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The Patent Regulation Board and the Trade Mark Regulation Board

Minutes

Thursday 13 July 2023 at 1.00 p.m.

Gatehouse Chambers, 1 Lady Hale Gate, Gray's Inn, London WC1X 8BS

Attending:

Rt Hon Lord Smith of Finsbury (IPReg Chair)
Justin Bukspan (attending remotely)
Alan Clamp
Sam Funnell (Data Working Group Chair)
Victor Olowe
Samantha Peters (Governance Working Group Chair)
Emma Reeve
Caroline Seddon (Education Working Group Chair)

In attendance: Fran Gillon (CEO), Victoria Swan (Director of Policy), Shelley Edwards (Head of Registration), Karen Duxbury (Finance Officer), Ben Newman (Compliance and Authorisations Officer), Richard Hill (GSM Accountants)

1. Apologies were received from Henrietta Rooney.

2. No conflicts of interest were declared.

<u>Items for decision/discussion</u>

3. Minutes of May meeting and matters arising

3.1. The Board approved the minutes subject to some minor drafting changes.

4. Auditor's report and IPReg Limited 2022 accounts

4.1. The Chief Finance Officer introduced the paper, which set out the pre-audit response to Griffin Stone Moscrop & Co (GSM), the financial statements for the year ended 31 December 2022, and the letter of representation.

4.2. The Board was advised by the auditor that the audit report was largely unchanged, with no internal control deficiencies to note. The auditor suggested that going forward IPReg might want to delay publication of its Annual Report until its accounts had been audited so that the audited version could be referenced.

4.3. The auditor highlighted some key points in the accounts. On the profit and loss account, profit after tax was £29,023. The income figure represented registration fees only. Cost awards and disciplinary fines had been included as other operating income, as they had not been paid and there remained the possibility that the money would not be received.

4.4. There had been a slight increase in wages and salaries since the previous year, with a significant increase in recruitment costs. Expenditure on legal and professional fees was significantly lower than in the previous year, as 2021 had included the withdrawal of the compensation fund insurance policy and the regulatory review. Most other expenditure was in line with the previous year.

4.5. On the balance sheet, no new office equipment had been purchased. The change in the fixed assets figures were mostly due to the depreciation charge and the value of old equipment disposed of during the year. Cash at bank and in hand had increased slightly since the previous year. IPReg was highly liquid and had significant reserves. A cashflow statement had not been prepared as there was no obligation to do so for an entity of IPReg's size.

4.6. The Board discussed the following matters:

4.6.1. ISA315, a revised international auditing standard relating to risks and controls, had been considered and addressed by the auditors. The audit report included details of actions taken to detect irregularities.

4.6.2. The financial statements listed all non-executive directors in the Company Information section so it would be transparent how many directors are included in note 3 – the number of employees and directors. All IPReg's non-executive directors are paid fees, but they are not employees.

4.6.3. Best practice on reserves. The auditor explained that IPReg was disclosing more detail on its reserves than was necessary, so that the accounts were as transparent as possible. There had been a slight change in wording in the 2022 reserves, as the Legal Choice reserve had been renamed as the Governance Reserve.

4.6.4. Whether the planned expenditure on computer development software should be capitalised. The auditor explained that it could be capitalised but IPReg's decision to not capitalise this but treat it as expenditure made the costs of building a website transparent and was sensible as continuous updates would be required.

4.7. The Board decided:

4.7.1. The pre-audit response provided to GSM was noted.

4.7.2. The financial statements for the year ended 31 December 2022 were approved for signature and subsequent filing at Companies House.

4.7.3. The letter of representation was approved to be signed by the Chair on behalf of the Board.

Action: CFO - Signed Financial Statements to be returned to auditor for signature and subsequent filing at Companies House

5. 2024 business plan, budget and practising fees consultation

5.1. The CEO introduced the paper, which set out the proposed business plan and budget for 2024.

5.2. The Board was advised that there was little flexibility for new projects or workstreams, but those set out in the business plan were achievable providing no major issues arose. The paper proposed reorganising the reserves, maintaining the allocated reserves for litigation and diversity but consolidating some of the other reserves into a single reserve.

5.3. The paper proposed a consultation on increasing fees by 6%. Additional income could be generated by introducing an application fee for registered bodies and abolishing the fee waiver period for new applications between 1 November and 23 December. The proposed consultation would take place over five weeks in the summer.

5.4. The Board discussed the following matters:

5.4.1. The two main areas of work requiring additional resources were the focus on education and the work to upgrade the website.

5.4.2. The length of the consultation period, taking into account the fact that it would take place over the summer holiday period, the need to consider the application to the LSB at the September Board meeting (recognising that the November meeting would be too late because the fee collection process started in early December) and the desirability of having sufficient time between the LSB decision and the start of the fee collection process. Given all those factors, the Board concluded that five weeks was the maximum length possible for the consultation period, as it had to conclude before the September Board meeting. The consultation document would be sent to all registrants as well as other stakeholders in order to maximise the number of responses.

5.4.3. What an appropriate fee level would be given the proposed business plan. It noted that the paper also showed the impact of reducing fees by 2%, holding fees at the current rate or increasing them by 2% as well as the proposed 6%. In the Board's judgment, none of these options would provide sufficient income in 2024 and risked needing a substantial increase in future years to compensate. The Board noted that the most recent CPI figure was 8.7% and discussed whether that would be an appropriate increase given the impact of inflation on IPReg's costs.

5.4.4. The need to be ambitious, particularly in its work on education where it would be necessary to obtain significant external support from academic experts and analysts.

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The Board considered that an increase of 8% would meet the need for additional resources. The introduction of an application fee for registered bodies and the abolition of the fee waiver period meant that some additional income would be generated and that an 8% fee increase would be sufficient.

5.4.5. That it was prudent to generate additional reserves to cover the IT changes that were required. The Board recognised that over the next two years, the reserves would probably be used to cover significant IT expenditure.

5.4.6. Whether the consultation process should include a webinar about IPReg's proposals on fees and the business plan. The CEO explained that summer webinars were unlikely to generate interest, particularly because 88% of registrants had their fees paid by their employers and so the level of the fee was not directly of interest to them. However, registrants would be able to speak to IPReg on a one-to-one basis if they wished to do so and this would be made clear in the email.

5.4.7. The importance of the planned thematic reviews for monitoring the effectiveness of elements of the new regulatory arrangements and that it was in the public interest to undertake that type of activity.

5.4.8. Concerns that the proposal to increase Board members' fees by 8.7% was not appropriate in the context of the cost-of-living crisis even though it would be the first increase since 2020. Prior to the pandemic, fees had increased by RPI each year. However, the Board recognised that there had been no problem attracting high quality applicants in the recent recruitment exercises. The Board noted that the proposed budget included a salary increase for staff of 5%, although this might need to be revised depending on the level of inflation in January 2024.

5.5. The Board decided:

5.5.1. To consult on the proposed 2024 business plan and budget including:

5.5.1.1. Increasing practising fees by 8% with consequential changes to the budget to reflect the ambitious work programme;

5.5.1.2. Introducing an application fee for registered bodies to be admitted to the registers;

5.5.1.3. Abolishing the fee waiver period (1 November – 23 December) for attorney and entity applications.

5.5.2. That it would be more appropriate to discuss Board members' fees at its September meeting with a paper from the Executive;

5.5.3. To make changes to the uncommitted reserves as set out in Annex E2;

5.5.4.To adopt the amended version of its first strategic priority.

Actions: CEO to amend the business plan to reflect the proposed 8% fee increase; paper to be prepared for the next Board meeting on Board member fee increases

6. Regulatory Performance Framework

6.1. The Director of Policy introduced the paper. The LSB's new regulatory performance framework, comprised of three standards, had come into effect on 1 January 2023. In June, the LSB had issued various requests to regulators for the first two standards. An assurance mapping exercise was required for 15 characteristics across Standard 1 (Well led) and Standard 2 (Effective approach to regulation). The LSB would review all submissions and allocate a RAG rating for each of the two standards. IPReg had also been asked about its compliance with the statements of policy on ongoing competence and consumer empowerment as well as how it takes the public interest into account.

6.2. The Board was advised that an internal RAG rating had been allocated to each of the 15 characteristics for the purposes of clarity, with a narrative summary explaining how each RAG rating had been reached. The document set out IPReg's actions and commitments to identify and address gaps.

6.3. All Standard 1 characteristics had been rated as green on the basis that real progress had been made, with a commitment to further improvement. Some of the green ratings were based in part on future planned work and the Board was asked to consider whether it could gain sufficient assurance from this or whether it considered that those should be rated as amber. On Standard 2, two characteristics had been rated as amber. This was due to the fact that we do not currently have specific diversity and inclusion policies and although work is planned to develop these, the significance of them meant that amber was an appropriate level of assurance. All other characteristics had been rated as green because of the progress made so far and the plans to continue with the work.

6.4. The Board discussed the following matters:

6.4.1. The Board recognised the need for continuous improvement, so even green-rated items should be considered work in progress. The paper provided examples of where particular characteristics had been reflected within IPReg's work, but the narrative framework was important because it explained how adherence to certain characteristics was achieved at an organisational level as part of IPReg's overarching strategy.

6.4.2. Whether there was an overreliance on the review of regulatory arrangements and whether this would affect the outcome of subsequent assessments. The Director of Policy explained that there was significant overlap between the characteristics. This was the first iteration of the regulatory performance framework and was specific to the period between October 2022 and May 2023. In future iterations, she anticipated that more targeted updates would be required by the LSB.

6.4.3. On Standard 1, item 2 on ownership and accountability and item 5 on high levels of transparency were recognised as items that required continuous improvement. In the Board's judgement, these items should be rated as green because of the progress that had already been made. The Board considered that item 8 on fit-for-purpose governance systems that align to best practice should be amended from green to amber because there had not yet been an opportunity to reflect on the effectiveness of the governance changes that had been made; this should also be reflected in the narrative.

6.4.4. On Standard 2, whether IPReg had access to enough data or market research to be able to claim that it had a comprehensive understanding of the market it regulated. However, in the Board's judgement, there had been sufficient progress, evidence and plans for item 9 to be rated as green. For Item 10.2 the LSB had included as an example undertaking market research into public concerns and public confidence in the regulator. However, for IPReg this would not be a proportionate use of its budget because of the low number of people who used attorneys. Instead, we should emphasise IPReg's own rationale for the areas it had chosen to focus on, based on its understanding of the market.

6.4.5. On item 12 on the effective use of data, although significant progress had already been made in this area, it should be changed from green to amber because IPReg was not sufficiently using data to drive decision-making. The Board discussed the question of proportionality. However, it was agreed that amber was appropriate because data was so essential to measuring progress.

6.4.6. Item 14 on diversity and equality was rated appropriately as amber because although work was underway on this, significant progress had not been made. There were 'soft' policies in place, but 'hard' policies were required for a green rating. Nevertheless, it should be indicated that the plan was at an advanced stage and that progress should be made quickly towards a green rating.

6.4.7. Whether it would ever be possible for the Board to gain full assurance on item 15 – IPReg is committed to trying to improve access to services and reduce inequalities in access to services, but it is difficult to show whether our work directly impacts those issues when so many other factors are at play on diversity. However, the Board considered that we can demonstrate commitment through various actions and IPReg could show that it was doing all that could reasonably be expected. Overall the amber rating for this characteristic was appropriate.

6.4.8. Overall, the Board discussed the distinction between 'amber and' items that were a long way from green, and 'amber but' items where the organisation was close to achieving a green rating.

6.5. The Board decided:

6.5.1. To approve the proposed IPReg responses to the LSB's regulatory performance information requests:

6.5.1.1. The assurance mapping of IPReg's compliance with Standards 1 and 2 and the 15 characteristics that underpin them subject to items 8 and 12 being rated as amber and further amendments being made to the presentation and narrative of the document.

6.5.1.2. The response to the LSB's specific questions to IPReg subject to amendments relating to the section on public interest.

7. IT upgrade

7.1. The CEO introduced the paper on the IT upgrade. Following consideration by the Board in March of options for upgrading the website from Drupal 7, a more in-depth due diligence exercise on IE Digital had been undertaken with Equantiis. Since the March meeting, Drupal had extended the November 2023 end-of-life date to January 2025, but it was still necessary to upgrade as soon as possible.

7.2. The Board was advised that a further meeting with IE Digital had taken place to understand the costs involved. ClearCourse had not yet responded to any communications about moving to another provider, but ClearCourse's cooperation would be needed in order to complete the transfer.

7.3. The Board decided:

7.3.1. The CEO would report to the Board by email on the outcome of the discussion with ClearCourse and next steps.

Action: CEO to pursue discussions with ClearCourse

8. Governance Action Plan Implementation

8.1. The CEO introduced the paper, which set out the progress made in implementing the steps agreed for months 6-12 of the Governance Action Plan. Annex A showed the progress made up to 16 June 2023, including the remaining actions from the initial six months' work developing the approach to risk and KPIs. A meeting of the Risk Working Group was in the process of being arranged.

8.2. The Board was advised that the use of external expertise would be considered on specific projects, in particular the work on education. Work would soon start on the Priority 3 topics, including developing a formal stakeholder engagement plan.

8.3. The Board discussed the following matters:

8.3.1. In autumn 2023, it would be important to consider how well the changes already implemented were working in practice.

8.3.2. Whether the Governance Working Group should review the progress made and report to the Board.

8.3.3. That Board member appraisals would be scheduled for the autumn once the appraisal process had been agreed.

8.4. The Board noted the paper.

Action: **CEO to arrange Governance Working Group meeting**

9. Review of Regulatory Arrangements – progress update

9.1. The Board noted that the review had been implemented and the new arrangements had come into force on 1 July.

10. Complaints Update

10.1. The Head of Registration introduced the paper, which set out an update on complaints received and processed by IPReg. From 1 July 2023, the complaints process was governed by the new regulatory arrangements, specifically Chapter 4 of the Core Regulatory Framework and the Investigation and Disciplinary Requirements.

10.2. The Board was advised that two complaints had been opened and one closed since the previous meeting, although a further case was likely to soon be closed. The first case related to PII and would be the first case heard under the new arrangements. There were currently two cases involving unprofessional/inappropriate conduct.

10.3. The Board noted the paper.

11. Risk Register

11.1. The CEO presented the risk register. There was one red risk that related to the IT upgrade.

11.2. The Board discussed the following matters:

11.2.1. Despite the staff changes made recently, the amber-rated risk relating to staff capacity remained. The team was still stretched, with staff continually working at full capacity.

11.3. The Board noted the paper.

12. PII sandbox – potential waiver application

12.1. The Board held a confidential discussion about a development concerning an insurer who had expressed interest in the PII Sandbox.

13. CEO's report

13.1. The CEO introduced the paper, which set out the main issues to bring to the Board's attention.

13.2. Potential changes to the minimum qualification required to sit the EQEs.

13.3. The CITMA campaign on unregulated representation before the IPO.

13.4. The ministerial roundtable for stakeholders from the IP attorney and legal professions had now been scheduled for 27 July.

13.5. The Board:

13.5.1. Noted the paper; and

13.5.2. Agreed that the response to the LSB's call for evidence on NDAs should be submitted.

14. Action Log

14.1. The action log was noted.

15. Complaints about IPReg

15.1. There had been no complaints about IPReg in the last year.

16. Finance Report

16.1. The Finance Report was noted.

17. Regulatory Statement

17.1. It was confirmed that, except where expressly stated, all matters were approved by the Patent Regulation Board and the Trade Mark Regulation Board.

18. Any Other Business

18.1. There being no other business, the meeting closed at 16.31.