

The Patent Regulation Board and the Trade Mark Regulation Board**Minutes****Thursday 9th December 2021 at 12 noon****Attending:**

Rt Hon Lord Smith of Finsbury (Chair)
Justin Bukspan
Samantha Funnell
Alan Kershaw
Victor Olowe
Samantha Peters
Emma Reeve
Nigel Robinson
Caroline Seddon

In attendance: Fran Gillon, Shelley Edwards, Sarah Hall, Emily Lyn

1. **Apologies** - no apologies were received.
2. **Notification of any conflicts of interest** – none.

PART A – NON-CONFIDENTIAL ITEMS**3. Minutes of November 2021 meeting and matters arising**

3.1 Minutes agreed as a correct record.

3.2 Matters arising: the Board noted that IPReg has approval from the Legal Services Board (LSB) for the no increase to practising fees.

4. Action Log

4.1 The Board noted the action log. Updates were provided on two items:

- the Chair reported that Zoom Board member appraisals will commence in the New Year;
- FG reported that OSIT has offered the same licence fee and for level of services for the current 8 person office, also offered a smaller 6 person office; on balance proposal of 12 month licence extension for current office as least disruptive option – this was agreed by the Board.

5. Consultation on Review of Regulatory Arrangements

SH joined the meeting.

5.1 AK reported that the last steering group meeting had extensively reviewed the lawyer's draft Regulations. EL presented the consultation paper, reporting on the plan to email all attorneys, and

all who have engaged with the review, as well as other stakeholders such as the Competition and Markets Authority (CMA) and the Legal Services Consumer Panel (LSCP). The consultation will be issued on 17 December. On 16 December, there is a briefing meeting with PAMIA, the dominant Professional Indemnity Insurance (PII) provider to the market, regarding the proposed PII Sandbox. There is a dedicated meeting with the LSB on 17 December, ahead of publication later that day. The consultation will be 13 weeks long to allow for an additional week in light of the Christmas break. It was reported that there are events planned towards the end of the consultation, engaging with both the IP Federation and IP Inclusive.

5.2 The Board noted that amendments to the consultation include, and are explicitly identified, within in the consultation:

Code of Conduct – there is a proposed new requirement on diversity monitoring;

Clarify overseas qualifications – including where we will potentially recognise these; SE reported that the current regulatory arrangements enable recognition of qualifications only from the European Economic Areas countries (under the post-Brexit transitional arrangements). The consultation proposes that qualifications from any country could have the potential to be recognised. This will be on a case by case basis with the emphasis upon the applicant to demonstrate they meet the required competencies. It is proposed that there will be tools to mitigate risk and provide confidence in the individual's competence, such as supervised practice, targeted CPD, aptitude test etc.

CS joined the meeting.

5.2 The Board discussed the proposed consultation and agreed the following changes:

- more context regarding the evidence base, and to request within the consultation further evidence, where available, whether that supports or challenges proposals – to include a specific question regarding client money types (to help inform the data gathering exercise scheduled for next year regarding Compensation Fund); and also a nature of client base question;
- amend questions so easier to read and frame so common format which allows comment, rather than a binary response;
- provide a distinct questions sections/document (as well as questions within the document itself).

Action: provide more context on evidence bases and add specific evidence gathering questions on client monies and client base

Action: create common questions format and provide a distinct questions section

5.3 It was acknowledged that office workloads will be necessarily impacted in the shorter term due to the process for embedding new regulatory arrangements. It is hoped that the proposed suite of guidance documents should aid the regulated community in their understanding. The process for non-UK qualification applicants is to be outsourced, with the cost to be met by the applicant.

5.4 The Board went through each section of the proposed consultation document and agreed a small number of drafting amendments, including more narrowly defining terms such as referral arrangements and foreign exchange uplifts, as part of the proposed transparency requirements. It was noted that there may be reluctance from some firms to embrace the transparency proposal but which the Legal Services Consumer Panel is likely to welcome for empowering consumers. It is considered that the current absence of this transparency can be a risk to less informed clients. The Board discussed how to engage with as wide a host of stakeholders as possible including asking the IP Federation to request their members provide evidence as to how the larger industry firms approach this issue.

5.5 The Board noted the operating procedure example and agreed it would be likely useful to provide a couple of examples. It is considered that these will be useful accompaniments to the rules change application when made to the LSB.

5.6 The Board noted that enabling switching between regulators was included in the impact assessment due to the CMA Report on legal services welcoming opportunity for such.

5.7 The Board agreed it would value examples of where policy decisions have been made with limited evidence base, though it is hoped this next stage of the consultation will provide more evidence.

5.8 The Board agreed to proceed with the consultation as planned, launching on 17 December,.

SH left the meeting.

6. Other activities (not covered elsewhere)

6.1 3 x CEOs 24 November: FG reported providing the Chartered Institute of Patent Attorneys (CIPA) and the Chartered Institute of Trade Mark Attorneys (CITMA) with the LSB Decision Notice on the fees as well as the supplementary information IPReg provided in light of LSB questions (which it does not publish), [REDACTED]

6.2 Regulatory Forum 2 December: Lord Smith reported discussing the regulatory arrangements review, LSB consultations and [REDACTED]

7. Mercer Review – Proposed IPReg response

7.1 CS presented the paper setting out the background and rationale for the proposed IPReg response to the Mercer Review, intended to be both constructive and welcoming. Overall, the review strayed into areas which were not considered particularly helpful, or appropriate; the proposed response focuses on that which the Education Working Group considers the most

important elements from a regulatory perspective. IPReg particularly welcomes the FD4 examination proposals, the issues with that examination being the initial driver for the much broader review.

7.2 The Board reaffirmed its commitment to both the principle of a diversity of qualification assessment provider pathways and the necessity of independent governance structures relating to the CIPA and the Patent Examination Board, as stated in the proposed response.

7.3 The Board discussed creation of a table which sets out a proposal and our position, where there is one, even if that is that there is insufficient evidence provided for there to be a position, so that a non-response is not taken as a possible endorsement.. Likely for internal reference in the first instance but may also help stakeholder discussions going forward. The Board noted there are a number of items on the periphery, such as dual qualification, where there is no evidence base for the conclusions or recommendations, and would appear to be one of professional opinion and/or seeking to go back in time. Some concern that silence, where we have deliberately not responded on a number of items, could be taken as assent.

7.4 The Board agreed the proposed IPReg response to the Mercer Review, subject to reinforcing the statement regarding insufficient evidence.

Action: VS and CS reinforce the statement in the response regarding not being able to comment in some places due to insufficient evidence

Action: VS to create a table as to each Mercer Review proposal and IPReg position on it, if any

PART B – CONFIDENTIAL ITEMS

8. Complaints update

8.1 SE presented the complaints update paper, reporting on the following:

8.2 [REDACTED]

8.3 [REDACTED]

8.4 [REDACTED]

8.5 [REDACTED]

9. LSB Discussions

9.1 Regulators' joint statement on disciplinary sanctions and Diversity and Inclusion: the Chair reported that the legal regulators, had been asked by the LSB to sign a joint statement on this area which includes their new concept of "counter inclusive misconduct".

9.2 [REDACTED]

9.3 [REDACTED]

Action: FG to seek clarity from the LSB on what the statement seeks to address

9.4 Response to LSB consultation: Statement of policy – empowering consumers: [REDACTED]

9.5 The Board agreed the proposed response to the LSB consultation.

Action: FG to submit IPReg response to LSB Consumer Empowerment Consultation

9.6 Practising fee decision notice: the Board noted the LSB had agreed to the proposed practising fee schedule for the coming year, though with a number of questions, the answers to which FG has set out in the paper.

9.7 [REDACTED]

a) [REDACTED] and [REDACTED]

b) [REDACTED]

9.8 [REDACTED]

9.9 [REDACTED]

9.10 [Redacted]

9.11 [Redacted]

9.12 [Redacted]

9.13 [Redacted]

9.14 [Redacted]

9.15 [Redacted]

- 9.16 [Redacted]
- [Redacted]
 - [Redacted]
 - [Redacted]

| [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

Action: FG to submit factual accuracy check response on performance assessment to the LSB

Action: [REDACTED]

10. Regulatory Statement – for Part A and Part B: Confirmation that, except where expressly stated, all matters are approved by the Patent Regulation Board and the Trade Mark Regulation Board.