

IPReg Consultation - response to the recommendations of the CMA Legal Services Market Study Report

1. Background

The Legal Services Market Study

- 1.1 The Competition and Markets Authority (“CMA”) carried out a detailed study of the legal services market. The CMA’s report was published in December 2016 (see [here](#)). The CMA concluded that the legal services market was not working well for “consumers”, defined as individual consumers and small businesses.
- 1.2 Of particular concern to the CMA was the lack of transparency about price, service and quality. The CMA’s recommendations included:
 - Action to deliver a step change in standards of transparency to help consumers: (i) to understand the price and service they will receive, what redress is available and the regulatory status of their provider; and (ii) to compare providers. The CMA recommended that the legal regulators should revise their regulatory arrangements to set a new minimum standard for disclosures on price and the service provided and develop and disseminate best practice guidance. It considers that this should include a requirement for providers to publish relevant information about the prices of legal services;
 - Promotion of the use of independent feedback platforms to help consumers understand the quality of service offered by competing providers. The CMA recommended that the legal regulators should provide guidance to providers on how they should engage with public reviews;
 - Facilitation of the development of a dynamic intermediary market through making data more accessible to comparison tools and other intermediaries. The CMA recommended that this information should be freely and easily accessible in one place (i.e. a single digital register) so that all authorised providers and intermediaries would be better able to help consumers choose a legal service provider by combining and contextualising this data with information on price, service and quality;
 - Making better information available to assist consumers when they are identifying their legal needs and the types of legal services providers (both regulated and unregulated) who can help them. The CMA recommended that the Legal Choices website should be overhauled and that improved content should reflect the purchasing journey for common legal needs, in addition to general public legal information.
- 1.3 Although the CMA report’s main focus was not on IP services specifically, it did focus on individuals and small (and in particular micro) businesses and found that:

- Problems with intellectual property matters were the fourth largest category of issues for small businesses, with 9% reporting that they had experienced a problem in the previous 12 months;¹
- Small businesses were more likely to seek legal advice in relation to intellectual property matters than, for example, trading issues (even though these were the most common legal problem);²
- The Federation of Small Businesses (“FSB”) reported that 7% of calls to its helpline about “business law” related to intellectual property.³

The Intellectual Property Office study

1.4 In September 2017, the Intellectual Property Office (“IPO”) published a report into the performance of the UK patent system.⁴ Amongst other things, and in the context of the actions expected by the CMA, the IPO study found that:

- The high cost of legal advice was seen as a barrier to small firms getting advice;⁵
- UK SMEs in particular had low levels of patenting (even allowing for differences in, say, levels of manufacturing between countries);⁶
- Increasing understanding of how to use patent attorneys and the benefits of patenting (including how to bring products to market) would support SMEs’ interaction with the patent system;⁷
- Research into how to support SMEs in best utilising the patent system could help clarify SMEs’ awareness and experience of patenting.⁸

2. Reasons for this consultation

2.1 In June 2017, IPReg (together with the other frontline legal regulators) published its Action Plan to implement the CMA’s recommendations. The Legal Services Board (“LSB”) has assessed all the Action Plans and provided its views; it published its assessments on 2 October 2017 (see [here](#)). The proposals in this paper take into account the LSB’s assessment of IPReg’s Action Plan and feedback from the CMA. IPReg is working closely with all the legal regulators to ensure that, as far as possible, its proposals are consistent with theirs.

¹ CMA report Figure 2.3

² CMA report paragraph 3.171

³ CMA report page C12, paragraph 41 – the FSB received 40,000 calls about business law in 2015.

⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/639203/building-evidence-performance-patent-system.pdf Note that this was after publication of IPReg’s Action Plan.

⁵ IPO study page 2

⁶ IPO study page 3

⁷ IPO study page 23

⁸ IPO study page 3

- 2.2 Both the CMA and the LSB recognise that attorneys serve primarily business consumers and that therefore it is appropriate for IPReg to take more limited action compared to some of the other legal regulators. However, the CMA expects legal regulators to consult on regulatory change to drive increased transparency.
- 2.3 The CMA's report raises fundamental and potentially far-reaching questions. In addition, the IPO study identifies areas where it may be possible to increase SME awareness and use of the patent system, bringing potential benefits to consumers and businesses. IPReg therefore wishes to engage with attorneys, consumer/business representatives and representative bodies to enable them to give views on what steps are appropriate to increase transparency in the context of the intellectual property market(s).
- 2.4 We are not proposing at this stage any specific changes to either the Code of Conduct or Rules/Regulations or their associated Guidance – any changes will be the subject of a separate consultation after we have considered the responses to this one. At this stage, our strong expectation is that any changes would be incorporated in Guidance rather than in Rules/Regulations. This seems to be a proportionate approach, with such Guidance aimed primarily at those attorneys/firms providing advice to consumers and small businesses; it would be for the attorney/firm to decide whether it was applicable to them, given their detailed knowledge of the type of clients they advise. This approach has been endorsed by the LSB (albeit that it has asked us to keep this approach under review).
- 2.5 IPReg considers that requiring greater transparency of the services attorneys offer including pricing information is in the interests of individual consumers and small businesses in that it will help them identify and make informed choices about attorney services available to them. This should in turn help to drive increased competition. There are also likely to be benefits for attorneys whose clients are mainly small businesses and consumers because greater transparency will provide more opportunities for attorneys to promote their services and thereby improve consumer understanding of their role.

Question 1: What are your views on IPReg's proposed approach, in particular our proposals that:

- a. Any changes would be incorporated in Guidance rather than in Rules/Regulations;
- b. The focus of any changes to our Guidance should be on those attorneys that provide services primarily to individual consumers and small businesses. Should IPReg develop criteria to determine which attorneys might be covered by such Guidance?

3. Possible areas for increased transparency

- 3.1 The CMA report emphasised the importance of clear information before consumers choose their legal provider (pre-engagement information):

“To make informed decisions and to compare providers’ offers, legal services consumers need clear information to help them understand the price and service offering of individual providers. This information needs to be available before consumers choose a provider.”⁹

The LSB has reiterated the importance of pre-engagement information in its assessment of IPReg’s Action Plan.¹⁰

Pricing, scoping meetings and timescales

3.2 IPReg has considered where additional information could be provided on websites. For example:

- Pricing - what pricing would be most helpful to individual consumers and small businesses (taking into account proportionality, feasibility and relevance)? Options could include:
 - Fixed prices for specific categories of work, the factors that may affect fixed fees and the circumstances in which additional fees may be charged;
 - Scale of disbursements (e.g. filing fees in the UK and elsewhere, court fees, administration charges, foreign exchange charges, etc.)
 - Hourly rates for specific categories of fee-earner;
 - Scenario-based pricing, where illustrative examples are given including likely cost and time-scales.
- The availability or otherwise of a free or fixed-fee initial scoping meeting that might be particularly helpful for inexperienced or first-time users of intellectual property legal services and which would include indications of cost, likely process, risks and timescales;
- Typical stages and timelines for particular types of work.

Question 2: What are your views on providing this type of information on attorneys’ websites? What other types of information could be provided?

Consumer protection

3.3 IPReg considers that the following information could be provided on attorneys’ websites so that it is available to consumers and small businesses as part of their consideration of which firm to use:

- complaints handling procedures (this information is required to be provided after engagement by Rule 12 of the Code of Conduct);
- the right of consumers to complain to the Legal Ombudsman (this information is also required to be provided after engagement by Rule 12);

⁹ CMA Report paragraph 7.30

¹⁰ http://www.legalservicesboard.org.uk/Projects/pdf/2017/Monday%2012%20Noon/IPReg_-_action_plan_suff_assessment.pdf

- the fact that the attorney/firm has Professional Indemnity Insurance (this information is required to be provided after engagement by Rule 17) and why this provides important protection for consumers;
- the fact that they are regulated by IPReg (this information is required to be provided after engagement by Rule 18) and why this provides important protection for consumers;
- generic information already provided in client care letters (providing this is clear and understandable, in accordance with IPReg’s guidance).¹¹

Question 3: What are your views on the provision of this type of pre-engagement information on attorneys’ websites?

Question 4: Is there any other information that should be provided?

Quality

3.4 IPReg currently publishes aggregated information about first tier complaints (i.e. complaints made direct to an attorney or firm) in its Annual Report.¹² If firms published information on their websites about the complaints they had received, this might provide an indication to consumers and small businesses about the quality of work experienced by other clients. However, it is not necessarily the case that complaints are a reliable indicator of quality, especially in the absence of any understanding of the context of the complaint; this is especially true for work that is not commoditised. In addition, if complaints are handled well by a firm, they can lead to improved standards of client care; this would not be reflected in “raw” complaints data. Further, a small number of complaints is unlikely to be sufficient to be a reliable indicator of quality. Therefore, rather than pursue the publication of complaints data, IPReg proposes instead to focus on working with the other regulators on the feasibility of developing a single digital register (see section 5) and supporting firms in engaging with review platforms (see section 6).

Question 5: What are your views on providing information about complaints on attorneys’ websites? What other type of information about quality could be provided?

3.5 The LSB has suggested that IPReg should integrate the disciplinary information it already publishes into the Register(s) on its website. The LSB considers that this can be achieved “at little cost”. IPReg will consider whether it is appropriate to do this and establish how much it would cost.

Question 6: Would providing disciplinary information on the Register(s) be useful?

3.6 The CMA report discusses the use of a quality mark (i.e. an assessment of service/quality) or “regulatory badge” (an indication that a firm is regulated and the protection this brings) as an aid to clients in assessing the quality of legal providers and to help distinguish them from un-regulated providers.¹³ It is currently a requirement of the Code that attorneys/firms state that they are regulated by IPReg. IPReg’s view is that the wider issue about quality marks and/or regulatory

¹¹ <http://ipreg.org.uk/pro/practice-development/client-care-letters/>

¹² <http://ipreg.org.uk/public/about-us/annual-report/annual-report-20162017/>

¹³ CMA Report paragraphs 7.102-109

badges are more appropriately addressed in the longer term, perhaps during the re-development of the Legal Choices website and/or if a single digital register is established.

Question 7: What are your views on IPReg's proposed approach to quality marks and regulatory badges?

4. Legal Choices

4.1 IPReg is participating in the regulators' group that is considering how the Legal Choices website could be improved. This work is being led by the SRA.

5. Single digital register

5.1 IPReg is also participating in the regulators' group that is considering whether it would be feasible to develop a single digital register. This would contain a set of common fields across all regulators. Work on the feasibility of a single digital register is being led by the SRA.

6. Independent feedback platforms

6.1 We will consider what advice we should give to attorneys about engaging with independent feedback platforms (i.e. a website such as Trustpilot or Feefo) if the market develops them.

Question 8: Do you have any comments on the approach taken by IPReg on the Legal Choices website, a single digital register or independent feedback platforms?

Question 9: What is your view of the impact that the above proposals will have on the competitiveness of regulated IP companies and individuals?

This consultation opened on 9th **October 2017** and will run until 9th **January 2018**. If you would like all or part of your response to be treated as confidential, please make this clear.

Responses and requests for meetings should be sent to ipreg@ipreg.org.uk.