

## The Patent Regulation Board and the Trade Mark Regulation Board

### Agenda

Thursday 15 July 2021 at 12 noon

By Video Conference

1. Apologies – Shelley Edwards
2. Notification of any conflicts of interest
3. Welcome and appointment of new Board members

#### **PART A – NON-CONFIDENTIAL ITEMS**

4. Minutes of May 2021 meeting and matters arising
5. Action Log (FG)
6. Education Working Group Update (CS/VS)
7. Higher Courts Advocacy Course Accreditation Application - Nottingham Law School (CS/VS)
8. Progress on review of regulatory arrangements (FG/EL)
9. Other activities (not covered elsewhere):
  - a. 3 x CEOs 9 July (FG)
  - b. Regulatory Forum 3 June (Chair/FG)
10. Progress on Diversity – no paper
  - a. Board ambassador
  - b. IP Inclusive

#### **PART B – CONFIDENTIAL ITEMS**

11. LSB issues:



[REDACTED]

**12. Compensation arrangements (FG/MB) –** [REDACTED]

**13. Complaints update (MB)**

**14. Risk Register (FG)**

**15. Governance (FG)**

- a. Letter to/from LSB – Internal Governance Rules lay majority – to note
- b. Board member appointments – no paper
- c. IPReg Limited Directors – no paper

**16. Finances (KD)**

- a. Financial statements and Letter of Representation (IPReg Limited)
- b. Actual v Budget 6me 30 June 2021 – paper to follow
- c. 2022 budget revisions – paper to follow

**17. 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   |
|---------------------------------------|--|--|----------------|----------------|--|
| May 2021 Board Meeting                |  |  |                |                |  |
| May-21                                | Consumer Bodies Engagement                       | Take forward engagement with consumer bodies                                   | EL/ER          | Ongoing        | Included in developing stakeholder engagement plan. Update to be provided to Board in September. |
| May-21                                | Progress on Review of Regulatory Arrangements    | Share the Board paper with the LSB   | FG/EL          | Closed         |  |
| May-21                                | Diversity - next steps - workshop feedback       | Implement the diversity initiatives  | FG             | Ongoing        |  |
| May-21                                | Diversity - Inclusive Language                   | Adopt and publish Inclusive Language Policy                                    | FG             |                |  |
| May-21                                | IPReg Limited - Auditors                         | Re-tender for auditors   | KD             | Ongoing        |  |
| May-21                                | IPReg Limited - Governance                       | Update Register of Interests   | KH             | Ongoing        | Most responses now received  |
| May-21                                | Performance Management Dataset                   | Submit PMD to the LSB and publish on website                                   | VS             | Completed      | PMD submitted to LSB on 21 May   |
| May-21                                | Higher Courts Advocacy Certificate Accreditation | Inform CPD Training of successful accreditation and put information on website | VS             | Completed      | Accreditation confirmed to CPD Training on 21 May; course has gone live                          |
| May-21                                | Complaints Update - debt recovery                | Pursue bankruptcy petition   | SE             | <b>Ongoing</b> |  |

## IPReg Board Meeting Actions Log - New and Outstanding Actions

|                                 |   |  |       |                    |  |
|---------------------------------|---|--|-------|--------------------|--|
| May-21                          | Silent Cyber - Professional Indemnity Insurance | Consider whether the MTCs need to change to reflect PAMIA's affirmative endorsement  | MB    | Ongoing            | Amended MTCs (incorporating PAMIA's affirmative wording) provided by Marsh (IPReg's insurance broker). MB to review and approve. |
| May-21                          | Silent Cyber - Professional Indemnity Insurance | Update the LSB   | FG    |                    |  |
| May-21                          | LSB Issues - regulatory performance framework   | Draft a response to the LSB performance assessment letter for the July Board         | FG    |                    |  |
| <b>March 2021 Board Meeting</b> |   |  |       |                    |  |
| Mar-21                          | Regulatory Arrangements Review                  | Identify possible external bodies/individuals to support work on diversity and PII   | FG    | Ongoing            |  |
| Mar-21                          | IPReg Accreditation Handbook                    | Consult on Accreditation Handbook with qualification agencies                        | VS/CS | Ongoing            | Consultation closes 20 May   |
| Mar-21                          | Historic Examinations Exemptions Consultation   | Take forward rule change application to LSB  | VS/SE | In progress        | Rule change application made; follow-up queries from LSB replied to; hope to be in receipt of decision shortly                   |
| Mar-21                          | Complaints                                      | [REDACTED]   | SE    | Closed – see above |  |
| Mar-21                          | LSB – Consumer Bodies                           | Take forward contacting consumer representatives e.g. Federation of Small Businesses | FG    | Closed             | This will be covered in the regulatory arrangements review   |
| Mar-21                          | Mutual Recognition of Qualifications            | [REDACTED]   | SE    | Ongoing            | [REDACTED]   |

## IPReg Board Meeting Actions Log - New and Outstanding Actions

|                            |  |   |                         |         |                                  |
|----------------------------|--|---|-------------------------|---------|----------------------------------|
|                            |  |   |                         |         |                                  |
| January 2021 Board Meeting |  |   |                         |         |                                  |
| Jan-21                     | Covid-19 – Impact on IPReg team                | Report any relevant issues to LSB   | FG                      | Ongoing |                                  |
| Jan-21                     | LSB - Regulatory Performance Framework         | Formalise process of considering whether to expedite complaints   | SE/MB                   | Ongoing |                                  |
| Jan-21                     | LSB - Regulatory Performance Framework         | Include interim orders in consultation on regulatory arrangements review  | EL                      | Closed  | Included in Review               |
| Jan-21                     | LSB - Regulatory Performance Framework         | Continue to liaise with LSB on its survey on small businesses   | VS/FG                   | Ongoing | Further discussion held 29 April |
| July 2020 Board Meeting    |  |   |                         |         |                                  |
| Jul-20                     | Risk registers                                 | Discuss how cyber risks should be added to the risk register and arrange for IPReg to undertake the Cyber Essentials programme. | IPReg team and SF       | Ongoing |                                  |
| January 2020 Board Meeting |  |   |                         |         |                                  |
| Oct-19                     | LSB CEO Meeting                                | Invite Matthew Hill to Board meeting  | FG                      | Open    | Discussed with Matthew. Date TBC |
| April 2019 Board meeting   |  |   |                         |         |                                  |
| Apr-19                     | Queen Mary University London - progress report | Continue to monitor and take action as required   | Education Working Group | Ongoing |                                  |

## Board Meeting 15 July 2021

### Information Paper: Education Working Group Update

#### Agenda Item: 6

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

**Author:** Victoria Swan, Director of Policy ([victoria.swan@ipreg.org.uk](mailto: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 is a working group of IPReg Board members who consider and make recommendations to the IPReg Board on the following:

- ensuring appropriate standards for entry on the register(s);
- ensuring an effective means of quality assurance of existing qualification providers;
- overseeing the accreditation and re-accreditation processes for each accredited qualification agency;
- monitoring of accredited qualification agencies to ensure accreditation standards continue to be met;
- encouraging more qualification course options to provide competition on cost, content, delivery methods and geographic location.

The Education Group reports to Board, it does not have delegated authority of its own.

1.2 The Education Working Group is chaired by Caroline Seddon, and its members are Lord Smith, Alan Kershaw, Emma Reeve and Keith Howick, with executive attendance of Victoria Swan and Shelley Edwards.

1.3 This paper seeks to provide an overview of the activities and outputs of the Education Group since those reported to the 20 May 2021 meeting of the Board and includes the outputs of the of the 26 May meeting of the Education Group meeting.

#### 2. Recommendation(s)

2.1 The Board is asked to note this paper.

2.2 The Board is asked for interest from a patent attorney profession representative to join the Education Working Group.

#### 3. Work plan

3.1 Current status of work plan items:

| Quality Assurance Remedy  | Status   | Work being/to be undertaken  |
|---|--|--|
| a) publication of accreditation assessment reports, their findings and recommendations made to qualification pathway accreditation applicant bodies | Completed  | All accredited qualification 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)                   | Completed  | All accredited qualification agencies have submitted their first annual reports which have been considered by the Education Group and feedback given. Annual report requirements updated in June 2021 – see items 4.1-4.5 of this paper.   |
| d) developing a process for withdrawing accreditation from providers who do not maintain the accreditation standards                                | Completed  | <a href="#">IPReg Accreditation Withdrawal Policy Statement and Procedure</a> now live.  |
| e) cost reflective charges for accreditation (including some allocation of officer time)  | Completed  | Officer time now included in accreditation exercises, <a href="#">notice of this</a> published on website and mentioned in letter to all qualification agencies informing them of the Accreditation Withdrawal Policy Statement and Procedure.   |
| f) encouraging more pathway providers – other university/ examination offers  | To be scheduled  | a) Brunel University plans for application for accreditation of a Double Major Life Sciences and IP Undergraduate Programme put on hold during the pandemic.<br>b) Preliminary informal discussions with an organisation potentially interested in making an application for accreditation of an Advanced Level Qualification.<br>c) Look at opportunities presented by the apprenticeship levy. |
| g) provision of online Frequently Asked Questions   | Completed  | Publication of <a href="#">Frequently Asked Questions</a> which seek to address a range of admission queries, including current accredited pathway options, exemptions, EU admissions in light of Brexit, and experience requirements.   |
| h) review of the Accreditation Handbook   | Desktop review completed; broader review to be scheduled | Desktop review undertaken, consulted with qualification agencies, updated version of the Handbook (and annual reporting requirements) was issued in June;<br>broader review [2022] will likely require external specialist resource and include  |

|  |                         |  |
|--|-------------------------|--|
|  |                         | Advanced Level Qualification syllabus specification.   |
| i) whether to quality assure the work-based element of attorneys' training     | Not to be taken forward | Agreed at 6 October 2020 meeting of Education Group not to take forward.   |
| j) encouraging more pathway providers – consideration given to apprenticeships | To be scheduled         | a) Brunel University Double Major proposal (item f above) would seek to offer a year work placement.<br>b) Preliminary informal discussions with an organisation potentially interested in making an application for accreditation of an Advanced Level Qualification.<br>c) Look at opportunities presented by the apprenticeship levy. |
| k) changing our overall work priorities or automating some of the process      | Ongoing                 | For example, the recent desktop review of Accreditation Handbook in the first instance.  |

#### 4. Update on items brought to the May 2021 Board Meeting

4.1 **IPReg Accreditation:** the [IPReg Accreditation Handbook](#) sets out the standards expected of the attorney qualifying pathways. An accreditation application needs to demonstrate how the proposed qualification would meet the Handbook's specified standards, syllabus, credit weighting and learning outcome requirements. The recent desktop review and consultation proposed minor amendments to create consistency and universal applicability of terminology, provision of a glossary, contents page, numbering, and minor syllabus amendments to reflect sector developments, in particular, Brexit. It also proposed new requirements regarding:

- a) having in place Equality, Diversity and Inclusion policies and undertaking diversity profile surveys, and
- b) Regulations in light of online learning and/or assessment offers.

There were no objections raised to the proposals. A further minor addition was made to be explicit that not all specified features will apply to all delivery mechanisms e.g. staff/student ratio applies to university courses but not to examination-only agencies.

4.2 With the pandemic necessarily prompting online delivery of assessments, the Education Group required IPReg accredited qualifying pathway agencies to provide proposals, and subsequent reviews of, these assessments, including evidence of appropriate quality assurance mechanisms, and any lessons learned. All qualification agencies were found to have delivered online assessments which upheld the intended outcomes for candidates (this was not the case with the [Bar Standard Board's online examinations](#)).

4.3 At least three (of the five) accredited qualification agencies have declared an interest in moving towards permanent online delivery regarding assessments and two of online learning. The Education Working Group agreed that formal arrangements were needed to consider these longer term options. Accordingly, the annual reporting requirements upon qualification agencies will now include quality assurance of any proposals for online delivery (wholly, or

hybrid) of i) learning and ii) assessments. Reaccreditation of qualifying pathway options is based upon a standard 5 year cycle with the PEB's Final Examinations scheduled for later this year and Queen Mary University London for next year. These exercises, and those which follow, will include consideration of those arrangements.

- 4.4 At the direction of the Education Working Group, the letter confirming all these changes, requested that accredited qualification agencies with appetite to provide online learning, give consideration to a hybrid offer of both online and in-person learning. This because whilst the Education Group is cognisant that there are, undoubtedly, potential benefits to online learning - broadening participation through convenience and including (but not limited to) possibility of a reduced course fee, improving IT technical skills and refining virtual communication and collaboration - there are also potential detriments if it is the only method of learning, risking the valuable networking culture of the profession at junior level. Qualification courses are an opportunity to build long-lasting relationships across firms, learn about how other firms operate, and build industry confidence with peers. Attending in person means the individual (and their firm) are committing to the training element on specified days and allowing the individual an element of absence from the day-job, which we know can be hugely demanding for trainees.
- 4.5 Where accredited qualification agencies are looking to make a permanent move to online learning, the Education Group has request that consideration is given to offering a course with a hybrid mixture of remote and in-person participation, providing convenience for students whilst not losing entirely the networking value, likely to be particularly for those who are the only trainee in their office. The letter confirmed that the new arrangements go live as of 17 August, that being 8 weeks from the date of the letter.
- 4.6 Historic Joint Examination Board (JEB) examinations and historic courses exemptions – introducing a Sunset Clause: historically, the Chartered Institute of Patent Attorneys and the Institute of Trade Mark Attorneys (as it was then, prior to Chartered status) designed and administered the attorney qualifying examinations through their Joint Examination Board. When the JEB was wound down in 2011-12, transitional arrangements were triggered for recognition for those examinations. Alongside the initiation of the wider regulatory arrangements review, IPReg issued a dedicated consultation on providing an 18 month sunset clause ending those transitional arrangements and also on including within that clause, historically approved courses which had run up to 2013.
- 4.7 Responses to the consultation were received from an individual attorney, CIPA, CITMA, and Nottingham Trent University (which, since the transitional arrangements were triggered, has provided a fast-track iteration of its Professional Certificate in Trade Mark Practice aimed at those with JEB passes [and solicitors]). Those responses and the impact they had on the sunset clause proposal were brought to the 18 March 2021 meeting of IPReg Board. A first iteration of the rule change application was shared with the LSB for informal review and informed by that feedback, a revised rule change application was reviewed and approved, subject to some amends, by the 26 May meeting of the Education Working Group. That application, submitted on 3 June, included a broad (but not exhaustive) range of factors and equalities considerations which the Registrar may take into account should an individual apply for an extension to the sunset clause.

- 4.8 On 17 June the LSB issued 8 questions/requests relating to implementation timeframes, Registrar discretion, consistency of exemptions and minor administration matters. These were responded to in full on 22 June. The LSB considered that a further response was required regarding explicit specification in the rules relating to each qualification which had/has a historic exemption (them not having been named within the rules for the last 10 years) and for a statement of assurance regarding applications to the register based upon historic other (non-IPReg accredited) qualifications. Accordingly, it issued on 29 June an extension notice regarding its 28 day standard application decision timeframe (which would have ended on 30 June). The IPReg response has been made. We hope to be in receipt of the LSB's decision shortly.
- 4.9 Should the LSB's decision approve the rule change application we will first inform CIPA, CITMA and Nottingham of the LSB decision and the commencement of the sunset clause on 1 August (it ends on 31 January 2023). We will publish a News article relating to the sunset clause and will issue another when we publish the revised Rules on 1 August.

## 5. Update on Other Items

- 5.1 Higher Courts Advocacy Certificate: please see item 7 of the agenda regarding the Nottingham Law School, Nottingham Trent University application for accreditation. The CPD Training UK course offer has gone live and has been promoted on the IPReg website and highlighted to both CIPA and CITMA.
- 5.2 Queen Mary University London – Quality Concerns (Standing Agenda Item): the programme administration/management review update is attached. The CITMA student survey issued at the end of 2020 had indicated that programme administration and management continued to be an issue. Accordingly, the Programme Management Group created to oversee the improvement of QMUL's courses was requested to provide an update on this particular area of concern. The update advises that programme administration is now managed across a team rather than one individual, improvements made to both admissions and induction processes, mapping and reviewing content against the IPReg Accreditation Handbook requirements, transferring support to the Student Support and Engagement Team and improving student feedback mechanisms.
- 5.3 European Qualifying Examinations (EQE): the European Patent Institute (the EPI), sets the EQEs, testing candidate knowledge and aptitude to appear before the European Patent Office. There are currently 4 EQE papers:
- *Paper A*: drafting, tests the candidate's ability to draft claims and the introductory part of a European patent application;
  - *Paper B*: amendment, requires candidates to prepare a reply to an official letter in which prior art has been cited;
  - *Paper C*: opposition, involves drafting a notice of opposition to a European patent;
  - *Paper D (2 parts)*: legal, assesses candidates' ability to answer legal questions and to draft legal assessments.
- 5.4 The Patent Examination Board (PEB) historically recognised the passing of EQE papers A and B as providing exemption (respectively) to the PEB's Final Diploma Examination FD2 'Drafting of Specifications' and FD3 'Amendment of Specifications Papers'. IPReg continues to recognise

their equivalence, via successful completion of the entire EQE, or a pass in the individual respective paper. It does not extend to a compensable fail in relation to a single paper:- if an individual has a compensable fail in EQE papers A or B they would need to re-sit and successfully pass the relevant single paper, or pass the EQE as a whole before they could apply for registration with IPReg.

5.5 Board members, Sam Funnell (SF) and Nigel Robinson (NR), attended the 26 May meeting of the Education Working Group to present on proposals being set out by the EPI in its [EQE Discussion Paper](#) which include technical improvements to the current platform and relatively minor changes to the papers to better suit digital examinations. These changes to be made in 2022/23. However, they advised that the digitalisation of the EQE is being used as a catalyst for a much more ambitious project and the EQEs will change significantly in 2024. The aim is to upgrade the EQEs to a modular model which better tests the “fit-to-practise” criterion. There would be no Paper A or B from 2024 with the proposals splitting the EQEs into two tracks: practical and legal; the practical track will merge draft and opposition, testing similar kind of skills but will not separate coverage as it does now.

5.6 SF and NR advised that the examinations would include multiple choice papers as well as a final open script paper. NR commented that the proposals seem to provide for thorough testing of a patent claim but not the core skill of drafting one. The apparent move away from compensable fails was welcomed. On behalf of the Education Working Group, [REDACTED]

a) [REDACTED]

b) [REDACTED]

c) [REDACTED]

5.7 SF and VS then attended the EPI Conference on 21 June. The EPI commented that the current papers were designed over 40 years ago and whilst there had been intention to digitalise them in the longer term, the pandemic meant this had been brought forward to 2021 (the 2020 EQE exams were cancelled in the early stages of the pandemic). Participants in the 2021 examinations had indicated general advantages of the digitalisation and also registered desired

improvements (such as a possibility to divide the screen and compare text). There was much discussion regarding the issues of sitting in front of a screen for 2 hours or more, alongside the possibilities for cheating if candidates were allowed breaks in the middle of a longer exam. It was though considered that computer based examinations better reflects the day-to-day job as well as enabling, going forward, that the 5 examinations are not all delivered in the one week, which can be exhausting for candidates (as physical examinations, they have been provided in a focused timeframe to help mitigate what can be significant travel and accommodation costs for candidates).

5.8 The EPI wishes to stagger examinations throughout the year; test concepts instead of content; continue to capture main activities such as drafting, amendments, opposition, complex (legal) advice but also to see whether there is more to be include as to what “fit to practise” means, such as freedom to operate, appeal procedures, litigation, ethics, IP strategy; and to limit the length of some papers (4 hours seen as too long). There were many views given in the conference by several of the c100 attendees, and which will likely inform the direction of travel for the EPI. The Education Working Group is to keep a watching brief on developments with particular reference to any potential impact upon the current exemptions afforded to PEB qualifying examinations on the basis of the EQE.

5.9 Patent Examination Board: the PEB shared, on a strictly confidential basis, its final review of the online examinations delivered in October 2020. The report was welcomed by the Education Working Group which found it comprehensive and accountable. This was conveyed to the PEB.

The Education Group has a meeting with [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

5.10 Other – Education Working Group Membership

With a huge thanks to Keith Howick for his invaluable contribution to both Board and the Education Working Group, having served his term(s), the Education Group invites interest from a patent attorney profession representative on Board to join it.

**Annex – Queen Mary University London Update on Programme Management/  
Administration Review**

**UPDATE ON PROGRESS OF THE QMUL PROGRAMME ADMINISTRATION/MANAGEMENT REVIEW  
(25/06/2021)**

**Action Update Proforma**

|   |  |   |  |                                 |
|---|--|---|--|---------------------------------|
| <b>Area of activity:<br/>Administration</b>   | <b>Overall administration</b>  |   |  |                                 |
| <b>Context: Our programme review, informed by student feedback, suggested that actions should be taken to improve the overall administration of the programmes.</b> |  |   |  |                                 |
| <b>Overall objective</b>  | <b>Specific actions</b>  | <b>Who is leading</b>   | <b>How achievement will be judged</b>  | <b>Intended completion date</b> |
| Improve the overall administration of the programme.  | A team of QMUL staff that developed extensive expertise by running our successful LLM programme, rather than a single programme administrator, will be responsible for the different functions of programme administration | PG Law Office team (hereinafter PG Law)<br><br>All staff members have great experience in managing a particularly large (over 800 students) and successful LLM programme. | Student feedback during and after the completion of the course. Overview by Programme Director.<br><br>Law firm/Employer survey. | Completed.                      |
| <b>Progress: Completed.</b>   |  |   |  |                                 |
| <b>Date progress recorded: 04/06/2021</b>   |  |   |  |                                 |

| <b>Area of activity:<br/>Administration</b>   | <b>Admission Process</b>   |                       |   |                                 |
|---|--|-----------------------|---|---------------------------------|
| <b>Context: Our programme review, informed by student feedback, suggested that actions should be taken to improve the efficiency of the admission process. Actions taken upon student feedback.</b> |  |                       |   |                                 |
| <b>Overall objective</b>  | <b>Specific actions</b>  | <b>Who is leading</b> | <b>How achievement will be judged</b>   | <b>Intended completion date</b> |
| <p>Improve the efficiency of the admission process</p> <p>Avoid undue delays in enrolment</p>   | <p>PG Law liaised with Admissions Office to coordinate actions and streamline the admission process</p> <p>Communicate key details of the application process, to firms that sponsor students on the Cert IP programme</p> <p>Provide applicants with single point of contact for admissions</p> | PG Law                | <p>Student feedback during and after the completion of the course. Overview by Programme Director.</p> <p>Law firm/Employer survey.</p> | Completed.                      |
| <b>Progress: Completed.</b>   |  |                       |   |                                 |
| <b>Date progress recorded: 04/06/2021</b>   |  |                       |   |                                 |

|  |   |                       |   |                                 |
|--|---|-----------------------|---|---------------------------------|
| <b>Area of activity:</b>   | <b>Induction process</b>  |                       |   |                                 |
| <b>Context: Our programme review, informed by student feedback, suggested that actions should be taken to improve the efficiency of the induction process.</b> |   |                       |   |                                 |
| <b>Overall objective</b>   | <b>Specific actions</b>   | <b>Who is leading</b> | <b>How achievement will be judged</b>   | <b>Intended completion date</b> |
| Improve the efficiency of the induction process  | <p>Customize induction process to tailor the needs of the specific student group</p> <p>Create 'New Student Letter' outlining administrative onboarding process</p> <p>Create induction website using modalities similar to the LLM induction, subject to requisite adjustments</p> <p>Offer additional workshops for students who have no previous experience in writing legal papers</p> <p>Organise a separate library induction for Specialist IP TM and MSc students</p> | PG Law                | <p>Student feedback during and after the completion of the course. Overview by Programme Director.</p> <p>Law firm/Employer survey.</p> | Completed.                      |
| <b>Progress: Completed.</b>  |   |                       |   |                                 |
| <b>Date progress recorded: 08/06/2021</b>  |   |                       |   |                                 |

|  |  |   |   |                                 |
|--|--|---|---|---------------------------------|
| <b>Area of activity:</b>   | <b>Curriculum and module revision</b>  |   |   |                                 |
| <b>Context:</b>  |  |   |   |                                 |
| <b>Overall objective</b>   | <b>Specific actions</b>  | <b>Who is leading</b>   | <b>How achievement will be judged</b>                     | <b>Intended completion date</b> |
| <p>Mapping content to IPReg requirements as set out in the IPReg accreditation handbook</p> <p>Reviewing content to better meet the needs of the practice.</p> | <p>Internal content review has taken place suggesting minor changes, which have been implemented.</p> <p>We participated in the CIPA Education Committee where we had an opportunity to reflect on the relevant issues with its members.</p> | <p>Team consisting of IP experts and Quality Assurance Expert</p> | <p>Student Feedback.</p> <p>Law firm/Employer survey.</p> | <p>Completed.</p>               |
| <b>Progress: Completed.</b>  |  |   |   |                                 |
| <b>Date progress recorded: 21/06/2021</b>  |  |   |   |                                 |

|   |   |  |   |                                 |
|---|---|--|---|---------------------------------|
| <b>Area of activity:</b>  | <b>Student Support</b>  |  |   |                                 |
| <b>Context: Our programme review, informed by student feedback, suggested that actions should be taken to improve student support.</b>            |   |  |   |                                 |
| <b>Overall objective</b>  | <b>Specific actions</b>   | <b>Who is leading</b>                      | <b>How achievement will be judged</b>   | <b>Intended completion date</b> |
| <p>Enhance our mechanisms of student support for our professional courses</p> <p>Deal more effectively with student queries during the course</p> | <p>Transfer student support responsibilities to the Student Support and Engagement Team (SSET)</p> <p>SSET will ensure that students queries will be dealt promptly and effectively</p> | <p>Student Support and Engagement Team</p> | <p>Student feedback. Overview by Programme Director.</p> <p>Law firm/Employer survey.</p> | <p>Completed.</p>               |
| <b>Progress: Completed.</b>   |   |  |   |                                 |
| <b>Date progress recorded: 21/06/2021.</b>  |   |  |   |                                 |

|   |   |                       |   |                                 |
|---|---|-----------------------|---|---------------------------------|
| <b>Area of activity:</b>  | <b>Feedback Mechanisms</b>  |                       |   |                                 |
| <b>Context: Focus groups have turned out to be a very valuable source of information during the past academic year. Our programme review considered ways of further improving their operations.</b> |   |                       |   |                                 |
| <b>Overall objective</b>  | <b>Specific actions</b>   | <b>Who is leading</b> | <b>How achievement will be judged</b>   | <b>Intended completion date</b> |
| Optimise mechanisms for receiving students feedback   | <p>Enhance focus groups as a mechanism for receiving student feedback</p> <p>Focus groups meetings will be taking place during each term</p> <p>Involvement of Programme Directors in focus groups</p> <p>Introduce surveys circulating with law firms/employers.</p> | PMG                   | <p>Student feedback during and after the completion of the course. Overview by Programme Director.</p> <p>Law firm/Employer survey.</p> | Completed.                      |
| <b>Progress: Completed.</b>   |   |                       |   |                                 |
| <b>Date progress recorded: 15/06/2021</b>   |   |                       |   |                                 |

In addition to the items listed above as part of the Programme Review, the Programme Management Group will be keeping the following matters under continuous review:

- Programme delivery, including availability of materials, teaching formats and methodologies.
- Student feedback enhancement.

Changes made in response to this continuous review will be reported to IPReg in the normal way via the minutes of the Programme Management Group.

## Board Meeting 15 July 2021

### Decision paper: Nottingham Law School, Nottingham Trent University - Higher Courts Advocacy Certificate application

#### Agenda Item: 7

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

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

#### 1. Summary

1.1 Individuals who apply for entry onto the Registers of Patent and/or Trade Mark Attorneys are expected to obtain the Intellectual Property Litigation Certificate within 3 years of entry on to the register. Attorneys then have the choice of obtaining a Higher Courts Litigation Certificate and upon successful completion, the option of obtaining the Higher Courts Advocacy Certificate (HCAC).

1.2 Up until 31 March 2021, given the absence of an IPReg-accredited HCAC course, the qualification has been issued only to individuals who have passed a Higher Rights of Audience Assessment (HRA) approved by the SRA<sup>1</sup>. Since 1 April 2021, only qualified solicitors can sit the HRA assessments. In light of this, the 21 January 2021 meeting of the IPReg Board agreed that IPReg should pursue standalone IPReg-accredited HCAC providers (so it is not just qualified solicitors and barristers who can apply for the Certificate, as would be the case going forward otherwise). Both CPD Training UK and Nottingham Law School were contacted to gauge interest in becoming accredited for provision of a Higher Courts Advocacy Certificate. This because both organisations offer IPReg-accredited litigation courses.

1.3 The 20 May 2021 meeting of the IPReg Board agreed the accreditation of a Higher Courts Advocacy Certificate to be provided by CPD Training UK. This paper concerns accreditation of an HCAC application made by Nottingham Law School, Nottingham Trent University. As with all Litigation and Advocacy courses accreditation exercises, two appointed independent specialist assessors undertook a comprehensive review of the application(s). The independent assessment report recommends accreditation of the HCAC application and this is endorsed by the Education Working Group of Board.

#### 2. Recommendation(s)

2.1 The Board is asked to approve the accreditation of Nottingham Law School's Higher Courts Advocacy Certificate course, subject to confirming they will implement the following report recommendations:

Recommendation 1:- Nottingham to explain clearly to delegates/students, as part of their pre-publicity, the strict attendance requirements for Part 1 if delegates/students are to progress to Part 2;

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<sup>1</sup> On one occasion issued to a barrister.

**Recommendation 2:-** Nottingham to consider the benefit of having some assessment materials which are not IP specific (for the reasons stated at item 4.3 of the report relating to the risk of this becoming about technical ability rather than advocacy skills); and

**Recommendation 3:-** Nottingham to consider, to the extent that this is not already part covered by a university-wide plan, how part 2 would be delivered in the event that Covid protocols do not permit face-to-face teaching.

2.2 Nottingham has confirmed commitments to take forward the recommendations (recommendation 2, in a limited capacity only).

2.3 The Board is asked to approve the accreditation for the standard five years. This is subject to IPReg advising Nottingham Law School that in extenuating circumstances, such as significant concerns being raised, or other aggravating factors, or should the regulatory arrangements review determine changes are needed to the current litigation and advocacy regulatory arrangements.

### 3. Risks and mitigations

|                     |  |
|---------------------|--|
| <b>Financial</b>    | <p>Unlike other accreditation exercises, the costs of the consultants were not re-charged to the Qualification Agency, as agreed by the 21 January 2021 meeting of Board. This because IPReg had invited Nottingham to make the application.</p> <p>The assessment report included an advisory note to consider whether the course could be priced more competitively<sup>2</sup> (proposed at £2900-£3100 with a possible alumni discount taking it to £2100-2300, plus VAT) and what provision, such as scholarships and provision of staged payments, might be possible in order to attract as diverse range of applicants as possible.</p> |
| <b>Legal</b>        | <p>[REDACTED]</p>  |
| <b>Reputational</b> | <p>The accreditation work seeks to ensure consistency of content, quality and reputation across the qualification delivery agents. IPReg is now explicit that the 5 years accreditation status timeframe may become subject to review in extenuating circumstance such as significant concerns being raised (or, also, in this instance, should the regulatory arrangements review determine that changes are needed).</p>   |
| <b>Resources</b>    | <p>[REDACTED] and [REDACTED] were appointed as the assessment team reviewing the HCAC application. [REDACTED] is a non-practising solicitor who has led on all historic litigation/advocacy reviews for IPReg and [REDACTED] holds the IPReg Higher Courts Litigation and Advocacy Certificates.</p>   |

### 4. Higher Courts Advocacy Certificate - Application and Assessment

4.1 Nottingham Law School was required to provide an application setting out how their course offering would deliver the Outcomes set out at Schedule One of the [IPReg Rights to Conduct](#)

<sup>2</sup> CPD Training UK's course is £1500 + VAT.

[Litigation and Rights of Audience Certification Rules](#) as well as taking account of/benchmarking against the [SRA Higher Rights of Audience Civil Standards 2021](#) as they judge appropriate.

4.2 As with the 2019 assessment of the Nottingham's Basic Litigation Skills Course, the appointed<sup>3</sup> assessors were [redacted] and [redacted] [redacted] has been the independent specialist lead on all [redacted] [redacted] has provided the professional practitioner input. [redacted] holds all 3 levels of the litigation (and advocacy) certificates awarded by IPReg. Their jointly authored report was shared with CPD Training UK for fact checking and the raising of any objections to the recommendations made. None were declared.

4.3 Their assessment report (Annex) highlights a number of strengths in the application including:

- the faculty being all barristers or solicitors and by the blend between advocacy, judicial, teaching and writing experience;
- Nottingham's desire to design a course from the ground up rather than just repurpose the Higher Rights of Audience course aimed at solicitors; and
- Course structure and activities outlined in the course syllabi together with the proposed blended learning model.

The report highlights one reservation of the assessors, that being the absence, at this stage, of any sample learning or assessment materials. "However, even without this and particularly in light of the material provided relating to similar programmes and NLS' experience in writing course material, we are satisfied that it is appropriate for us to recommend approval of the Course to the IPReg Board".

4.4 The report contains 3 Recommendations and an Advisory Note:

- Recommendation 1:- Nottingham to explain clearly to delegates/students, as part of their pre-publicity, the strict attendance requirements for Part 1 if delegates/students are to progress to Part 2;
- Recommendation 2:- Nottingham to consider the benefit of having some assessment materials which are not IP specific (for the reasons stated at item 4.3 of the report relating to the risk of this becoming about technical ability rather than advocacy skills); and
- Recommendation 3:- Nottingham to consider, to the extent that this is not already part covered by a university-wide plan, how part 2 would be delivered in the event that Covid protocols do not permit face-to-face teaching;
- Advisory Note: Nottingham to consider whether the course could be priced more competitively and what provision, such as scholarships and provision for staged payments, might be possible in order to attract as diverse a range of applicants as possible.

4.5 The first draft of the report was shared with Nottingham for fact-checking and the raising of any objections/concerns. Their response is provided at Annex B, recommendations 1 and 3 and the Advisory Note are all confirmed for action. Context is provided in response to the IP-specific case study. This led to addition by the assessors of the following paragraph,

*"NLS have since provided helpful clarification that the Sherrif v Trent case study 'is deployed for a simulated trial that takes place at the very end of the Higher Litigation Certificate course. By that stage the students, organised into "firms" comprising both Patent Attorneys and Trade Mark*

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<sup>3</sup> As agreed by the January 2021 Board.

*Attorneys, will have been working on the scenario from the start of the course, interviewing clients/witnesses, developing Statements of Case and Witness Statements, participating in Case Management and preparing for trial.’ They make the point that students will therefore be far more familiar with the issues and therefore better able to deal with more technical subject matter. We acknowledge this point but still feel it is important, as set out in recommendation 2 below for NLS to consider the benefit of having some non-specific IP assessment material”.*

4.6 The revised assessment report, informed by the Nottingham response, was shared with Nottingham which advised by email, 2<sup>nd</sup> July 2021,

“We don't mean to be difficult, but our course design is just seeking to mitigate a known threat to the validity of any assessment and support the inference as to competence that can be taken from a pass by the candidate, the regulator, and the public.

We have, of course, acknowledged in our response to the fact check of the report, the potential benefits of use of a non-IP related course material. This is an invaluable approach in the context of the SRA Higher Rights of Audience assessments where the material can often be best described as generic in nature. It would, for instance, be possible to use a simple debt action for the purpose of assessment, such as the HRA Civil Route case study provided, *Mertex*.

Our concern relates to the limited nature of the rights granted under the *IPREG Rights to Conduct Litigation and Rights of Audience Certification Rules 2012*. The rights conferred are limited and linked to a highly specialist context. It is important to ensure that a signal is not given to the candidate that, by virtue of success in assessment, they are competent to perform a regulated activity that they are not licensed to undertake. We are concerned that the use of an assessment vehicle such as *Mertex* might send such a signal to a successful candidate.

Our approach is like that adopted for the current SRA Higher Rights of Audience assessments. A solicitor advocate must undertake both a criminal and a civil advocacy assessment to obtain rights to appear as an advocate in all divisions. Without a pass in both advocacy assessments the licence to appear is restricted. Advocacy is, therefore, assessed within the context in which the relevant licence to appear is to be granted. The IP advocate will, likewise, be restricted to a specialist court within a restricted domain of activity by virtue of the IPREG 2012 Regulations. It makes sense, therefore, to adopt a position in which advocacy is taught, and assessed, on a topic informed basis as the same is true of the closest comparator, SRA Higher Rights of Audience.

We will, however, use non-IP material in the course to illustrate the potential cost consequences, including the potential imposition of a wasted costs order, because of straying into an area of activity in which the IP advocate has no rights to appear”.

This limited acceptance of the recommendation is itself recommended for endorsement.

4.7 The Education Working Group of Board recommends that Nottingham’s application to provide an accredited Higher Courts Advocacy Course is approved.

## 5. Recommendation(s)

5.1 The Board is asked to approve the accreditation of Nottingham Law School's Higher Courts Advocacy Certificate course, subject to confirming they will implement the following report recommendations:

Recommendation 1:- Nottingham to explain clearly to delegates/students, as part of their pre-publicity, the strict attendance requirements for Part 1 if delegates/students are to progress to Part 2;

Recommendation 2:- Nottingham to consider the benefit of having some assessment materials which are not IP specific (for the reasons stated at item 4.3 of the report relating to the risk of this becoming about technical ability rather than advocacy skills); and

Recommendation 3:- Nottingham to consider, to the extent that this is not already part covered by a university-wide plan, how part 2 would be delivered in the event that Covid protocols do not permit face-to-face teaching.

5.2 Nottingham has confirmed commitments to take forward the recommendations (recommendation 2, in a limited capacity only).

5.3 The Board is asked to approve the accreditation for the standard five years. This is subject to IPReg advising Nottingham Law School that in extenuating circumstances, such as significant concerns being raised, or other aggravating factors, or should the regulatory arrangements review determine changes are needed to the current litigation and advocacy regulatory arrangements.

## 6. Annex

Annex A – Accreditation Assessment Report: Nottingham Trent University UK Higher Courts Advocacy Certificate

Annex B – Nottingham response to Assessment Report Recommendations and Advisory Note

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## Review of an application made by Nottingham Law School at Nottingham Trent University to deliver a training programme leading to the award of a Higher Courts Advocacy Certificate

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### 1. Introduction

This review has been done by [REDACTED] and [REDACTED] at the request of the Intellectual Property Regulation Board (IPReg). The reviewers' qualifications are set out in Appendix A.

This review considers the application by Nottingham Law School at Nottingham Trent University (NLS) and (i) advises on whether the application meets the Advocacy Skills Outcomes set out in IPReg's Rules and (ii) comments on whether it aligns with [the SRA Higher Rights of Audience Civil Standards 2021 \(the SRA Standards\)](#).

The reviewers are grateful for the initial guidance from Victoria Swan on both the scope of this review and IPReg's position in relation to the Solicitors Regulation Authority's (SRA) changes to its rules on advocacy training.

### 2. History of Higher Rights of Audience

Higher rights of audience entitle advocates to appear and represent their clients in the higher echelons of the Court system - the High Court, Court of Appeal and Supreme Court. These higher rights of audience were traditionally given to barristers only.

The system fundamentally changed in 1990. The Law Society successfully lobbied for the introduction of legislation in the form of The Courts and Legal Services Act 1990. This entitled solicitors, on completion of appropriate training, to appear as advocates in court.

The Solicitors Regulation Authority (SRA) was formed to act as the independent regulator of Solicitors under the Legal Services Act 2007. Historically the SRA has accredited a number of different educational providers to deliver and assess higher rights of audience (HRA) training courses. Successful completion of an SRA-accredited HRA training course entitled the candidate to exercise higher rights of audience. The present applicant, NLS, is accredited by the SRA to provide HRA training.

Hitherto it has not been a requirement that candidates for HRA training courses be a solicitor, although most were. A number of patent attorneys (PAs) and trade mark attorneys (TMAs) have successfully participated in these HRA training programmes and been awarded higher rights of audience.

IPReg has relied on the ability of PAs and TMAs to sit an SRA approved HRA assessment to certify PA and TMA candidates as holders of higher rights of audience. However, the SRA has introduced the SRA Standards, effective from January 2021. The most significant change is that effective from 1 April 2021 only solicitors may sit an SRA accredited HRA assessment.

### 3. IPReg's Power to grant Higher Rights of Audience in the Courts of England and Wales

There is therefore a need for HRA training for PAs and TMAs separate from that provided under the auspices of the SRA. IPReg is the appropriate body to accredit training providers to deliver a course and assessment to fulfil this need and wishes to do so.

IPREG is authorised by the Legal Services Board to grant higher rights of audience to PAs and TMAs by virtue of the IPREG Rules, [Rights to Conduct Litigation and Rights of Audience and Other Reserved Legal Activities Certification Rules 2012](#).

The IPReg Rules give IPREG the power at paragraph 2.2 to issue three different types of advocacy certificate. Each certificate gives PAs and TMAs increasing rights of audience, which rights are summarised as follows:

- Intellectual Property Litigation Certificate  
Rights including a right to conduct appeals and litigation in lower courts, a right of audience before IPEC and the High Court, and appeals in certain proceedings to the Court of Appeal and the Supreme Court
- Higher Courts Litigation Certificate  
Additional rights including audience before the County Court in relation to Part 63 CPR matters, conduct litigation and audience in case management conferences before the Patents Court and other courts where Part 63 CPR applies, conduct appeals from decisions in the aforementioned to the Court of Appeal and the Supreme Court
- Higher Courts Advocacy Certificate

Additional right of audience before the High Court, the Court of Appeal and the Supreme Court in proceedings under the Higher Courts Litigation Certificate.

The Intellectual Property Litigation Certificate is compulsory for all PAs and TMAs. This certificate is awarded on successful completion of a basic litigation course which includes an assessment of the candidate's advocacy skills. Accredited courses leading to certification are currently offered by providers including NLS.

The Higher Courts Litigation Certificate and the Higher Courts Advocacy Certificate are both optional. NLS is currently the only institution accredited to deliver and assess a course leading to the award of a Higher Courts Litigation Certificate.

The changes effected by SRA means that there are currently no institutions [REDACTED], it is possible that CPDT are now accredited but I will leave this to Victoria to correct if necessary] accredited to deliver and assess a course leading to the award of a Higher courts Advocacy Certificate for PAs and TMAs. NLS has applied to IPReg to fill this gap.

## 4. The NLS Application

### 4.1 Scope of the Application

NLS have submitted an extensive application comprising the following:

| Doc | File Name  | Content  |
|-----|--|--|
| 1   | a. 01 Nottingham Law School Application for accreditation                | The Application  |
| 2   | b. Appendix 1 - HCAC Stage 1 Course outline                              | Syllabus and statement of outcomes for stage 1   |
| 3   | c. Appendix 2 - HCAC Stage 2 Course outline                              | Syllabus and statement of outcomes for stage 2   |
| 4   | d. Appendix 3 - HCAC TSP   | Proforma trial strategy plan   |
| 5   | e. Appendix 4 - HCAC Advocacy Criteria                                   | Proforma assessment criteria and marksheet for an advocacy assessment  |
| 6   | f. Appendix 5 - NLS' experience in teaching professional qualifications  | Statement of NLS' experience in teaching professional qualifications   |
| 7   | g. Appendix 6 - NLS' Teaching Faculty                                    | Brief CVs for the NLS teaching faculty   |
| 8   | h. Appendix 7 - The Reflective Learner                                   | Note for learners describing the reflective learner and the reflective practitioner  |
| 9   | i. Appendix 8 - lsb_submission_final                                     | IPREG submission to the Legal Services Board dated August 2012 to revise certification rules into the Rights to Conduct Litigation and Rights of Audience and Other Reserved Legal Activities Certification Rules 2012 |
| 10  | j. Appendix 9 - Confidential - Exemplar Questions IPREG Application 2021 | Sample MCQ self-test questions   |
| 11  | k. Appendix 10 - [REDACTED] Dec 2017                                     | [REDACTED] review of privilege published in CITMA Review issue 438   |

NLS subsequently provided the following documents under separate cover:

| Doc | File Name  | Content  |
|-----|--|--|
| 12  | HCAC Skills Course Outcomes - Mapped                       | Document mapping the proposed course to IPREG outcomes   |
| 13  | 1 Exemplar HCAC Materials                                  | Assessor notes for HRA assessments   |
| 14  | 5 Exemplar (Sheriff v Trent) Evidence Bundle for Trial     | Witness statements and expert report – used in NLS' course leading the award of a Higher Courts Litigation Certificate |
| 15  | 4 HRA Civil Written Assessment Paper 25.01.21              | Sample examination paper produced for NLS' HRA course  |
| 16  | 2 HRA Civil Advocacy Assessment 2021 Mertex v Avis         | Advocacy case, Mertex Ltd. V Avis Promotions Ltd. concerning allegedly unsatisfactory T-shirts                         |
| 17  | 3 Assessor notes for Mertex Case Study - Case Analysis (1) | Assessor Notes and Case Analysis   |

Each document has been given a corresponding number in the above tables. The documents will be identified by those numbers in the following.

## 4.2 Key Points Regarding the Application

### *A. Accreditation*

NLS has been accredited since 1994 by the SRA to conduct assessments leading to the award by the SRA of Higher Rights of Audience. The SRA's [website](#) shows a total of 7,072 practising solicitors having Higher Rights of Audience as of February 2021.

NLS has been accredited and successfully reaccredited by IPREG to deliver the Basic Litigation Skills Course and Assessment since March 2014.

NLS is currently the only institution accredited by IPREG to deliver a training course resulting in the award of a Higher Courts Litigation Certificate.

NLS has also delivered many other courses targeted specifically at PAs and TMAs including an LLM in IP Litigation and an IP Litigation course.

NLS therefore has a formidable track record of successfully delivering litigation training to lawyers in general and specifically to PAs and TMAs.

### *B. The Proposed Course*

NLS make the point that the proposed course will be different from that which they offer to solicitors seeking higher rights of audience, although it will also meet the SRA Standards.

Their rationale is that appearing as an advocate in IP cases requires specialist knowledge of topics not covered in standard HRA courses aimed at solicitors, such as legal professional privilege for the clients of PAs and TMAs and IPReg's code of conduct as it applies to advocates.

The proposed course will be delivered in two distinct stages.

**Stage 1** will be delivered online over a 3-month period. It will focus on those of the IPReg outcomes relating to professional conduct, evidence, and trial preparation and procedure.

The material will be made available within NLS' virtual learning environment and will comprise a mixture of direct reading by students, listening to and engaging with podcasts and attendance at five online two-hour live teaching sessions delivered over MS Teams. A full syllabus for Stage 1 has been provided as document 2. We consider the syllabus to meet the learning outcomes.

NLS have clarified in correspondence that attendance in real time at these teaching sessions is compulsory and students will not be able to progress to stage 2 unless they can demonstrate they have completed stage 1. NLS have emphasised that in the case of an exceptional reason for non-attendance they may be prepared to allow students to progress if they can show they have met the learning outcomes and that these cases will be assessed on an individual basis.

**Stage 2** will be delivered face-to-face over a period of 3 consecutive days at NLS' campus. It will focus on those of the IPReg outcomes relating to advocacy skills and will culminate with a mini trial.

Students will be taught about trial strategy, drafting skeleton arguments, examining witnesses and making closing speeches. The learning materials will comprise written guidance on skills, podcasts and associated exercises and a bespoke case study. NLS have not yet produced this material because they plan to tailor it to the needs of the IP profession. The material will be similar in style to the material used in the course culminating in the award of a Higher Courts Litigation Certificate which they provided, as document 14.

A full syllabus for Stage 2 has been provided as document 3. We consider the syllabus to meet the learning outcomes.

Students will then have a 7-day break before being required to participate in the same mini-trial on the MS Teams platform. Their participation will evidence they have taken on board the feedback they received.

### *C. The Proposed Assessment*

The application sets out a detailed assessment strategy, which is to split the assessment into two parts. The first part is a written assessment to test Outcomes relating to professional conduct, evidence, trial preparation and procedure. The second is an oral assessment to test Outcomes relating to trial advocacy skills.

NLS propose that the **written assessment** will be a 2.5-hour paper comprising a combination of multiple-choice questions and short answer questions linked to an intellectual property case study.

The proposed oral **advocacy assessment** will last an hour and take the form of a mini trial. Candidates will prepare a written legal or evidential submission in advance of the trial accompanied by a skeleton argument. During the assessment candidates will cross-examine a witness – played by an actor – and make a closing speech in a court-like setting with the assessor in the role of a judge.

NLS have said that the pass mark for each assessment should be 60% and that candidates will be required to pass both assessments, with no compensation between the assessments. Compensation risks a student strong in written skills but weak in oral skills or vice versa achieving pass. Competency in both aspects is a necessary aspect of real-world advocacy. There will also be a red light fail requirement where candidates who fail a 'must pass' element will get a mark of zero, subject to agreement between the assessors and the external examiner.

NLS have not provided any sample assessment materials for the proposed course. However, they have provided assessment materials from their HRA courses (documents 13, 15 and 16). Should the proposed course be approved, they intend to produce assessment materials in a similar style but linked to an IP case study. We will address this issue in more detail in part 4.3 below.

Although it is not clear from the application, we assume that NLS will issue all students who satisfactorily complete the course and the assessments with a certificate. This would allow students to present the Certificate to IPREG in order for IPREG to make the award of the Higher Courts Advocacy Certificate.

#### *D. The Proposed Fee*

NLS state that the proposed full fee to cover both stages of the course is likely to be in the region of £2,900-£3,100. They then go on to say that they propose to issue a launch discount as well as an alumni discount which is likely to lower the fee to £2,100-£2,300. We assume VAT would be chargeable on these fees.

While pricing is clearly a commercial decision for NLS, the full fees are high particularly compared to those which other providers seeking accreditation plan to charge.

We therefore suggest by way of an advisory note (set out at page 9 below) that NLS consider pricing the discounts it mentions into the course fee to be able to offer a lower fee to all students whether alumni or not and maintain this fee rather than make it an introductory offer.

We would also like to advise that NLS consider what provision, such as scholarships and provision for staged payments, might be possible in order to attract as diverse a range of applicants as possible.

### **4.3 Quality and Suitability of Course Material**

NLS have not provided any sample material relating to the proposed course. The material has not yet been written and it will take time and resources to do so.

While it is unusual not to provide any sample material, it is not unprecedented. However, NLS have provided relevant information in several supporting documents:

- A statement of their learning and teaching methods at pp 9-10 of the application
- Detailed syllabi for both parts 1 and 2 of the course (documents 2 and 3)
- A sample written assessment paper produced for NLS' HRA course (document 15)
- A sample advocacy assessment paper ('Mertex') produced for NLS' HRA course (document 16)
- Sample assessor notes for the advocacy assessment ('Mertex') (document 17)
- A case study 'Sherriff Mouldings' used for teaching of NLS' course leading the award of a Higher Courts Litigation Certificate (document 14).

We assume that NLS' intention would be to structure assessment materials based on the case studies in these supporting documents, have formed a view based on this material and have the following comments.

The Mertex advocacy case study (document 16). is fine as a case study. The subject is not in itself difficult – a dispute over allegedly unsatisfactory T-shirts – and is not overly technical. Advocacy skills are tested based on cross examination of witnesses and an opening/closing speech and we believe that this could readily be pitched at the right level for an assessment to demonstrate the candidate's skills.

The Sherriff case study (document 14) is quite technical and some of the exhibits appear to be incomplete. Again, we see no problem of using this as a case study. However, if this were used as assessment materials, we see a risk of the issues being muddled.

NLS have since provided helpful clarification that the Sherrif v Trent case study 'is deployed for a simulated trial that takes place at the very end of the Higher Litigation Certificate course. By that stage the students, organised into "firms" comprising both Patent Attorneys and Trade Mark Attorneys, will have been working on the scenario from the start of the course, interviewing clients/witnesses, developing Statements of Case and Witness Statements, participating in Case Management and preparing for trial.' They make the point that students will therefore be far more familiar with the issues and therefore better able to deal with more technical subject matter. We acknowledge this point but still feel it is important, as set out in recommendation 2 below for NLS to consider the benefit of having some non specific IP assessment material.

What is being tested? The candidate's technical ability, understanding of the IP-specific rules of procedure, advocacy skills?

We would say the technical ability of PAs is a given and technical ability is irrelevant for TMAs. PAs may be disadvantaged because they know too much about the technology and TMAs disadvantaged because of their own perceived lack of technical understanding.

Moreover, there is a risk that candidate PAs will have a better understanding of technical matters than the assessors. Any technical errors or inconsistencies in the assessment materials are likely to be distracting and could distort the candidate's perception of the issues.

We also feel that that IP-specific rules of procedure are best tested in the written part of the assessment.

The aim of the oral test is to assess the candidate's ability as an advocate. Just because it is PAs that are being assessed, does not mean there has to be a technical component. Advocacy is a topic-independent skill.

In the Patent Examination Board drafting of specifications paper (FD2) candidates are instructed not make use of special knowledge that they may have of the subject matter concerned. There is a danger that importing knowledge to the test will distort the candidates' answers, moving them outside the scope of the question.

Selecting some non-IP topics as a basis for HRA assessment similarly reduces the risk of candidates getting bogged down in technical details that at best are irrelevant and at worst move beyond the intended scope of the exercise. Case studies that are outside the normal working area of PAs and TMAs help the candidates to focus on learning advocacy skills without the distractions that comes from expert knowledge.

While we applaud NLS' efforts to include IP-related technical disputes in case studies, we recommend at the very least they exercise caution in creating assessment materials with

technical content. We would encourage NLS to think about including some non-IP examples on the basis this will stretch the candidates to think and perform outside their ‘comfort zone’.

We are happy with NLS’ learning and teaching methods and the course content summarised in the syllabi for stage 1 and stage 2 and supported in the accompanying materials. We are satisfied that these supported by appropriate course material will provide students with a positive learning experience that will enable them to achieve the course outcomes.

#### 4.4 Alignment of the Application with the Required Learning Outcomes

NLS have provided a document mapping the course content to the IPREG learning outcomes (document 12 above) and we are satisfied, having reviewed this, that all outcomes will be met.

#### 4.5 Quality of NLS’ Faculty

The table below sets out CPDT’s faculty for teaching and assessing and some of their more notable achievements.

| Faculty Member          | Professional Qualifications | Notable Achievements   |
|-------------------------|-----------------------------|--|
| Professor<br>[REDACTED] | Solicitor                   | Contributor to Butterworth’s ‘Commercial Court and Arbitration Pleadings’                                    |
| [REDACTED]              | Solicitor                   | Director of NLS’ Centre for Mediation and Dispute Resolution   |
| [REDACTED]              | Barrister                   | Regularly appears in the higher courts including the CJEU acting for clients owning or challenging IP rights |
| [REDACTED]              | Solicitor                   | Formerly a Judge of the First Tier Tribunal (Information Rights)   |

We are impressed that the faculty are all either barristers or solicitors and by the blend between advocacy, judicial, teaching and writing experience.

### 5. Recommendations

#### Context

NLS provide extensive documentation to support their application and clearly have a long history in delivery of both specialist training to PAs and TMAs as well as to those wishing to obtain Higher Rights of Audience.

We were impressed by NLS’ desire to design a course from the ground up rather than simply repurpose their HRA course aimed at solicitors and were impressed by the course structure and activities outlined in the course syllabi together with the proposed blended learning model, which we believe will make the best use of delegates’/students’ time.

Our only reservation is that we were not able to review any sample learning or assessment material relating to the proposed course itself.

However, even without this and particularly in light of the material provided relating to similar programmes and NLS' experience in writing course material, we are satisfied that it is appropriate for us to recommend approval of the Course to the IPREG Board for a five-year period subject to the following recommendations:

#### *Recommendations*

1. NLS explain clearly to delegates/students as part of their pre-course publicity the strict attendance requirements for Part 1 if delegates/students are to progress to Part 2.
2. NLS consider the benefit of having some assessment materials which are not IP specific for the reasons stated in section 4.3 above.
3. NLS consider, to the extent that this is not already part of a university-wide plan, how Part 2 would be delivered in the event that COVID protocols do not permit face to face teaching.

#### *Advisory Note*

NLS consider whether the course could be priced more competitively and what provision, such as scholarships and provision for staged payments, might be possible in order to attract as diverse a range of applicants as possible.

## Appendix A: Reviewers' Qualifications

██████████ is a non-practising solicitor and experienced consultant specialising in the design and delivery of professional legal education. ██████████ has reviewed multiple applications made by different institutions for accreditation to deliver IPREG's Basic Litigation Course. ██████████ also acts as IPReg's external examiner of the Course delivered by CPDT.

████████████████████ has been a registered PA and TMA since the early 1990s. He was among the first group of PAs/TMAs to secure the Higher Rights Certificate in 2013. A practiced advocate he has represented clients since the early days of the Patents County Court and has been the lead in countless contentious oral proceedings at both the Opposition Division and Boards of Appeal level at the European Patent Office. He has given closed-door presentations advocating policy positions to UK and EU civil service influencers. And he has worked with and instructed counsel in high-profile cases in the High Court, the Court of Appeal and equivalent tribunals in several European and Asian states.

By email to [Victoria.swan@ipreg.org.uk](mailto:Victoria.swan@ipreg.org.uk)

Date: 24 June 2021

Dear Victoria

## **Review of application for accreditation of Higher Courts Advocacy Certificate Course**

We are grateful for the time and attention the reviewers have given to our application for accreditation. We set out here our observations on some factual points followed by our comments on the Recommendations and Advisory Note.

### **Facts**

1. We are referred to as Nottingham Trent Law School. Just to make sure that any accreditation is not issued to the wrong, indeed non-existent, organisation, we are of course Nottingham Law School at Nottingham Trent University.
2. In the third paragraph of Section 2 we are incorrectly referred to as CPDT.
3. We think that the materials provided in respect of the Sheriff v Trent scenario have been interpreted in the wrong context. We provided the Sheriff v Trent trial bundle in response to a request for sight of some "teaching material". The bundle is deployed for a simulated trial that takes place at the very end of the Higher Litigation Certificate course. By that stage the students, organised into "firms" comprising both Patent Attorneys and Trade Mark Attorneys, will have been working on the scenario from the start of the course, interviewing clients/witnesses, developing Statements of Case and Witness Statements, participating in Case Management and preparing for trial. The trial lasts for half a day. This is a very long way from the more contained scenario that would be provided to Higher Courts Advocacy Certificate ("HCAC") candidates a few days in advance for a one-hour assessment to be undertaken outside the team environment. These materials should not therefore play any role in assessing the standard at which the NLS HCAC course will be assessed.

### **Recommendations and Advisory Note**

**Recommendation 1** – Noted and agreed. We will, of course, make the attendance requirements for Part 1 clear to students, both in promotional materials and in the Course Handbook provided to students undertaking all courses at the University.

**Recommendation 2** – NLS consider the benefit of having some assessment materials which are not IP specific for the reasons stated in section 4.3 above.

We will consider the comments of the reviewers as the course and assessment strategy is developed.

It may assist, however, if we clarify the teaching and associated assessment strategy that we advocate in the application. Whilst there is, we accept, a risk that an overly technical case study could prove to be a distraction to a candidate, especially in an assessment situation, this risk must be counterbalanced by the need for relevance to the context in which the successful candidate will exercise the right to appear as an advocate in the higher courts acquired under the 2012 Regulations.

First, we note the reviewers' comment that "advocacy is a topic independent skill". We agree that candidates often learn from a case study with an element of variation from their own day to day experience. However, NLS works on the basis that a topic informed approach, linked to the relevant context in which the rights will be exercised is preferable both in terms of underlying assessment validity and, also, the way the in which the rights will be used by the successful advocate.

Secondly, as we explain in the factual comments above, it is possible that the Sheriff v Trent scenario has been interpreted as representing an assessment scenario. Sheriff was provided merely to demonstrate the type of case study that could be used. It is not overly technical in the context of IP work, although we accept the calibration of level and the potential for distractors in both teaching and assessment case studies are relevant considerations.

Our preferred approach does not mean that technology will get in the way of the underlying law and procedure, any more than it does in the Higher Courts Litigation Certificate course where Patent Attorneys and Trade Mark Attorneys work alongside each other preparing, respectively, the patent and trade mark elements of the case.

We are happy to discuss this further as it is a topic which justifies a full debate.

**Recommendation 3** - NLS consider, to the extent that this is not already part of a university-wide plan, how Part 2 would be delivered if COVID protocols do not permit face to face teaching.

Yes, of course.

### **Advisory Note**

We will discuss the reviewers' comments with our commercial management and revisit our costings as we develop our course.

Yours sincerely

██████████  
████████████████████  
██████████

**Nottingham Law School, Nottingham Trent University**

## Board Meeting 15 July 2021

### Review of regulatory arrangements – key policy issues and direction of travel

#### Agenda Item: 8

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

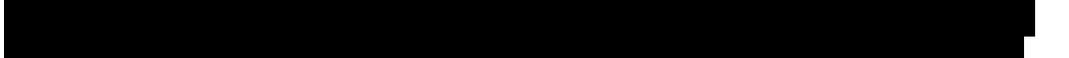
#### Summary

1. This paper provides an update on progress with the review of our regulatory arrangements and sets out the direction of travel for the key policy issues following recent workshops with members of the Board sub-group (see slide pack at Annex A).

#### Recommendation(s)

2. The Board is asked to note the progress update and agree to co-opt additional members to the Board sub-group in view of departures from the Board.
3. The Board is asked to comment on and agree the principles set out at paragraph 7 as the basis by which we judge progress with the review and communicate our aims with stakeholders.
4. The Board is asked to comment on the direction of travel set out in the slide pack at Annex A and agree that we proceed with engaging with stakeholders on a targeted basis. This engagement will help us to develop our proposals and identify the potential impacts ahead of formal consultation (planned for later this year).
5. The Board is asked to note the update on the Regulators Pioneer Fund (paragraphs 15-17) and our decision not to apply for the current funding round due to timing issues.

#### Risks and mitigations

|                  |  |
|------------------|--|
| <b>Financial</b> | <p>We have allocated £40k in the budget for legal support for this project and are currently discussing fixed fees for each package of work with Kingsley Napley.</p> <p>We now have in place a small panel of expert advisors to provide challenge and support in key areas including PII, diversity and inclusion, and assessing the likely impact of alternative forms of regulation. The cost is anticipated to be c. £20k over the next 12 months (2 budget years). Three of the four members took part in the workshop sessions and early signs suggest they will add value both in terms of their expertise and the credibility they will bring to the project (including the development of impact assessments for our proposals).</p> |
| <b>Legal</b>     |    |

|                     |   |
|---------------------|---|
|                     |   |
| <b>Reputational</b> | This is a high-profile project that has been welcomed by many of those we regulate. The LSB is scrutinising our progress on this work. Achieving a comprehensive, principles-based approach to our “post-admission” regulatory arrangements will be a significant achievement and will enhance our reputation. Seeking early input from stakeholders is likely to enhance credibility of the project and our proposals. |
| <b>Resources</b>    | The appointment of the expert advisors has enabled us to fill the gaps in our resources identified so far. The remaining area to consider getting external advice is on the economic impacts of any fee changes. We will look at options for this once our policy position in relation to fee categories is firmed up.  |

## Progress update and governance

6. Since the last Board discussion we have published the summary of responses and created a dedicated web page for the review. This completes stage one of our project plan and we are currently on track with stage two (focusing on developing the draft framework) which will take us through to the next Board update in September.

**Recommendation:** The Board is asked to note the progress update and agree to co-opt additional members to the Board sub-group in view of departure from the Board.

## Principles for the review

7. At Annex A, we set out the following Principles for the review:
  - Proportionate consumer protection
  - Reducing the burden of regulation, encouraging competition
  - Principles based: remove prescription and detailed rules unless evidence demonstrates necessary
  - Facilitating innovation
  - Streamlined and consistent
  - Resilient to change
8. We propose that these principles form the basis by which the Board judges progress with the review. This will help us to ensure that the different aspects of what is a wide ranging review can hang together as well as forming the basis by which we make policy decisions. We will also use these principles with stakeholders to communicate our aims for the review. We consider that clear and consistent messaging will be important throughout in terms of increasing understanding and buy-in with the project.

**Recommendation:** The Board is asked to comment on and agree the principles set out as the basis by which we judge progress with the review and communicate our aims with stakeholders.

## Policy workshops

9. We have recently completed a series of online workshops with the IPReg team and Board sub-group members to focus on some of the key policy issues involved with the review: Conduct and disciplinary process, Continuing Professional Development (CPD), Client money and PII, and Practice categories and Multidisciplinary Practices (MDPs). These were extremely useful and engaging discussions the outputs of which are set out for the Board at Annex A.
10. Subject to the Board's views, we are keen to begin testing these ideas with stakeholders on a confidential basis. The sooner we are able to do this the sooner we will know whether the amendments we need to make are significant or minor. As discussed with the Board in May, we consider that targeted

and confidential engagement on our proposals will help to develop our initial thinking and build both our understanding and evidence base, leading to a better quality consultation when we get to that stage later in the year.

11. Several of the workshops were attended by our newly appointed expert external advisors who provided a valuable challenge function and perspectives from other sectors and disciplines (such as economic regulation). We will continue to work with them on an ad-hoc basis and specifically with our diversity and inclusion expert on our approach to impact assessment of the proposals.
12. For the avoidance of doubt, the Board will be having a full discussion on our proposed final policy positions ahead of any formal consultation. As the slides indicate there is a significant amount of work to do before then, particularly in terms of gathering information and understanding the potential impacts. Stakeholder engagement is an integral part of this and may lead to a change in position on any of the issues. There will also be strategic questions as to how we wish to present our proposals. We are not looking for detailed comments on the slide pack at this stage unless the Board wishes to discuss one or more of the topics in more detail.

**Recommendation:** The Board is asked to comment on the direction of travel set out in the slide pack at Annex A and agree that we proceed with engaging with stakeholders on a targeted basis. This engagement will help us to develop our proposals and identify the potential impacts ahead of formal consultation (planned for later this year).

## LSB Review of continuing competence

13. The LSB has signalled it will be publishing research and high level principles for its approach to continuing competence in the coming weeks. It is the LSB's view that regulators need to do more to identify competence issues and to address them should they arise.
14. The LSB's work in this area has implications for our review and particularly our approach to reform of Continuing Professional Development. It will therefore be very useful to discuss the LSB's position with our stakeholders to understand the specific implications for the IP professions. We will keep the Board updated on this matter.

## Regulators Pioneer Fund

15. Since the last Board meeting, the Department for Business, Energy & Industrial Strategy (BEIS) announced that it is reopening the Regulators Pioneer Fund (RPF) this year. Regulators and local authorities can apply for grants of up to £200,000 for projects that will help create a UK regulatory environment that encourages business innovation and investment.
16. Projects must be innovative and reflect a research, learning and experimentation approach to regulation. Successful applicants are required to work within specific timescales, i.e. the project must run for at least 6 months and end by 31 March 2022. They must also take part in the BEIS evaluation process.

17. We have taken a close look at the RPF criteria and explored the possibility of a bid to help us develop a digital approach to our new regulatory arrangements (working with an external partner such as [Clausematch](#)). While we appear to meet the criteria, the timing is not quite right for our project (it is about 12 months too soon). We will keep engaging with Clausematch to explore how such an approach might work and get a clearer sense of costs. Should the RPF run again next year we will be in a very good position to bid and as the review progresses there may well be other ideas we wish to explore.

## Next steps

18. Subject to the Board's views on our proposed direction of travel in relation to the key policy issues, we will update the draft framework to reflect our latest thinking. We will then instruct Kingsley Napley to review the framework document to determine whether there are any legal issues we need to address.
19. Once we have comments back from Kingsley Napley, we will convene the sub-group to discuss in detail along with the updated draft framework. We anticipate this discussion will take place in August.
20. We will also begin scheduling discussions with a number of stakeholders and report back to the Board in September on how these are progressing together with any early implications for our proposals.

## Board Meeting 15 July 2021

### LSB issues – Performance management framework

#### Agenda Item: 11b

**Author:** Fran Gillon, CEO ([fran.gillon@ipreg.org.uk](mailto:fran.gillon@ipreg.org.uk) 020 7632 7174)

#### Summary

1. The LSB's annual regulatory performance assessment<sup>1</sup> published in December 2020 identified that IPReg had three unmet outcomes. In March, following consideration by the Board, we responded to the LSB's request for an update on what action IPReg was taking to meet the outcomes (**Annex A**). The LSB replied on 7 May requesting further information (**Annex B**). A draft response to this letter for consideration by the Board is at **Annex C**.

#### Recommendation(s)

2. The Board:
  - a. Comments on the draft response and delegates final sign off to the Chair and CEO;
  - b. Agrees to establish a data group to provide advice and guidance on what data is relevant to our policy decisions going forward.

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<sup>1</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2020/12/LSB-Regulatory-performance-report-21-December-2020-FINAL-FOR-PUBLICATION.pdf>

**By email**

Fran Gillon  
Chief Executive  
Intellectual Property Regulation Board



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1 July 2021

**Well-led regulators and the regulatory objectives**

Dear Fran

The Legal Services Board recently completed a review of the Bar Standards Board under the Well-led standard of the Legal Services Board Regulatory Performance Assessment Framework. As you know, the performance framework provides for a more in-depth review when ongoing monitoring identifies that we do not have sufficient assurance about an area of a regulator's performance or identifies an area as one of concern.

The [report](#) with our findings from the review was published today. It sets out that we found little evidence of a focus on the needs of consumers and the public interest in the decisions we reviewed and that the BSB was unable to demonstrate meaningful consideration of the regulatory objectives.

The BSB has accepted the findings in relation to the decisions that we reviewed, stated its commitment to the regulatory objectives and developed an action plan to address the findings and demonstrate that it conforms to the Well-led standard. This has all been reflected in our published performance assessment, which accompanies the report.

There is learning in our report that we think has the potential to help us all improve the effectiveness of regulation in the legal services sector. I would encourage you, therefore, to consider your own decision-making processes in light of our findings. Overall, we expect all regulators to be proactively and transparently putting the regulatory objectives at the heart of their decision-making.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Matthew Hill', is positioned above the printed name.

**Matthew Hill**  
Chief Executive

By Email



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23<sup>rd</sup> June 2021

Dear All

### **Compensation Fund**

It has come to our attention that those regulators with insurance-backed compensation funds might have difficulty securing a renewal as one of the main underwriters, Royal Sun Alliance, has indicated that it will no longer be providing this sort of facility. I am therefore writing to all regulators to ensure that you are aware of this issue and ask that you consider any potential impact on your operations.

We intend to do some targeted work on compensation fund arrangements in the coming months, as this issue appears to highlight a vulnerability in the current approach adopted by a number of regulators. There are also different approaches and levels of protection offered across regulators that we would like to better understand and consider. However, we will not be starting this work imminently and in the meantime, ask all regulators to:

- keep us informed of any potential impact from the changes in the insurance market on their own operations and your plans for responding to these
- identify any opportunities for collaboration to help ensure that any risks to consumers and regulatory objectives are properly mitigated.

The LSB stands ready to discuss and support regulators to respond to this issue.

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 of Policy and Regulation**

## Board Meeting 15 July 2021

### Information paper: Complaints update

#### Agenda Item: 13

**Author:** Shelley Edwards, Head of Registration ([shelley.edwards@ipreg.org.uk](mailto:shelley.edwards@ipreg.org.uk)), Mark Barnett, Assurance Officer ([mark.barnett@ipreg.org.uk](mailto:mark.barnett@ipreg.org.uk)). Mark Barnett will present the paper

#### Summary

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

#### Risks and mitigations

|                     |   |
|---------------------|---|
| <b>Financial</b>    | None. Existing resources are dedicated to the oversight and administration of complaints received.  |
| <b>Legal</b>        | [REDACTED]  |
| <b>Reputational</b> | 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.   |
| <b>Resources</b>    | 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 Complaint<sup>1</sup>, the case will be closed. If it does amount to a Complaint, it moves to the Complaint Initiated stage.

### Complaint Initiated

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

### CRC

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

### JDP

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

### Appeal

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

## Cases by numbers

| Category   | Number | Notes  |
|--|--------|--|
| Complaints received in last month (since last meeting) | 2      |  |
| Total open cases                                       | 6      | Under investigation = █<br>Complaint initiated = █<br>CRC stage = █<br>JDP stage = █<br>Appeal stage = █ |
| Complaints closed in last month (since last meeting)   | 1      |  |

<sup>1</sup> 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]       |



30 June 2021

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Dear Matthew

## Internal Governance Rules 2019 – Rule 16 authorisation

I write further to Chris Nichols' letter of 23 July 2020 in which the LSB authorised that IPReg would not be required to comply with Rule 7 of the Internal Governance Rules with respect to requiring a lay majority for the IPReg Board. That authorisation was time limited and ends today (30 June 2021).

This letter is to notify the LSB formally that IPReg has appointed new Board members with effect from 1 July 2021:

- Justin Bukspan is appointed as a professional member to the Trade Mark Regulation Board;
- Victor Olowe is appointed as a lay member of the Trade Mark Regulation Board and of the Patent Regulation Board; and
- Samantha Peters is appointed as a lay member of the Trade Mark Regulation Board and of the Patent Regulation Board.

The effect of those appointments is that the Patent Regulation Board, the Trade Mark Regulation Board and the IPReg Board all now have a lay majority and that no further authorisation under Rule 16 is required.

I am copying this letter to the CIPA and CITMA CEOs.

Yours sincerely



**Fran Gillon**  
Chief Executive

Cc: Keven Bader – CITMA  
Lee Davies - CIPA

**Sent by email**  
Fran Gillon  
Chief Executive  
Intellectual Property Regulation Board



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8 July 2021

Dear Fran

**Internal Governance Rules 2019 – End of rule 16 authorisation for non-compliance with Rule 7**

Thank you for your letter of 30 June 2021 from the Intellectual Property Regulation Board (IPReg) confirming that the IPReg governance arrangements now meets the lay composition requirements as set out in Rule 7 of the LSB Internal Governance Rules.

Your letter confirms the end of term of a Trade Mark Attorney non-lay board member on 30 June 2021 and new appointments to the Trade Mark Regulation Board, the Patent Regulation Board and consequently to the IPReg Board. All three Boards now meet the lay composition requirements of a majority of lay persons and a lay Chair.

This finalises the period of written authorisation for non-compliance of the Internal Governance Rules, Rule 7 (Governance: Lay composition) granted by the Legal Services Board on 23 July 2020.

I am copying this letter to Lee Davies, CEO of CIPA, and Keven Bader, CEO of CITMA.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Matthew Hill', with a stylized flourish at the end.

**Matthew Hill**  
Chief Executive