferably in the form of a training contract; and
- The Informals should continue, with the support of CIPA, its efforts to assist possible recruits in understanding such information.

8.3. We considered that candidates should have available as many ways of being trained as possible, so as to enable recruits from any background to be trained, but that all ways of being trained should lead to the candidate being able to meet the standard set out in Chapter 1 at each level of qualification. In order for the same standard to be reached by all candidates, we recommend that:

that a common examination should be passed by all candidates at each stage.

This avoids any problems which may arise from any differences between the examinations presently available to test the candidates for fitness to move onto the FD examinations. This should allow any provider to provide training, in whatever format the provider wishes to offer. The cost of providing the training should be able to be reduced as the requirement for setting and marking examinations would be removed from the training providers. There would be no need to accredit the providers as market forces would operate to eliminate unsatisfactory providers.

8.4. It is envisaged that providers could use any of the formats currently in use but that it would be possible for other providers to come into the market with different formats. The digital revolution would allow providers to use face-to-face and/or digital teaching and different training schedules. The providers should be able to adapt the teaching to the circumstances of each candidate and his or her employer.

8.5. We also recommend that:

- CIPA should continue to provide train the trainer and other support for those providing training;
- IPReg should accredit the syllabi for the FC and FD examinations and the PEB for setting the FC and FD examinations;
- IPReg should require all candidates to take the PEB FC and FD examinations;
- Any provider should be allowed to provide training for the FC and FD examinations without requiring any accreditation; and
- CIPA and the Informals should co-operate to determine what formats of training are lacking and encourage providers to provide such training.

8.6. On the matter of a minimum training period, we were of the opinion that there was no need to impose such a period. It was felt that the requirement of IPReg for two years' service under a registrant or four years' service otherwise, as well as having passed the FD examinations, was sufficient. The candidates in most cases also have a minimum training period imposed on them by the EQE and so another, possibly different, training period, would be confusing.

8.7. However, it was considered that there is too much pressure on candidates to take the examinations too early to improve career prospects and increase salary. This can be counterproductive as it can induce candidates to take examinations for which they are not properly prepared and then fail. It has been shown that the chances of passing a failed paper, especially FD4, tend to go down. It was felt that not enough candidates use the modular nature of the FD examinations to their advantage. We therefore recommend that:

CIPA and IPReg should encourage its members and registrants to adopt career progression systems which are not solely linked to examination success and training systems which encourage candidates to make use of the modular system so that they take any particular examination only when they appear to be ready to take that examination.

8.8. On the LSC [Litigation Skills Course], we saw that there are advantages in any candidate having the skills taught by the course, not only for UK litigation but also for opposition proceedings before the EPO and litigation in other jurisdictions. However, it was considered that much of the ground covered in the LSC is black-letter law, which should be covered in the FC syllabus and examination, and advising on litigation situations, which should be covered by the FD1 syllabus and examination. Thus, we recommend that:

the LSC course should be cut down to the practical matters of advocacy and the preparation for advocacy; and the black-letter law content of the LSC should be transferred to the FC syllabus and examination, the application of the black-letter law in giving written advice to a client should be transferred to the FD1 syllabus and examination and the practical aspects of the course should be retained in a reduced assessed LSC.

Such practical matters, in our view, cannot be examined in a written examination.

8.9. We consider that there should be a CPD requirement for all registrants and it should be compulsory to report on meeting the CPD requirement to IPReg. We consider that the onus for carrying out CPD should be on each registrant individually and that each registrant should be prepared to provide details of her or his CPD to IPReg on a random basis.

8.10. We also consider that there should be opportunities for registrants to expand their areas of expertise but these should generally be voluntary. We welcome CIPA's decision to make all its webinars more widely available and to expand the scope of the webinars. IPReg and CIPA should also encourage other providers to offer training in non-examined areas.

8.11. There are three areas, trade marks, practical litigation skills and higher court advocacy, where it was questioned whether there should be assessed training.

8.12. As regards trade marks, it used to be possible to become a dual-qualified attorney by an on-the-job examination route. However, at present, it is only possible to become a registered trade mark attorney by following a university course. It is felt that this reduces access to the trade mark profession. Since entry on the trade mark register is the responsibility of IPReg, it is considered that any training for entry onto the register should be assessed by examination. We therefore recommend that:

IPReg, CIPA and CITMA should investigate whether there should be a route to registration as a trade mark attorney other than via a university course, for instance by an advanced examination at the same level of the FD examinations or by following an assessed training course.

8.13. As regards practical litigation skills, it is considered that it should be compulsory for all registered patent attorneys to complete an assessed course on this subject. However, this course should be limited to the practical aspects of litigation skills and that the other parts of the present course should be incorporated into the FC and FD syllabi and examinations (see above).

8.14. As regards higher court advocacy, we consider that the training for this subject should remain as it is, with a requirement to follow an assessed training course before the grant of a certificate".

CHAPTER 3 ASSESSMENT

“12.1. In light of the above, we therefore recommend that:

IPReg, CIPA and the PEB investigate whether early registration of candidates should be implemented.

12.2. We also recommend that:

qualification for the Foundation Certificate should be via the PEB FC examinations, with all course providers teaching to the same syllabus.

12.3. We also recommend that:

- the PEB has as a continuing task of ensuring that the content of each FD examination remains limited to its core area; and
- the PEB has a continuing task of ensuring that the length of all the FD examinations is maintained in a defined size range from year to year.

12.4. We also recommend that:

- the PEB does not make available marking schedules (as occurs with the EQEs) to candidates but provides more detailed examination reports and provides train-the-trainer sessions immediately after release of the results for any FD paper; and
- the PEB should make it clear that, for each of papers FD2, FD3 and FD4 and for each questions in paper FD1, the examiners are looking to see whether the answer as a whole merits a passing mark so that candidates do not concentrate on ‘mark gathering’.

12.5. We also recommend that:

- when taking the FC and FD examinations, candidates should have read-only access to a limited selection of sources to be determined by the PEB.

12.6. We also recommend that:

- the FC and FD examinations should continue to be held online and, if appropriate , should use the same system as is used for the EQE.

12.7. We also recommend that:

- the PEB, together with IPReg and CIPA, should investigate the use of the electronic examination system used for the EQE to see whether it can be adapted to meet the requirements of the FC and FD examinations and allow read-only access to selected sources;
- the PEB should adapt the examinations and marking schedules as necessary so that the maximum working time for any examination can be limited to four working hours, excluding

any additional time that is required for e.g. students with reasonable adjustments, breaks, or uploading/downloading time; and

- the PEB and IPReg should consider whether the invigilation system used by the system is sufficient.

12.8. We also recommend that:

- the PEB, IPReg and CIPA should encourage employers to support their candidates in effective use of the modular examination systems without affecting career progression; and
- the PEB, IPReg and CIPA should look at the scheduling of the UK examinations once more is known about how the proposed changes to the EQEs will be implemented in 2024 and beyond, so as to avoid potential clashes.

12.9. We also recommend that:

- the PEB, IPReg and CIPA should investigate whether having two sittings a year is a practical proposition.

12.10. If, as expected, the UK examination system remains in electronic format, we recommend that:

- the examinations should be spread over two weeks so that there is a gap of a day between each FD paper and there is only one FC paper per day.

12.11. We also recommend that:

- IPReg, with the assistance of the PEB and CIPA, should investigate whether the exemptions from FD2 and FD3 in light of a full pass of the EQE are appropriate.

12.12. As noted at the end of chapter 3, any changes should be reviewed to ensure that, as far as possible, they encourage an increase of diversity and inclusion in the profession”.

CHAPTER 4 GOVERNANCE

“4.1. In light of the above, we recommend that:

- IPReg should review, with CIPA, the requirement for the PEB to be independent of CIPA in terms of its governance and financial control.

The review should include the extent to which the requirement for the PEB to be independent contributes to the financial viability of the UK patent attorney qualifying examinations and perceptions of a lack of transparency or openness. The review should evaluate other models, such as the professional examinations for legal executives, when considering what, if any, improvement could be made.

4.2. We also recommend that:

IPReg should create a set of occupational standards for patent attorneys.

The occupational standards will provide the framework for the establishment of the syllabus for trainee patent attorneys, identifying what knowledge and skills need to be acquired and assessed. The occupational standards can form the basis for the accreditation of examining bodies and the guidance of training providers such as universities. This should be more developed and detailed than the existing IPReg Competency Framework.

4.3. With the establishment of a set of occupational standards, and for the reasons given above, IPReg should consider requiring all trainees to pass a common set of examinations, regardless of the training route undertaken. Where trainees undertake university courses, as is often the case at foundation level, the trainees should sit the relevant examination papers to ensure that the occupational standards have been met. Occupational standards will open up the market to other training providers, who may provide courses or other types of learning such as remote learning, to prepare trainees for examination.

4.4. We also recommend that:

IPReg should test the agility of the existing examination system, to ensure that it can be responsive to a rapid change in the skills and knowledge required by the patent attorney profession.

For example, the pandemic has significantly accelerated to move towards videoconferencing for proceedings before the EPO and other bodies. Patent attorneys are addressing this through CPD and future patent attorneys will need to have this incorporated into initial training and assessment”.

Board Meeting 9 December 2021

Information paper: Complaints update

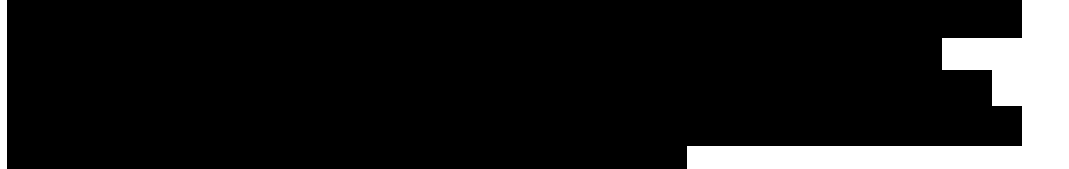
Agenda Item: 8

Author: Shelley Edwards, Head of Registration (shelley.edwards@ipreg.org.uk), Mark Barnett, Assurance Officer (mark.barnett@ipreg.org.uk).

Summary

1. This paper stands as an update on complaints received and processed by IPReg.

Risks and mitigations

Regulatory Objective(s)	<ul style="list-style-type: none"> • <u>Protecting and promoting the interests of consumers</u> • <u>Increasing public understanding of the citizen’s legal rights and duties</u> • <u>Promoting and maintaining adherence to the professional principles</u> <p>- Complaints handling and disciplinary action against regulated persons is designed to protect the public and uphold public confidence in the professions and in the provision of intellectual property legal services by regulated persons.</p> <p>Information given to complainants ie generally consumers of IP legal services, on receipt of a complaint, informs them of their rights (and obligations) when something has gone wrong.</p> <p>- Investigating alleged breach(es) of the Rules of Conduct (or any of our regulatory arrangements) may lead to a written finding of no misconduct and explanation given to both the complainant and the subject individual or firm, thereby increasing the public’s knowledge and understanding of what legal regulation is and how it works, and promoting adherence to the professional principles to regulated person (more so if ethical advice is also given).</p> <p>- Investigations leading to disciplinary action against a regulated person(s) will lead to a published decision which, in the case of a finding of breach and sanction, will protect the public and also act as a deterrent to the professions. Or where no breach is found, there will be transparency and clarity on what level of professional standards is regarded as reasonable and acceptable.</p>
Financial	None. Existing resources are dedicated to the oversight and administration of complaints received.
Legal	
Reputational	In common with all regulatory bodies, we can expect that complainants who are disappointed with the outcome of their regulatory complaint may make a corporate complaint about IPReg’s decision or processes. This reputational risk will be mitigated by the Corporate Complaint policy and procedure which is currently being developed. This will be published on the website and followed where applicable.

Resources	Whilst the overall number of complaints received about regulated persons is low (an average of around 7 complaints every year since 2010), the complaints that have been investigated and taken forward to CRC (and beyond) have been resource-intensive. The development and refinement of internal procedures, as well as the additional capacity to investigate and process cases in-house should assist. The need for external legal support should also be reduced due to increased internal capacity.
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Recommendations

- The Board is asked to note this paper.

Investigation Stages

Under Investigation

Information has been received which is being investigated under Rule 5 Disciplinary Procedure Rules (“DPR”) to determine whether it amounts to a Complaint. If it does not amount to a Complaint¹, the case will be closed. If it does amount to a Complaint, it moves to the Complaint Initiated stage.

Complaint Initiated

Information has been received which suggests a breach of IPReg’s regulatory arrangements under Rule 5.3 DPR. Further investigation and liaison with parties may be required at this stage, including obtaining brief and concise observations on the complaint from the respondent.

CRC

Case has been referred to or is being dealt with by the Complaints Review Committee under Rule 8 DPR. A case at this stage may be adjourned for further investigation, closed, dealt with summarily or referred to the JDP.

JDP

Case has been referred to or is being dealt with by the Joint Disciplinary Panel / Disciplinary Board. under Rule 9.10 DPR.

Appeal

The Disciplinary Board has made a decision following a disciplinary hearing, and this is under appeal or notice has been given that an appeal will be lodged under Rule 20 DPR.

Cases by numbers

Category	Number	Notes
Complaints received in last month (since last meeting)	2	

¹ For example, because information provided does not support an allegation of a breach of any of IPReg’s regulatory arrangements, no evidence has been provided to support any allegations made, allegations have been made prematurely (e.g. the firm’s complaints procedure has not been exhausted), the matter is not within IPReg’s jurisdiction (more appropriate to be dealt with by police, LeO, other regulator or organisation) etc

	[REDACTED]
	[REDACTED]
[REDACTED]	[REDACTED]
	[REDACTED]

Closed cases in last month (since last meeting)

[REDACTED]	[REDACTED]
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Recommendation

The Board is asked to note this information paper.

From: [Matthew Hill](#)
To: [Paul Philip](#); [Mark Neale](#); [Janine Griffiths-Baker](#); [James Wakefield](#); [Geraldine Newbold](#); [Howard Dellar](#); [Fran Gillon](#); [Duncan Wiggetts](#); [Kate Wellington](#); "sheilak@clc-uk.org"
Cc: [Angela Latta](#); [Craig Wakeford](#); [Sally Al-Saleem](#); [Paul Nezandonyi](#)
Subject: Joint statement on disciplinary sanctions and EDI
Date: 24 November 2021 09:04:06
Attachments: [Disciplinary sanctions and diversity Declaration version 2 clean.docx](#)

Colleagues,

In the summer we agreed to explore a principles-based sector-wide statement on the seriousness of "counter-inclusive" misconduct and the importance of disciplinary sanctions as one means (among others) of tackling it. We circulated a first draft of such a statement and we were very grateful for the range of comments we received, the vast majority of which we have accommodated in a revised draft attached to this email. We have also taken the opportunity to seek informal advice from the Bridge Group, which, as most of you will know, is a leading charity in the field of EDI and the draft reflects that process.

One point that we have not incorporated into this draft is one raised by Geraldine, which is whether the term "regulatory community" does sufficient justice to the distinctiveness of the tribunals. Indeed, Geraldine suggested that the tribunals might have a separate statement. While we at the LSB think that much of the strength of a statement of this nature lies in its universal and cross-cutting nature (and would therefore much prefer a single statement), we are quite open to suggestions as to how this point might be dealt with in the drafting and we are inviting suggestions on that point specifically.

Subject to that, we are reaching the point at which we ought to be in a position to go live with the statement and any associated engagement activity. We would like to begin liaising with you (or where more appropriate your teams) on suitable mechanisms for getting the statement into the public domain (and if you have views to feed in now, that would be very helpful).

Finally, I am very conscious that some of you will need to secure Board cover to participate formally. I would be very grateful if you could let us know when those processes might be complete so we can start working on a launch date.

In the meantime, if you have further comments on the statement, including on the point Geraldine raises, could we ask for them by close on Friday 10 December?

With gratitude

Matthew

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JOINT STATEMENT FROM ALL LEGAL SERVICES REGULATORS AND TRIBUNAL PROVIDERS (the “legal services regulatory community”)

TACKLING COUNTER-INCLUSIVE MISCONDUCT THROUGH DISCIPLINARY SANCTIONS

All of us in the legal services regulatory community are committed to doing everything we can to support an independent, strong, diverse and effective legal services sector, one in which anyone can succeed, and the profession is enriched by practitioners with the full range of diverse lived experience.

While there have been some improvements in diversity and inclusion in the sector, there remains a great deal of work to be done. It is still more difficult to progress as a lawyer – sometimes much more difficult – if you are, for example, a woman, or if you are a person of colour, or if you have a disability or are from a lower socio-economic background. This needs to change much further and faster than it has in the past.

We know the reasons for this are complex and differ from group to group and within groups and believe that this complexity should not be used as a reason to do nothing.

We know that regulation is not the whole answer, or even most of the answer. But we also know that it can be an important part of the answer.

For example, we in the legal services regulatory community have considerable influence over how legal professionals behave and in helping shape shared professional values. We oversee the way lawyers are trained and educated. We set standards of conduct and expectations of professional behaviour. And we have powers to take action where conduct falls below those expectations, through our disciplinary processes and sanctions.

Many of the barriers to a successful legal career arise from the conduct – or indeed misconduct – of legal professionals. A workplace in which sexual misconduct or harassment has become part of the culture, that tolerates racial discrimination, or where people with disabilities are bullied or excluded is not only unlawful but will not provide a fair chance of success for individuals with protected characteristics and interconnected protected characteristics, which is essential to create the strong and diverse legal profession we all want to see.

The legal services regulatory community therefore embraces the following principles:

- Counter-inclusive misconduct is serious and will be taken seriously
- Recognising our individual independence, and that of disciplinary panels and tribunals, we will nonetheless take every opportunity to ensure that its seriousness is reflected in a consistent way within our standards and codes, in our approaches to disciplinary action and in the sanctions that are applied where such misconduct is found
- We will support each other in ensuring a consistent message across the whole sector that counter-inclusive misconduct must and will be tackled effectively wherever it is found.

We know that the vast majority of legal professionals will agree with and welcome these principles and will want to make their own contribution to ensuring a strong and diverse legal profession.

Questions for IPReg on PCF application

1. Thank you for submitting IPReg's PCF application to the LSB. We have now completed an in-depth analysis of the proposals and have concerns about the overall transparency of the application. This has meant that we do not have a sufficient understanding of some of the key proposals, including:
 - IPReg's use of reserves;
 - how the IPReg Board reached the decision to maintain fees at 2021 levels;
 - IPReg's funding of its regulatory performance commitments.
2. This information is important for our approval process. Our process is focused on ensuring there is the necessary transparency for the regulated community and its consumers, to whom the regulatory body is accountable, that the regulatory body is using its resources efficiently in pursuit of the regulatory objectives and other relevant commitments. It is vital that regulatory bodies provide clear evidence of how they will appropriately allocate the resources they raise, how they manage their reserves and how their independent boards reach decisions about resources.
3. It is unfortunate that IPReg did not have time to submit a draft application, through which we may have been able to address these concerns sooner. In recent correspondence and discussions, we have encouraged IPReg to see engagement during our statutory decision process as an opportunity to test its proposals and ensure they are effective. However, we trust that IPReg will be able to respond to the questions set out below, noting that the information we require for our assessment is that which, we assume, would have been presented to the IPReg Board in determining the proposed PCF level for 2022.

Reserves:

4. We note from the application that IPReg proposes to maintain the PCF at 2021 levels and to fund the resulting gap in PCF income relative to operating expenditure by transferring money from reserves. IPReg will also draw on other reserves to create a new compensation fund reserve. We require further information to understand IPReg's use of reserves, which is not clear from the application, including IPReg's reserves policy.

Questions:

- a) Can you please explain how the projections for reserves are consistent with the IPReg policy of holding 3-months of operating expenditure in reserve?

IPReg response

The overall level of IPReg's reserves is £667,763. Removing the only committed reserve for the Compensation Fund (£88,282) (see Annex 3a Revised Reserves Policy paragraph 5) leaves £579,481 total uncommitted reserves which the Board has available to it to cover expenditure. This is more than sufficient to cover three months' operating expenditure. If the situation arises where IPReg is unable to collect fees for a prolonged period, the Board will use its judgement to decide whether it would be appropriate to reallocate the uncommitted reserves to operational activities and/or to projects.

The General Contingency Reserve is intended to cover 3 months of operational expenditure. A full 3 months' expenditure would be around £236k, the largest elements of which are staff salaries and the office licence fee. However, we would be able to postpone payment of some costs which would bring the overall 3 month figure down to around £210k.

The Board decided at its September 2021 meeting that, in its judgement, the current allocation of £200k is appropriate given the level of reserves that it has had to commit to the Compensation Fund and the fact that it can reallocate other reserves if necessary. The Board also decided that, in its judgment, the allocation of uncommitted reserves to projects was appropriate.

- b) It appears the forecast for 2021 and budget for 2022 will both deplete the level of reserves held at IPReg. Will IPReg seek to replenish its reserves in future years and if so, how?

IPReg response

The IPReg Board considers each year (and, if necessary, during the year) whether its allocation of reserves and/or its reserves policy should be amended. It will use its judgement to decide whether it will replenish its reserves in future years. The only way for IPReg to replenish its reserves is from practising fees.

- c) Please explain IPReg's approach in using a multitude of committed reserves for costs that are typically considered to be operating expenditure. Does this pose restrictions on how IPReg can call on or reallocate reserves within the financial year? For example, if there was a call on the Litigation reserve in excess of its balance, could IPReg transfer funds from another committed reserve pot?

IPReg response

IPReg's Reserves Policy sets out (Annex 3a paragraph 5) our approach to committed reserves. It explains that IPReg considers that the Compensation Fund Reserve falls within the scope of the LSB's concept of "committed" reserves since it fulfils a specific statutory duty to provide compensation arrangements. IPReg does not, therefore, have a "multitude of committed reserves" – as set out in our Reserves Policy, there is only one committed reserve (the Compensation Fund Reserve).

Other than the committed reserve, as the Reserves Policy sets out, reserves can be transferred if, in the Board's judgement, it is appropriate to do so. The flexibility that this approach gives the IPReg Board has been beneficial in enabling it to reallocate reserves to support the compensation fund in order to satisfy its statutory obligations under the Legal Services Act section 21(2) to provide compensation arrangements. It also means that if there were a call on the litigation reserve that exceeded its balance, funds could be transferred from another uncommitted reserve if the Board considered that it was appropriate to do so.

In addition, some of the project related reserves that are highlighted as possible Reserve offsets in the Proposed 2022 Budget (Annex 5), have been

set aside as a result of the unspent budget lines from previous years when activities/projects were deferred as a result of the pandemic. This allows a drawdown from the reserve to offset against the costs of the project when it is actioned. An example of this is the Disciplinary Panel Recruitment & Training Reserve which was initially a 2020 Budget activity and was deferred to 2022 (see note d. on the Proposed 2022 Budget Annex 5).

In order to be as transparent as possible, the Proposed 2022 Budget (Annex 5) shows expenditure for the year, including those projects that have reserves available for offsetting (shown by the inclusion of “supported by Reserve” on the relevant budget line). This enables the reader to understand that these costs can be met through reserves and not necessarily as expenditure from that year’s practice fees. The ability to allocate reserves to projects is a factor that the Board considers when deciding the proposed level of practising fees.

Additionally, a suggestion of how the reserve offsets may be utilised is also shown at the end of the budget. Note j on Annex 5 states that these are potential offsets that can be utilised if required. The Board will look at the level of the operating balance at the end of the year before making any decisions on the level of reserve movements. The final operating balance may be more different from the original budgeted amount. This may be because there has been higher practice fee income than estimated, or as a result of unbudgeted “other income” (as explained in the application, our usual practice does not include an estimate for this - see paragraph 10 bullet point 3 of the application) and/or underspends on budget lines which would, in turn, reduce the reserve offsets.

As the LSB is aware, the Compensation Fund is also to be funded by a transfer from operating expenditure of £30k each year (approximately the same figure as the compensation insurance policy premium) which will release a similar amount back to the other reserves. To date, there have been no claims on the insurance policy and there is no indication that there may be a potential claim on the Fund.

- d) It appears that some of these reserve funds will be in deficit by 2022 from the drawdowns in the 2021 forecast and 2022 budget contained in the application. For example, the Disciplinary Panel recruitment & training reserve. In IPReg’s 2020 accounts on Companies House, there is a balance on this reserve of £20k. This was restated down to £15k in Annex 9 of the application. However, Annex 5 of the application then appears to release £15k in both 2021 and 2022 leaving a deficit of £15k. There also look to be similar deficits on the CMA funding reserve and the Communication reserve. Please explain how IPReg has reconciled these figures?

IPReg Response:

As noted above, the creation of the Compensation Fund Reserve necessitated a re-allocation of reserves to it. This has led to the difference in balances stated in individual reserves in the financial statements for the year ended 31 December 2020 and those noted in Annex 9 (e.g. the Disciplinary Reserve is now shown as £15k).

The Proposed 2022 Budget (Annex 5) shows the 2021 Budget comparative figures for income and expenditure and possible reserves offsets – these are

the figures submitted to, and approved by, the LSB in our previous year's application. We have included them in our application (as we did last year – please see Annex 2 of that application) in order to aid transparency of our (then) anticipated expenditure year on year. As indicated above, possible reserve offsets are not definitive (see also note j. of Annex 5).

Annex 8 shows that the projected operating balance for 2021 is estimated to be a lower deficit than originally budgeted and therefore the drawdown on reserves as at 31 December 2021 may be less than initially estimated when the 2021 budget was drawn up. There will be no reserve offsets in 2021 for either Communications (as this reserve has now been re-allocated to the Compensation Fund Reserve) or in respect of the Disciplinary Panel Recruitment & Training as this is now anticipated in 2022 (see note d. on Annex 5). A provisional decision about any further offsets will be made by the IPReg Board once the final year-end figures for 2021 have been prepared in advance of our external audit, currently anticipated for summer 2022. The Board makes a final decision on reserve movements after it has considered the auditor's report.

Decision to maintain PCF at 2021 levels:

5. We note that IPReg has decided to maintain PCF levels at 2021 levels and therefore to use reserves to cover a deficit in expenditure. As set out above, we did not find the application to be clear on what the impact of this would be on reserves. Taking this into account, we would like to understand the evidence used and the decision-making process for reaching the decision not to raise PCF levels to cover projected expenditure, as set out by the question below:

Question:

- e) Paragraph 7, bullet 4 of the application set out that '*The Board has determined that it would not be appropriate to increase the level of practising fees this year*'. Then, at paragraph 14, bullet 4, the application describes that an exercise to consider whether it would be appropriate to increase the PCF was undertaken. Please can you provide evidence to support your assertion in paragraph 7 and share the different considerations your Board took into account and how it balanced these to reach the decision it was not appropriate to increase the PCF?

IPReg response

As noted in paragraph 14 of the application, the Board looked at the current level of fees and considered whether, in its judgement, it would be appropriate to reduce the practice fees, maintain the fees at the same level or raise the practice fees.

The Board had an extensive discussion about the budget and practice fees and took into account a number of factors including:

- A moderate estimate of net admissions to the registers in 2022 and the fact that the number of people joining the registers is greater than the number leaving;
- Over the next 2-3 years, there are a number of policy work areas that may require additional resources. For example:

- Elements of the Review of Regulatory Arrangements such as supporting the implementation of new continuing competence requirements;
- Recruitment of a new Panel to consider complaints;
- The Education Working Group programme plan;
- The anticipated number of LSB consultations and other activities;
- The need to alter the allocation of its reserves as a result of establishing a compensation fund;
- Its approach to financing its operating deficit from reserves;
- The fact that the LSB has previously commented on the size of IPReg's reserves;
- The fact that the impact of the pandemic and the end of furlough are still being felt and the longer-term implications are unclear.

As it does every year, the Board considered whether, in its judgement, it would be possible to reduce the cost of regulation by reducing fees. However, it balanced against this the need to ensure that IPReg has sufficient resources to meet its regulatory obligations, plan and complete activities and manage unforeseen events, such as the need to establish new compensation arrangements in 2021. The Board also took into account that the change in compensation arrangements had resulted in a significant amount of unforeseen expenditure and that a reduction in fees had the potential to further reduce the reserves.

Taking all these factors into account, the Board decided that, in its judgement, a fee increase in 2022 was not required, given that the anticipated work can be financed if fees are held level and reserves are used where necessary.

Allocation of resources to regulatory performance commitments:

6. As IPReg is aware, the LSB's regulatory performance framework sets out the outcomes that we expect all regulatory bodies to meet. Where regulatory bodies are not meeting the outcomes, we expect them to take action to improve their performance. Through our approval of a regulatory body's PCF, we seek assurance that any commitments for action are adequately funded by the PCF, as per paragraph 42 of the [LSB's Practising Fee Guidance \(guidance\)](#).
7. We note that IPReg was assessed as not meeting three outcomes (RA2, RA3 and E2) in November 2020. We welcome the commitments IPReg has since made to meet these outcomes, however, the PCF application is not clear as to how the actions will be funded.

Questions:

- f) Can you please explain how the budget reflects IPReg's RA3 commitments to:
 - a. work to develop its evidence base, including research it may undertake to better understand the consumers of IP services and the wider market.

IPReg response

As the LSB will note from Annex 9, there is a Research Reserve of £15k. This will be used to pay for research that may be needed to develop our evidence base. Subject to advice from the Board's Data Group, we anticipate that we will gather information from different sources including registrants, our CRM and the IPO. The work will be managed by the team and Board members as part of our business as usual activities.

- b. use diversity data collected in 2021, including assessing its progress against the outcomes in the LSB's diversity guidance.

IPReg response

As the LSB will note from paragraph 8 of our application, the Board has allocated £20k from its reserves for funding diversity initiatives.

We have used the diversity data in the consultation on the practising fee and in our work on education. It will also form an important part of our impact assessment for the Review of Regulatory Arrangements.

Assessing progress against the LSB's outcomes forms part of the business as usual work of the IPReg team and therefore, in the Board's judgment, does not require a separate budget line.

- c. other research and data gathering, particularly noting the July 2021 regulatory performance progress update which said, 'a significant amount of research and data gathering will be needed over the next 6-12 months to develop a full risk model'.

IPReg response

This work and the research work mentioned in (a) above are closely linked – please see response to (a) for this information. As above, the work will be managed by the team and Board members as part of our business as usual activities.

Clarity required on other areas of the application:

- 8. Our analysis of the application also raised a series of other questions as set out below.

Questions:

- g) In our decision notice last year, we said we expected IPReg 'to take additional steps to improve its consultation response rate in future in accordance with the final PCF Rules'. The application does not explain any additional steps taken and the response rate has not improved. Can you please explain what steps you took to improve the consultation rate? If you did not take additional steps, can you please explain why you did not think it necessary to?

IPReg response:

In IPReg's experience, registrants are very engaged with us on issues that they

consider are important to them and their businesses. For example, in 2021, we received 14 responses to the Compensation Arrangements consultation and 35 responses to the Call for Evidence consultation on regulatory arrangements. We also responded to numerous queries by phone and email on these two issues. In addition, we have held numerous bi-lateral discussions on the Review. The communication signposting the Diversity Survey elicited 1,180 responses which is a statistically significant response rate.

Based on the responses to these consultations, IPReg considers that our approach to communications and messaging does lead to good levels of responses and engagement.

The PCF consultation for 2021 fees and 2022 fees were for zero increases (i.e. a decrease in real terms) so they were unlikely to have a negative impact on the profession. This contrasts with the response to the 2019 PCF consultation which was for a proposed increase of 3.8% plus 5% to cover the additional expenditure required to discharge IPReg's regulatory functions. This was the first increase in fees since 2016 in fees and resulted in 46 responses.

A factor that might affect the response rate to practising fee consultations may be that over 90% of attorneys work in private practice or industry and their fees are usually paid by their employers. This means the level of fee does not impact the attorney directly and they are unlikely to want to spend time responding to a consultation that does not affect them. Furthermore, attorneys who pay their own fees, whether in private practice, industry or as sole traders are also able to claim the fees as a taxable deduction because IPReg is an approved professional organisation listed on HMRC's List 3.

Both CIPA and CITMA responded to the consultation about 2022 fees. CITMA represents the interests of over 1,600 trade mark and design professionals and CIPA represents the interests of the UK's 2,400 practising patent attorneys and others working in IP. Although these figures are likely to include students and retired members, both CITMA and CIPA are significant stakeholders for IP professionals. IPReg therefore considers that the responses of the representative bodies provide important and informed insight into the impact of our proposals on the regulated sector.

- h) Paragraph 25, Q3, bullet 3 sets out that one stakeholder (IP Inclusive) urged IPReg to run a diversity survey in 2022 and annually thereafter. CIPA also urged IPReg to revisit the decision not to conduct a survey in 2022. Two other respondents' comments reflected the importance of diversity information. Can you please explain how you considered this feedback in finalising the proposed level of PCF?

IPReg response

.As the LSB is aware, we have put an Action Plan in place which takes into account the results of our initial diversity survey.

IPReg took into account the responses to the consultation in deciding whether it should conduct a diversity survey in 2022. We consider that there would be more value in running another survey in 2023 after what we would hope to be a more normal year after the worst of the pandemic. We welcomed the suggestion

by CITMA of a wider discussion about how to achieve the best results from a diversity survey. We have therefore decided to take forward discussions with stakeholders about how any survey would best be conducted in 2023. This work is considered to form part of the business as usual work of the IPReg Team and does not require a separate budget line or additional resources at this stage.

- i) Rule 14a of the [LSB Practising Fee Rules](#) 2021 sets out that the PCF application should be clear on how the benefits of regulatory activities will be assessed. Can you please provide information about how IPReg will assess the actual benefits after the regulatory activities funded by the PCF (or by reserves) have been completed, including the benefits of the review of regulatory arrangements and diversity and inclusion work?

IPReg response

As stated above, we intend to hold discussions during 2022 about how best to conduct a diversity survey in 2023. The diversity survey results have been published on our website along with our Action Plan to aid transparency. However, as acknowledged in a recent LSB workshop on diversity, it is very difficult to attribute cause and effect when it comes to diversity initiatives (in particular).

In terms of assessing the impact of the changes to our regulatory arrangements, they will be in place by spring 2023 at the earliest. We will develop our plans to assess the impact of the changes in due course and once we have taken final decisions (following consultation) on the changes we are taking forward. In planning any post implementation review we will take into account how other regulators have undertaken similar tasks.

- j) Paragraph 7, black bullet 6, white bullet 3 of the application sets budgeted expenditure for 2022 as £1,051,870. However, in Annex 5 the budgeted figure is set as £1,021,870. Can you please confirm which figure is correct?

IPReg response:

The budgeted actual expenditure is £1,021,870 and the inclusion of the budgeted transfer of £30k to the Compensation Fund, shown after the Projected Operating Balance line, increases the total to £1,051,870. This transfer has been included in the Table in Paragraph 7 as part of the “Policy & Governance” activity and is also shown on Annex 5.

Fran Gillon
Chief Executive
IPReg
By email only: Fran.Gillon@ipreg.org.uk



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22 November 2021

Dear Fran,

Approval of application made by IPReg to Legal Services Board (LSB) under section 51 of the Legal Services Act 2007 (the Act) for the level of practising fees for 2022

Please find enclosed our Decision Notice approving the levels of the 2022 fee determinations for practising certificates for individuals and firms, as set out in your application and supporting documents of 12 October 2021.

The decision notice records concerns about how the application and subsequent material provided address the overarching criteria set out in our Rules and Guidance, in particular around transparency and accountability. As a result, we have set out our expectations for future applications to ensure that IPReg meets these overarching criteria and provides greater transparency and accountability to those that it regulates and the wider public.

I note that we recorded similar concerns about the transparency of IPReg's recent application to the LSB to establish a new compensation fund. In my cover letter to that decision I noted that our expectation is that a well-led regulator accepts and indeed welcomes the opportunity to test its proposals with a view to ensuring that regulatory arrangements are both effective and benefit from the legitimacy that comes from statutory approval. I invite you take this additional opportunity to review IPReg's approach to assisting the LSB in fulfilling its statutory responsibilities. In carrying out those responsibilities, we expect regulators to cooperate with our reasonable enquiries and provide information in a proactive and constructive manner.

The Notice should be considered effective as of today, 22 November 2021. A copy of the Notice will be published on our website within the next two working days.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'Fran Gillon', written over a light blue horizontal line.

Matthew Hill
Chief Executive

E: matthew.hill@legalservicesboard.org.uk



Approval of 2022 Practising Certificate Fee (PCF) application made by the Intellectual Property Regulation Board (IPReg) to the Legal Services Board (LSB) under section 51 of the Legal Services Act 2007 (the Act)

1. The LSB has approved an application made by IPReg to the LSB under section 51 of the Act. Section 51 of the Act relates to the control of PCF charged by approved regulators.
2. A PCF is a fee payable by a person under an approved regulator's regulatory arrangements, in circumstances where the payment of the fee is a condition which must be satisfied for that person to be authorised by the approved regulator to carry on one or more activities which are reserved legal activities. An approved regulator may only apply amounts raised by the PCF for one or more of the permitted purposes which are set out in section 51(4) of the Act and the Practising Fee Rules 2021 (Rules)¹.
3. A PCF is payable under the regulatory arrangements of an approved regulator only if the LSB has approved the level of the fee required by section 51 of the Act. The Chartered Institute of Trademark Attorneys (CITMA) and Chartered Institute of Patent Attorneys (CIPA) are approved regulators, and IPReg is the regulatory body to which CITMA and CIPA have delegated their regulatory functions.
4. In making an application, an approved regulator must comply with the provisions of the Rules. The Rules provide a framework for the practising fee application and approval process. The Rules specify the permitted purposes that the practising fee may be applied to, the criteria and material the LSB will consider before deciding to grant an approved regulator's application in whole or part, the information approved regulators are required to submit, and the application process and procedure. An approved regulator must also have regard to the LSB's Guidance on the Practising Fee Rules 2021 (Guidance)², which gives guidance on each of the Rules.
5. This notice sets out the decision taken, including an assessment of the PCF application.

Summary and overview of PCF application and decision

6. The application submitted by IPReg provides that the PCF bands which determine the level of PCF to be charged to individuals and firms will remain the same as in 2021, as set out in the table below.

¹ <https://legalservicesboard.org.uk/wp-content/uploads/2021/02/PCF-Final-Rules-2021-Accessible.pdf>

² <https://legalservicesboard.org.uk/wp-content/uploads/2021/01/PCF-Final-Guidance-for-publication-accessible.pdf>

Attorneys/Individuals	Proposed 2022 Fees	
	Single register	Both registers
Attorney solely undertaking corporate work	£177	£283
Attorney in private practice	£215	£353
Attorney not in active practice	£161	£258
Sole trader attorney not employing other attorneys or professionals	£353	£504
Sole trader attorney:	£353	£504
employing other attorneys - add fee per attorney	£71	£71
employing other professionals - add fee per professional	£283	£283

Registered Bodies <i>(this includes ABS and non-ABS firms)</i>	Proposed 2022 Fees	
	Single or both registers	
Registered Body through which a single attorney and no other attorneys or other professionals provide services	£138	
Any other registered body		
Base Fee	£353	
add fee per attorney	£71	
add fee per other professional practising via the registered body	£283	

7. IPReg's projected total PCF income for 2022 is £1,013,213 (an increase from the 2021 budget PCF figure of £906,936). IPReg's annual report 2020³ sets out in paragraph 3.3 on page 7 that as of 31 December 2020 there were 3,165 registered attorneys, of which: 248 were registered as both a patent and a trade mark attorney, 2157 registered as patent attorneys, and 760 registered as trade mark attorneys.
8. The LSB's decision is to approve in full the levels of the PCF for 2022 to be charged to individuals and firms, as set out in the application. In making this decision, we identified some shortcomings in relation to the transparency and accountability of IPReg's application. We have therefore set out some important expectations for IPReg to meet in its application next year, so as to be able to demonstrate that it fully meets the overarching criteria set out in the Rules and provides transparency and accountability to its regulated community and the public, that it is using its resources efficiently in pursuit of the regulatory objectives.

LSB assessment

Overarching criteria (Rule 14)

Accountability

³ [IPReg Annual Report 2020 FINAL.pdf](#)

9. The Rules and Guidance set out an expectation that regulatory bodies provide accountability in their PCF applications on their work in relation to areas of concern raised by the LSB. In particular, paragraph 42 of the Guidance explains that we may take into account whether any commitments that regulators have made in relation to unmet regulatory performance outcomes are reflected in regulators' activities for the year ahead. This is important because the performance framework sets out the minimum standards we expect of a well performing regulator; being able to demonstrate how the PCF and associated programme of activity will enable a regulatory body to meet these minimum standards is an important part of demonstrating that the proposal is sufficient to allow the body to discharge its regulatory functions effectively.
10. IPReg was assessed as not meeting three outcomes (RA2, RA3 and E2) under our regulatory performance framework in November 2020.⁴ Over the last year, IPReg has committed to a number of actions aimed at addressing these unmet outcomes. However, the application was not clear how these commitments would be funded through the proposed PCF and there was very little detail on what would be done to make progress on these in the application, business plan and wider material provided. We therefore sought further information from IPReg on this point. As part of this, we asked IPReg how its proposed activity took account of the fact that in a performance update provided to the LSB in July 2021, IPReg itself noted that 'a significant amount of research and data gathering will be needed over the next 6-12 months to develop a full risk model'. This was identified by IPReg in relation to its work to develop its own compensation fund.
11. In response, IPReg confirmed that it has reserves set aside for work related to the unmet outcome RA3, including £15k for research to develop its evidence base and £20k for diversity initiatives. It noted that, subject to advice from the Board's Data Group, it anticipates that it will gather information from different sources including registrants, its CRM and the Intellectual Property Office. We note that the research reserve has been reduced from £50k due to the diversion of funds for IPReg's compensation fund.
12. We are concerned that the overall budget allowed will not match the need that IPReg itself has identified, for significant research and data gathering. Our concerns about the level of funding are compounded by the lack of detail provided by IPReg in either the application or its business plan, or in response to our further questions, on the scope of this planned research and how it will contribute to its overall work programme.

Transparency

13. In relation to transparency, the Rules provide that regulators should be clear how they apply their practising fees to a programme of activity, and how the benefits of those activities which are regulatory functions will be assessed.
14. Annex 6 of the application sets out IPReg's Business Plan for 2022/2023 and this business plan sets out IPReg's programme of activity. Paragraph 7, bullet 5 of the application, sets out that due to its small size, staff work across several different areas, which means that IPReg is unable to provide a detailed breakdown of PCF spend per regulatory activity. The table under paragraph 7 of the application sets out that the majority (61%) of its PCF income will fund staff costs. IPReg has also set out

⁴ <https://legalservicesboard.org.uk/wp-content/uploads/2020/12/LSB-Regulatory-performance-report-21-December-2020-FINAL-FOR-PUBLICATION.pdf>

the level of funding required to deliver its programme of activity. We consider that there is scope for IPReg to provide a greater degree of transparency around how its resources are allocated across its different regulatory activities. We expect IPReg to give further consideration to how it might provide an indication or estimate of how resources are allocated, to improve transparency and accountability.

15. Rule 14a of the Rules sets out that the PCF application should be clear on how the benefits of regulatory activities will be assessed. As this information was not included in the application, we asked IPReg to provide information about how it will assess the benefits of regulatory activities funded by the PCF, including those of its review of regulatory arrangements and its diversity and inclusion work. IPReg responded that it is currently developing plans for how to evaluate diversity initiatives and for assessing the changes to regulatory arrangements. There is therefore very little detail on commitments about how it will approach evaluation and assessment of the benefits of its regulatory activity.

Conclusion

16. Based on our published assessments, IPReg needs to improve its performance in a number of areas under our regulatory performance framework. As set out above, the budget and programme of activity provided fall short on transparency and accountability, including on demonstrating how IPReg will approach and fund the work required to achieve the required performance improvement. This in turn makes it difficult to conclude with confidence that the amounts raised by the practising fees to be applied to regulatory functions are sufficient to effectively discharge its functions, in line with Rule 29(d).
17. On this occasion, we are not refusing the application on the basis of these concerns. Instead, we will continue to monitor IPReg's progress in delivering improvements in its performance and provide IPReg with the opportunity to demonstrate that it can meet the performance outcomes through its proposed budget and programme of activity.
18. The decision to approve the application this year has also been informed by the fact that this is the first year of operation of the new Rules. In this context, we consider that the application, plus the additional information provided through our assessment, can be seen as meeting the minimum requirements. For the avoidance of doubt, for future applications we will require a greater degree of accountability and transparency, so that applications are fully in line with the overarching criteria set out in the Rules and Guidance, including in relation to any commitments that are relevant to delivering improvements in performance under our regulatory performance framework. We will also expect IPReg to set out how it has assessed the actual benefits of the regulatory activities undertaken in the previous year and how it will assess the benefits of regulatory activities for the coming year.

Allocation of PCF to permitted purposes

19. We are satisfied that IPReg has complied with the guiding principles in setting the PCF for its regulatory functions, in particular that the PCF must be allocated solely for the permitted purposes set out in section 51 of the Act and the Rules.

Budget for 2022 and reserves

20. IPReg intends to distribute the cost of the level of funding required amongst its regulated community using a proposed fee structure consistent with previous

years. The annual report 2020 sets out on page 4 that fee income from regulated bodies was £256,698 and individual attorney fees were £702,608.

21. IPReg has provided its draft budget for 2022 and the income and expenditure for the previous year (inclusive of VAT). Paragraph 10 of the application notes that the 2022 budget takes the following into consideration:
 - IPReg does not expect any material change in income and expenditure and so has not provided any forecasts for 2023 and 2024.
 - The budget is prepared using the accruals basis and all figures are inclusive of VAT.
 - The budget only shows PCF income and no other sources of income.
 - All expenditure is on permitted purpose activities.
22. We asked IPReg for further information on why it uses a range of pots of reserves for costs that would be typically considered to be operating expenditure. Annex 9 to its application includes thirteen separate ring-fenced reserve lines. IPReg explained that one of the reasons for this is that some of the reserve offsets have been set aside as a result of unspent budget lines from previous years, when activities were deferred as a result of the pandemic. IPReg believes that this approach aids transparency. It also explained that it retains the flexibility to transfer money between different reserve pots. Whilst we do not consider that this approach raises grounds to refuse the application, we are concerned that rather than aiding transparency, this approach could be seen as making the overall position harder to understand and therefore less accessible and transparent. We would also expect that the number of unspent budget lines that result in future offsets would reduce in the future, as a result of prudent planning and notwithstanding future external events such as the COVID-19 pandemic.
23. As set out in paragraph 7, bullet 4 of the application, the proposed PCF does not meet the funding required to deliver IPReg's programme of regulatory activity and IPReg will draw on reserves to meet this funding gap. Annex 5 of the application (proposed budget 2022) sets out how reserves will meet this funding gap and further detail on reserves was provided in Annex 9. From the information provided in the application, it was unclear what impact the proposed draw on reserves would have on the target level of uncommitted reserves, as provided for in IPReg's reserves policy, and therefore the overall financial resilience of IPReg. We therefore sought further information and assurance from IPReg.
24. In response, IPReg confirmed that its General Contingency Reserve is what is intended to cover three months of operational expenditure in line with its reserves policy. It explained that a full three months of operational expenditure would be £236k but that it would be able to delay some payments to bring this down to £210k. The impact of the draw on reserves would leave the General Contingency Reserve at £200k, so slightly under the target set out in the policy. IPReg also noted that it has significant additional reserves in other pots that could be reallocated to increase the General Contingency Reserve to above £500K if necessary. As a result, it was satisfied that the allocation was appropriate.
25. This response provided assurance on the substance of IPReg's position. However, as stated above, this position was not clear from the initial information provided in the application. For future applications and engagement with the regulated community on its PCF, we expect IPReg to consider how it could improve transparency by presenting its proposals in a way that provides clarity on the projected impact on its overall financial position and resilience.

Decision not to increase fees

26. As set out in paragraph 7 of the application, IPReg determined that it would be inappropriate to increase PCF fees for 2022. We asked IPReg to provide evidence to support the assertion in paragraph 7 and share the different considerations the IPReg Board took into account and how it balanced these to reach the decision it was not appropriate to increase the PCF.

27. IPReg responded that it took into account several factors to make this decision, including:

- A moderate estimate of net admissions to the registers in 2022 and the fact that the number of people joining the registers is greater than the number leaving.
- Over the next 2-3 years, several policy work areas may require additional resources such as elements of the Review of Regulatory Arrangements.
- The Education Working Group programme plan.
- The anticipated number of LSB consultations and other activities.
- The need to alter the allocation of its reserves as a result of establishing a compensation fund and approach to financing an operating deficit from reserves.
- Its approach to financing its operating deficit from reserves.
- The fact that the LSB has previously commented on the size of IPReg's reserves.
- The fact that the impact of the pandemic and the end of furlough are still being felt and the longer-term implications are unclear.

28. IPReg also explained that every year the IPReg Board considers whether it would be possible to reduce the cost of regulation by reducing fees and that these considerations are balanced by the need to ensure that IPReg has sufficient resources to meet its regulatory obligations, plan and complete activities, and manage unforeseen events. We were satisfied with this additional assurance provided.

Consultation and engagement

29. IPReg consulted on this application between 6 September 2021 and 4 October 2021. It sought comments on the following areas:

- Its plan not to increase practising fees in 2022.
- Plan to extend by 12 months (until 31 December 2022) the ability for IPReg to waive practising fees for attorneys who are facing hardship as a result of the Covid-19 pandemic.
- Business Plan for 2022/23.
- Budget for 2022.

30. We note that IPReg's consultation⁵ on the PCF included information about the need to create a compensation fund reserve and fund part of its operating expenditure from reserves rather than PCF. The consultation also included an equality impact assessment and sought comments on this area. Paragraph 25 of the application provides a comprehensive review of the responses to the consultation and paragraph 26 sets out IPReg's response to the issues raised by consultees.

⁵ IPReg [consultation](#) on 2022 Business Plan, Budget and Practising Fees

31. As set out under paragraph 5 of the application, last year's PCF decision notice set out an expectation for IPReg to take additional steps to improve its consultation response rate in the future. Under paragraph 5, the application explains that IPReg engaged directly with CIPA and CITMA before the consultation opened and sent them both advance copies of the consultation. The application also sets out that all registrants and regulated firms were emailed the consultation directly and so were the Legal Services Consumer Panel and IP Inclusive. Paragraph 24 of the application sets out that IPReg received six responses to the consultation, which is less than the 10 responses it received last year.
32. We asked IPReg a follow-up question to explain what steps it took to improve the consultation rate. IPReg responded that it considers that its approach to communications and messaging does lead to good levels of responses and engagement.
33. We do not accept that the six responses to IPReg's public consultation was a good level of response. As set out in this decision notice, the application was lacking transparency and clarity in a number of regards which makes it harder for IPReg to be accountable to the public and fee payers. Improving the transparency of what is being proposed will be important to encourage higher levels of engagement in the future. Given the low response rates to public consultation, we expect IPReg to demonstrate consideration and implementation of alternative methods of engagement, in addition to public consultation, to ensure that its proposals benefit from effective engagement in the future. We recognise IPReg's efforts to engage widely on its review of regulatory arrangements and encourage IPReg to consider any learning from this which it could apply, when seeking better engagement for future PCF applications.

Impact assessments

Equality Impact assessment

34. Annex 4 of the application includes a summary of IPReg's initial Equality Impact Assessment (EIA) on the impact of the level of the proposed PCF on legal services carried out by authorised persons, in particular those with protected characteristics. We note that following its diversity survey of registrants this year, IPReg is now in possession of up-to-date diversity data to support this EIA and IPReg's other regulatory activities.
35. Under the initial EIA IPReg had not identified any potential adverse impact on protected characteristics from the proposed PCF. Annex 11 of the application includes IPReg's EIA as amended following consultation feedback. This EIA amended text around IPReg's approach to the PCF for attorneys on parental or adoption leave.
36. Paragraph 3 of the application sets out that in recognition of individual hardship, IPReg operates a PCF waiver process. Following consultation, IPReg has widened its PCF waiver policy (set out in annex 12) but not changed its PCF levels.
37. Question 3 of the PCF consultation asked for feedback on IPReg's decision not to conduct a diversity survey in 2022. Paragraph 25, question 3, bullets 3 and 4 of the application set out that two stakeholders urged IPReg to run a diversity survey in 2022, with IP Inclusive recommending it be run annually. We asked IPReg a follow-up question to understand how it had taken account of the views of these stakeholders in deciding not to re-run the diversity survey. IPReg confirmed that it had but considers that there would be more value in running another survey in 2023 after what it hopes

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to be a more normal year post-pandemic. IPReg is discussing with stakeholders how any survey would best be conducted in 2023.

38. Overall, we consider that the application provides adequate consideration of equality issues, which are particularly relevant to the regulatory objective of encouraging an independent, strong, diverse, and effective profession.

Decision

39. The LSB has approved the PCF application submitted by the IPReg for 2022 under section 51 of the Act.

Summary of expectations for next application

- A greater degree of accountability and transparency, in line with the overarching criteria set out in the Rules and Guidance, including in relation to any commitments on delivering improvements in performance under the regulatory performance framework.
- IPReg to demonstrate consideration to how it could provide an indication or estimate of how resources are allocated across activities, to improve transparency and accountability.
- IPReg to set out how it has assessed the actual benefits of the regulatory activities undertaken in the previous year and how it will assess the benefits of regulatory activities for the coming year, in line with the expectations in the Rules and Guidance.
- IPReg to consider how it could improve transparency by presenting its proposals in a way that provides clarity on the impact of its proposals on its overall financial position and financial resilience.
- IPReg to demonstrate consideration and implementation of alternative methods of engagement, in addition to public consultation, to ensure that its proposals benefit from effective engagement in the future.

Matthew Hill, Chief Executive

Acting under delegated authority granted by the Board of the Legal Services Board
22 November 2021