

The Patent Regulation Board and the Trade Mark Regulation Board

Agenda

Thursday 5 November 2020 at 12 noon

Online

1. Apologies
2. Notification of any conflicts of interest

PART A – NON-CONFIDENTIAL ITEMS

3. Minutes of September 2020 meeting and matters arising
4. Action Log (FG)
5. Discussion on Covid-19 – impact on:
 - a. IPReg team (FG) – no paper
 - b. Market (All) – no paper
6. Other activities (not covered elsewhere):
 - a. 3 x CEOs: 30 September and 28 October (FG)
 - b. UK Internal Markets Bill (Chair/FG/SE)
 - c. Brexit (FG)
7. IPReg Accreditation Withdrawal Procedure (CS, VS)
8. Qualifying as an attorney – reviewing exemptions for historic JEB examinations and courses (CS, VS)
9. Education Group Update (CS, VS)
10. Diversity monitoring (FG)
11. Regulatory Performance Review (FG)
12. Lawtech (FG)

PART B –CONFIDENTIAL ITEMS

13. Complaints update (SE)

14. LSB issues (Chair/FG)

15. Red risks (FG)

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
September 2020 Board Meeting					
Sept-20	Pro bono work	Discuss pro bono corporate insurance model	██████████	Open	
Sep-20	Discussion on Covid-19 - IPReg team	Compile a risk assessment concerning returning to the office	FG	Closed	Superseded by events
Sep-20	2020 budget and business plan	Publish budget, business plan and consultation	FG and KD	Closed	Fee application submitted to LSB on 28 October
Sep-20	Regulatory arrangements review - Call for Evidence	Take forward Call for Evidence document publication and related discussions	FG	Closed	CfE has been published and emailed to contacts
Sep-20	PCF Stakeholder Consultation Event	Submit response to LSB practising fees applications consultation	FG	Closed	Response submitted
Sep-20	LSB review of enforcement effectiveness	Submit investigation and enforcement effectiveness response to LSB	FG and SE	Closed	Response submitted
Sep-20	Education Group Update - Covid-19	Contact PEB regarding examination proctoring within firms	VS	Closed	Education Group considered and welcomed the QA processes the PEB put in place re: this arrangement
Sep-20	Attorney qualifying courses and examinations - accreditation costs	Inform accredited agencies and put notice on website regarding recharging costs policy	VS	Ongoing	Policy put on website and Brunel notified (likely pending accreditation application)
Sep-20	Diversity funding - Stemettes	Liaise with IP Inclusive regarding any initiatives which might need sponsorship	FG	Closed	

IPReg Board Meeting Actions Log - New and Outstanding Actions

Date of Meeting in which action arose	Agenda Item	Action	Responsibility	Status	Notes/Update
Sep-20	Diversity funding - Stemettes	Liaise with CEO of Stemettes about how to highlight the work that IP attorneys undertake	SF	Open	
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	
May 2020 Board Meeting					
May-20	Action log - Pro bono	Liaise with CIPA and IP Federation re Professional Indemnity Insurance issues	FG	Ongoing	
March 2020 Board Meeting					
Mar-20	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
January 2020 Board Meeting					
Jan-20	Regulatory arrangements review	Procure quotes for legal support	FG	Closed	
Oct-19	LSB CEO Meeting	Invite Matthew Hill to Board meeting	FG	Open	Discussed with Matthew. Date TBC
Oct-19	Responses to IPReg consultations on pro bono and run-off cover	Submit a draft pro bono application to LSB early 2020 following discussions with respondents	FG	Ongoing	FG met with IP Federation 25 March. Need to discuss with CIPA re PII

IPReg Board Meeting Actions Log - New and Outstanding Actions

Date of Meeting in which action arose	Agenda Item	Action	Responsibility	Status	Notes/Update
April 2019 Board meeting					
Apr-19	Queen Mary University London - progress report	Continue to monitor and take action as required	Education Working Group	Ongoing	

Board Meeting 5 November 2020

Decision Paper: IPReg Qualification Accreditation Withdrawal Procedure

Agenda Item: 7

Lead Board Member: Caroline Seddon, Chair of Education Group

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

1. Summary

- 1.1 IPReg accredits courses and examinations for becoming an attorney and for post-registration certification of litigations skills.
- 1.2 This paper seeks to gain approval of an explicit procedure for withdrawing accreditation of a course or examination. This in the circumstances of verified significant risk(s) to the accreditation standards and when it is considered no other measure could address the risk(s) and/or other measures have already been applied and have failed to address the risk.
- 1.3 Whilst it is hoped that IPReg will not find itself in such circumstances, it is considered important for both transparency and accountability, that there is a published procedure in place in case of such circumstances.
- 1.4 IPReg undertook an 8 weeks consultation on a draft high-level withdrawal procedure. The consultation responses were clear that more detail was sought, in particular around the appeals process. The revised procedure (Annex A) is significantly different from [the version consulted on](#), having taken full and serious account of all the helpful and thorough consultation feedback received.

2. Recommendation(s)

- 2.1 The Board is asked to approve, subject to any amendments it may suggest, the proposed IPReg Accreditation Withdrawal Policy Statement and Procedure (Annex A).

3. Risks and mitigations

Financial	An accreditation withdrawal would likely risk a loss of income for the qualification provider. An appeal, and/or Judicial Review, of an accreditation withdrawal decision would likely have financial ramifications for IPReg.
Legal	The likely financial and reputational impact of accreditation withdrawal potentially risks Judicial Review being sought. The stakeholder feedback ¹ received has informed the proposed procedure and in the event of it being triggered, the procedure will need to be strictly followed.

¹ CIPA's consultation response warns of the potential for Judicial Review by a qualification provider, CITMA's consultation response highlights the need for clear and "judicially fair" decision mechanisms.

Reputational	It is important that qualifications meet the specified standards; where there is found to be significant risk(s) to this, IPReg must take action and be both accountable and transparent on this.
Resources	Whilst a combination of IPReg office and Board resources would be applied to the decision-making, independent specialist legal advice would be required to determine an appeal.

4. Background

- 4.1 IPReg accredits courses and examinations for both the attorney qualifying pathway and the litigations skills² qualification. For the former, accreditation is based upon assessment either against the [IPReg Accreditation Handbook](#) and for the latter, Schedule 1 of the [Right to Conduct Litigation and Rights of Audience Rules](#). Currently, the standard accreditation status timeframe for both types of qualification is five years.
- 4.2 Whilst it had been considered implicit that the issuing of accreditation status meant it could be taken away (and in doing so, not having to await the end of the 5 years accreditation timeframe), the Education Group is clear that an explicit accreditation withdrawal procedure is required for the purposes of transparency and accountability. As a first step, the Education Group agreed a high-level procedure for consultation.

5. Consultation

- 5.1 The consultation on the draft procedure was undertaken over a 8 week period³. Consultation responses were received from CIPA, CITMA, ██████████ Nottingham Trent University, the Patent Examination Board, and Queen Mary University London. All stakeholder feedback was clear that significantly more detail was sought, with both CIPA and CITMA commenting there was a risk of judicial review inherent within the initial high-level draft procedure.
- 5.2 The extensive feedback and corresponding significant revisions meant turnaround on a definitive version of the procedure could not be immediate. Accordingly, a notice was issued on the consultation webpage, and individual notifications to each consultation respondent, thanking them for their feedback, advising IPReg is taking full and serious account of the feedback, and would be providing, in due course, substantial revisions.
- 5.3 The full feedback and a significantly reworked procedure informed by that feedback were discussed at a dedicated meeting of the Education Group on 2 July 2020 and then again at the Education Group meeting of 6 October 2020. Revisions have included:
- creation of a separate policy statement and procedure
 - explicit preamble that it is hoped there is not a time when the procedure has to be invoked
 - review and revision of terminology applied
 - significantly more detail including example triggers, appeals grounds, timeframes, decision making mechanisms and decision makers
 - publication of decision only upon expiration of appeal timeframe and in keeping with publications policy.

² Both patent and registered trade mark attorneys are required to obtain the Intellectual Property Litigation Certificate within three years of coming on to the register.

³ Opening 17 April and closing 12 June 2020.

5.4 Annex B provides a summary table of the stakeholder feedback comments and IPReg’s proposed response to each of those comment. Annex A provides the revised policy statement and procedure as informed by that stakeholder feedback.

6. Recommendation(s)

6.1 The Board is asked to approve, subject to any amendments it may suggest, the proposed IPReg Accreditation Withdrawal Policy Statement and Procedure (Annex A).

7. Next steps

7.1 The new procedure will be issued to each of the respondents, accompanied by a letter providing a summary of that which has been covered in this paper and advising that it is live as of the date of that letter. The procedure will be issued on the IPReg website alongside both the Accreditation Handbook and the Rights to Conduct Litigation Rules. Individual stakeholder responses will be published⁴ on the website, alongside the summary table of stakeholder responses and corresponding IPReg position.

Annex A – Proposed IPReg Qualification Accreditation Withdrawal Policy Statement and Procedure

Annex B – Summary of consultation feedback and proposed IPReg response

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IPReg Accreditation Withdrawal - Policy Statement

The IPReg Board hopes it would never be in a situation where we would have to withdraw accreditation from an attorney qualification. A decision to do so would not be taken lightly, would be made by the Board, and would be reached only when all other remedies had been considered and/or pursued, and the significance of the risk(s) to the accreditation standards⁵ were so pronounced that remedies were insufficient to address it.

An application which meets the accreditation standards is typically accredited for five years⁶. If, during that time, there is a verified significant risk to the accreditation standards, we would need to take action. By significant⁷ risk we mean a serious, sustained and systemic issue, such as one reported by an entire student cohort or a professional membership body. Examples of a serious, sustained, systemic issue might be: not covering the IPReg syllabus, wholly and consistently inaccurate or out-of-date course materials, or inadequate assessment arrangements. Conceivably, it could even include wider-reaching significant risks, such as the broader institution's action/ inaction (e.g. losing accreditation status with another agency, or a financial issue which threatens the viability of the course or examination).

Where a significant risk is raised during a live course or examination period, it is particularly important for immediate discussion and mitigation with the aim of ensuring that accreditation withdrawal, should it need to take place, takes place at the end of the period. This would be to enable the students/candidates who have successfully completed the course or examination to be entitled to the corresponding IPReg-accredited attorney qualification.

IPReg Accreditation Withdrawal - Procedure

1. Where a significant risk to the accreditation standards is indicated, IPReg would seek to verify this through evidence gathering (as appropriate). Where found to be both legitimate and significant, IPReg would inform the qualification provider of the identified risks, the specific areas of review and/or where appropriate, the specific actions which need to be taken and by when, and what improvements need to be seen. The qualification provider would be afforded the opportunity to respond should they consider the risk was not legitimate and/or was not as significant as perceived. Wherever possible IPReg would work with the qualification provider to help it meet the accreditation standards.

2. In the circumstances of significant risk, a programme of support and intervention remedies would apply in order that necessary improvements were made in a timeframe appropriate to the risk and how and when it could be addressed. Remedy options include (but are not limited to): requiring formal commitments and progress updates from the qualification provider, IPReg meetings with the qualification provider, bringing forward the dedicated independent accreditation exercise assessment ahead of its typical 5 years schedule, issue of notice of concerns of significant risk on the IPReg website. The qualification provider would be given clearly defined and time-framed objectives and

⁵ IPReg has the statutory power to accredit courses and examinations for attorney qualifications, pursuant to the legislation cited at the outset of the [Patent Attorney and Trade Mark Attorney Qualification and Registration Regulations \[2009\]](#). The accreditation standards for attorney qualifying pathways are set out in the [IPReg Accreditation Handbook](#), the accreditation standards for litigation skills courses are set out in the [Rights to Conduct Litigation and Rights of Audience Certification Rules](#).

⁶This is underpinned by an annual reporting requirement on accreditation standards within that timeframe.

⁷ By contrast, for example, an issue reported by a single student or exam candidate would be considered a minor risk, and accordingly would be referred to the relevant qualification provider's complaint process.

there would be ongoing liaison between them and IPReg with a view to meeting those objectives and thereby potentially avoiding accreditation withdrawal.

3. Progress review timeframes would depend upon the details of the significant risk and related remedies. Upon review, IPReg would determine whether there have been sufficient improvements made to the quality of provision. Where this review takes the form of assessment by independent specialist assessors, the costs to IPReg of those assessors and the IPReg office would be re-charged to the qualification provider.

4. Should it reach a point where there were insufficient improvements and the risk remains significant, accreditation withdrawal would need to be considered and tabled for discussion at the IPReg Board. The Board would consider a reasoned statement regarding the possibility of accreditation withdrawal. The qualification provider would be given notice of at least 21 days of the Board meeting and invited to provide written submissions and to attend and be heard at that meeting.

5. Having fully considered all evidence, the IPReg Board would make a decision⁸ whether or not to withdraw accreditation. A Board decision to withdraw accreditation would be notified in writing to the affected qualification provider within two working days of the decision. This decision notice would set out the exact and full grounds for the withdrawal of accreditation.

6. The decision notice would be clear on the date from which accreditation is withdrawn. It would be explicit regarding what needed to be done by the qualification provider and by when. The qualification provider would be required to submit withdrawal plans which confirm these requirements to be actioned in the expected timeframe and/or raise any items to consider relating to those expected timeframes.

7. The decision notice would state the date by which an appeal of the accreditation withdrawal decision must be filed, this will be within 28 days of the accreditation withdrawal decision notice. An appeal shall not be deemed to be filed until IPReg has received a notice of appeal and the fee for appeal has been paid.

8. A notice of appeal under this procedure shall contain: a) the name and address of the appellant; b) an indication of the decision impugned; and c) a statement of grounds indicating the reasons for setting aside the decision impugned, or the extent to which it is to be amended, and the facts and evidence on which the appeal is based. An appeal may be made on one of the following grounds:

- a) IPReg did not have the power to make the decision being appealed or used a power for an improper purpose;
- b) the decision was irrational;
- c) the procedure followed was unfair or biased or a substantial procedural error occurred;
- d) the decision was a breach of the law.

9. IPReg shall appoint a barrister or solicitor, of at least 10 years' qualification, independent of the IPReg Board to act as Adjudicator and the notice of appeal, IPReg's reasoned statement and decision notice, and any qualified provider comments in response, shall be forwarded to the Adjudicator who shall review the documents and rule on appeal. A decision of the Adjudicator shall contain:

- a) the date when the decision was taken;
- b) the name of the Adjudicator;
- c) the name of the appellant;

⁸ If the Board is unable to come to a conclusion the IPReg Chair would have a casting vote.

- d) a summary of the facts;
- e) the reasons; and
- f) a recommendation as to whether the decision being appealed should be upheld, revoked in part or revoked.

10. An Adjudicator shall recommend a decision being appealed should be revoked, or revoked in part, to the extent that the Adjudicator determines that:

- a) IPReg did not have the power to make the decision being appealed or used a power for an improper purpose;
- b) the decision was irrational;
- c) the procedure followed was unfair or biased or a substantial procedural error occurred;
- d) the decision contravened an appellant's rights under the law.

11. If a decision being appealed is recommended to be revoked, or revoked in part, the decision of the Adjudicator may include an order that some or the entire appeal fee should be reimbursed to the appellant.

12. Copies of the decision of the Adjudicator shall be sent to IPReg and the appellant.

13. The Adjudicator's recommendation and report should be made within 28 days. However, should the Adjudicator consider more time is required they may seek Board approval to do so. Their recommendation shall be taken back to the IPReg Board for ratification. Where an Adjudicator recommends that a decision should be revoked, or revoked in part, the IPReg Board shall reconsider the decision being appealed in the light of the Adjudicator's comments and take such steps to revise the decision as are considered appropriate.

14. IPReg shall publish its accreditation withdrawal decision on its website, in accordance with the Publication Policy, and only upon the time for appeal having expired (as item 7) without receipt of any request to appeal being made by the provider, or an appeal has been made, determined and dismissed.

15. All efforts shall be made that such an announcement would provide sufficient lead-in time for potential students/candidates to make another choice of course or examination wherever possible⁹.

⁹ IPReg's education work plan programme includes expanding the qualification pathway options.

Examination Agency	Consultation Feedback Summary	Proposed IPReg Response
CIPA Education Committee	<ul style="list-style-type: none"> • Procedure does not take account of judicial review given the potential serious reputational damage. • Include procedure within Accreditation Handbook. • Section 1 could be confusing as it deals with accreditation not withdrawal. • Students do not necessarily understand the different roles of IPReg and any QAA body. • Consultation suggests concern regarding the standards of certain offers and so “is obliged to take remedial action in the guise of the paper’s procedure” and considers IPReg should provide anonymised examples to enable parties to comment appropriately. • Item 3.5 – does not accept a circumstance for a course not to be able to run until its end. • Procedure “contains some potentially serious flaws which IPReg needs to address”: • Item 2.1 – need to determine if there is prima facie case justifying action. • Items 2.2. & 2.3 - seeks significant concern example. • Item 3.1 – seeks transparency of Education Group powers, Board & Chair roles and how decision made. 	<p>For reference, overarching comment.</p> <p>Accepted, to appendix (or link) to Handbook.</p> <p>Accepted, section has been limited.</p> <p>Accepted, for consideration in scheduled broader Handbook review.</p> <p>This is not the case (but if it were, it would not be appropriate to provide an example of a currently accredited provider, even if anonymised).</p> <p>Amended to emphasise the importance of immediate discussion and mitigation during a live course with the aim of preventing this scenario.</p> <p>Accepted, amendments made regarding verification of indicated risk.</p> <p>Accepted, examples provided.</p> <p>Accepted, more information provided.</p>

	<ul style="list-style-type: none"> • Item 3.1 – notice on precise concerns, 28 days to make representations including at Board meeting. • Item 3.3 – a written reasoned decision with reference to the evidence on which it is based; no publication of decision prior to end of the appeal timeframe. • Item 3.8 - confusion between “review” and “appeal”; “case different and additional to that provided at item 3.1” means this is a new decision, not an appeal. • Item 3.8 – confused appeal procedure risks Judicial Review; allow an appeal on reasonable grounds and who hears it not involved in original decision. • Item 3.8 – considers six weeks an appropriate timeframe for appeal. 	<p>Accepted, amendment made.</p> <p>Accepted, amendment made.</p> <p>Accepted, amendments made to clarify there is an appeal (rather than review) opportunity.</p> <p>Accepted, amendments made.</p> <p>Accepted that 5 days is insufficient, amended to 28 days in keeping with Appeals Rules.</p>
CITMA	<ul style="list-style-type: none"> • Welcomes this positive action, though “high-level” procedure would benefit from some specific details. • Trigger examples may provide guidance. • Seeks details on process leading up to withdrawal, timetables, what an intervention programme might look like, how identify frivolous complaints, track and monitor issue, roles at different parts of the process. • Suggests details of Education Group are published. 	<p>For reference, overarching comment.</p> <p>Accepted, examples provided.</p> <p>Amendments made to reflect verification of indicated significant risks and that IPReg will liaise with the qualification provider to determine clearly defined and time-framed objectives; have not sought to provide detail on an intervention programme as this will vary according to the circumstance.</p> <p>The Education Group is a working group of Board members. In considering education matters the IPReg Board is advised by its Education Group, which it has established to discuss in detail issues</p>

	<ul style="list-style-type: none"> • Item 3.4 mentions an alternative provider, this is not feasible in the case of Nottingham and what would emergency provision look like in such a circumstance. • If issue is identified early on in an academic year? • Issues regarding re-takes and who would host these. • Appeal provisions need more thought so robust and judicially fair, suggests 10 working days for an appeal and 10 working days reply deadline for IPReg. 	<p>relating to the provision of attorney education. The Education Group reports to Board, it does not have delegated authority of its own.</p> <p>Accepted (this is also the case for the PEB Final Examinations), footnote amendment references that one of the education work plan items is to expand the qualification pathway options.</p> <p>The objectives and related timeframes set will reflect this. Amended to emphasise the importance of immediate discussion and mitigation during a live course.</p> <p>Should this become relevant to a circumstance, this would depend upon a range of factors, and would be determined as appropriate to that circumstance.</p> <p>Accepted that 5 days is insufficient, amended to 28 days in keeping with Appeals Rules.</p>
	<ul style="list-style-type: none"> • Support IPReg looking to introduce a written procedure for dealing with this issue, should it arise. • Paras 3.1 & 3.2 – amend “would” to “will” to provide certainty • Para 3.1 – change “asked to provide a written response” to “invited to provide written submissions and (if requested by the provider) to be heard” • Para 3.3 – include an explicit requirement for decision to the provider to be supported by written reasons 	<p>For reference, overarching comment.</p> <p>All proposals accepted, amendments made.</p>

	<ul style="list-style-type: none"> • Para 3.3 – publication of decisions should be made only after the time for appeal has expired • Para 3.7 – “expectations and timeframes” too vague • Para 3.8 – 21 days for appeal so consistent with timescale for making an appeal in civil proceedings 	<p>Accepted that 5 days is insufficient, amended to 28 days in keeping with Appeals Rules.</p>
<p>Nottingham Trent University</p>	<ul style="list-style-type: none"> • Define withdrawal circumstances, an informal process, define set goals, link to Accreditation Handbook. • Consider a definitions clause and consistency of use. • Accreditation Handbook sets out the standards for the FLQ and not for the ALQ, as is Nottingham’s offer. • How will “concern” and “significant concern” be measured; and if part of annual reporting mechanism how to ensure not relying solely on student feedback. • Will it be a unanimous or majority decision? • Identifies considerations regarding a live offer and what would constitute “extenuating circumstances”. 	<p>For reference, overarching comment.</p> <p>For reference, overarching comment. Amendments made as follows through this section. Terminology reviewed for consistency.</p> <p>Whilst the Handbook syllabus and credit weightings relate to the FLQ, the standards and learning outcomes apply equally to the ALQ.</p> <p>Accepted, amendments made (and for consistency of terminology, “risk” and Significant risk” have replaced “concern” and “significant concern”).</p> <p>Accepted, amendment made to clarify that the Chair will have the casting vote should there not be a consensus.</p> <p>Accepted, amendment made to reflect the importance of immediate discussion and mitigation during a live course to hopefully prevent a live course ending prematurely.</p> <p>Accepted, amendments made to appeal process.</p>

	<ul style="list-style-type: none"> • Require a defined and delineated appeals process and criteria and framework for appeal. • “Sufficiently significant” versus “significant concern”. • Item 1.2 – link procedure to litigation skills course providers, Accreditation Handbook also to cover ALQ. • Item 1.3 – what constitutes risk and who decides if implementation plan remedies it? • Item 1.4 – what is a significant risk and “accreditation standards” in 1.3 vs. “quality standards”? • Item 1.5 – criteria for shorter accreditation period? Annual reporting requirements to take account of internal reporting processes and dates. • Items 2.1 and 2.2 – define “risk” and “concern” levels and what is meant by “indication of possible quality issue” and against what criteria it is assessed. • Item 2.3 – what is a programme of support and who to do; appropriate timeframe and remedial options mutually agreed; and clarity of what is meant by “dedicated accreditation exercise assessment”. 	<p>Accepted, amendments made so consistent terminology, “significant risk” now consistently applied.</p> <p>Provided link (in footnote) to litigation skills course Outcomes. Scheduled Accreditation Handbook review to include consideration of specifying ALQ syllabus and credits.</p> <p>Board decision, with Chair to have casting vote should there not be a consensus.</p> <p>Accepted, amendments made so consistent terminology applied.</p> <p>Scheduled broader Accreditation Handbook review to include timeframe criteria consideration; annual reporting timeframe is for individual agencies to determine.</p> <p>Accepted, amendments made to include examples and consistent terminology applied.</p> <p>Not always appropriate for mutually agreement and programme of support would vary according to the risk. Amendment made to provide clarity on what is meant by a “dedicated accreditation exercise assessment”.</p> <p>This is a remedy option (relating to notice of identification of a significant risk), not an absolute. Publication of a decision to actually</p>
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	<ul style="list-style-type: none"> • Item 2.3 - website reporting to include guidelines and circumstance due to risk to reputations. • Item 3.1 – clarify whether unanimous or majority decision, enable submissions before any decisions are made and afford opportunity to make oral representation. • Item 3.2 – what is meant by “all other avenues” and define “severity of the issue is so pronounced”. • Item 3.3 – Board to provide written reasons for the decision and provide 28 days for response. • Item 3.4 – how achieve timeframe to choose another provider; suggest a face-saving opportunity. • Item 3.5 and 3.7 – define “extenuating circumstances” and clearly delineate protocol/withdrawal plans for teach-out using an independent moderator/verifier. • Item 3.8 – afford minimum 28 days for appeal; suggests substantial review of the appeal clause. 	<p>withdraw accreditation would be made in keeping with the IPReg Publication Policy.</p> <p>Accepted, amendments made.</p> <p>Accepted, removed the former and amended the latter.</p> <p>Accepted, amendments made.</p> <p>Every opportunity will be afforded to address significant risk(s) prior to, and within, procedure.</p> <p>Removed “extenuating circumstances” and made clear the importance of immediate discussion and mitigation to try and ensure that a qualification cohort can run to its natural conclusion.</p> <p>Accepted that 5 days is insufficient, amended to 28 days in keeping with Appeals Rules.</p>
Patent Examination Board	<ul style="list-style-type: none"> • Would value defined circumstances/specific criteria. • Unclear who decides, approval process/body unclear. 	<p>Accepted, examples offered to provide guidance.</p> <p>Accepted, amendments made.</p> <p>Accepted, amendment made.</p>

	<ul style="list-style-type: none"> • An independent person should hear appeal, not the IPReg Chair if involved in the original decision. • Some ambiguity whether “review” or “appeal”. • 20 working days a reasonable appeal timeframe. • Considers the word “extenuating” (paras 1 and 13) is misleading as it indicates “circumstances that tend to diminish culpability”, propose instead “exceptional” • Para 14 implies qualification provider undertakes review. 	<p>Accepted, consistent terminology applied.</p> <p>Accepted that 5 days is insufficient, amended to 28 days in keeping with Appeals Rules.</p> <p>These paragraphs were part of the consultation paper; removal of “extenuating” from procedure.</p> <p>This paragraph was part of the consultation paper.</p>
Queen Mary University London	<ul style="list-style-type: none"> • Specify trigger circumstances (and be explicit on matters outside of procedure e.g. complaints unrelated to teaching and learning), provide a structured evidence verification procedure, providers to assist in assessing plausibility of any complaint. • Providers have opportunity to submit written observations ahead of, and to provide oral argument in front of, the decision board. One month notice. • Clarify how IPReg Education Group and Board make decision and information on the former. • Statement to set out exact reasons for withdrawal. • Review vs. appeal, limitation of “case different and additional”, considers appeal grounds should be able to challenge any aspect of the Board’s decision. 	<p>Accepted; amendments made to clarify circumstances in which the procedure would, or would not, likely apply; and explicit on the need for verification.</p> <p>Accepted, amendments made (though notice timeframe proposed as 21 days).</p> <p>Accepted, amendments made.</p> <p>Accepted, amendments made.</p> <p>Accepted, amendment made so clear it relates to appeal and possible appeal grounds identified.</p>

	<ul style="list-style-type: none"> • Person(s) who considers the appeal should not have been involved in the original decision. • Publication of a decision prior to it becoming final could inflict irreparable reputational harm. • Case for appeal should allow for a calendar month. 	<p>Accepted, amendment made.</p> <p>Accepted, amendment made.</p> <p>Accepted that 5 days is insufficient, amended to 28 days in keeping with Appeals Rules.</p>
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Board Meeting 5 November 2020

Decision Paper: Qualifying as an attorney: review of exemptions currently afforded to JEB examinations and historic courses

Agenda Item: 8

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

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

1. Summary

- 1.1 An individual can apply for entry to the IPReg register on the basis of having passed historic Joint Examination Board (JEB) examinations or having passed a historically approved IPReg course. The JEB exams are a minimum of 8 years old, the formerly approved courses are currently a minimum of 7 years old. It is proposed that IPReg seeks to provide a sunset clause to formally end the transitional arrangements which afford exemption to historic JEB examinations and to formally end recognition of historically approved courses (Bournemouth, Brunel and Manchester University courses prior to 2013 cohorts).
- 1.2 This would mean, after an appropriate lead-in time (sunset clause), neither the JEB examinations¹ nor the specified courses would be recognised as providing elements of the attorney qualification pathway. The lead-in time/sunset clause is suggested as 18 months from the policy going live (likely to begin in Q1 2020). This proposed timeframe is allow for 6 months promotion of the sunset clause ahead of allowing for an academic year to pass (in case of someone relying upon a historic FLQ who might want to sit an ALQ prior to the end of the transitional arrangements).
- 1.4 This subject has been discussed at the Education Group meeting of 6 October and agreed for the consideration of Board.

2. Recommendation(s)

- 2.1 The Board is asked to approve the issuing of the consultation paper (Annex), subject to any amendments it may suggest; this, first to the professional membership bodies, and then accredited qualification pathway agencies² and publication on the website.

3. Risks and mitigations

Financial	Upon the sunset clause ending, an individual seeking first-time entry on to the register with historic JEB examinations/historically approved course
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¹ This would cover the JEB Common, Foundation and Advanced papers and any JEB letters conveying exemption.

² Bournemouth University, Brunel University, Nottingham Trent University, Patent Examination Board and Queen Mary University London.

	passes would be required to sit new examinations or attend a new course at either their expense or that of their firm. The possible exception is someone seeking readmission to the register, having previously actively practised as a registered attorney, in which case it is for the Registrar's discretion on a case by case basis as to how long provisions might apply.
Legal	Affording a sunset clause with a significant lead-in time seeks to minimise any risk of Judicial Review.
Reputational	It is important that the examinations and courses which would seek to form elements of the attorney qualification pathways meet the accreditation standards. These standards, introduced at the end of 2016, set out the syllabus requirements for Foundation Level Qualifications and the quality standards expected of any accredited qualifying pathway course or examination. The sunset clause would apply to examinations or courses which were live prior to the introduction of these standards.
Resources	Office resources would be allocated to the consultation and subsequent promotion of the sunset clause, as well as asking the professional membership bodies and accredited agencies to promote as they judge appropriate.
Accessibility	It is acknowledged that an individual may have needed to take time out from qualifying due to a range of circumstances, including, factors such as caring responsibilities or illness. It is considered that providing over 10 years (by the end of the sunset clause), alongside timely promotion of the ending of transitional arrangements, will have afforded sufficient time for qualification in such circumstances.

4. Historic offers - Joint Examination Board (JEB) examinations and approved courses

- 4.1 Historically, the Chartered Institute of Patent Attorneys and the Institute of Trade Mark Attorneys (prior to Chartered status), acting together as the JEB, set and administered attorney qualifying examinations. Upon the JEB being disbanded, transitional arrangements were made to afford exemptions for those examinations. The overwhelming majority of JEB passes would now be at least 10 years old (and could be as old as 30 years given that the JEB was set up in 1990).
- 4.2 To date, IPReg's position has been that an examination/course (and any related exemption) that was valid at the time an individual successfully passed a historic qualifying examination or course would be honoured by the current accredited qualification agencies as affording exemptions. The consultation (Annex) would seek to remedy this by introduction of a sunset clause to the qualification eligibility of the specified historic attorney qualifications.
- 4.3 The sunset clause would apply only to those who took the historic examinations or courses but had not, prior to the date upon which the clause will come into force, been entered onto either register. In the case of an attorney who had been previously registered on the basis of the historic qualification and who later seeks readmission, it would be for the Registrar to determine on a case by case basis, whether the sunset clause should apply. Where an attorney is currently entered onto one register on the basis of historic qualifications, and who seeks admission to the other register on the basis of the same qualifications, the sunset clause would not apply.

- 4.4 The Registered Trade Mark Attorney (RTMA) Intensive course (“Fast Track”) is a variation of the Professional Certificate in Trade Mark Practice (PCTMP) provided by Nottingham Trent University (NTU). This was historically created as a transitional arrangement targeted at those who had partially qualified via the JEB (in more recent times, in an attempt to have a wider target audience, also targeted at very small numbers of solicitors interested in dual qualification). Following discussions with NTU during the reaccreditation of its PCTMP offer, the May 2020 meeting of IPReg Board agreed not to undertake a dedicated accreditation review of the transitional arrangement intensive course, instead to include as an item in a sunset clause consultation.
- 4.5 For reference, the IPReg website currently states that “IPReg has no formal policy in relation to the length of time that an examination can be regarded a qualifying examination for the purposes of admission. That said, where the substantial experience of an applicant does not end immediately before the application, the Board, in considering whether to exercise its discretion based on the particular circumstances, will take into account the date(s) when the advanced qualifying examinations were passed”.

5. Recommendations

- 5.1 The Board is asked to approve, subject to any amendments it may suggest, issuing the consultation paper provided as an Annex; this, first to the professional membership bodies, and then accredited qualification pathway agencies (Bournemouth University, Brunel University, Nottingham University, Patent Examination Board and Queen Mary University London) and published on the website.

6. Next steps

- 6.1 Should the Board approve the consultation, it would be phased as at items 2.1 and 5.1. Ultimately, should the sunset clause be applied, we would ask CIPA, CITMA and the accredited agencies to join IPReg in publicising it with the intent that there is a minimum six month active promotion window of its introduction.

Annex: Qualifying as an attorney – proposing a sunset clause to end recognition of historic JEB examinations and IPReg approved courses

Annex

Qualifying as an attorney - proposing a sunset clause to end recognition of historic JEB examinations and IPReg approved courses

Historic examinations and courses

Historically, the Chartered Institute of Patent Attorneys (CIPA) and the Institute of Trade Mark Attorneys (ITMA as it was then, now CITMA), acting together as the Joint Examination Board (JEB), had both common papers and papers specific to either patent or trade mark qualifications. The last year in which it was possible to sit the JEB's Foundation papers was 2010. The Advanced papers could be taken in 2011 (with the possibility of re-taking some of those papers in 2012). Upon the disbanding of the JEB, transitional arrangements were agreed for IPReg-accredited qualification agencies to recognise historic JEB examinations as providing an element of exemption from the accredited attorney qualification pathways.

The IPReg-accredited qualification agencies are Bournemouth University, Brunel University London, Nottingham Trent University, the Patent Examination Board and Queen Mary University London.

To date, IPReg's position has been that an exemption that was valid at the time an individual successfully passed an historic qualifying examination (as with the JEB exams as above) or an historic qualifying course (the pre-2013 offers of the universities of Bournemouth, Brunel³ and Manchester), would be honoured by the accredited qualification agencies as affording elements of exemption from current examinations and courses.

IPReg considers that it is now time, to end the transitional arrangement of providing exemption to the historic JEB examinations. The overwhelming majority of JEB passes will be at least 10 years old and could be as old as 30 years given that the JEB was set up in 1990. Additionally, we would seek to end the arrangement of providing exemption to historically IPReg accredited courses.

Registered Trade Mark Attorney Intensive Course

Anyone seeking to qualify as a registered trade mark attorney is required to successfully complete one of the IPReg-accredited Foundation Courses offered by the universities of Bournemouth, Brunel University London, or Queen Mary University London (QMUL). The Certificate in Trade Mark Law and Practice provided by QMUL currently affords exemptions to some modules owing to both historic JEB papers and historic accredited courses.

They must then pass the Professional Certificate in Trade Mark Practice (PCTMP) course provided by Nottingham Trent University (NTU). NTU provides a "Fast Track"/Intensive course iteration of the PCTMP, the Registered Trade Mark Attorney (RTMA). This is available to individuals who have passed some of the historic JEB examinations and are therefore currently awarded some exemptions from the wider PCTMP. The RTMA was created in 2010/11 as a transitional arrangement to recognise the JEB qualifying examinations for a period after the JEB closed down.

³ Please note that the trade mark offer of Brunel was not IPReg accredited between 2015 and 2019.

IPReg considers now to be an appropriate time to consider setting a date for ending these transitional arrangements. This would mean that historic JEB passes would no longer be viewed as deemed passes to elements of the registered trade mark attorney qualification pathway. In considering this, IPReg is mindful that the arrangements were only ever intended as transitional, the syllabus of those examinations would not meet the current accreditation requirements as set out in the IPReg Accreditation Handbook published in November 2016, and it is thought that eligible JEB graduates who may have taken career breaks have been sufficiently accommodated.

The RTMA closure would not take immediate effect but would take the form of a sunset clause to specify a date by which the JEB transitional arrangements would end. This would be likely 18 months in order to afford appropriate notice to anyone that might want to use this qualification route before it is no longer an eligible qualification pathway. After that specified date an individual would need to sit one of the Foundation Certificate courses in full⁴ followed by the full PCTMP. Exemptions will still apply to solicitors meaning an iteration of the RTMA will continue in this targeted dual qualification capacity.

Patent Attorney Qualification Route

The Patent Examination Board currently affords exemptions to someone with a pass in the historic JEB P1 paper as well as recognising any eligibility request previously granted by the JEB. It also recognises the University of Manchester Diploma/LLM in Intellectual Property passed in or before July 2013.

Historic Examinations and Courses to which it is proposed that the Sunset Clause would apply

Historic Qualification/Examination which currently provides for Exemption	Background
Bournemouth University: Postgraduate Certificate in Intellectual Property	Course passed before January 2013
Brunel University: Postgraduate Certificate in Intellectual Property Law (trade mark) or LLM in Intellectual Property with elective module in International Trade Mark Practice Management	Course passed before September 2013 [VS to check this with Brunel]
JEB letters exempting candidates from the JEB examinations	Letters provided by the JEB when it was live confirming exemptions to any of the JEB examinations
Common Foundation Paper – Basic English Law	JEB paper passed in 2010 or before
Common Foundation Paper – Designs and Copyright Law	JEB paper passed in 2010 or before
Common Foundation Paper -T1 Basic United Kingdom Trade Mark Law	JEB paper passed in 2010 or before
Common Foundation Paper – T5 Basic Overseas Trade Mark Law and Practice	JEB paper passed in 2010 or before
Patent Advanced Paper – P2 Patent Agent’s Practice	JEB paper passed in 2011* or before

⁴ JEB passes would no longer afford any exemptions to the Queen Mary University London course.

Patent Advanced Paper – P3 Preparation of Specifications for United Kingdom and Overseas Patents	JEB paper passed in 2011* or before
Patent Advanced Paper – P4 Amendments of Specifications for United Kingdom Patents/ Applications in Prosecution, Revocation Proceedings or Otherwise	JEB paper passed in 2011* or before
Patent Advanced Paper – P6 Infringement and Validity of United Kingdom Patents	JEB paper passed in 2011* or before
Patent Foundation Paper – P1 Basic United Kingdom Patent Law and Procedure	JEB paper passed in 2010 or before
Patent Foundation Paper – P5 Basic Overseas Patent Law and Procedure	JEB paper passed in 2010 or before
Trade Mark Foundation Paper – T2 Basic United Kingdom Trade Mark	JEB paper passed in 2010 or before
Trade Mark Advanced Paper – T3 Advanced United Kingdom Trade Mark Law and Practice	JEB paper passed in 2011* or before
Trade Mark Advanced Paper – T4 Advanced Trade Mark Search	JEB paper passed in 2011* or before
Trade Mark Advanced Paper – T6 Advanced Community Trade Mark and International Trade Mark Law and Practice	JEB paper passed in 2011* or before
Manchester University: Postgraduate Intellectual Property Diploma	Course completed in or before July 2013

*or 2012 re-sit if available

Please note that whilst the sunset clause applies to those who took the historic examinations or courses only (i.e. did not enter on to the register/practise as an attorney), it is a matter for the Registrar's discretion on a case by case basis as to how long provisions might apply for those who were once entered on to the register and are seeking readmission.

Board Meeting 5 November 2020

Information Paper: Education Working Group Update

Agenda Item: 9

Lead Board Member: Caroline Seddon, Chair of Education Group

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

1. Summary

- 1.1 Emerging education concerns informed the decision made by the April 2019 meeting of the IPReg Board to establish a dedicated group to help tackle these issues. The Education Group met for the 5th¹ time on 6 October 2020.
- 1.2 This paper seeks to provide an overview of the activities and outputs of the Education Group since those reported to the September 2020 meeting of the Board.

2. Recommendation(s)

- 2.1 The Board is asked to note this paper.

3. Work plan

- 3.1 Current status of work plan items:

Quality Assurance Remedy	Status	Work being/to be undertaken
a) publication of assessment reports, their findings and recommendations made to qualification pathway accreditation applicant bodies	Completed	Accredited agencies formally informed of new policy; the Brunel accreditation assessment report was the first to be published.
b) requiring regular updates on progress against accreditation implementation plans	Completed	Accredited agencies formally informed of new policy.
c) requiring annual reports (to include student feedback, external examiners reports findings, and improvements made as a result)	Ongoing	Bournemouth University has submitted the first annual report, please see item 8.

¹ This relates to 4 Education Group meetings and 1 dedicated accreditation withdrawal procedure meeting (item 6 of this Board meeting agenda). Additionally, there have been an ongoing series of meetings (and correspondence) with QMUL since early 2019 (item 5.1 of this paper).

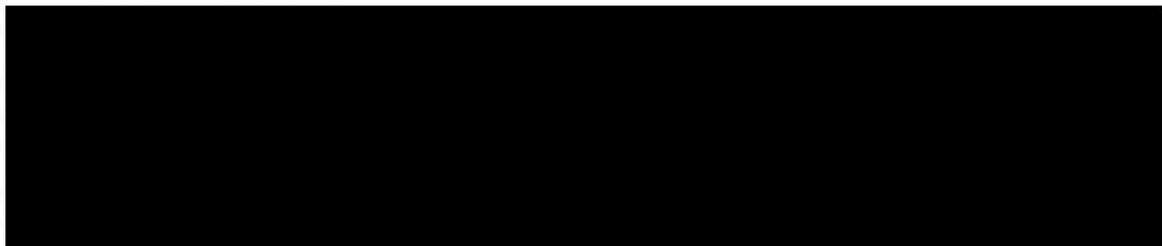
d) developing a process for withdrawing accreditation from providers who do not maintain the accreditation standards	On Board meeting agenda	Consultation undertaken on high-level accreditation withdrawal procedure, procedure has been extensively revised and is being brought to this Board meeting for consideration.
e) cost reflective charges for accreditation (including some allocation of officer time)	Completed	Officer time now included in accreditation exercises, notice of this published on website.
f) encouraging more pathway providers – other university/ examination offers	In progress	Brunel University plans to make an application [timeframe TBC] for accreditation of a Double Major Life Sciences and IP Undergraduate Programme. Discussions with CPD Training Ltd determined that delivery of a qualification pathway was not a viable option.
g) provision of online Frequently Asked Questions	Completed	Frequently Asked Questions published which seek to address a range of admission queries including current accredited pathway options, exemptions, admission as a non-UK professional and experience requirements.
h) review of the Accreditation Handbook	Scheduled (desktop)	Desktop review by office in first instance scheduled for Q4 2020/Q1 2021; broader review likely to require external specialist resource.
i) whether to quality assure the work-based element of attorneys' training	Not to be taken forward	Agreed at 6 October 2020 meeting not to take forward.
j) encouraging more pathway providers – consideration given to apprenticeships	In progress	Brunel University Double Major proposal would seek to offer a year work placement.
k) changing our overall work priorities or automating some of the process	Ongoing	For example, desktop review of Accreditation Handbook in first instance.

5. Queen Mary University London (QMUL) – Quality Concerns

5.1 Standing item on Education Group meeting agendas as a result of the CITMA student survey feedback formally shared at the beginning of 2019 and the necessary QMUL improvement programme stemming from that. Following very productive meetings over the summer, whereby significant improvements re being seen, as mentioned at September Board, ■



5.2



- 5.3 The group will look to schedule a meeting with QMUL before the end of the calendar year, seeking to discuss, when in receipt, QMUL's online assessments review and annual report, and the latest CITMA student survey findings.

6. IPReg Accreditation Withdrawal Procedure

- 6.1 A high level procedure was consulted upon over a 8 week period ending 12 June. Consultations responses were received from CIPA, CITMA, CPD Training UK, Nottingham Trent University, the Patent Examination Board, and Queen Mary University London. In light of the detailed and valuable feedback substantial revisions were made to the proposed procedure which the Education Group considered and approved, subject to further (minor) amendments, at the 6 October meeting. The revised procedure has been provided for Board's consideration at item 6 of this meeting's agenda.

7. Historic Examinations and Courses Exemptions

- 7.1 Upon the disbanding of the historic Joint Examination Board (JEB), transitional arrangements were agreed for IPReg-accredited qualification agencies to recognise historic JEB examinations as providing an element of exemption from the accredited attorney qualification pathways.
- 7.2 The Education Group meeting of 6 October considered and approved a proposed consultation paper on providing a sunset clause for these transitional arrangements as well as for historically approved courses. The consultation paper has been provided for Board's consideration at item 7 of this meeting's agenda.

8. Online Examinations Reviews

- 8.1 In light of the Covid-19 pandemic and its associated social distancing guidelines, all accredited qualification agencies have provided their most recent set of examinations via online delivery mechanisms. All qualification agencies were advised that approval for this delivery mechanism was given only for that particular set of examinations in those particular circumstances and that they would be required to undertake a review of those examinations, to be of particular importance ahead of any proposals to deliver future examinations in a similar manner. Bournemouth University included its online examinations review within its annual report which was considered by the October meeting of the Education Working Group (please see item 9 below).

- 8.2  PEB candidates planning to take the examination in their firm's premises, having an individual (who has declared no conflict of interest) from within the firm invigilate (rather than by an online invigilator). The PEB shared a range of quality assurance processes for this arrangement which were welcomed and accepted by the Education Group. The Education Group also suggested parameters which the PEB might seek to include in its post-examinations review, such as an inter-year comparison of grades, analysis of any critical incidents, and other possible benchmarking mechanisms. A recent [CIPA article](#) refers to last month's successful online delivery of the patent examinations. Later this month the Education Group will be meeting with Chris Mercer and Lee Davies regarding emerging findings of the Mercer Review of the patent examinations.

9. Annual Reports

- 9.1 Bournemouth University's annual report was accompanied by the External Examiner Report and Examination Board minutes, both of which were clear the examinations had been successfully delivered online. The report provided information on student numbers (51 patent route, 14 trade mark route) of most recent cohort, ratio of 10.8 students to lecturer (6 lecturers), results breakdown and commentary, information on student feedback and quality assurance mechanisms, Additional Learning Support provided (4 students qualified for this).
- 9.2 The report was reviewed by the Education Group and whilst the report was broadly found to be comprehensive and reassuring, the one exception was found to be the absence of examples of student feedback and any programme changes made as a result. Examples of student feedback engineering changes were requested from, and provided by, Bournemouth: the examples provided are the duration of the online exam being extended to 4 hours and the release of all past exam papers (and marking guidelines) to aid examination preparation.
- 9.3 Annual reports of the other qualification agencies are expected:
- Brunel University London – expected end-October; exams in January and May
 - Nottingham Trent University – expected November, exams in January, March, April, July
 - Patent Examination Board – expected timeframe TBC (agreed as end-July within a typical examination cycle, date for this cycle to be determined); exams in October
 - Queen Mary University London – expected December; exams in January and May.

Board Meeting 5 November 2020

Diversity monitoring

Agenda Item: 10

Author: Fran Gillon, CEO (fran.gillon@ipreg.org.uk)

Summary

1. This paper updates the Board on the progress made to date in developing our approach to diversity monitoring and sets out the next steps that we propose to take.
2. We have recently attended very informative workshops with IP Inclusive (D&I data gathering: making it count) and the IP Federation (Social mobility and access to the IP professions: a 2020 think tank). These have provided extremely useful contacts and advice on our approach to diversity monitoring.
3. We have examined two approaches to gathering anonymised diversity data:
 - a. Working with an external provider who has experience of gathering diversity data and its analysis;
 - b. Gathering the data through a webform on our CRM.

Recommendation(s)

4. The Board agrees that for our initial data gathering exercise we should work with [REDACTED] (Annex A). This will include presentation of the data and discussion about its implications for policy development;
5. The Board agrees that we should undertake diversity training with [REDACTED];
6. Recognising the work that we have already done with IP Inclusive and the IPO, [REDACTED] [REDACTED] (for the survey, analysis and training). I have asked for a split between the two activities and will provide this at the Board meeting.

Risks and mitigations

Financial	The total cost of the data gathering and training is [REDACTED]. This can be accommodated within the budget. The cost of developing a webform with MillerTech as an alternative approach will be confirmed at the Board meeting.
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Legal	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
Reputational	<p>This work will provide a firm basis for our work on diversity in future. It also provides a good opportunity to build on our positive relationship with IP Inclusive.</p> <p>There is no longer a statutory requirement to produce Equality Impact Assessments (EIAs). The requirement was removed in 2012 having been recognised as overly burdensome for many organisations. However, in its recent consultation on changes to the practising fee approval process, the LSB proposed making EIAs a compulsory part of that process.</p>
Resources	<p>The work can be accommodated within existing resources.</p>

Discussion

7. The workshops referred to in paragraph 2 provided excellent networking opportunities and access to expertise in designing and implementing diversity surveys. We have developed a set of questions to establish a baseline for our diversity data and these have been reviewed by an expert at the IPO. Although it would be possible to use the new CRM to gather data anonymously, we do not have specific expertise in running surveys. So for our first survey we consider that it would be preferable to use external expertise.
8. In terms of timing, IP Inclusive is planning to run its second survey in November. We therefore propose to start our survey in early January 2021 so that the two surveys are not running at the same time, or too close to Christmas.
9. [REDACTED] can also provide training for the IPReg team and Board on diversity. We propose that this should take place once the survey data has been analysed so that a discussion of its implications can be included.

Board Meeting 5 November 2020

LSB regulatory performance review

Agenda Item: 11

Author: Fran Gillon, CEO (fran.gillon@ipreg.org.uk)

Summary

1. Each year the LSB requires regulators to submit information to it about performance against the LSB's [regulatory performance framework](#).
2. In [December 2019](#), IPReg became the first regulator to meet all the required standards.
3. The LSB has written asking for an update on various issues (Annex A). A draft response is at Annex B.

Recommendation(s)

4. The Board agrees to submit the response at Annex B.

Risks and mitigations

Financial	There are no direct financial risks.
Legal	 
Reputational	This issue is one of the areas where the LSB appears to have adopted a much more interventionist approach and seems to be introducing additional requirements (e.g. on interim orders) that we were not previously required to meet.
Resources	This is being managed within existing resources.

By email

Fran Gillon
Chief Executive
20 Little Britain
London
EC1A 7DH



Legal Services Board
3rd Floor, The Rookery
2 Dyott Street
London
WC1A 1DE

T 020 7271 0050

www.legalservicesboard.org.uk

8 October 2020

Dear Fran

Annual Regulatory Performance Assessments - November 2020

As part of our ongoing monitoring of regulators' performance against the regulatory outcomes, we will be conducting our annual performance assessment in November. This letter explains the process and timelines, which should reflect relationship management discussions, and sets out the information that we will require from IPReg.

Scope

Our annual assessment will consider the following:

- Progress made towards meeting any outcomes currently graded as 'not met';
- General performance in relation to the regulatory performance outcomes and any issues that have arisen since our last annual assessment in November 2019;
- Developments in relation to the new outcome WL7, introduced in July 2020, relating to regulatory independence.

Information request

For our assessment we will require a report from you setting out responses to the specific questions set out in the attached Annex.

Please provide us with your response to this information request by **6 November 2020**.

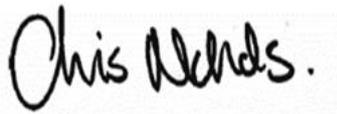
In addition to the information that you provide, our assessment of IPReg's performance will take account of information the LSB has gathered since our last annual assessment in November 2019. This will include our contacts with you, such as relationship management meetings, CEO and Board-level meetings, applications that you have submitted to us for approval and any information you may have provided since the last assessment round.

Next steps

We will consider your response alongside the information we have already gathered and update our assessment and action plan. In doing so, as we have in previous reviews, we will work with you to agree any new actions and milestones. We will ensure that you have time to fact-check our final assessment before publication in mid-December.

If you have any questions about the assessment process or the specific questions set out in the Annex, please either contact me or your relationship manager.

Yours sincerely

A handwritten signature in black ink that reads "Chris Nichols." The signature is written in a cursive, slightly slanted style.

Chris Nichols
Director, Policy and Regulation

Annex: Specific questions for IPReg

Outcome RA3: The regulator has a robust evidence base from a range of sources on: (a) consumers' needs and use of legal services (b) new and emerging policy developments (c) the regulated community and (d) the market(s) regulated by it which informs its regulatory arrangements and approach.

Outcome WL4: The regulator learns from its own work, stakeholders, the legal sector and other sectors and uses that learning to improve its work.

Question: Following your response to our diversity information request earlier this year and our subsequent discussions (including regarding issues with IPReg's historic data and the potential benefits of your CRM system in addressing these), we would like to better understand the wider evidence base on your regulated community and how this is used to inform your regulatory work. We would also like to know how your evidence base will be developed following the introduction of the CRM.

- a) What evidence does IPReg collect to inform its regulatory approach?
- b) How frequently is relevant data gathered?
- c) Who does IPReg engage with to gather relevant intelligence?
- d) What data has IPReg collected on the impact of Covid-19 on the profession?
- e) How will IPReg's CRM system support IPReg to maintain a robust evidence base?

Outcome RA2: So they are effective and operate as intended, regulatory arrangements and supporting guidance documentation are regularly reviewed and, where necessary, updated based on a robust evidence-base.

Outcome WL2: The regulator understands the resources (financial, human and technical) and organisational structure it needs to carry out its regulatory functions (including authorisation, supervision and enforcement) effectively and efficiently and these are implemented.

E2: The regulator ensures that all complaints are reviewed on receipt and serious cases are prioritised and, where appropriate, referred to an interim orders panel.

Question: We note that a number of regulatory activities have been delayed, including the review of regulatory arrangements that has been planned since 2018. We would like to better understand the reasons for the delays and what steps you are taking to implement your regulatory priorities, particularly noting the implementation timeframe for any new regulatory arrangements (and your expectation that they will now not be in force before Q1 2022).

- a) What is the reason for the significant delay to IPReg's planned review of regulatory arrangements?
- b) How will the delay of the review impact on IPReg's regulatory approach generally, and specifically in relation to previously identified priorities such as 'Improving the application process for individuals and entities' and 'More appropriate categories of registrant'? Please note that these projects are provided as examples from the current IPReg Business Plan, but there is other work captured by the review such as your arrangements for enforcement.
- c) On enforcement, we note that IPReg does not have the power to impose interim sanctions. Please set out why IPReg does not consider these powers to be necessary and, in their absence, how you contend that you meet outcome E2. Please also

confirm if you have plans to seek such powers through the review of regulatory arrangements.

In addition, in our decision notice of 2 March 2020 in relation to IPReg's application on run-off cover, we set an expectation for IPReg to report on the following data during the first year of operation:

- i. the extent of non-compliance with PII arrangements
- ii. any interventions made by IPReg to secure compliance and the outcome of such interventions
- iii. any use of the compensation insurance policy and any identified consumer impact (such as a financial loss due to the absence of run off cover).

We recognise that it has not yet been a year but would welcome any updates on your monitoring in this regard.

Outcome WL7: The Approved Regulator/Regulatory Body meets the outcome to ensure regulatory independence:

- **The Approved Regulator has the necessary delegation arrangements in place and gains assurance that its regulatory functions are effectively carried out in line with the IGR.**
- **The Regulatory Body carries out its regulatory functions in line with the IGR and provides assurance to its Approved Regulator as required by Section 28 of the Legal Services Act 2007**

Question: Please provide an update on any relevant actions or developments which have taken place since the submission of your certificate of compliance and the end of the transition period on 23 July 2020.

Item 11 Annex B

DRAFT RESPONSE TO LSB ON REGULATORY PERFORMANCE FRAMEWORK QUESTIONS

Outcome RA3: The regulator has a robust evidence base from a range of sources on: (a) consumers' needs and use of legal services (b) new and emerging policy developments (c) the regulated community and (d) the market(s) regulated by it which informs its regulatory arrangements and approach.

Outcome WL4: The regulator learns from its own work, stakeholders, the legal sector and other sectors and uses that learning to improve its work.

Question: *Following your response to our diversity information request earlier this year and our subsequent discussions (including regarding issues with IPReg's historic data and the potential benefits of your CRM system in addressing these), we would like to better understand the wider evidence base on your regulated community and how this is used to inform your regulatory work. We would also like to know how your evidence base will be developed following the introduction of the CRM.*

- a) What evidence does IPReg collect to inform its regulatory approach?*
- b) How frequently is relevant data gathered?*
- c) Who does IPReg engage with to gather relevant intelligence?*
- d) What data has IPReg collected on the impact of Covid-19 on the profession?*
- e) How will IPReg's CRM system support IPReg to maintain a robust evidence base?*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Outcome RA2: So they are effective and operate as intended, regulatory arrangements and supporting guidance documentation are regularly reviewed and, where necessary, updated based on a robust evidence-base.

Outcome WL2: The regulator understands the resources (financial, human and technical) and organisational structure it needs to carry out its regulatory functions (including authorisation, supervision and enforcement) effectively and efficiently and these are implemented.

E2: The regulator ensures that all complaints are reviewed on receipt and serious cases are prioritised and, where appropriate, referred to an interim orders panel.

Question: *We note that a number of regulatory activities have been delayed, including the review of regulatory arrangements that has been planned since 2018. We would like to better understand the reasons for the delays and what steps you are taking to implement your regulatory priorities, particularly noting the implementation timeframe for any new regulatory arrangements (and your expectation that they will now not be in force before Q1 2022).*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

a) *What is the reason for the significant delay to IPReg's planned review of regulatory arrangements?*

[Redacted]

[Redacted]

- b) *How will the delay of the review impact on IPReg's regulatory approach generally, and specifically in relation to previously identified priorities such as 'Improving the application process for individuals and entities' and 'More appropriate categories of registrant'? Please note that these projects are provided as examples from the current IPReg Business Plan, but there is other work captured by the review such as your arrangements for enforcement.*

[Redacted]

[Redacted]

[Redacted]

[Redacted]

- c) *On enforcement, we note that IPReg does not have the power to impose interim sanctions. Please set out why IPReg does not consider these powers to be necessary and, in their absence, how you contend that you meet outcome E2. Please also confirm if you have plans to seek such powers through the review of regulatory arrangements.*

[Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Question: In addition, in our decision notice of 2 March 2020 in relation to IPReg's application on run-off cover, we set an expectation for IPReg to report on the following data during the first year of operation:

- i. the extent of non-compliance with PII arrangements*
- ii. any interventions made by IPReg to secure compliance and the outcome of such interventions*
- iii. any use of the compensation insurance policy and any identified consumer impact (such as a financial loss due to the absence of run off cover).*

We recognise that it has not yet been a year but would welcome any updates on your monitoring in this regard.

[REDACTED]

| [REDACTED]

| [REDACTED]

Outcome WL7: The Approved Regulator/Regulatory Body meets the outcome to ensure regulatory independence:

- The Approved Regulator has the necessary delegation arrangements in place and gains assurance that its regulatory functions are effectively carried out in line with the IGR.*
- The Regulatory Body carries out its regulatory functions in line with the IGR and provides assurance to its Approved Regulator as required by Section 28 of the Legal Services Act 2007*

Question: Please provide an update on any relevant actions or developments which have taken place since the submission of your certificate of compliance and the end of the transition period on 23 July 2020.



Board Meeting 5 November 2020

Lawtech UK – Regulatory Response Unit

Agenda Item: 12

Author: Fran Gillon, CEO (fran.gillon@ipreg.org.uk)

Summary

1. This paper updates the Board on IPReg’s involvement with the development of a Regulatory Response Unit (RRU) with [Lawtech UK](#).
2. The RRU’s draft terms of reference (Annex A) explain that:
 - a. The Lawtech Sandbox is a core pillar of the Lawtech UK work programme, with the objective of enabling pioneers to develop and test ideas, products and services that address the legal needs of UK business and society, with government, regulator and industry support, collaboration and data.
 - b. The Regulatory Response Unit (RRU) is a fast response forum providing cross-authority regulatory support to Lawtech Sandbox participants and the wider market, to make it easy for Lawtech pioneers to access the navigation and support they need, and provide confidence for the market, as well as addressing regulatory risks and opportunities arising in the Lawtech Sandbox.
3. Further information from a recent workshop is at Annex B. Please note that these slides are confidential.

Recommendation(s)

4. The Board endorses IPReg’s involvement with this project and establishes a RRU Reference Group of [3] Board members to provide advice as required on issues raised through the Sandbox.

Risks and mitigations

Financial	There are no direct financial implications.
Legal	[REDACTED]
Reputational	The work of the RRU is key to supporting the overall aims of Lawtech UK.
Resources	The work can be accommodated within existing resources.

Board Meeting 5 November 2020

Information paper: Complaints update

Agenda Item: 13

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

Financial	None. Existing resources are dedicated to the oversight and administration of complaints received.
Legal	[REDACTED]
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.

Recommendations

2. 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)	1	
Total open cases	7	Under investigation = █ Complaint initiated = █ CRC stage = █ JDP stage = █ Appeal stage = █
Complaints closed 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

Open cases

Case ref	Stage and Status
[REDACTED]	[REDACTED]

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

Closed cases in last month

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

Disqualification Review Committee

[REDACTED]	[REDACTED]
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	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
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Recommendation

The Board is asked to note this information paper.