

The Patent Regulation Board and the Trade Mark Regulation Board

Agenda

Thursday 14 July 2022 at 1:30 pm

[Gatehouse Chambers \(Gray's Inn, 1 Lady Hale Gate, London WC1X 8BS\)](#)

1. Apologies
2. Notification of any conflicts of interest

PART A – NON-CONFIDENTIAL ITEMS

3. Financial Statements (IPReg Ltd) – 2:00 pm attendance by Richard Hill (Griffin Stone Moscrop & Co)
4. Minutes of May 2022 meeting and matters arising
5. Action Log (FG)
6. Progress on Review of Regulatory Arrangements (EL)
7. Other activities (not covered elsewhere):
 - a. 3 x CEOs (FG)
 - b. Regulatory Forum (Chair/SE)
8. Education Working Group Update (VS, CS)

PART B –CONFIDENTIAL ITEMS

9. Complaints update (SE)
10. Governance and Transparency Working Group – Report on findings and recommendations (SP)
11. LSB engagement (FG)
 - a. Board to Board meeting 1 June (Chair)
 - b. Response to LSB – performance management framework report (FG)
 - c. LSB Statement of Policy – empowering consumers – gap analysis (FG)

d. Sanctions

- **Action plan (FG) – to note**
- **Discussion with LSB 1 July (FG) – no paper**
- **Meeting with MoJ 25 May (FG) – no paper**

e. All regulators Chairs/CEOs meeting 29 June (AK/FG)

12. Finance update (KD)

13. Risk register (FG)

14. Regulators' Pioneer Fund (FG)

15. 2023 business plan, budget and practising fees [REDACTED] – RESTRICTED – NOT FOR FULL CIRCULATION – [REDACTED] ONLY]

16. Report back from JDP recruitment (VO/ER/JB/SE) - no paper

17. Regulatory Statement

Confirmation that, except where expressly stated, all matters are approved by the Patent Regulation Board and the Trade Mark Regulation Board.

Board Meeting 14 July 2022

Financial statements for IPReg Limited

Agenda Item: 3

Author: Karen Duxbury (karen.duxbury@ipreg.org.uk)

Summary

- 1.1 The financial statements for the year ended 31 December 2021 (Annex A).
- 1.2 Letter of Representation (Annex B)

Recommendation(s)

2.1 The Board is asked to:

- Approve the Financial Statements for the year ended 31 December 2021 for signature and subsequent filing at Companies House.
- Approve the letter of representation to be signed.

Risks and mitigations

Regulatory Objective(s)	The signed Financial Statements will be uploaded to Companies House and the website Actual v Budget comparison for 2021 and Reserves will be updated accordingly. This will aid transparency and better aid understanding of IPReg's finances.
Financial	This will provide confirmation of IPReg's financial position as at 31 December 2021.
Legal	
Reputational	The undertaking of an audit IPReg's commitment to transparency is clearly identifiable.
Resources	The Chief Finance Officer will continue to deal with financial matters under the direction of the CEO and Board.

Update to year end 31 December 2021 figures

- 3.1 The figures for the year ended 31 December 2021 presented to Board in March, included a full provision against the recoverability of an outstanding costs award balance of £9,391. A further £6,000 was recovered and reported at the May Board meeting and the Board were advised that an adjustment to write back £6,000 of the provision had been made to the figures.
- 3.2 Subsequently, the remaining balance of £3,391 was received and the costs award has now been fully recovered. A further adjustment to write back the provision to zero has been made to the figures.
- 3.3 Both write backs have increased the operating surplus from £35,771 (as reported in March) to £45,162 (before the transfer of £11,718 to the Compensation Fund Reserve) and Reserves will correspondingly be increased by £9,391.

3.4



Financial Statements for the year ended 31 December 2021

- 4.1 The audited financial Statements for the year ended 31 December 2021 are attached (Annex A).
- 4.2 The letter of representation is attached.
- 4.2 Other than the changes noted in point 3 above, there were no other changes to the figures disclosed at the March 2022 Board meeting.
- 4.3 The auditors have confirmed that there were no significant weaknesses or deficiencies during the course of the audit and are therefore not issuing a formal management letter.
- 4.3 The Board is asked to approve:
 - the letter of representation for signature by the Chair on behalf of the Board.
 - the Financial Statements for signature by the Chair and Company Secretary.

THE INTELLECTUAL PROPERTY REGULATION BOARD LIMITED

(A company limited by guarantee)

DIRECTORS' REPORT AND FINANCIAL STATEMENTS

FOR THE YEAR ENDED 31 DECEMBER 2021

REDACTED IN FULL - FOR LATER PUBLICATION ON WEBSITE

IPReg Board Meeting Actions Log - New and Outstanding Actions

Date of Meeting in which action arose	Agenda Item	Action	Responsibility	Status	Notes/Update
May 2022 Board Meeting					
May-22	LSB Performance Management Dataset	Submit the Performance Management Dataset, share with representative bodies and publish on IPReg website	VS	Closed	
May-22	Complaints Update	Review disciplinary webpage information to provide information about the ability of the JDP to make a costs order	SE/MB		
May-22	Progress on Review of Regulatory Arrangements	Roundtable with stakeholders to be arranged	EL	Closed	A virtual roundtable has been arranged for 27 July. Alan Kershaw and Emma Reeve will attend.
May-22	LSB Engagement	Draft response to consultation on performance framework and circulate to Board members	FG	Closed	
March 2022 Board Meeting					
Mar-22	Recruitment of Joint Disciplinary Panel Members	Take forward JDP recruitment with Thewlis Graham	SE	Ongoing	
January 2022 Board Meeting					
Jan-22	Annual Renewal Process Update	Review annual return information categories similar to PAMIA questions	SE	Ongoing	Any changes will be put in place for 2023 renewal year

IPReg Board Meeting Actions Log - New and Outstanding Actions

November 2021 Board Meeting					
Nov-21	Governance Matters	FG to develop an Escalation Policy/Procedure (similar to "Speak Up Guardian") and share with Team and Board	FG	Ongoing	
Nov-21	Governance Matters	FG to ask auditors to review financial controls and report to Board	FG	Ongoing	Audit taking place w/c 23 May. Auditor attending July Board meeting.
Nov-21	Governance Matters	Governance documents to be reviewed in 2 years' time	FG	Open – Nov-23	
July 2021 Board Meeting					
Jul-21	Compensation Arrangements	Develop risk profile	FG/SE/MB	Ongoing	To be developed over next 2 years
May 2021 Board Meeting					
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	Ongoing	
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	

IPReg Board Meeting Actions Log - New and Outstanding Actions

January 2020 Board Meeting					
Oct-19	LSB CEO Meeting	Invite Matthew Hill to Board meeting	FG	Open	Date TBC

Board Meeting 14 July 2022

Review of regulatory arrangements – response to consultation

Agenda Item: 6

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

Summary

1. The proposed response to the consultation (see **Annex A**) sets out our full analysis of the consultation responses and next steps. The content reflects discussion at the May Board meeting and our subsequent discussions with Kingsley Napley. Subject to the Board’s views this document will be published on our website and all respondents to the consultation will be notified. We propose to publish an updated version of our Impact Assessment (see tracked version at **Annex B**), which takes into account the feedback received in consultation, and any policy changes we have made as a result.

2. This paper also provides an update on the proposed next steps in relation to stakeholder engagement and the application to the LSB. We have provided the current draft of the amended regulatory arrangements (**Annex C**) which we plan to submit to the LSB for approval subject to a final decision from the Board in September and the advice received from Kingsley Napley in relation to the application of the Overarching Principles to the private lives of attorneys (**Annex D**). This advice has been incorporated into the response to consultation.

Recommendation(s)

3. The Board is asked to agree that we publish the response to consultation provided at **Annex A** and updated Impact Assessment at **Annex B**.

4. The Board is asked to agree that we return in September with a draft application to the LSB containing the proposed amendments to our regulatory arrangements and key pieces of draft guidance

Risks and mitigations

Financial	We previously agreed a fixed fee for Kingsley Napley to make the final alterations to the draft regulatory arrangements as a result of the consultation responses (£5,500 plus VAT). At this point we are of the view that a final review by Kingsley Napley of the LSB application in its entirety (including draft guidance) will be desirable before we submit the application to the LSB. This is to make sure it is coherent and consistent throughout and add weight to the application given the experience Kingsley Napley have in this area. We have not yet agreed a fee for this additional piece of work but will seek to agree a fixed price.
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	<p>We have a budget of £20k in place for this year to fund our external expert advisors (who provide challenge and support in key areas including PII, diversity and inclusion, and assessing the likely impact of alternative forms of regulation). We have engaged these experts in the development of the documentation. For instance, the updated Impact Assessment has been reviewed by our EDI expert and we received very positive feedback. We have also received some useful challenge and input from our economic and regulatory advisors on our approach to the PII sandbox.</p> <p>Work on the draft guidance is well underway. The Board will recall that the LSB now requires drafts of supporting guidance to be provided with the application. Approximately half of the guidance is being developed in-house and the rest by an external consultant. We have allocated a budget of £10k for this work and have so far incurred around a quarter of that amount.</p>
<p>Legal</p>	<p>[REDACTED]</p> <p>[REDACTED]</p>
<p>Reputational</p>	<p>This continues to be a high-profile piece of work for IPReg and publication of the response to consultation is a significant milestone for the project. As agreed by the Board at the May meeting, we have arranged a stakeholder roundtable to take place on 27 July, shortly after the response document is published. This will provide a good opportunity for IPReg to explain its position and next steps before the Board is asked to take a final decision on the LSB application.</p> <p>The Board will recall that both CIPA and CITMA indicated in their response to the consultation that a further full 12 week consultation is required on any revisions to the regulatory arrangements made as a result of the consultation so our decision to proceed without consultation as planned may generate some criticism from the professional bodies. We address this matter in the response document.</p>
<p>Resources</p>	<p>The appointment of expert advisors has enabled us to fill the gaps in our resources identified so far. For example, our diversity & inclusion expert has completed a review of our updated impact assessment and provided feedback.</p> <p>The appointment of an external consultant to assist with the guidance has enabled us to make rapid progress and also provided some useful additional challenge as we develop our policy position in the response document and amended regulatory arrangements. We consider that this additional resource is providing added value and enabling us to meet what is a challenging timetable.</p> <p>The remaining area to consider getting external advice is on the economic impacts of any fee changes at the appropriate point. We have made clear in the response to consultation that any fee changes are unlikely to come into effect until 2024 at the earliest.</p>

Regulatory Objectives	<p>The overall aims of the review balance all of the regulatory objectives and in particular:</p> <ul style="list-style-type: none">• Protecting and promoting the public interest - by ensuring adequate standards are in place for all regulated persons• Promoting competition in the provision of services - by removing unnecessary barriers to competition and enabling new business models• Protecting and promoting the interest of consumers - by providing an appropriate level of consumer protection and ensuring that consumer needs can be serviced by a suitably diverse market of legal services providers. <p>All of our proposals have been assessed against the regulatory objectives at consultation stage and again through the updated Impact Assessment.</p>
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Response to consultation and updated impact assessment

5. The response to consultation document provides our analysis of the responses to the consultation which closed in March 2022 and an explanation of how we intend to respond. It is set up in a similar format to the consultation document, pointing stakeholders to the key policy areas and questions asked in the consultation. We have also provided a table which includes additional technical points to which we consider we should respond. In addition, we have made clear that there are a small number of minor changes in response to drafting errors.
6. We recommend to the Board that at this point we do not publish the amended regulatory arrangements. This is due to the possibility that we may make some final amendments as a result of the stakeholder roundtable on 27 July and having multiple versions in the public domain may lead to confusion. We will publish the tracked change version in September at the point at which we submit the application to the LSB. We consider that the response to consultation together with the updated Impact Assessment will provide stakeholders with sufficient information at this stage. We also propose to publish details of any changes that we make after the application is submitted so that we are transparent about any changes that are made as a result of discussions with the LSB.
7. Key areas where we are making changes in response to the feedback we have received include:
 - a. Overarching Principles ('the Principles'): Following the Board discussion in May, we have worked with Kingsley Napley to clarify the circumstances in which the Principles may apply outside practice and to amend the wording of Principle 6 regarding equality, diversity and inclusion. A note of the legal position in relation to private life is provided at **Annex D** and the proposed amendments to the regulatory arrangements are marked up in tracked changes at **Annex C**.
 - b. Amendments to the transparency requirements to clarify that we do not expect detailed financial accounts of any financial benefits to be provided to clients and deletion of the reference to "disguised disbursements" as an example of hidden charges as it was unclear what this meant when we had already included "foreign exchange uplifts" and "commissions".
 - c. Amendments to the client money requirements to make clearer how they will apply in practice including a slight change to the definition of client money to make clear that advance payments for costs received where the terms have been agreed will not be considered client money. We have also clarified that monies held in a Third Party Managed Account (TPMA) are not client money and corrected a drafting error in relation to residual balances.
 - d. Amended the definition of client to include former and prospective clients where the context permits, this was raised by respondents specifically in relation to conflicts of interest.
 - e. Addressing feedback from in-house attorneys by making clear in the introduction to the Code of Conduct that not all provisions will apply and are dependent on the context in which you are working
 - f. Introduction of a transitional period of 18-24 months for the new CPD approach to allow attorneys and regulated firms time to adapt.

- g. Altered the requirement for all material risks to be identified, monitored and managed so that it refers to “material risks” rather than “all material risks.”
 - h. Drafting amendments to the complaints requirements in the Code of Conduct to simplify and remove unnecessary references to an ADR scheme.
8. As the Board agreed in May, we not be making any changes to our litigation skills requirements at this time. Further work is needed including consultation with qualification providers as part of the education work programme. We also set out in the response to consultation our proposal to introduce diversity monitoring over a longer time frame and following further consultation.
9. On the matter of further consultation on the final form of the regulatory arrangements (as raised by CIPA and CITMA), we set out the Board’s view that further consultation is unnecessary due to the nature of the changes we have made in response to the consultation and the amount of consultation already completed.
10. We have also updated our Impact Assessment to reflect the feedback we have received in relation to potential impacts (see tracked changes in the version at **Annex B**). We propose to publish a clean version of the updated Impact Assessment alongside the response to consultation to provide additional information in regard to our decision making. The updated Impact Assessment has been reviewed by our external equality, diversity and inclusion expert and reflects the feedback provided. Overall, she was extremely positive about the work we have done on the Impact Assessment which will go on to form an important part of the LSB application.

Recommendation: The Board is asked to agree that we publish the response to consultation provided at **Annex A** and updated Impact Assessment at **Annex B**.

Stakeholder engagement

11. We are organising a virtual roundtable with a number of key stakeholders on 27 July. Attendees will include representatives from CIPA, CITMA (including representatives of small firms and sole traders specifically), IP Practice Directors Group, IP Inclusive, Consumer Panel and IP Federation. The event will be chaired by Alan Kershaw and attended by Emma Reeve.
12. The event will be an opportunity hear more about how we are responding to the consultation and for discussion. For transparency purposes we will ensure the response document is published in advance so that all stakeholders have access to the information not only those attending the roundtable. We will state in the response document and any associated communications that we welcome discussions in relation to our plans from all those interested.
13. We will update the Board on this discussion at the September meeting.

LSB application

14. We met with the LSB on 22 June to discuss our proposed approach to the rule change application and provide an update on timetable following consultation. It was a positive discussion and we agreed broadly on the approach we might take to an application of this type.
15. We are now beginning work on the application which will draw from both the response to consultation and updated Impact Assessment. The LSB application itself will be a significant document and will need to include key pieces of guidance as supporting information. We expect this to include draft guidance on client money, transparency requirements, CPD, PII sandbox, IPReg decision making and sanctions, and our publication policy. Drafts of all guidance are currently in development and will be informed by the roundtable discussion.

Recommendation: The Board is asked to agree that we return in September with a draft application to the LSB containing the proposed amendments to our regulatory arrangements and key pieces of draft guidance

Next steps

16. If the Board agrees, we will publish the response to consultation and updated Impact Assessment as soon as possible after the Board meeting and before the roundtable event on 27 July.

Board Meeting 14 July 2022

Information Paper: Education Working Group Update

Agenda Item: 8

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 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 Working Group (EWG) 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 EWG reports to the IPReg Board, it does not have delegated authority of its own.

1.2 The EWG is chaired by Caroline Seddon, and its members are Lord Smith, Alan Kershaw, Emma Reeve and Nigel Robinson, 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 in the paper brought to the 2 November 2021 meeting of the Board.

2. Recommendation(s)

2.1 The Board is asked to note this paper.

2.2 The Board is welcome to provide comment on the:

- QMUL response to the IPReg Accreditation Assessment (item 5/Annex); and
- European Qualifying Examinations – proposed changes (item 6)

to help inform the Education Working Group's consideration of both items at its next¹ meeting.

¹ To be held remotely before summer-end.

3. Regulatory and Strategic Objectives

- 3.1 **RO Protecting and promoting the interests of consumers:** the integrity of the IPReg register(s) of attorneys require provision of legal services of an appropriate quality from day one of qualification; this requires clearly defined training and course/examination qualification requirements. The [IPReg Accreditation Handbook](#) sets out the standards which attorney qualification agencies must meet to satisfy the needs of all stakeholders, including students, firms, the legal market and potential consumers of attorney services. The Handbook was subject to desktop review² by the EWG in 2021³, and the work plan (item 4) of the EWG includes a comprehensive review of the Handbook to ensure it helps protect and promote the interests of consumers of attorneys from day one of being on the IPReg register.
- 3.2 **RO Encouraging an independent, strong, diverse and effective legal profession:** the IPReg Accreditation Handbook seeks to ensure that whilst meeting its specified standards, the range of qualification provision could remain varied and that those seeking to study for an attorney qualification may continue to have a range of provision to choose from, for example in terms of format and location of delivery. The EWG work plan includes encouraging a wider range of qualification pathway providers.
- 3.3 The [IPReg Accreditation Handbook](#) sets out the accreditation standards required of all qualification pathway agencies. It currently specifies the core subjects, credit weightings and learning outcomes for all variations of the Foundation Level Qualifications (FLQs). This to ensure that the same level and coverage of learning is acquired irrespective of which FLQ pathway the student or examination candidate pursues. The work plan (item 4) of the EWG includes a broad review of the Handbook with the review to include specification of the syllabus of the Advanced Level Qualifications (ALQs) to provide transparency of expectation for, and with a view of encouraging, more potential ALQ pathway providers⁴.
- 3.4 **RO Promoting and maintaining adherence to the professional principles:** the FLQ syllabus requires a defined credit requirement on the subject of ethics; the Handbook review will include both the FLQ and ALQ credit allocations to ethics.
- 3.5 **IPReg Strategic Objective:** the EWG work plan (item 4) includes the encouragement of entry of new providers of qualification options (at both the foundation and advanced levels) so that those who want to become trade mark attorneys and patent attorneys have a variety of routes to entry into the profession. This with the aim to help encourage diversity in the profession, to help improve quality and drive lower costs.

4. Work plan

- 4.1 Current status of work plan items:

Quality Assurance Remedy	Status	Work being/to be undertaken
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² In consultation with IPReg accredited qualification agencies – see footnote 4 for those providers.

³ Having first gone live in 2016.

⁴ There are currently 4 FLQ providers – the universities of Bournemouth, Brunel, Queen Mary London and the Patent Examination Board (PEB, patent attorney route only) – and one ALQ provider for each pathway, with Nottingham Trent University providing the ALQ for the trade mark attorney route and the PEB the ALQ for the patent attorney route.

a) publication of accreditation assessment reports, their findings and recommendations made to qualification pathway accreditation applicant bodies	Completed	The accreditation assessment reports of both Brunel University (2021) and Queen Mary University (2022) have been published .
b) requiring regular updates on progress against accreditation implementation plans	Completed	This is a requirement of the annual reporting as at item c).
c) requiring annual reports (to include student feedback, external examiners reports findings, and improvements made as a result)	Completed	An annual reporting mechanism has been fully established. EWG review each qualification agency's annual report and provide feedback. Additional requirement placed upon qualification agencies regarding any proposed changes to online delivery of assessments – see item 6 of this paper.
d) developing a process for withdrawing accreditation from providers who do not maintain the accreditation standards	Completed	IPReg Accreditation Withdrawal Policy Statement and Procedure .
e) cost reflective charges for accreditation (including some allocation of officer time)	Completed	The accreditation assessment costs charged to a qualification agency now include IPReg office time allocated to the accreditation administration and oversight.
f) encouraging more pathway providers – other university/ examination offers	To be scheduled	a) Brunel University has previously declared intention to apply for accreditation of a Double Major Life Sciences and IP Undergraduate Programme – currently on hold. b) Identification of limited options for apprenticeship levy as informed by desktop review and preliminary discussions with representative bodies. c) Specification of the Advanced Level Qualifications syllabus, as intended via the scheduled review of the IPReg Accreditation Handbook (as at item h below), should aid transparency of requirements for potential accreditation applicants.
g) provision of online Frequently Asked Questions	Completed	The Frequently Asked Questions are amended as informed by both sectoral developments and qualification enquiry themes raised through the Customer Relationship Management system.
h) review of the IPReg Accreditation Handbook	Desktop review completed; broader review to be scheduled	A desktop review was undertaken by the EWG and a revised edition issued to qualification agencies in June 2021; the planned broader review [2022/23] will likely require external specialist

		resource and is to include specification of Advanced Level Qualification syllabus.
i) whether to quality assure the work-based element of attorneys' training	Not to be taken forward	The 6 October 2020 meeting of the EWG agreed not to be take this forward.
j) encouraging more pathway providers – consideration given to apprenticeships	To be scheduled	As at item f) above.
k) changing our overall work priorities or automating some of the process	Ongoing	For example, in the first instance, undertaking a desktop review of the IPReg Accreditation Handbook ahead of the scheduled root and branch review.

5. Queen Mary University London (QMUL) – reaccreditation

5.1 In December 2021, QMUL made an application for IPReg (re)accreditation of its three attorney qualifying pathway Foundation Level Qualifications (FLQs):

- Postgraduate Certificate in Intellectual Property Law
- Postgraduate Certificate in Trade Mark Law and Practice
- Masters of Science in Management of Intellectual Property.

5.2 As with all qualification accreditations, IPReg appointed independent specialists to undertake assessment of the application. Their report proposed the reaccreditation of all 3 FLQ programmes, subject to QMUL taking forward the assessors' 19 Mandatory Requirements (MRs), to meet the standards set out in the [IPReg Accreditation Handbook](#), and 8 Recommendations of actions likely to be beneficial to students of the qualifications.

5.3 The 17 March 2022 meeting of the IPReg Board accepted the EWG's endorsement of that report's finding, Mandatory Requirements and Recommendations. It also approved the EWG's accompanying proposal that, given the failure by QMUL to implement requirements⁵ as specified in the 2017 accreditation assessment report, this reaccreditation is to require sight of a detailed implementation plan as to how and when QMUL will take forward the Mandatory Requirements and Recommendations:

"QMUL providing by 5pm 1 July 2022, a detailed, time-scaled, implementation plan as to how the Mandatory Requirements and Recommendations will be taken forward, ready for the September 2022 cohort, including but not limited to, restructuring the Postgraduate Certificate in Intellectual Property to the required 80 credits⁶"

5.4 The QMUL response document - provided as Annex - was provided by the deadline. The QMUL document provides high level reports on items which have been taken forward, or are due to be; it provides neither time-scales nor significant detail. The response is to be considered by the EWG at its next meeting.

⁵ The EWG has worked with QMUL to oversee implementation of these, following identification of the quality issues through the CITMA Student Survey

⁶ IPReg letter to QMUL, 1 April 2022, 'IPReg Board Accreditation Decision'.

5.5 At IPReg's request, in March 2023, the independent assessors will undertake a formal review of the fulfilment by QMUL of the Mandatory Requirements and Recommendations. This review will be at QMUL's expense. Upon IPReg being provided with confidence that the Mandatory Requirements and Recommendations have been implemented, the standard 5 year accreditation timeframe can be confirmed. Should such confidence not be provided, IPReg has been clear in its correspondence with QMUL that it reserves the right to truncate the accreditation timeframe.

6. European Qualifying Examinations – proposed changes

6.1 The [IPReg Accreditation Handbook](#) sets out the standards which must be met by an IPReg-accredited qualification pathway course or examination. There are two levels of academic qualifications⁷: the Foundation Level Qualifications (courses offered by the universities of Bournemouth, Brunel, Queen Mary London and examinations offered by the Patent Examination Board [PEB]) and the Advanced Level Qualifications (for the patent attorney route, examinations provided by the PEB and for the trade mark attorney route, the course provided by Nottingham Trent University).

6.2 As at Schedule 3 of the [Examination and Admission of Individuals to the Register Rules](#) there are a number of specified qualifications which provide an element of exemption, or deemed pass, from the IPReg-accredited qualifications. The European Qualifying Examinations (EQEs), as set by the European Patent Institute (EPI), are listed in that Schedule. The four EQEs seek to test the knowledge and aptitude of an individual to appear before the European Patent Office (EPO):

- *Paper A*: drafting, tests the candidate's ability to draft claims and the introductory part of a European patent application;
- *Paper B*: assess and reply to office action/opposition, 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 advice to a client, assesses candidates' ability to answer legal questions and to draft legal assessments.

6.3 Historically, the PEB recognised the passing of EQE papers A and B as providing (respective) exemption to the PEB's Final Diploma Examination FD2 'Drafting of Specifications' and FD3 'Amendment of Specifications' Papers. The exemptions were also afforded where an individual passed the EQE as a whole. IPReg has continued to recognise their equivalence, via successful completion of the entire EQE, or a pass in the individual respective paper. The exemption 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.

6.4 The EQEs were physically delivered until pandemic social distancing provisions meant they did not take place in 2020, and as of 2021 they are being virtually administered. This digitalisation of the EQE has been a catalyst for an ambitious project which would see the EQEs change

⁷ Entry on to the register also requires substantial experience of either two years supervised experience or four years unsupervised.

significantly (the current structure of the EPI papers having been established over 40 years ago). In its [EQE Discussion Paper](#) the EPI includes technical improvements to the current platform, and relatively minor changes to the papers to better suit digital examinations, with these changes to be made in 2022/23. The broader proposed changes, for 2024, would see the EQEs move to a modular model which the EPI considered better tests the “fit-to-practise” criterion. This would see the removal of Papers A and B, with the EQEs split into two tracks: practical and legal; the practical track will merge draft and opposition, testing similar skills whilst not separating coverage as it does now. The grading of compensable fail would be removed.

6.5 The EPI launched its consultation in May 2022 - to close on 15 July 2022 - presenting the proposed new framework and its model papers. The consultation is aimed at gathering feedback on the proposed format, which includes the concept paper, a questionnaire, details of the proposed modules, lists of competences to be tested, and a set of model examination papers. Depending on the outcome of the consultation, a fully-fledged reform of the Regulation on the European qualifying examinations (REE) and its implementing provisions (IPREE) will follow. The EQE 2023 will be conducted under the current Regulations.

6.6 There is a dedicated [New EQE webpage](#) on the EPO website which outlines the 2 Foundation modules, and 4 Main examination modules which would comprise the new EQE:

Module	Coverage	Examination format	Equivalence in present system
Foundation 1 Legal Knowledge	covers basic knowledge of EPC substantive aspects, general knowledge of EPC procedural aspects, general knowledge of PCT procedural aspects	one exam lasting 2 hours, 20 questions, 70% of which are multiple choice;	no equivalent in the present system
Foundation 2 Claim analysis and applied procedural patent law	part 1 covers practical application of EPC and PCT procedural requirements; part 2 covers practical application of EPC substantive requirements;	auto scored (multiple choice; true/false questions; fill-in-answer) and free text; 2 parts of 2 hours each;	similar to questions in pre-examination but with higher level of complexity, amendments exercise incorporates aspects of the present A, B and C exams, but is more complex; and a further, shorter exercise is of equivalent complexity to paper C but allows more flexibility.
Main 1 Assessment of information and client instructions	covers understanding of client’s invention, prior art analysis,	the examination is in two parts, each lasting 90 minutes,	the assessment of information is a key

	<p>interpretation of claims (drafted by others), interpretation of description, understanding of examiners' communications, evaluate client's instructions and, if needed, provide an amended claim on the basis of the available information</p>	<p>includes a broad range of exercises, 50% of the questions are multiple choice, two exercises where the candidate is provided with an application, or proposed content for an application, and prior-art documents and is asked to identify the features disclosed, which ones can make up a valid set of claims, and explain the problem solved, inventive step etc.;</p>	<p>element in the present A-D papers.</p>
<p>Main 2 Drafting patent documentation and reasoning points of law and technique</p>	<p>covers drafting claims and description, replying to Office actions, amending claims, reasoning why claims are novel or lack novelty, reasoning why claims are (or are not) inventive, drafting notice of opposition or appeal, arguing why a patent complies with the European Patent Court (EPC) and Patent Cooperation Treaty (PCT) Chapter II: draft reply to Written Opinion-International Searching Authority</p>	<p>two main exercises, each lasting between 2 and 2.5 hours – candidates are presented with documents and instructions and must draft at least part(s) of a response to an Office action and/or new patent documents</p>	<p>argumentation and legal writing are important elements in the present B and C papers.</p>
<p>Main 3 Mastering procedural patent law</p>	<p>covers the assessment of different options at a given procedural point and being able to decide which is the best option, focusing on procedures and not on isolated acts, seeking to master EPC procedural aspects</p>	<p>covers the assessment of different options at a given procedural point and being able to decide which is the best option, focusing on procedures and not on isolated acts,</p>	<p>digital evolution of the questions in the present D1 paper.</p>

	and PCT procedural aspects	seeking to master EPC procedural aspects and PCT procedural aspects	
Main 4 Advising the client	covers the analysis of the client's and the competitor's position and identify commercial interest, perform acts before the European Patent Office (EPO) in the PCT and EP procedure to improve client's position, advise client with respect to IP protection in other jurisdictions, analyse client's products and identify inventive, essential features of commercial interest so as to draft independent claims covering all potential embodiments and dependent claims to define fall-back positions, advise client with respect to the rights conferred by a patent and acts required to enforce a patent (potentially by identifying infringing activities and remedies in certain jurisdictions e.g. UK), analyse whether the client has freedom to operate based on competitor's IP protection and propose negotiation/licensing strategies, clearly communicate all available options including their advantages and disadvantages to the	5 exercises split into two parts (2 cases and 3 cases), each part lasting 2 hours and 10 minutes	represents evolution of the present D2 with an emphasis on the activity of advising the client in a broader context

	client; open questions with scenarios		
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6.7 As taken from the 10 June 2022 CIPA Webinar, 'The EQE imagined – where have papers A to D gone?', as hosted by Julia Gwilt, and co-delivered by Tiem Reijns of the EQE Working Group, and Petra Pecharova of the EPI Professional Education Committee, set out that the consultation proposes:

- Current EQE: has become predictable due to the established structure of the individual papers, papers A-C can be reverse engineered, many candidates regard the EQE as less a test of knowledge and professional skills and more “a test of providing a solution to the examination”
- Analysis: undertaken by education specialists to gauge what is covered in the papers and to isolate elements in a different way
- Recurring features in current papers:
 - Processing information – papers A,B,C and D
 - Isolating/arguing non-patentable subject matter – papers A,B, C
 - Legal basis – papers A, B, C and D
- Shorter modules: now digital, limiting screen time
- Biannual: examinations ultimately may be offered more than once a year
- New module order: structured to increase in complexity and content
- Provisional timeframe for sitting modules: Foundation module to be sat from 12 months experience and then the Main modules every 6 months after (so 18 months to 36 months)
- Proposed time spent on examinations: c20 hours
- Module Comparisons:

Module	Comparison
F1	Legal questions from the pre-examination but at a level that fits 6-12 months experience, and with more degrees of freedom in asking questions due to the online system
F2	Claim analysis from the pre-examination, but in a more open/flexible setting allowing for broader questions
M1	Prior art and client needs aspects of papers A and B, in a more flexible setting of the online system
M2	Free text examinations in the style of current papers A, B and C with more focus on content and less on methodology
M3	Digital evolution of D1, using the degrees of freedom of the online system
M4	Similar content as current D2 but with broader advisory responsibilities to clients; open/free text; macro perspective

- Concept/consultation: proposals not yet finalised; after the summer there will be a final updated and improved concept and then new Regulations including transitional provisions
- Timeframe: likely to be 2025/26 that the first real examinations take place but may commence Foundation earlier, transitional provisions not yet decided on

- Online - provides opportunities for broader examination formats such as: true/false, multiple choice, drag-drop, provide the legal basis, give a date, give amount of a fee, open questions (with maximum number of words to prevent a cut and paste of a large section of Regulations)
- Advantages of new format: lower predictability of the structure of an individual paper and greater variety of tasks compensates for the limited time per task and more scenarios/issues can be tested in new examination format.

6.8 The next meeting of the EWG will look to determine a forward pathway, likely to include an IPReg consultation on exemptions, if any, to apply to the attorney qualifying examinations as a result of EQE passes. Consultation (and/or other) to follow announcement, expected later this year, of final EQE concept.

7. Patent Examination Board – Online examinations

7.1 Hybrid approach to examinations oversight: the PEB advised the EWG on 7 June 2022 of the proposed approach to the October 2022 patent examinations, whereby the Foundation Certificate (FC) Examinations would continue to be invigilated using proctoring software, the Final Diploma [FD] examinations would be invigilated via Zoom by PEB trained Invigilators. This proposed differentiation of approach is “based on the nature and content of the two sets of examinations and not primarily on cost grounds (although cost was also considered).

FC [sic] examinations rely on knowledge recall and are, arguably, more susceptible to malpractice, if a candidate can access a textbook or online resource during an examination. For this reason, the PEB Governance Board decided that invigilation by proctoring should be retained for Foundation examinations, so candidates could be monitored closely.

However, because the FD [sic] examinations assess the application of knowledge and a candidate’s analysis of an issue, they are not as susceptible to malpractice as [sic] FCs. For this reason, the PEB Governance Board decided that candidates should be invigilated via Zoom by PEB trained Invigilators and proctoring software will not be used for FD invigilation”.

7.2 Locations of examinations: “Running examinations wholly in offices was discounted because not all firms are able to offer this facility; also, candidates may have to travel considerable distances in order to sit their examinations which may be costly and stressful on them.

On that basis, the PEB Governance Board decided that online PEB examinations sat mainly at home (or other suitable private address) by candidates should continue in 2022 (with an option to sit in offices if candidates made suitable arrangements with their employees).”

7.3 The EWG endorsed the proposed approach to the October 2022 PEB examinations.

7.4 Please note, as agreed with the PEB, it has earlier this month, made an application for IPReg reaccreditation of the Final Diploma examinations.

1. **Mandatory requirement 1: all documentation to be corrected to reflect that Trade Mark Law and Practice is a postgraduate certificate.**

The documentation has been modified to reflect the nature of the programme (Level 7).

2. **Recommendation 1: that CCLS organisational charts be made easily accessible to all relevant stakeholders in particular programme level staff and students.**

Organisational charts will be made available via the programme website and in the programme documentation.

3. **Mandatory requirement 3: all documentation to be corrected to indicate correct credit values.**

The Certificate in IP programme has been changed to an 80 credit programme in accordance with IPReg requirements. The changes have been approved and all relevant documentation has been updated.

4. **Mandatory requirement 4: notional learning hours need to be corrected across all documents for consistency.**

The Certificate in TM module forms have been corrected accordingly showing 600 notional learning hours only.

5. **Mandatory requirement 5: Credits need to be corrected in IPLM 204, if this is the same module as IPLC 132, for consistency. The 10 credits required by IPReg must remain unaltered.**

IPLM204 (MSc) is different from IPLC132 (Certificate in IP). The two modules will not be co-taught from 2022/23. IPReg content is fully covered in IPLM204 and the credits required by IPReg (10) remain unaltered.

6. **Mandatory requirement 6: content identified above in respect of IPLM201 and IPLM202 to be added to the syllabus**

Unfair competition law and the law of passing off have been added to the syllabus for clarification. Relevant topics as required by IPReg had always been covered.

7. **Mandatory requirement 7: the programmes specification must reflect the requirements of IPReg Accreditation Standards paras 31.b) and 47.**

The requirements (paras. 31 b) and 47) are met. Accordingly, a student who successfully completes the modules which satisfy IPReg requirements on the MSc will be awarded a Certificate in IP as an exit award if failing to pass the MSc. The wording in the programme

specification has been changed to clarify that position as was agreed during the meeting with the assessors, and this will be clearly indicated on the programme website as well. Changes to the website are in progress and will be finalised by end of June 2022.

- 8. *Mandatory requirement 8: now that the online course has bedded down each module convenor calculates the actual amount of notional learning hours (pre-reading, asynchronous lectures and synchronous lectures, MCQs, revision time and exam time etc) that is being set/expected of the students and carries out a pruning exercise of extraneous content (without compromising the IPReg requirements). That the amount of notional learning hours (workload) is made clear to all stakeholders including students and their employers.***

The website will be updated to reflect workload. All module convenors have conducted a pruning exercise as requested. Notional learning hours will be indicated in the module descriptions .

- 9. *Recommendation 2: QMUL, and ideally other examination agencies, should liaise with Nottingham team to identify gaps that are evident to Nottingham when students arrive and adjust trade mark certificate course accordingly.***

Nottingham have been contacted and a meeting with the Certificate Programme Director will be set up in due course.

- 10. *Mandatory requirement 9: QMUL to clearly state in the programmes specifications whether a course is full time or part time and the teaching methodology being used face to face/blended/online etc.***

All modules will be taught face to face only from 2022/23. Part time study opportunities are explained on the programme website.

- 11. *Mandatory requirement 10: confirmation that the learning experience of students learning online will continue to be equitable with studying face to face, with equivalent opportunities for engagement with the tutor.***

As mentioned, all modules will be taught face to face.

- 12. *Recommendation 3: CCLS team consider additional learning sessions for students eg who have no work experience and or are not currently employed in the profession to help ease them into the subject matter.***

We will be organising sessions for students who have no background in IP law. These will serve as an introduction to basic practical legal methodology.

- 13. *Mandatory requirement 12: CCLS team to consider offering formative assessments with individual student written feedback (in addition to current MCQs) in each module. QMUL should be resourced sufficiently to provide formative assessment.***

Formative assessment sessions will be offered from 2022/23 and will be conducted by qualified teaching assistants under close supervision of the module convenor and the programme directors. Approval for employment contracts is currently underway.

- 14. Recommendation 4: CCLS to consider introducing activities/exercises to encourage students studying online to get to know each other at the beginning of each programme, extending the use of breakout rooms, delivering small group sessions of less than 10-15 students and setting up online study groups for students.**

As mentioned, all modules will be taught face to face.

- 15. Recommendation 5: guidelines for consistent, systematic training and review of tutors (including external tutors) and teaching assistants and use of teaching assistants across all modules should be developed.**

Teaching assistants are to receive initial training sessions. These will include specific guidance on content to be covered as well as an introduction to diverse forms of teaching activities, such as answering essay and problem style questions. Module convenors are responsible for providing guidance as regards questions and for selecting content, particularly from case law. we will also produce a guidance document for tutors. Teaching assistants will be used on all IPReg accredited modules and across all three programmes. They also have the opportunity to attend a one year training course so as to gain a HEI teaching qualification at college level. .

- 16. Mandatory requirement 14: review of assessment strategy to include introduction of assessment criteria and marking schemes for each module.
Mandatory requirement 15: review the number of external examiners and review roles to include input from external examiners into any module/programme review as the assessment is integrally linked to learning outcomes.
Mandatory requirement 16: review of process by which external examiners comments are responded to so that there is a consistent and adequate response.**

Assessment criteria and marking schemes including points of answers will be made available to external examiners. External examiners will be involved into any programme review in future. Comments by external examiners will be summarised and communicated, where appropriated, to programme directors and to module convenors, and will be discussed by the programme management group which will report to the CCLS Education Committee for any necessary implementation.

Board Meeting 14 July 2022

Information paper: Complaints update

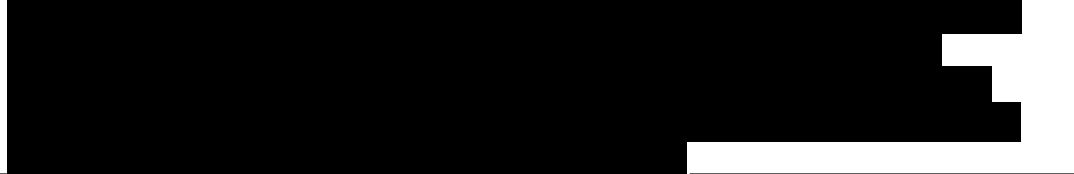
Agenda Item: 9

Author: Shelley Edwards, Head of Registration (shelley.edwards@ipreg.org.uk), Mark Barnett, Assurance Officer (mark.barnett@ipreg.org.uk).

Summary

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

Risks and mitigations

Regulatory Objective(s)	<ul style="list-style-type: none"> • <u>Protecting and promoting the interests of consumers</u> • <u>Increasing public understanding of the citizen's legal rights and duties</u> • <u>Promoting and maintaining adherence to the professional principles</u> <p>- Complaints handling and disciplinary action against regulated persons is designed to protect the public and uphold public confidence in the professions and in the provision of intellectual property legal services by regulated persons.</p> <p>Information given to complainants ie generally consumers of IP legal services, on receipt of a complaint, informs them of their rights (and obligations) when something has gone wrong.</p> <p>- Investigating alleged breach(es) of the Rules of Conduct (or any of our regulatory arrangements) may lead to a written finding of no misconduct and explanation given to both the complainant and the subject individual or firm, thereby increasing the public's knowledge and understanding of what legal regulation is and how it works, and promoting adherence to the professional principles to regulated person (more so if ethical advice is also given).</p> <p>- Investigations leading to disciplinary action against a regulated person(s) will lead to a published decision which, in the case of a finding of breach and sanction, will protect the public and also act as a deterrent to the professions. Or where no breach is found, there will be transparency and clarity on what level of professional standards is regarded as reasonable and acceptable.</p>
Financial	None. Existing resources are dedicated to the oversight and administration of complaints received.
Legal	
Reputational	In common with all regulatory bodies, we can expect that complainants who are disappointed with the outcome of their regulatory complaint may make a corporate complaint about IPReg's decision or processes. This reputational risk will be mitigated by the Corporate Complaint policy and procedure which is currently being developed. This will be published on the website and followed where applicable.

Resources	Whilst the overall number of complaints received about regulated persons is low (an average of around 7 complaints every year since 2010), the complaints that have been investigated and taken forward to CRC (and beyond) have been resource-intensive. The development and refinement of internal procedures, as well as the additional capacity to investigate and process cases in-house should assist. The need for external legal support should also be reduced due to increased internal capacity.
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Recommendations

- The Board is asked to note this paper.

Investigation Stages

Under Investigation

Information has been received which is being investigated under Rule 5 Disciplinary Procedure Rules (“DPR”) to determine whether it amounts to a Complaint. If it does not amount to a Complaint¹, the case will be closed. If it does amount to a Complaint, it moves to the Complaint Initiated stage.

Complaint Initiated

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

CRC

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

JDP

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

Appeal

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

Cases by numbers

Category	Number	Notes
Complaints received in last month (since last meeting)	1	

¹ For example, because information provided does not support an allegation of a breach of any of IPReg’s regulatory arrangements, no evidence has been provided to support any allegations made, allegations have been made prematurely (e.g. the firm’s complaints procedure has not been exhausted), the matter is not within IPReg’s jurisdiction (more appropriate to be dealt with by police, LeO, other regulator or organisation) etc

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

	[REDACTED]
	[REDACTED]

Closed cases in last month (since last meeting)

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

Recommendation

The Board is asked to note this information paper.

Board Meeting 14th July 2022

Title: Governance and Transparency Working Group (GTG) Report

Agenda Item: 10

Author: Samantha Peters, IPReg Lay Board Member

Summary

1. The IPReg Governance and Transparency Working Group was set up in January 2022 to look at governance and transparency within the organisation. The group was formed to identify potential areas of improvement in the light of IPReg's performance in the Well-Led dimension of the Legal Services Board's (LSB) 2021 Performance Assessment.
2. There were two outcomes in the LSB Performance Assessment of particular importance for this work.
 - Well Led 1 ***'The Board/Council holds the executive to account for the regulator's performance to ensure that it operates effectively and efficiently and in a way which is compatible with the regulatory objectives.'***
 - Well Led 3: ***'The regulator is transparent about its own: decision-making; regulatory approach; the risks it and its regulated community faces and how these are being mitigated; performance; regulated community and related markets; financial costs.'***
3. The Working Group's remit included a consideration of the following:
 - *all relevant aspects of the governance arrangements at IPReg, taking into account the LSB's recent Performance Assessment in relation to the Well-Led outcomes.*
 - *all relevant aspects of the transparency arrangements at IPReg, taking into account the LSB's recent Performance Assessment in relation to the Well-Led outcomes.*
 - *the arrangements for the ongoing review of board effectiveness of the IPReg Board.*
 - *wider good practice developments in relation to governance and transparency, which it may be helpful and proportionate to adopt and make relevant recommendations to the Board.*
4. This paper provides a report on the activities and outputs of the Working Group. Its members are Victor Olowe, Samantha Peters, and Emma Reeve. Its meetings are also attended by Fran Gillon, Chief Executive and Shelley Edwards, Head of Registration. The group has met monthly since it was formed in January 2022, with its last meeting taking place on June 23rd 2022.

Working Group Progress and Approach

5. The process the Working Group followed in order to assess IPReg's current practice and develop its recommendations is set out below:

- 5.1. Firstly, the group assessed IPReg against a variety of governance codes. Four Codes were used: The UK Corporate Governance Code, the Financial Reporting Council Board Effectiveness Guidance, the UK Charity Governance Code, and the UK Sports Council Governance Code. This exercise informed the Working Group’s understanding of current good practice.
 - 5.2. Secondly, the group compared IPReg to other legal services regulators. A benchmarking exercise was undertaken, comparing IPREG mechanisms for governance and transparency to those of other regulators in the sector. There were two elements to this comparison. A consideration of other regulator’s publicly available governance documents, and a consideration of other regulator’s board papers. This exercise informed the Working Group’s understanding of practice within the sector itself.
 - 5.3. Thirdly, the group studied LSB Reviews of other regulators governance arrangements and mined their responses for additional insight. This exercise informed the Working Group’s understanding of potential governance problems and solutions within the sector.
6. A report of the Working Group’s findings is set out in Annex 1. The general overarching conclusions are that:
- the effectiveness and transparency of governance policies and procedures could be enhanced.
 - increasing clarity concerning the Board’s role, as well as expanding and enhancing its systems and processes for scrutinising and developing itself, would be helpful.
 - a consideration of how Board meetings are arranged, to ensure that the Board has the information and support it needs for effective decision-making, would be timely. Such a review would also support the Board to be transparent about the process and rationale for any decisions it makes.
 - there is an opportunity to enhance the effectiveness and transparency of IPReg’s strategic planning and performance management.
 - a consideration of IPReg’s transparency when engaging and communicating with relevant stakeholders, would also be valuable at this time.

Underpinning all this, an open and reflective approach, particularly in respect of the Board’s appraisal and development of its own effectiveness, and the creation of time and space to learn from such evaluations, would be highly beneficial for the long-term health of the organisation.

7. A Governance Action Plan, comprising 19 specific recommendations, is set out in **Annex 2** (page 31). Each action was allocated a priority level and timeline to aid delivery (see Table 1) .

Table 1: Categorisation of Recommendations

Priority Level	Definition
Priority 1 – Short-term Recommendations	Immediate action within 0 to 6 months to tackle key issues, some of which are specifically highlighted in the LSB performance assessment.

Priority 2 – Medium-term Recommendations	Timely action is necessary within 6 to 12 months to tackle wider issues to improve governance and transparency arrangements.
Priority 3 – Longer-term Recommendations	Improvement action is appropriate within 12 to 18 months to enhance and embed stronger governance arrangements.

8. The 19 recommendations are listed below:

8.1. Short-term Recommendations - Six actions are deemed the highest priority timeline, for delivery within the next six months. These are:

- **Recommendation 1:** Review the items considered at Board meetings to ensure Agendas meet IPReg’s current and future strategic and regulatory objectives.
- **Recommendation 2:** Review the template for Board Meeting papers to ensure that these meet IPReg’s current and future strategic and regulatory objectives.
- **Recommendation 3:** Expand Board minutes to provide detailed reasoning for Board decisions.
- **Recommendation 13:** Publish the Governance Action plan with Board papers, and report on progress in subsequent Annual Reports and Board meetings
- **Recommendation 14:** Publish a Publication Policy setting out what IPReg will publish or make available to the public.
- **Recommendation 19:** Review the Board’s approach to risk and set out its policy and procedures for managing risk in writing.

8.2. Medium-term Recommendations - Seven actions are deemed more medium-term priorities for delivery within the next six to 12 months. These are

- **Recommendation 4:** Revise the format for the next Strategic Plan to ensure IPReg has strategically articulated objectives, clearly aligned with the LSA 2007, with related performance indicators and measurements.
- **Recommendation 6:** Develop a cycle of Board Reflection Events which support a culture of reflective practice at this level.
- **Recommendation 7:** Review Rules of Procedure and Terms of Reference (ToR) for the Board and all its working groups and publish these in the Governance Handbook.
- **Recommendation 8:** Set out procedures for annual internal individual Board member and Chair appraisals in writing in the Governance Handbook.
- **Recommendation 15:** Review our use of external expertise in the light of the regulatory arrangements review and consider the potential benefits of using such a system more widely.
- **Recommendation 17:** Review the scope of the Annual Report, with a view to providing enhanced transparency about how IPReg operates.
- **Recommendation 18:** Review arrangements for action plans, performance indicators and published policies concerning Equality, Diversity, and Inclusion (EDI).

8.3. Longer-term Recommendations: Six actions are considered slightly lower priority in terms of timing, for delivery within the next 12 to 18 months. These are:

- **Recommendation 5**: Produce an annual Work Plan/Business Plan, setting out IPReg’s objectives and performance indicators for the year, and introduce quarterly reports on this at Board Meetings.
- **Recommendation 9**: Put in place a process of independent external Board evaluation and set out procedures for this in writing in the Governance Handbook.
- **Recommendation 10**: Set out IPReg’s policy for the recruitment and reappointment of Board members in writing in the Governance Handbook.
- **Recommendation 11**: Produce a separate written procedure for Handling Complaints or Concerns about Members of the Board.
- **Recommendation 12**: Consolidate all governance policies and procedures into a single Governance Handbook and publish this on the website.
- **Recommendation 16**: Develop a written stakeholder engagement strategy setting out how stakeholders’ views are obtained and considered by IPReg.

It should be noted that these final priorities are not lesser in terms of their importance, but rather actions which might be best scheduled in once other actions are completed.

Recommendation(s)

9. The Board is asked to

9.1. NOTE the overarching conclusions set out above in section 6.

9.2. NOTE the draft GTG Report (**Annex 1** (page 6)) and give feedback on any aspects within it where the Board would like further information provided or additional investigation undertaken.

9.3. ADOPT the attached Governance Action Plan (**Annex 2** (page 31)).

9.4. APPROVE and/or give feedback on:

- The 19 proposed recommendations set out in the Governance Action Plan, including any additions or amendments the Board wishes to make. The recommendations are listed above in section 8 for ease of reference.
- The timeline and priority for each action and any changes or adjustments the Board wishes to make.

9.5. NOTE the notes of the Working Group meeting of 23rd June 2022 (**Annex 3** (page 34)).


Next Steps

10. Subject to these discussions, the GTG will reconvene to:

- Complete any agreed actions.
- Update the Governance Action Plan or Report accordingly.
- Finalise these for circulation or publication as required by the Board.

Risks and mitigations

Regulatory Objective(s)	Good governance enables the Board to discharge its objectives effectively and transparently. Therefore, any improvements to IPReg’s governance identified by this
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	work should support the Board's ability to deliver its regulatory objectives in a manner which is open, transparent, and accountable.
Strategic objective(s)	This Working Group is not included in the current strategic objectives or 2021/22 business plan. However, the action plan it produces will need to be incorporated in plans for both this year and future years, in keeping with recommended timelines.
Financial	The financial implications of this work concern the cost of Working Group meetings, which can be accommodated within the current budget. However, it is envisaged that there will be costs associated with the proposed work plan.
Legal	
Reputational	Boards which make decisions ineffectively, or in ways that lack transparency, expose their organisations to reputational risk. This work should assist IPReg with assurance that it is not exposing itself to such risks.
Resources	The creation of this Working Group is an addition to the current year's work plans. The main resources currently being expended on it are staff time, and meeting costs. The need for external support may be sought should internal capacity requires it, however at this stage the group is utilising the time and expertise of working group members to avoid the need for this. The current progress is being made possible because Board members have taken on bulk of the work.

Annex 2: Governance Action Plan

RECOMMENDATIONS	TIME-LINE	RATIONALE	SUGGESTED APPROACHES
1. Review the items considered at Board meetings to ensure Agendas meet IPReg's current and future strategic and regulatory objectives.	Priority 1 Short Term Actions (0-6 months)	This action is intended to support effective Board decision-making. Developing clarity and precision about what the Board wishes to consider at its meetings (both now and in future) will enable it to ensure its discussions are well-planned and that it receives the information it needs set strategy and scrutinise performance. Regular review of this nature also enables the Board to learn from its reflections about its own effectiveness. <i>This action should support the delivery of LSB Well Led 1.</i>	It is strongly suggested that future Board Agendas should include a quarterly review of organisational performance against the Strategic and/or Business Plan. It is also suggested that the Board considers including reports from the Chair and/or Chief Executive alongside regular reports from Chairs of Sub-Committees or Working Groups at each Board Meeting. Other regular reports could include learning from organisational complaints. It is also suggested that this review also consider the current break down between public and confidential Board Agenda items, as well as IPReg's overall approach to redaction, with a view to increasing transparency. Lastly, it is suggested that the Board develops a rolling Forward Plan of Agenda items. This will provide stakeholders with transparency about the Board's decision-making cycle. Board away, reflection time, horizon scanning, and strategy development could be included in this.
2. Review the template for Board Meeting papers to ensure that these meet IPReg's current and future strategic and regulatory objectives.	Priority 1 Short Term Actions (0-6 months)	This action is intended to support effective Board decision-making. Reviewing the structure and content of meeting papers will enable the Board to ensure it receives the information it needs to make effective decisions and hold the executive to account. Regular review of this nature also enables the Board to reflect on its own effectiveness. <i>This action should support the delivery of LSB Well Led 1.</i>	It is believed that all Board papers should clearly appraise different options, fully explore risks and mitigations, set out the relevant the evidence base and/or summarise relevant stakeholder feedback. Papers should also set out the background to recommendations including the process used to develop proposals so that any previous discussion and decisions affecting the item are understood. Other beneficial additions to the papers template might be details on communication plans, equality, diversity and inclusion considerations, and linkages to the strategic plan.
3. Expand Board minutes to provide detailed reasoning for Board decisions.	Priority 1 Short Term Actions (0-6 months)	This action is intended to support effective Board decision-making. More fulsome minutes will provide enhanced clarity about the board's decision-making process, better reflect its rationale underpinning such decisions and better demonstrate its effectiveness in holding the executive to account. <i>This action should support the delivery of LSB Well Led 1.</i>	It is suggested that minutes should outline options considered, capture issues raised during discussion, and provide more of the reasoning for decisions taken. It is suggested that this is best enabled by a modest expansion of the budget to fund a minute taker.
4. Revise the format for the next Strategic Plan to ensure IPReg has strategically articulated objectives, clearly aligned with the LSA 2007, with related performance indicators and measurements. 5. Produce an annual Work Plan/Business Plan, setting out IPReg's objectives and performance indicators for the year, and introduce quarterly reports on this at Board Meetings.	Priority 2 Medium Term Actions 6-12 months (Business Plan) Priority 3 Longer Term Actions 12-18 months (Strategic Plan)	These actions are intended to enhance strategic planning and performance monitoring. These initiatives will enable the Board to improve its strategic plan and augment its scrutiny of organisational performance. It will also support the Board in holding the executive to account. <i>This action should support the delivery of LSB Well Led 1:</i>	It is suggested that this work is timetabled to align with the current strategic planning cycle. So, the timeline for this needs to take account of the LSB publication of its decision on the regulatory performance framework Standards and Characteristics in Autumn 2022. Substantive thinking would need to take place in November 2022 when IPReg Board considers its strategic objectives in the light of this. Then in July 2023 we would consult on 2024/25 business plan taking account of these discussions. It is important that these plans incorporate Key Performance Indicators which enable the Board to monitor and scrutinise performance. In setting these will be a need to take account of whether the LSB dispenses with the requirement for the performance management database. Such reviews should be underpinned by a reflective approach, with the Board learning from past actions and achievements. Ongoing horizon scanning should be built into this strategic planning process.
6. Develop a cycle of Board Reflection Events which support a culture of reflective practice at this level.	Priority 2 Medium Term Actions (6-12 months)	These actions are intended to support effective Board planning and performance monitoring. These initiatives will enable the Board to improve its strategic plan and enhance	An open, reflective approach supports a Board to learn from its past actions or decisions. Developing the Board's skill in reflective practice will enable it to better learn from its own work. It is suggested that reflection time is built into the Board's planning cycle. As part of that it is also suggested that IPReg organises some events without the executive present to

		its scrutiny of organisational performance. It will also enhance the Board's ability to hold the executive to account.	assist the Board in reflecting on its own practice. Learning from these reflections should be fed into future development of strategies, policies, and procedures where appropriate. It is suggested that the first one of these Board only events should be before the November 2022 strategy meeting. Ongoing horizon scanning should be built into this reflection process.
7. Review Rules of Procedure and Terms of Reference (ToR) for the Board and all its working groups and publish these in the Governance Handbook.	Priority 2 Medium Term Actions (6-12 months)	This action is intended to provide clarity regarding the Board's role, conduct and behaviour. Ensuring all Committee ToR are up to date (and easily available) will aid transparency in IPReg's governance arrangements. <i>This action should support the delivery of LSB Well Led 3:</i>	It is recognised that our role emanates from the Delegation Agreement (with CITMA and CIPA). Additional governance documents are produced in keeping with this. It is suggested that IPReg periodically reviews these and publishes them in one easily accessible Governance Handbook. It is suggested that, as part of this review, all ToR's are also checked for consistency with the Delegation Agreement.
8. Set out procedures for annual internal individual Board member and Chair appraisals in writing in the Governance Handbook.	Priority 2 Medium Term Actions (6-12 months)	This action is intended to support and develop the Board . Appraisal helps the Board to pinpoint good practice as well as identify areas for improvement. As an ongoing process, it helps Boards to maintain their effectiveness.	See below.
9. Put in place a process of independent external Board evaluation, and set out procedures for this in writing in the Governance Handbook	Priority 3 Longer Term Actions (12-18 months (triennial external evaluation)	This action is intended to support and develop the Board. External evaluation will help the Board pinpoint good practice and identify areas for improvement. As an ongoing process, it will help the Board to maintain its effectiveness and hone its ability to hold the executive to account.	It is suggested that independent external Board evaluation takes place three years, supported by internal annual Board evaluation annually in-between. The process for the latter can be developed in partnership with external evaluators. These evaluations should help ascertain the effectiveness of the Board's meetings, decision-making and ability to hold the executive to account, on an ongoing basis. It is suggested that such evaluations include a reflection on, and review of, the quality and timeliness of the information provided to the Board by the executive. Board events without the executive present for the purpose of reflecting on the Board's own effectiveness and/or support systems may form part of this process. It is also suggested that IPReg produces an action plan setting out any developments agreed as a result of these Evaluations. This may be reported on in the Annual Report. There are budget implications for this area.
10. Set out IPReg's policy for the recruitment and reappointment of Board members in writing in the Governance Handbook.	Priority 3 Longer Term Actions (12-18 months)	This action is intended to enhance organisational transparency. <i>It should support the delivery of LSB Well Led 3.</i>	It is suggested that this work is undertaken in parallel with the production of the Governance handbook.
11. Produce a separate written procedure for Handling Complaints or Concerns about Members of the Board.	Priority 3 Longer Term Actions (12-18 months)	This action is intended to enhance organisational transparency. <i>It should support the delivery of LSB Well Led 3.</i>	It is suggested that this work is undertaken in parallel with the production of the Governance handbook.
12. Consolidate all governance policies and procedures into a single Governance Handbook and publish this on the website.	Priority 3 Longer Term Actions (12-18 months)	This action is intended to enhance organisational transparency. A Governance Handbook will help ensure IPReg governance policies and procedures are clear and transparent for all stakeholders. <i>This action should support the delivery of LSB Well Led 3.</i>	It is recommended that all governance documents are collated in a single Governance Handbook, published on the website. It is suggested that that this should include: the Delegation Agreement, Board Rules of Procedure, Sub-Committee and Working Group Terms of Reference, and Codes of Conduct. It is suggested that the handbook (i.e., governance policies and procedures) is reviewed every three years. This could be aligned with triennial Board evaluation. It is suggested that this work begins as early as is feasible. It is currently proposed that this is completed within 18 months, as by that point any policies being reviewed will have been completed. That said it may be beneficial to bring this forward and complete it within 6 to 12 months. However, if this is considered desirable, it is suggested that external resource is brought into support that timeline. This work should be undefined by regular audit to ensure all relevant policies are publicly available in writing.

13. Publish the Governance Action plan with Board papers, and report on progress in subsequent Annual Reports and Board meetings.	Priority 1 Short Term Actions (0-6 months)	This action is intended to enhance organisational transparency. <i>It should support the delivery of LSB Well Led 3.</i>	
14. Publish a Publication Policy setting out what IPReg will publish or make available to the public.	Priority 1 Short Term Actions (0-6 months)	This action is intended to enhance organisational transparency. <i>It should support the delivery of LSB Well Led 3.</i>	
15. Review our use of external expertise in the light of the regulatory arrangements review and consider the potential benefits of using such a system more widely.	Priority 2 Medium Term Actions (6-12 months)	This action is intended to enhance Board effectiveness, by ensuring it can easily source expertise required for the development of policy and strategy. <i>It should support the delivery of LSB Well Led 3.</i>	
16. Develop a written stakeholder engagement strategy setting out how stakeholders' views are obtained and considered by IPReg.	Priority 3 Longer Term Actions (12-18 months)	This action is intended to enhance organisational transparency. It will provide clarity concerning how we obtain stakeholder's views and utilise these within our decision-making. <i>This action should support the delivery of LSB Well Led 3.</i>	It is suggested that this considers stakeholders in the broadest sense, is robust in building in public and consumer engagement and also takes account of learning from the above considerations of the use of external expertise.
17. Review the scope of the Annual Report, with a view to providing enhanced transparency about how IPReg operates.	Priority 2 Medium Term Actions (6-12 months)	This action is intended to enhance organisational transparency. <i>It should support the delivery of LSB Well Led 3</i>	It is suggested that the Annual Report could include: <ul style="list-style-type: none"> • attendance of directors at board and committee meetings • key findings arising from Board Evaluation in the Annual Report. • a section on IPReg's principal risks and approach to risk management. It is also suggested that alongside this the audited accounts are published on the IPReg website. It is suggested that changes are introduced in the 2022 and 2023 Accounts in keeping with the work required.
18. Review arrangements for action plans, performance indicators and published policies concerning Equality, Diversity, and Inclusion (EDI).	Priority 2 Medium Term Actions (6-12 months)	This action is intended to enhance organisational transparency and improve planning and performance monitoring. <i>This action should support the delivery of LSB Well Led 3:</i>	It is suggested that this considers arrangements for publishing Equality, Diversity, and Inclusion (EDI) polices, and develops EDI action plans with clearer milestones to facilitate an easier assessment of progress. There should be clear performance indicators to measure progress against the Diversity Action plan.
19. Review the Board's approach to risk and set out its policy and procedures for managing risk in writing.	Priority 1 Short Term Actions (0-6 months)	This action will support the Board in its ability to manage risk strategically and operationally. <i>This action should support the delivery of LSB Well Led 3:</i>	

Board Meeting 14 July 2022

Performance management framework – response to LSB

Agenda Item: 11b

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

Summary

1. In March 2022, the LSB published its updated performance assessment of IPReg (**Annex A**). This paper sets out a draft progress report (**Annex B**), which the LSB has requested no later than 31 July. The draft takes into account the updated Data Group Action Plan (**Annex C**). The draft progress report will be updated with details of the decisions that the Board takes at the meeting on the recommendations from the Governance and Transparency Working Group (**agenda item 10**).
2. The LSB will reassess IPReg’s performance once it has received the progress report.

Recommendation(s)

3. The Board discusses the draft progress report and delegates finalising the response to the Chair and CEO.

Risks and mitigations

Regulatory Objective(s)	The LSB’s regulatory performance framework was published in 2017 and states: The regulatory objectives were considered in the development of the standards. Efforts undertaken by the regulator to meet the standards are likely to promote achievement of the regulatory objectives.
Strategic objective(s)	This paper considers the response to the LSB and so is not linked directly to IPReg’s strategic priorities, although our overall approach to regulation is designed to encourage and support innovation.
Financial	The Governance and Transparency Working Group report (agenda item 10) includes recommendations that will require budget allocation if they are adopted.
Legal	[REDACTED]
Reputational	The LSB has criticised specific aspects of IPReg’s work and has raised questions about the Board’s approach to governance. This is a clearly a reputational risk.
Resources	Responses to the LSB are undertaken as part of our business as usual activities.

March 2022

REGULATORY APPROACH					AUTHORISATION					SUPERVISION				ENFORCEMENT						WELL-LED								
1	2	3	4	5	1	2	3	4	5	1	2	3	4	1	2	3	4	5	6	1	2	3	4	5	6	7		

Overall

We assessed IPReg's performance on outcomes RA3, WL1 and WL3 in March 2022, following the receipt of information we requested in our November 2021 assessment. We concluded that all three outcomes should be rated as not met – action being taken. This notes an improvement in the assessment for RA3 and WL3, and a new unmet outcome for WL1.

For outcomes RA3 and WL3, the updated assessment reflects the positive steps that IPReg is taking to address our concerns in these areas, including concerns that IPReg does not provide the necessary transparency of its decision-making and that it does not have a sufficiently robust evidence base on which to make decisions.

The steps IPReg is taking include the establishment of a Governance and Transparency Working Group (GTWG), which will consider how IPReg can be more transparent in its decision-making. The GTWG will report to the IPReg board in March and May, then present an action plan to the board in July 2022.

IPReg also provided its Data Working Group's (DWG) forward work plan, which sets out activities that IPReg will take to improve its evidence base. This is a more comprehensive plan than IPReg has previously provided and offers some assurance that IPReg is doing what is necessary to meet RA3 in the future. Many activities should be completed, or the next steps determined, within the first half of 2022.

For outcome WL1, the updated assessment reflects that we do not currently have assurance that the IPReg board holds the executive to account for its performance to ensure it operates efficiently, effectively and in pursuit of the regulatory objectives.

IPReg's response outlined that board members have asked the executive to reflect alternative policy options considered and more discussion about the regulatory objectives in board papers, which is positive. It is also positive that the GTWG will consider IPReg's governance arrangements, arrangements for the ongoing review of board effectiveness and good practice developments that it could adopt. We note that the LSB expectations of well led regulators are clearly set out in the findings from the well led reviews of the Bar Standards Board (BSB) and Faculty Office (FO), which IPReg and other regulators are expected to take account of.

We expect IPReg to provide information to us by 31 July 2022 that sets out its progress against the DWG forward work plan, including activities it has completed and any additional activities it has identified are necessary. We expect IPReg to set out any improvements to its governance and transparency arrangements it has or will implement following the GTWG report to the IPReg board. We also expect to see evidence of consideration of the regulatory objectives and alternative policy options considered in IPReg's board papers and minutes.

Following the submission of the progress report in July, we will reassess IPReg's performance.

Not met: action being taken

Outcome	RA3: The regulator has a robust evidence base from a range of sources on: (a) consumers' needs and use of legal services (b) new and emerging policy developments (c) the
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		regulated community and (d) the market(s) regulated by it which informs its regulatory arrangements and approach.
Assessment (March 2022)	LSB assessment	<p>In November 2021, we assessed that IPReg did not meet outcome RA3 because of outstanding concerns about the robustness of its evidence base, which had been identified in the previous year's assessment.</p> <p>We noted that IPReg had made some positive progress in building its evidence base during the year, but that we did not have assurance that IPReg will take forward other activities necessary to improve its wider evidence base. This was because of a lack of transparency of activities IPReg had committed to, as well as of the timing and funding of those activities. We said this was of particular concern because IPReg will need to draw on a robust evidence base to support any proposals to change its regulatory arrangements as part of its review of regulatory arrangements. We asked IPReg to provide a detailed plan by 31 January 2022.</p> <p>IPReg responded with the forward work plan from its DWG, which sets out what data is required, data sources, what the data will support (e.g. regulatory objectives) and the timescale for data collection. This is a positive step and we welcome the work IPReg has commissioned on trade mark filings, discussions with stakeholders on diversity data collection and requests for different types of information via the review of regulatory arrangements consultation.</p> <p>We note that IPReg is relying on data coming from stakeholders that may not be forthcoming, so it will be important that it has alternative means for collecting data, where necessary, which IPReg has acknowledged in the work plan. IPReg should also be clear how it will use the data it now has to inform its regulatory approach, including any proposed changes to its regulatory arrangements following the review that is underway.</p>
	Action needed	We expect IPReg to provide an update on its progress against the forward work plan, including any activities it has completed or new activities it has identified. We also expect IPReg to set out how the data it collects will ensure it has a robust evidence base to inform its regulatory arrangements and approach.
	Timing	We expect IPReg to provide an update no later than 31 July 2022.

Not met – action being taken

Outcome	WL1: The Board/Council holds the executive to account for the regulator's performance to ensure that it operates effectively and efficiently and in a way which is compatible with the regulatory objectives.
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Assessment (March 2022)	LSB assessment	<p>In November 2021, we assessed that IPReg met WL1, but said this was at risk due to the lack of assurance we could take from the information available. We raised concerns that IPReg's board said the information it was provided to take decisions was 'entirely reasonable', when from what was publicly available it would be difficult to draw such a conclusion. We asked IPReg to provide evidence that its board takes accountability for the organisation's performance by 31 January 2022.</p> <p>In response, IPReg provided examples of how the board holds the executive to account, including through board working groups and scrutiny of board papers. IPReg also noted that its board members have a range of experience and in-depth knowledge.</p> <p>The information provided by IPReg did not give us assurance that it meets WL1. Our concerns about the information available to the board remain, and from a review of public board papers and minutes, it is apparent there is limited exploration of risks and opportunities to promote the regulatory objectives. We expect IPReg to ensure that its focus on the regulatory objectives and of its making decisions clearly in the public interest is evidenced in its board papers. We note that the LSB expectations of well led regulators are clearly set out in the findings from the well led reviews of the BSB and FO, including the information available to the board to inform decisions, which IPReg and other regulators are expected to take account of.</p> <p>We note that the use of board working groups can be a valuable source of board challenge and advice, but should not be a substitute for an effective executive acting in its own capacity with the board holding it to account for its performance. On a similar vein, well qualified board members will be effective on boards where there are the necessary factors to support high-quality collective decision-making.</p> <p>In its response, IPReg said it was establishing the GTWG to consider IPReg's governance and transparency arrangements, arrangements for the ongoing review of board effectiveness and good practice developments that it could adopt. We welcome the work of the GTWG and look forward to its recommendations to the IPReg board.</p>
	Action needed	We expect IPReg to provide an update on any changes to its governance arrangements it has or will implement following the GTWG's review. We also expect to see evidence of discussion of the regulatory objectives and alternative policy options considered (where relevant) in future IPReg board papers, as well as any other information that should be available to the board's of well led regulators.
	Timing	We expect IPReg to provide an update no later than 31 July 2022.

Not met: action being taken

<p>Outcome</p>		<p>WL3: The regulator is transparent about its own:</p> <ul style="list-style-type: none"> • decision-making • regulatory approach • the risks it and its regulated community faces and how these are being mitigated • performance • regulated community and related markets • financial costs.
<p>Assessment (March 2022)</p>	<p>LSB assessment</p>	<p>In November 2021, we assessed that IPReg did not meet WL3 because of concerns about the transparency of its decision-making. We set out two examples of this, including IPReg’s proposals to establish a new compensation fund and its setting of the level of PCF for 2022, in which it was not clear to the regulated community and the consumers of IP services, to whom IPReg is accountable, what the impact of the changes would be. We asked IPReg to provide a response setting out how it would provide greater transparency to its stakeholders by 31 January 2022.</p> <p>In response, IPReg said it would discuss with CIPA and CITMA how it could make the overall position of its reserves easier to understand and so more accessible, and ask its external auditors if they have any concerns about IPReg’s management of its reserves.</p> <p>More broadly, IPReg said it was establishing the GTWG to consider IPReg’s governance and transparency arrangements, arrangements for the ongoing review of board effectiveness and good practice developments that it could adopt. We welcome the work of the GTWG and look forward to its recommendations to the IPReg board.</p> <p>We note IPReg also said it would continue to publish a range of documents, including board papers and minutes, performance management datasets and annual reports. We encourage IPReg to do this, as well as explore opportunities to further enhance what information it publishes and when.</p>
	<p>Action needed</p>	<p>We expect IPReg to provide an update on any changes to its governance arrangements it has or will implement following the GTWG’s review. We also expect to see improved transparency from IPReg in the future, as evidenced, for example, in IPReg’s published documents and applications for changes to regulatory arrangements.</p>
	<p>Timing</p>	<p>We expect IPReg to provide an update no later than 31 July 2022.</p>

July 2022 Board – Item 11b Annex C

Data Group forward work plan – updated information tracked changes (v4 July 2022)

This document sets out the current work plan of the IPReg Data Group taking into account priorities in relation to our Review of Regulatory Arrangements and the work required for future arrangements for the Compensation Fund. It will be kept under review as this work progresses.

Dates and content are therefore subject to change, based on the judgement of the IPReg Board taking account of advice from the Data Group.

Updates for the July 2022 Board are shown as tracked changes.

Data required	Origin of request	Data sources	Rationale/regulatory objectives	Priority/timescale/comments	Progress updates
Review of regulatory arrangements – data/evidence gathering					
Potential risk indicators: dishonesty with client money <ul style="list-style-type: none"> - Is client money held - If yes: <ul style="list-style-type: none"> o (see above point about the date of the info provided) balance o Reported to IPReg (annually)/real time 	Review of regulatory arrangements	Firms	Relates to Standard 4: client money. Identify how much client money is held by different types of firm. Typical amounts are thought to be low, no conveyancing or probate conducted.	Review of regulatory arrangements – request made as part of consultation (December 2021) about information on amount of client money held. Consultation closes in March 2022 - review information provided in response and consider	Internal workshop held on 23/2/22 identified additional data and evidence that we have about client money. EL updating information as part of Review work.

Data required	Origin of request	Data sources	Rationale/regulatory objectives	Priority/timescale/comments	Progress updates
<ul style="list-style-type: none"> ○ Ever exceeded per firm insurance limits ○ If yes, notified to IPReg in advance? 			<p>Also need to test the impact of the proposed definition change.</p> <p>Consumer protection Professional principles</p>	<p>whether further information is required. Q1/Q2 2022.</p>	<p>Initial analysis is that the consultation has provided sufficient information on amount of client money held. Consistent with other evidence, these are generally low amounts which will decrease if definition of client money is changed as proposed.</p>
<p>Potential risk indicators – for each regulated firm:</p> <ul style="list-style-type: none"> - Number of issues in regulatory returns - CPD records/compliance - Disciplinary records/compliance - complaints history (seriousness, upheld/ not upheld) - PII claims history (nil/good/bad) - 	<p>Review of regulatory arrangements</p> <p>Building a risk model (compensation fund)</p>	<p>IPReg Companies House</p>	<p>Relates to standard 2: competence</p> <p>Identify any systemic issues with CPD requirements; understand reasons for wavier requests/grants</p> <p>Also need to build evidence around risk profile of IPReg regulated market as part of wider context of the Review.</p>	<p>Review of regulatory arrangements – CPD and disciplinary records on Civi – Q1/Q2 2022</p>	<p>Internal workshop held on 23/2/22 identified additional data and evidence that we have about client money. EL and SE (Civi reports on waivers) updating information as part of Review work.</p> <p>Detailed analysis of CPD waiver requests complete. Feeds into impact assessment for Review and informs policy on CPD.</p>

Data required	Origin of request	Data sources	Rationale/regulatory objectives	Priority/timescale/comments	Progress updates
			Consumer protection Diverse profession Professional principles		
<p>Review of regulatory arrangements data:</p> <p>(a) Disciplinary policy and process: arrangements used by other regulators, for example in the legal and health sectors (including any EDI impacts);</p> <p>(b) CPD: (i) review of the reasons for waiver requests; (ii) extent of compliance with existing requirements; (iii) EDI impacts of a change in approach drawing from experience of other regulators; (iv) how others have developed approaches that go beyond a “box-ticking” metric;</p>	<p>Letter to LSB 22 July 2021</p>	<p>IPReg Firms</p>	<p>This data will support other aspects of the Review – see individual CPD and client money sections of this document.</p> <p>In addition, appropriate disciplinary and enforcement policies help to uphold the professional principles and the rule of law. Information about non-UK qualified attorneys supports competition and diversity.</p>	<p>(a) Complete</p> <p>(b) (i) Review of reasons for waiver request – Q1 2022; (ii) Extent of compliance with current requirements – Q1 2022; (iii) EDI – included in IA – consultation underway, closes March 2022; (iv) complete – as part of review of regulatory arrangements</p>	<p>(a) Complete</p> <p>(b) (i) complete; (ii) Extent of compliance with current requirements – Q1 2022 – compliance monitored at Annual Return, no disciplinary cases on CPD; (iii) EDI – included in IA – consultation underway, closes March 2022 – responses being</p>

Data required	Origin of request	Data sources	Rationale/regulatory objectives	Priority/timescale/comments	Progress updates
<p>(c) Practice categories: modelling fees once categories have been decided;</p> <p>(d) General: (i) split between in-house, private practice, not practising (with reasons); (ii) diversity information; (iii) UK qualified attorneys practising overseas; (iv) IPO data; (v) LSB research into small businesses (including the extent, timing and cost of any follow up questions).</p>				<p>(c) Practice categories – not before [2024]</p> <p>(d) (i) Civi - Q2 2022; (ii) diversity survey complete; (iii) Civi – Q2 2022; (iv) Q1 – see below (Clarivate); (v) LSB research delayed</p>	<p>analysed, initial report to May Board; <u>updated IA to July Board following review by external expert;</u> (iv) complete – as part of review of regulatory arrangements</p> <p>(c) – not before 2024</p> <p>(d) (i) Civi - Q2 2022 – in progress – <u>expected beginning August;</u> (ii) diversity survey complete; (iii) Civi – Q2 2022 – in progress – <u>expected beginning August;</u> (iv) Q1 – see below (Clarivate); (v) LSB data on small businesses received on 7 January. Initial analysis by VS and Economic Insight undertaken. Further analysis by David Bish</p>

Data required	Origin of request	Data sources	Rationale/regulatory objectives	Priority/timescale/comments	Progress updates
					<p>(ex-SRA research team) being undertaken for report to March Board.</p> <p><u>March Board considered the analysis. We will consider what further analysis could be useful given the small sample size and the likely cost of any additional analysis such as a qualitative survey.</u></p>
Market(s) data – use of IP by individual consumers	Letter to LSB 22 July 2021	Firms/IPO	This section is about general market data.	Review of regulatory arrangements – request made as part of consultation (December 2021) about information on types of client. Consultation closes in March 2022 - review information provided in response and consider whether further information is required.	<p>In addition to consultation responses, initial findings are:</p> <ul style="list-style-type: none"> •Emerging data from larger firms (via IPPDG) that more than 50% of turnover comes from 5% of clients •LSB small business survey – only 25 of over 10,000 firms interviewed reported

Data required	Origin of request	Data sources	Rationale/regulatory objectives	Priority/timescale/comments	Progress updates
				<p>Engagement with consumer bodies as part of the Review consultation.</p> <p>Any inferences that can be drawn from the small business survey.</p>	<p>having an IP issue and using an IP lawyer</p> <ul style="list-style-type: none"> •IP services in pro bono clinics may provide additional source of information – considering which are most appropriate to contact – maybe education establishments first <p>Respondents to the Review consultation provided information about their client base. Initial analysis is that the consultation has provided sufficient information for current purposes. Consistent with other evidence, firms do not generally provide advice to individual consumers.</p>
Market(s) data – use of IP by micro/small businesses	Discussions with LSB on compensation	Firms/IPO/LSB survey	This section is about general market data.	Review of regulatory arrangements – request made as part of consultation (December	See above update on individual consumers – update as for individual consumers

Data required	Origin of request	Data sources	Rationale/regulatory objectives	Priority/timescale/comments	Progress updates
	fund (October 2021)			<p>2021) about information on types of client. Consultation closes in March 2022 - review information provided in response and consider whether further information is required.</p> <p>LSB small business legal needs survey – data received 7 January (25 firms out of 10k+ in survey)– analysis required</p> <p>Q1/Q2 2022</p>	<p>– note that firms do not categorise clients using regulatory/government definitions. Further consideration being given to this issue.</p> <p>See update above on LSB small business survey</p>
PII including run off cover: disciplinary action by type of attorney/firm	IPReg discussions	IPReg PAMIA	<p>Relates to standard 3: managing your practice</p> <p>Identifies whether there are particular types of attorney/firm who breach PII and run off cover rules</p>	Q2 - 2022	<p>Q2 – 2022</p> <p>Analysis of IPReg disciplinary cases shows that it is very small firms and sole traders who breach the requirement for PII and run-off cover.</p>

Data required	Origin of request	Data sources	Rationale/regulatory objectives	Priority/timescale/comments	Progress updates
			Consumer protection Professional principles		
General data/evidence gathering					
Diversity data <ul style="list-style-type: none"> - Consider timing of future surveys each year - Liaise with CIPA, CITMA and IP Inclusive on best way to gather data across regulated sector - Consider gathering data on admission to register (Civi CRM system change required) - Any notable minority advocacy organisations that are clients of the firm? 	Letter to LSB 22 July 2021	IPReg CIPA CITMA IP Inclusive Firms / key minority advocacy organisations that are clients.	This section is about general market data. Diverse profession Competition	Discussions with stakeholders to take place in Q1 and Q2 2022 Civi changes if implemented – likely to be for 2023 annual renewals at earliest	Discussed with CIPA and CITMA CEOs on 23 February 2022. Support for cross-sector working. IPReg to arrange initial discussions with CIPA, CITMA, IP Inclusive. FG to action this Meeting with CIPA, CITMA, IP Inclusive and the IP Federation being arranged.
Market(s) data – patents: <ul style="list-style-type: none"> - Nature (? – not just their number?) of patent filings at the IPO 	Letter to LSB 22 July 2021	IPO (needs external analysis – e.g. Clarivate)	This section is about general market data.	Complete	

Data required	Origin of request	Data sources	Rationale/regulatory objectives	Priority/timescale/comments	Progress updates
Market(s) data – trade marks - Nature (? – not just their number?) of trade mark filings at the IPO	Letter to LSB 22 July 2021	IPO (needs external analysis – e.g. Clarivate)	This section is about general market data.	Q1 2022	<u>July 2022 - we have contacted the IPO to ask for information that may help us establish the numbers/proportion of represented vs unrepresented trade mark applicants, and the number of applicants that were incorporated organisations vs those that were not (so most likely to be real persons), for the past 5 years. Data should be available for analysis towards the end of July.</u>
Competence	IPReg discussions	IPO reports to IPReg re individual attorneys Ombudsman complaints	Relates to standard 2: competence Identify any individual issues with competence Consumer protection Diverse profession	Ongoing	

Data required	Origin of request	Data sources	Rationale/regulatory objectives	Priority/timescale/comments	Progress updates
			Professional principles		
Compensation fund – data/evidence gathering in addition to above					
<u>General Firm information – for each regulated firm:</u> <ul style="list-style-type: none"> - Is firm active - No years authorised/year established - Practice area (patents, trade marks, both) - Typical turnover, last few years (to nearest £250k) - Typical turnover/fee earner - Total no. clients - Years since last compliance visit - Previous compliance rating - No. partners/fee-earning staff / non-fee-earning staff - Any unusual firm features (merged, transferred to 	Building a risk model (compensation fund)	Mainly from firms CITMA website Companies House website	These sections to be completed as part of the preparations for data gathering in 2023 and in the light of outcomes from the Review process and the LSB rule change application process. These preparations are likely to include advice from actuary as to what data is still required to enhance our risk model. Planned information gathering may therefore be subject	Review of compensation fund – sunset clause to 30 April 2024. Review to take place in 2023. Data gathering to take place during 2023.	

Data required	Origin of request	Data sources	Rationale/regulatory objectives	Priority/timescale/comments	Progress updates
<p>another regulator, no longer authorised)</p> <ul style="list-style-type: none"> - Non-UK offices belonging to the firm / towards which the firm has financial commitments (and provide their turnover figures) 			to change at that point.		
Annual PII premium (total for all registrants)	Building a risk model (compensation fund)	PAMIA		Data gathering to take place during 2023.	
<p>Potential risk indicators: failure to place PII</p> <ul style="list-style-type: none"> - Ever failed to place PII - If so: <ul style="list-style-type: none"> o How long PII not held o How much should have been placed o Was this one-off - Any known PII issues which would make failure to place more likely in future (unusual business, past problems, non-standard insurer) 	Building a risk model (compensation fund)	Firms PAMIA IPReg		<p>Review of compensation fund – sunset clause to 30 April 2024. Review to take place in 2023.</p> <p>Data gathering to take place during 2023</p>	
Potential risk mitigations:	Building a risk model	Firms		Review of compensation fund – sunset clause to 30	

Data required	Origin of request	Data sources	Rationale/regulatory objectives	Priority/timescale/comments	Progress updates
<ul style="list-style-type: none"> - Firm resources/net assets available (measure of recoverability of civil actions) - D&B (DUNS) credit ratings - Any high (or low) profile clients (high/low propensity/ability to claim and pursue options before claiming; clients on in eligible categories) 	(compensation fund)	Internet checks (D&B) – to include Companies’ House		<p>April 2024. Review to take place in 2023.</p> <p>Data gathering to take place during 2023</p>	
Market(s) data – use of IP by larger firms (NB to ask LSB for its working definition of “SME”)	Discussions with LSB on compensation fund (October 2021)	Firms/IPO		<p>Review of compensation fund – sunset clause to 30 April 2024. Review to take place in 2023.</p> <p>Data gathering to take place during 2023.</p>	
<p>Potential risk indicators: dishonesty with client money</p> <ul style="list-style-type: none"> - Is client money held - If yes: <ul style="list-style-type: none"> o (see above point about the date of the info provided) balance 	Building a risk model (compensation fund)	Firms		<p>Review of compensation fund – sunset clause to 30 April 2024. Review to take place in 2023. Data gathering for any additional information following Review data gathering exercise in 2022</p>	<p><u>IPReg May Board meeting agreed that no additional data is required at the moment. The proposed regulatory arrangements require firms to notify us whether or not they are holding client</u></p>

Data required	Origin of request	Data sources	Rationale/regulatory objectives	Priority/timescale/comments	Progress updates
<ul style="list-style-type: none"> ○ Reported to IPReg (annually)/real time ○ Ever exceeded per firm insurance limits ○ If yes, notified to IPReg in advance? 					<p><u>money. We expect to satisfy this requirement by asking for this information through the annual return. This will provide a value source of information in the future and will feed into the risk model for the work on our compensation fund.</u></p>
<p><u>Potential risk indicators – for each regulated firm:</u></p> <ul style="list-style-type: none"> - Number of issues in regulatory returns - CPD records/compliance - Disciplinary records/compliance - complaints history (seriousness, upheld/ not upheld) - PII claims history (nil/good/bad) - Previous interventions/insolvencies for partners/staff - Any other relevant firm features (can't get PII, 	<p>Review of regulatory arrangements</p> <p>Building a risk model (compensation fund)</p>	<p>IPReg Companies House</p>		<p>Review of compensation fund – sunset clause to 30 April 2024. Review to take place in 2023. Data gathering for any additional information following Review data gathering exercise in 2022</p>	<p><u>We will obtain further actuarial advice on the evidence needed to support the compensation fund review.</u></p>

Data required	Origin of request	Data sources	Rationale/regulatory objectives	Priority/timescale/comments	Progress updates
late paying fees, other information, other comp. fund claims) - Any partners that are not regulated by IPReg or the SRA?					

NB - we need to make it explicit to registrant respondents that all data provided by them is as of the day (or week) when their response is due, except when accounting / auditing standards require otherwise.

Note that for building the risk model, this is the ideal amount of data that the actuary would like. In reality he recognises that it may not be proportionate (or necessary) to collect it all and it may not be available in any event.

The consultation on the Review of regulatory arrangements is an opportunity for us to build our evidence base as well as identify any gaps and as a result the plan is subject to change.

Board Meeting 14 July 2022

LSB statement of policy – empowering consumers – gap analysis

Agenda Item: 11c

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

Summary

1. On 11 April 2022 the LSB published its [Statement of Policy on empowering consumers](#) (this is reproduced with annotations at **Annex A**). The LSB wants to hear from the regulators on their next steps following publication of the statement of policy. It wants to understand where regulators consider they do not yet meet the expectations in the final statement and what work they plan to undertake to meet those expectations.
2. It was agreed at a meeting of the [Market Transparency Coordination and Oversight Group](#) (MTCOG) that the regulators would complete a gap analysis and share thinking on next steps for the next MTCOG meeting on 21 July.
3. A gap analysis and related actions is at **Annex A**.

Recommendation(s)

4. The Board:
 - a. Notes the gap analysis; and
 - b. Agrees that the related actions are a targeted and proportionate response.

Risks and mitigations

Regulatory Objective(s)	The LSB’s Statement of Policy is relevant to: <ol style="list-style-type: none"> a. Improving access to justice; b. Protecting and promoting the interests of consumers; c. Promoting competition in the provision of legal services; d. Encouraging an independent, strong, diverse and effective legal profession; and e. Increasing public understanding of the citizen’s legal rights and duties.
Strategic objective(s)	This is relevant to the Board’s strategic objective of ensuring 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. The objective states that we will do this by ensuring that our review of regulatory arrangements focuses on setting reasonable standards but does not ‘gold plate’ them
Financial	There are no direct financial implications.
Legal	

Reputational	IPReg should take into account the LSB's Statement of Policies when making decisions on a related policy issue. The LSB considers how we have done this as part of its analysis of our performance under the regulatory performance framework.
Resources	The work can be undertaken within existing resources.