

**The Intellectual Property Regulation Board  
Consultation**

**2020 Business Plan, Budget and Practising Fees**

**29 May 2019**

## Introduction

1. This consultation asks for your views on:
  - a. increasing practising fees for 2020 by RPI (2.3%)<sup>1</sup> (see paragraph 9); and
  - b. our proposed 2020/21 Business Plan.
2. In response to suggestions from CIPA and CITMA that we avoid consulting over the summer holiday period, we are consulting earlier than we have done in the past. It is our intention to continue to do so in future years. If you have any comments on the Business Plan, budget or practising fees, please send them to: [ipreg@ipreg.org.uk](mailto:ipreg@ipreg.org.uk) by **5pm on Thursday 4 July 2019**.

## Context

3. Our current priorities are to:
  - a. Introduce a new CRM in Autumn 2019 in time for the 2020 annual re-registration process. The new CRM will improve the way in which we manage the statutory Registers and to provide better diversity and management information;
  - b. Move to offices that have more suitable facilities and better accessibility (before the current lease expires in February 2020); and
  - c. Start a review of our regulatory arrangements.
4. These essential elements of our work meant that in 2019 we increased practice fees by RPI + 5% (a total of 8.8%). We said in our consultation on the level of fees for 2019 that we “anticipate that any increase above RPI would be for 2019 only and we would aim to reduce practice fees in subsequent years”. In agreeing to the 2019 increase, the [LSB said](#) that its general expectation was that the cost of regulation should be reduced or stabilised. It also said that once three priority projects (the new CRM, moving offices and revising our regulatory arrangements) that we intended to undertake had been completed, the LSB “would expect IPReg to be in a position to bring down the level of fee to reflect any reductions in costs and efficiency savings”.
5. The three-year budget projection that we provided to the LSB to support our 2019 practising fee application was based on RPI increases of 3.5% each year. Now that our change programme is underway, we have a better understanding of the extent of the work that we need to do over the coming years. In order to support that work and ensure that the IPReg office is properly funded, it seems likely that we will need to propose increases of RPI in future years as well (i.e. fees will remain level in real terms).

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<sup>1</sup>This is the March 2019 figure published by [ONS](#) in April 2019.

6. The LSB asked us to monitor the impact of the 2019 increase on attorneys. As part of the 2019 annual re-registration process, we received 36 applications to be removed from our Registers. The reasons given for the applications were:
- a. Retirement: 25 (13 Patent, 5 Trade Mark, 7 Dual-registered);
  - b. Career Change: 4 (1 Patent, 3 Trade Mark);
  - c. To work in the unregulated sector: 2 (1 Patent, 1 Dual-registered);
  - d. Ill Health: 1 (1 Patent);
  - e. Other: 3 (2 Patent, 1 Trade Mark). Reasons cited were “no longer intend to practise as a Chartered Patent Attorney”, “I no longer work directly with IP in a hands-on way”, and dual registration with the Solicitors Regulation Authority and not wanting to retain both registrations;
  - f. Prefer not to say: 1 (Dual-registered).

We did not receive any applications that cited the level of fees as a reason for wanting to be removed from the Registers.

### Proposed 2020 budget

7. The draft 2020 budget (and comparison with the 2019 budget) that we have published alongside this document is based on a fee increase of RPI (2.3%).<sup>2</sup> This should be read alongside our [Reserves Policy](#)<sup>3</sup> and our adjusted [2019 Reserves](#).
8. We considered carefully whether it would be possible to increase fees by a smaller amount or hold fees at the 2019 rate (i.e. they would be reduced in real terms). However, a number of factors influenced our decision to propose an increase of RPI (i.e. to hold fees level in real terms):
- a. It is a time of significant work for a small organisation of seven part time staff and we need to ensure that we are properly financed in case of unexpected peaks in work;
  - b. There has been an increase in complaints about registered attorneys. In 2017 we received six complaints, in 2018 we received 14 complaints and so far in 2019 we have received or instigated seven (with 10 cases currently under investigation). Investigating these requires funding to an appropriate level so that the investigation is not unduly delayed (which could lead to an adverse impact on consumer protection);
  - c. As we said in our consultation on the 2019 practising fees, we plan to recruit a paralegal who could take over many of the more routine tasks that the regulatory officers currently undertake, freeing them up to focus on our priorities and especially the work to review and reform our regulations and procedures;

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<sup>2</sup>Note:

- The budget includes the LSB levy which is based on their estimate of £64,849 (2019: £58,546) and the Legal Ombudsman levy estimated at £5,000 (2019: £5,000). This represents an increase in the LSB levy of 10.7% (£6,303);
- Projected income is based on practice fees alone;
- Fees paid to the IPReg Board are now shown as “Director’s remuneration” rather than “Board costs”

<sup>3</sup>The Reserves policy has been amended slightly at paragraph 3 to provide the Board with more flexibility about when it can adjust the reserves. The Board’s overall approach to managing Reserves has not changed.

- d. It is unclear what the impact of Brexit will be, particularly on trade mark attorneys – any significant reduction in the number of registrants would have a detrimental impact on our income in future;
- e. There has been a further increase in the percentage of the LSB levy that we have to pay (this increased by 9.1% in 2019 and the estimated levy for 2019/20 shows an increase of 10.7%). We note that the LSB considers that it has a “strong case” for an increased budget in future;<sup>4</sup>
- f. The risks noted above highlight the need to rebuild reserves after the depletion of the Reserves in 2019 on the CRM project.

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<sup>4</sup> See paragraph 18 of the LSB’s [January 2019 Board meeting](#).

## Impact on practising fees

9. The proposed increase will have the following impact on practising fees:

### *Impact on individual and entity fees*

The impact on practising fees would be:

	Single register 2019 current fees	Both registers 2019 current fees	Proposed 2020 (+RPI) single register	Proposed 2020 (+RPI) both registers
Attorney solely undertaking corporate work	£173	£277	£177	£283
Attorney in private practice	£210	£345	£215	£353
Attorney not in active practice	£157	£252	£161	£258
Sole trader attorney not employing other attorneys or professionals	£345	£493	£353	£504
Sole trader attorney employing other attorneys or professionals	£345 + £69 for each attorney employed by the sole trader attorney + £277 for each other professional employed by the sole trader attorney	£493 + £69 for each attorney employed by the sole trader attorney + £277 for each other professional employed by the sole trader attorney	£353 + £71 for each attorney employed by the sole trader attorney + £283 for each other professional employed by the sole trader attorney	£504 + £71 for each attorney employed by the sole trader attorney + £283 for each other professional employed by the sole trader attorney

## Draft Business Plan 2020/21

### Introduction

1. IPReg is undergoing a programme of change and we have therefore decided that during 2020 and 2021, we will continue to focus on improving the way we conduct core activities (especially operation of the Register(s)) and to limit the number of new initiatives that we start.

### IPReg's strategic priorities

2. In March 2019, the IPReg Board met to discuss its strategic priorities for the period from 2019 – 2021. The Board reaffirmed that its priorities for 2019/20 are to implement a new CRM system, move to offices that have more suitable facilities and better accessibility (before the current lease expires in February 2020) and review its regulatory arrangements. In setting its strategic priorities (as part of that review and more widely) the Board wants to be more externally focused to ensure that its regulatory framework encourages and supports innovation:
  - a. In the provision of services that providers are able to offer consumers and the ways in which those services are provided, including the use of law tech. We will do this by ensuring that our review of regulatory arrangements focuses on setting reasonable standards but does not 'gold plate' them;
  - b. By encouraging the entry of new providers of education courses (at both the foundation and advanced levels). We want people who want to become trade mark attorneys and patent attorneys to have a variety of routes into the profession (including apprenticeships). We want these to be provided using different delivery methods and to introduce new subjects (e.g. law tech). We consider that, over time, this will help to increase diversity, improve quality and lower costs. We also want to review on a more regular basis the quality and performance of existing accredited education providers;
  - c. By ensuring that its requirements for continuing competence, in addition to protecting consumers, are relevant to the changing way in which legal services are provided and the commercial requirements of regulated individuals and entities.

### Improving our efficiency and effectiveness

#### *Our day to day activities*

3. The IPReg team carries out a wide range of "business as usual" activities. These include:
  - considering applications from individuals and entities for registration;
  - providing advice on our regulatory arrangements;
  - investigating complaints and taking disciplinary action where necessary;
  - dealing with enquires to our "Info" email box;
  - a rolling accreditation process of examination agencies and considering applications from new entrant agencies;

- responding to LSB consultations and requests for information (e.g. on the regulatory performance framework and diversity);
- developing policies following recommendations from external bodies (e.g. the CMA legal services market survey).

These activities occupy most of the team's time over the course of a typical year.

#### *Keeping the registers – a new CRM*

4. The annual re-registration process currently takes significant resources, particularly dealing with telephone and email queries from registrants. We estimate that over the period from December to March, around 80% of the team's time (including additional days worked) is spent on the re-registration process. We have therefore allocated significant resources in 2019 to develop a new CRM system that will improve significantly the annual fee collection and re-registration process. It will also improve the way in which we interact with registrants and provide better information about the diversity of those we regulate and the nature of the market(s) in which they operate.
5. Following a public procurement process, we are working with [Miller Tech](#) and [Purple Consultancy](#) to develop the new CRM system. At the time of writing this consultation, we anticipate that the new CRM will go live around in Autumn 2019 and will be used for the first time for the 2020 fee collection process which starts towards the end of 2019. We anticipate that much of the first three months of 2020 will be spent ensuring that this process works well.
6. We have set some "measures of success" for the new system and will review these once the CRM is fully operational. We will also use improved data (e.g. on diversity) from the new CRM to inform our future policy development.

#### *Improving our regulatory arrangements*

7. As we said when we consulted on the 2019 Business Plan, our regulatory arrangements (our rules and regulations) have built up over time and, inevitably, there are areas where they could be improved. We do not plan to change our overall approach to regulation – risk-based, keeping prescriptive rules to a minimum and providing guidance to help understand the outcomes we are seeking. However, we need to review our regulatory arrangements in their entirety. In doing so, we will make them more streamlined and consistent. We will also consider whether a "light" version of regulatory arrangements for in-house attorneys and overseas attorneys would be appropriate, taking into account the risk posed to consumers. In developing new regulatory arrangements, we will remove any actual or perceived barriers to providing *pro bono* advice, whilst ensuring that regulatory protection is afforded to consumers who are provided with *pro bono* advice.
8. This is a significant piece of work, both for IPReg and those we regulate and we would like to maximise the input we get from the consultation process. We have adjusted the timetable for conducting the review in order to allow sufficient time to consider all aspects of our regulatory arrangements. The adjusted timetable is:
  - Q2 2020 – initial consultation on proposed approach and outline of new regulatory arrangements (originally Q1 2020);

- Q4 2020 – detailed proposals for new regulatory arrangements (originally Q3 2020).

Our aim would be to apply to the LSB for approval of the new regulatory arrangements in Q2 of 2021 (originally Q1) with a view to them being in force in Q4 2021 (originally Q3).

#### *Improving the application process for individuals and entities*

9. We receive applications from individuals and entities to be regulated. We have identified that we could make the application process more efficient overall. Our aim, once our new CRM is in place is to move to on-line applications for individuals and entities.
10. We have a statutory objective to promote competition in the provision of legal services and want to ensure that our application process for entities is not an unnecessary barrier to entry. Although it is likely that the new CRM will initially retain the current forms and fees, we want to review our approach – this could include a different approach to fees to ensure that they are consistent and proportionate, new guidance and new application forms.
11. Our current thinking on timing for this review remains as set out in our 2019 Business Plan:
  - Q3 2019 – scoping the review and identifying areas for change/improvement;
  - Q1 2020 - consultation on proposed changes;
  - Q3 2020 – application to the LSB for approval of the new arrangements.

#### *More appropriate categories of registrant*

12. In reviewing the operation of the current register, we have identified that some categories of registrant need to be changed to reflect better the commercial framework within which they practise. This is particularly the case for some attorneys who are classified as sole traders. We also consider that it is appropriate to review whether attorneys who are “not in active practice” should be allowed to remain on the register indefinitely, or whether it would be more appropriate to restrict this category to events such as sabbaticals or parental leave.
13. Ideally, we would conduct this review in time for implementation before the 2021 annual renewal process. Once we are further ahead with the implementation of the new CRM, we will have a better idea of how we will be able to change registrant category. We therefore still plan to hold initial discussions with stakeholders during 2019 and to consult in early 2020. Thereafter, implementing any changes will take into account the need to provide certainty as to the level of fees in 2021 and progress on reviewing our regulatory arrangements.

#### *Accreditation and monitoring of training providers*

14. During 2019, we have started work on two important new issues to ensure that education providers continue to meet the standards required in the IPReg Accreditation Handbook:

- a. Working with Queen Mary London to ensure that recommendations in the 2017 IPReg review are being actioned and that recent feedback obtained by CITMA from students is leading to improvements in course structure, content and delivery;
- b. Discussions with CIPA about its review of the training, support and assessment of students.<sup>5</sup>

15. In due course we will review our accreditation process to ensure that it remains fit for purpose and includes appropriate safeguards to maintain standards in between reviews. We anticipate that this review will also consider a more appropriate structure for recharging the cost of accreditation and monitoring to the academic institution. We want these costs to reflect the resources used by IPReg (e.g. Board member fees plus a percentage of staff time). We will also introduce a formal process for removing accreditation from providers who fail to maintain reasonable standards. We hope to be able to start this work during 2020.

16. We continue to consider that it is appropriate to review whether the current system of exemptions (e.g. for qualifications and for litigators) is targeted, proportionate and consistent. It remains the case that this work is likely to start in late 2020.

### Diversity funding

17. For the avoidance of doubt, we remain committed to keeping a ring-fenced reserve to fund suitable diversity initiatives.

### Summary

18. In addition to our business as usual activities (see paragraph 3), we propose to do the following in 2020/21 (colour coded for ease of reference):

<b>2020</b>	
Q1	<ul style="list-style-type: none"> <li>• Consultation on proposed changes to registrant categories</li> <li>• Consultation on proposed changes to application process</li> </ul>
Q2	<ul style="list-style-type: none"> <li>• Initial consultation on new regulatory arrangements (high level)</li> </ul>
Q3	<ul style="list-style-type: none"> <li>• Application to LSB for proposed changes to registrant categories (with 2021 practising fees, etc.)</li> <li>• Application to LSB for changes to application process</li> </ul>
Q4	<ul style="list-style-type: none"> <li>• Consultation on detailed proposals for new regulatory arrangements</li> <li>• New registrant categories in place (depending on other factors)</li> <li>• New application process in place</li> <li>• Scope review of education exemptions policy</li> <li>• Start review of accreditation policy</li> </ul>
2021	
Q1	
Q2	<ul style="list-style-type: none"> <li>• Application to the LSB for approval of new regulatory arrangements</li> </ul>

<sup>5</sup> See <http://www.cipa.org.uk/policy-and-news/latest-news/cipa-announces-a-review-of-the-training-support-and-assessment-of-students/>

Q3	<ul style="list-style-type: none"><li>• New regulatory arrangements in force</li></ul>
Q4	