

## **Approval of 2024 practising fee application made by the Intellectual Property Regulation Board (IPReg) to the Legal Services Board (LSB) under section 51 of the Legal Services Act 2007 (the Act)**

1. The LSB has approved an application made by IPReg under section 51 of the Act. Section 51 of the Act relates to the control of practising fees charged by approved regulators.
2. Practising fees are payable by a person under an approved regulator's regulatory arrangements, in circumstances where the payment of the fee is a condition which must be satisfied for that person to be authorised by the approved regulator to carry on one or more reserved legal activities. An approved regulator may only apply amounts raised by practising fees for one or more of the permitted purposes set out in section 51(4) of the Act and the Practising Fee Rules 2021 (Rules)<sup>1</sup>.
3. A practising fee is payable under the regulatory arrangements of an approved regulator only if the LSB has approved the level of the fee under section 51 of the Act. The Chartered Institute of Trade Mark Attorneys (CITMA) and Chartered Institute of Patent Attorneys (CIPA) are approved regulators, and IPReg is the regulatory body to which CITMA and CIPA have delegated their regulatory functions.
4. In making an application, an approved regulator must comply with the provisions of the Rules. The Rules provide a framework for the practising fee application and approval process. An approved regulator must also have regard to the LSB's Guidance on the Practising Fee Rules 2021 (Guidance)<sup>2</sup> which gives guidance on each of the Rules.
5. This notice sets out the decision taken, including an assessment of the practising Fees application.

### **Summary of application and decision**

6. The application submitted by IPReg proposes that the level of practising fees payable in 2024 by individuals and registered bodies will increase by 8% compared to 2023 excluding the fee for those not in active practice which is unchanged (as set out at paragraph 25 of the application).
7. In 2023 IPReg budgeted for a total income from Practising Fees of £1,033,301. For 2024, IPReg has budgeted for a projected total income of £1,247,781 (an increase from £1,106,462 in 2023), based on the assumption of 3559 individuals, and around 248 registered bodies, paying a practising fee. The proposed 2024 fees are set out in the tables below.

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<sup>1</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2021/02/PCF-Final-Rules-2021-Accessible.pdf>

Practising Fees for 2024: Comparison with 2023 Practising Fees, (including members of Single register and those of both Registers<sup>3</sup>)

Attorneys/Individuals	2023 Fees		Proposed 2024 Fees	
	Single register	Both registers	Single register	Both registers
Attorney solely undertaking corporate work	£188	£300	<b>£203</b>	<b>£324</b>
Attorney in private practice	£228	£374	<b>£246</b>	<b>£404</b>
Attorney not in active practice	£171	£273	<b>£171</b>	<b>£273</b>
Sole trader attorney not employing other attorneys or professionals	£374	£534	<b>£404</b>	<b>£577</b>
Sole trader attorney:	£374	£534	<b>£404</b>	<b>£577</b>
employing other attorneys - add fee per attorney	£75	£75	<b>£81</b>	<b>£81</b>
employing other professionals - add fee per professional	£300	£300	<b>£324</b>	<b>£324</b>
Registered Bodies <i>(including licensed bodies)</i>	2022 Fees		Proposed 2023 Fees	
	Single or both registers		Single or both registers	
Registered Body through which only a single attorney provides services	£146		<b>£158</b>	
Any other registered body	£374		<b>£404</b>	
Base Fee	£75		<b>£81</b>	
fee per attorney	£300		<b>£324</b>	
fee per other professional				

8. Of the total income from practising fees, £1,156,181 (93%) will be allocated to IPReg to fund its regulatory activities, with the remaining 7% allocated to levies payable by IPReg: Legal Ombudsman (£5,000) and the LSB (£86,600).
9. As required by the Practising Fee Rules, the LSB has considered the application and is satisfied that IPReg:
  - proposes to use the practising fee income for 2024 to fund activities which fall within the permitted purposes, in compliance with section 51(2) of the Act.
  - has set out how it intends to discharge its regulatory functions in a way that is compatible with the regulatory objectives set out in section 28 of the Act.
  - demonstrates in its application that it has been transparent with the regulated community about IPReg's financial reserves and resilience.
10. Further, the application enables the LSB to be confident that IPReg has adequately planned its financial position for the forthcoming year.

<sup>3</sup> An attorney on a single register will be either a patent attorney or a trade mark attorney. An attorney on both registers will be both a patent attorney and a trade mark attorney.

11. We consider that the application also provides:

- meaningful consideration of equality issues, which are particularly relevant to the regulatory objective of encouraging an independent, strong, diverse, and effective profession. We note this consideration is demonstrated through IPReg's retention of the ability to waive the Practising Fees for attorneys facing hardship, in particular, for those who might be most disadvantaged by the rise in the Practising Fees. IPReg confirmed the "*not in active practice*" status allows them to pay a reduced rate. This is set out in further detail within the EDI assessment, at Annex 13 of the application.
- due consideration to the impact of the level of the Practising Fees on the conduct of legal services by its regulated community in setting the Practising Fees for 2024.

12. The LSB's decision is to approve in full the levels of the Practising Fees for 2024 applicable individuals and registered bodies as set out in the application by IPReg.

### **LSB assessment**

#### Distribution of costs amongst the regulated community

13. IPReg proposes to make the following three changes to how it will apply the practising fees (or distribute costs) from 2024:

- Increases in 2024 practising fees will only apply to practising attorneys*  
IPReg will only apply the proposed increase in practising fees for 2024 to practising attorneys. This means that all non-practising attorneys will be exempt from paying the increase. In previous years, only non-practising attorneys in retirement had benefited from the exemption. IPReg consider that the impact of practising fee increases on non-practising attorneys (3% of registrants) is disproportionate to their small number, as they are low risk given they are not actively practising, with overall reduction in income to IPReg expected to be £1,550. It considers this will impact positively on equality, diversity and inclusion of the profession it regulates.
- Abolishing an automatic waiver of registration fees for individuals and registered bodies applying to the register in November and December –*  
IPReg's practice has been that attorneys and entities who apply for registration between 1 November and 23 December in any year, would be exempt from paying a practising fee for that year. However, the cost of regulating the attorney or entity who registered during this period remains the same as if they applied outside this period. This meant that the costs of regulation for such persons were borne by those already registered. IPReg states that if such applicants had been required to pay practising fees in 2022, this would have generated £1,744 in additional fees.

14. From 2024 IPReg will also charge an application fee to entities that are wholly owned and managed by attorneys. Previously, the application fee only applied to licensed bodies. IPReg considered that led to the inequitable outcome that the costs of processing applications from entities wholly owned by lawyers, was funded from practising fee income paid by all attorneys and firms.

15. The application fee for new firms to become registered bodies do not form part of the Practising Fee. That proposal has been considered separately alongside proposals by IPReg to make alterations to its regulatory arrangements (the IPReg Practice Fee Regulations 2023). Those alterations have been approved under the Act by the LSB in an exemption direction dated 18 October 2023 published on the LSB website<sup>4</sup>. IPReg has not included these application fees as part of the budgeted income (due to unpredictability around the numbers of applications received year on year). However, in its view the impact on total income from registered bodies is negligible.
16. We asked IPReg to clarify if it proposes to undertake a review of its current policy around distribution of practising fees within its regulated community before the 2025 practising fee application.
17. We understand from IPReg's response and from looking at its Practice Fee Regulations that its current approach to distributing practising fees is based on the prescribed practice categories that attorneys fall into namely; registered attorneys in private practice (i.e. within an IPReg or SRA regulated firm), registered attorneys solely undertaking corporate work (i.e. for a company that does not provide legal services to the public), registered attorneys practising as a sole trader or as a sole trader employing other regulated attorneys, solicitors or other professionals<sup>5</sup> and finally, those not currently in active practice.
18. IPReg stated that Practising fees for each category are determined in accordance with the level of risk to consumers, with Sole Traders being treated as the most high-risk, in contrast to those not practising at all.
19. IPReg told us that the definitions of those practice categories need reviewing to keep account of how attorneys are currently practising, and whether they are practising in the UK or elsewhere. IPReg's view, informed by consultation responses is that any review of categories of practice type will be a complex exercise with far reaching impacts on individuals, firms and also on IPReg's own IT infrastructure. With this in mind, we understand IPReg intends to conduct a review in 2025 at the earliest.
20. We note IPReg's planned review and are interested in the outcome, including how any change will impact the practising fee for authorised persons carrying out reserved legal activities. We expect IPReg to give consideration to the timing of its review and expect the 2025 application to include an update on its plans.

How the benefits of those activities which are regulatory functions will be assessed.

21. IPReg's proposed business plan for 2024/25, at Annex 4 of the application, states that it intends to gather evidence about the benefits of, and issues raised by its current approach to education. We understand IPReg intends to undertake 2 reviews as part of this work. It will undertake a review of its Accreditation Handbook, noting it does not currently include requirements for the advanced level qualifications. We further

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<sup>4</sup> <https://legalservicesboard.org.uk/our-work/statutory-decision-making/alterations-to-regulatory-arrangements/exemption-directions-2>

<sup>5</sup> The IPReg Practice Fee Regulations 2023 states other professions are for the purposes of the Regulations a manager or employee based in the UK who is not a registered attorney but holds qualifications necessary for registration; a qualified European patent and or trade mark attorney, a barrister or solicitor of England and Wales.

understand that it will also undertake a review of its Competency Frameworks for both trade mark attorneys and patent attorneys.

22. We asked IPReg to provide additional information setting out how it will assess the benefits of activities which are regulatory functions.
23. IPReg stated that all of its regulatory policy proposals are subject to considerations on risks, links to its strategy and business plan, regulatory objectives and best regulatory practice, evidence and analysis, and impacts, set out in its Board paper template.
24. In terms of assessing the benefits of activities which are regulatory functions, IPReg has confirmed the following:
  - it has scheduled post-implementation thematic reviews to assess the benefits (and otherwise) of recent alterations to regulatory arrangements relating to Continuing Professional Development, transparency provisions and the Professional Indemnity Insurance Regulatory Sandbox
  - it is currently reviewing the interim compensation arrangements which were put in place following the exit from the market of its compensation fund insurance provider
  - it has undertaken what it says is an objective assessment of its regulatory functions under the LSB regulatory performance assessment framework Regulatory Standards 1 (Well-Led) and 2 (Effective Regulatory Approach) and is committed to undertaking a self-assessment against Regulatory Standard 3 (Effective Operational Activity) before the end of 2023
  - it intends to review the Competency Framework and Accreditation Handbooks as part of the work around barriers to entry for patent attorneys
  - a Risk Working Group has been formed to inform redevelopment of the organisational approach to risk and regulatory functions. We understand this will include IPReg's approach to risk, current risks and how it is addressing them.

### Reserves

25. Our expectation is for IPReg to set out a clear policy on how it sets the target for the level of its reserves and manages those reserves that must include detail on:
  - the different types of reserves held,
  - detail of the risks connected to each distinct type of reserve,
  - the target level for committed and uncommitted reserves and satisfy the LSB that the target level for reserves are sufficient to ensure that it is reasonably financially resilient.
26. IPReg attached its reserves policy at Annex 5 of the application. Paragraph 20 of the application touched on the allocation of committed and uncommitted reserves whilst paragraph 2 of the Reserves Policy explains that decisions about the transfer of part or all of specific reserve(s) to or from the income and expenditure are considered annually.
27. We noted that the reserves policy did not detail an assessment of the risks involved with each type of reserve, nor did it set out the rationale behind the setting of the various target levels in line with the Guidance. We therefore asked IPReg for a fuller explanation of its assessment of risk as well as its rationale for the setting of the target levels for each reserve.

28. IPReg responded explaining that it has assessed the potential “known risks” as follows:
- i. Inability to collect practice fees either due to delay with the implementation of practising fee changes or a systems failure which impacts the applications and renewal process. IPReg confirms the General Contingency Reserve has been set aside for this purpose and that the target level is approximately 3 months budgeted expenditure.
  - ii. External costs (in respect of assurance issues and/or dealing with complex complaints) may exceed the budget. IPReg confirms the Assurance Disciplinary & Litigation Reserve has been set up to cover such occurrences and is ring-fenced. The level is set at £210,000.
29. IPReg pointed to other ring-fenced reserves such as the Funding Diversity Initiatives Reserve and the IT/Website Reserve for specific workstreams which can be funded through its uncommitted reserves and can also be used to mitigate against unexpected costs.
30. IPReg explained that its reserves policy sets out that reserves can be transferred if, in the Board’s judgement, it is appropriate to do so. IPReg cited previous examples of when the Board has utilised this policy to address specific risks such as when it created a committed reserve for its Compensation Fund and when it set aside ring-fenced reserves related to specific workstreams. Any unused reserves were then released back to reserves and reallocated as appropriate.
31. We note that IPReg intends to amalgamate its various reserves allocated to specific activities into a General Operational Reserve from 2024. The approach is one its auditors have approved. IPReg explain that this would cover:
- unexpected costs on any workstream or expenditure,
  - any increase in the Compensation Fund (if the review recommended this),
  - and any shortfall on the other ring-fenced reserves, if required.

#### Financial information

32. We observe that in each of the past two years, IPReg has budgeted lower amounts for salary increases than the actual amount spent (2.5% budgeted vs 5% actual in 2022 and 5% budgeted vs 9.3% actual in 2023). We therefore asked IPReg to provide an additional explanation of the impact of these changes along with commentary on whether the budgeted amount for 2024 (5%) is likely to be an under-estimate.
33. IPReg responded explaining that staff contracts allow for an annual review increase in January each year, which is discretionary, but if awarded takes into account the most recent Consumer Price Index (CPI) at the time the decision is made. IPReg explains it can only estimate the level of % CPI increase for each year. For the purposes of its budget the estimate of 5% was used for 2024. IPReg confirmed this will be reviewed once the December 2023 CPI index figure is released by the Office for National Statistics (ONS) which the Board will take into account. By way of example, IPReg cited that the CPI rate in December 2022 was 10.5% and the Board decided to award a 9.3% pay increase to all staff. IPReg also stated, due to inflationary pressures in the UK, it cannot confirm whether the budgeted amount of 5% is likely to be an underestimate.

## Consultation and engagement

34. IPReg consulted on its proposed practising fees and Business Plan, a copy of which was attached to Annex 4 of the application.
35. We welcome the additional information contained in the application about engagement with IPReg's consultation (including the information on the rates of email deliveries and click-throughs) along with the steps that IPReg takes to stimulate engagement through targeted emailing of relevant stakeholders and the offer of direct discussion of the proposals put forward in this application.
36. In the 2025 practising fee application, we expect IPReg to continue providing full information around how the benefits of the various activities funded or proposed to be funded with the practising fee will be assessed with the aim that this may lead to increased engagement, so that IPReg can continue to build on progress made to increase transparency and accountability.

## **Decision**

37. The LSB has approved the Practising Fees application submitted by IPReg for 2024 under section 51 of the Act.

## **Summary of expectations for next application**

38. In the 2025 practising fee application, the LSB expects IPReg to:
  - keep us updated on the timings of any review that it proposes to undertake in practice categories.
  - continue to demonstrate its commitment to providing full information around how the benefits of the various activities funded by the practising fee will be assessed.

**Matthew Hill, Chief Executive**  
**Acting under delegated authority granted by the Board of the Legal Services Board**  
**18 October 2023**