

**The Patent Regulation Board and the Trade Mark Regulation Board****Minutes****Thursday 17<sup>th</sup> May 2022 at 12 noon****Gatehouse Chambers, Gray's Inn, 1 Lady Hale Gate, London, WC1X 8BS****Attending:**

Rt Hon Lord Smith of Finsbury (Chair)  
Justin Bukspan  
Samantha Funnell  
Alan Kershaw  
Victor Olowe  
Sam Peters  
Nigel Robinson  
Caroline Seddon

**In attendance:** Fran Gillon, Shelley Edwards, Emily Lyn, Karen Duxbury, Victoria Swan

- 1. Apologies** - apologies were received from Emma Reeve.
- 2. Notification of any conflicts of interest** – none.

**PART A – NON-CONFIDENTIAL ITEMS****3. Minutes of 17 March 2022 meeting and matters arising**

3.1 See item 5.3 - the minutes of the March 2022 meeting were agreed. No matters arising.

**4. Action Log**

4.1 The action log was noted.

4.2 SE reported on the recruitment of Joint Disciplinary Panel (JDP) members: 41 lay panellist, 20 patent and 14 trade mark applications received; Thewlis Graham is drawing up a shortlist. CIPA and CITMA helped publicise the recruitment process. The new panel should be in place for September 2022.

**5. Other activities**

5.1 Sanctions – correspondence and meetings: FG reported that a meeting is scheduled for the week beginning 23 May 2022 with the Ministry of Justice to discuss if any additional powers are needed in relation to economic crime and the ability of legal regulators to obtain information from the firms they regulate. The Board noted that the IPReg CEO had attended the extraordinary 28 March 2022 CIPA Council meeting to discuss sanctions guidance. The Board noted all the correspondence on sanctions from the LSB, the Lord Chancellor and IPReg. The Board also noted the actions that IPReg had taken to raise awareness of the sanctions framework including publishing information and guidance on its website, strengthening its admissions checks and emailing attorneys to draw to their

attention the need to obtain a licence from the Office of Financial Sanctions Implementation. The Board considered that this was targeted and proportionate action and noted that the guidance would be kept under review. The Board also noted that a further regulators' roundtable was being planned by the LSB.

5.2 3 x CEO (CIPA, CITMA, IPReg) 31 March: FG reported that the topics discussed included:

- LSB performance assessment process and action plan;
- IPReg's budget;
- Regulatory Arrangements Review;
- Ukraine and financial sanctions guidance;
- JDP recruitment;
- LSB Relationship Management meetings.

5.3 JB joined the meeting. The Trade Mark Board was therefore quorate and the 17 March Board meeting minutes were agreed.

5.4 3 x CEO (CIPA, CITMA, IPReg) 29 April: FG reported that the items discussed included:

- LSB performance assessment process and action plan;
- The CPTTP and intellectual property (IP) matters;
- The Mercer Review;
- Ukraine and financial sanctions matters;
- LSB relationship management meetings including its approach to continuing competence.

5.5 Regulatory Forum 18 March: the Chair reported that the items discussed included:

- LSB performance assessment process and action plan;
- Concern about the potential cost of the Compensation Fund issue and the impact on fees if eligibility to claim is widened in line with LSB expectations;
- Update on the reaccreditation of Queen Mary University London and the need for an appropriate implementation plan and formal independent review of its implementation.

5.6 Board matters: Chair reappointment: AK took over the Chair temporarily and the Chair left the meeting for the duration of the item. FG reported that the Chair will have been in post for 4 years as of 6 September 2022; the contract allows for the term to be extended by up to a further 3 years (to 5 September 2025) and she proposed this to the Board. The Board agreed the reappointment of the Chair. Additionally, the Board agreed that the appointment process which happens in practice is to be documented in due course.

5.7 Completion of Board appraisals: the Chair reported that all appraisal discussions have been completed and that they had generated very useful feedback.

**Action: document process for Chair reappointment and Board appraisals in due course**

## 6. LSB Performance Management Dataset

6.1 VS presented the Performance Management Dataset (PMD) for submission to the LSB. She explained that it covers the period from 1 April 2021 to 31 March 2022. The PMD shows a significant reduction in the longest number of days taken to handle a complaint - down from 561 days in the 2020-21 PMD to 286 days and in the median timeframe down from 221 to 124 days. The PMD does not identify any areas for concern regarding IPReg's performance. For the purposes of transparency and accountability the PMD will be published on the IPReg website.

6.2 VS reported that this is the fifth annual dataset that we have compiled but that the LSB'S current regulatory performance framework consultation proposes removal of this requirement. Instead the LSB proposes moving towards a framework whereby the regulators will be expected to proactively provide information which provides assurance to regulators' boards and the LSB.

6.3 The Board noted that the PMD is a good performance driver for the IPReg Team, including capturing the number and themes of regulatory enquiries. The Board also noted that the LSB's proposed removal of this requirement provides an opportunity for the Board to decide what it wants for its own KPIs in due course.

**Action: VS to submit the Performance Management Dataset, share with representative bodies and publish on IPReg website**

## **PART B – CONFIDENTIAL ITEMS**

### 7. Complaints Update

7.1 SE presented the complaints paper, which the Board noted and discussed the following:

7.2 [REDACTED]

**Action: SE/MB to review disciplinary webpage information to provide information about the ability of the JDP to make a costs order**

SF joined the meeting.

### 8. Progress on Review of Regulatory Arrangements

8.1 FG introduced a paper on how responses to the consultation had been considered.

8.2 AK reported that the working group considered there is no need for another formal consultation despite this being suggested by CIPA and CITMA. The Board agreed that there should be structured stakeholder engagement once the July Board meeting had agreed the "minded to" position on all policy issues. The Board agreed there is no need to undertake another consultation because the structured engagement was a targeted and proportionate way to explain our approach.

8.3 Transparency – EL reminded the Board that the consultation had proposed introducing a requirement to make the provision of information about “hidden” charges (such as foreign exchange uplifts) compulsory. However, it was not the policy intention to require significant accounting detail to be provided – just an explanation of the firm’s approach to these types of charges. The Review Working Group proposed drafting a client guide that would be available on the IPReg website for firms to use if they did not want to develop their own information. This would provide information for clients about the type of questions they should ask about additional charges.

8.4 The Board discussed the issue and agreed that, in its judgment, the targeted and proportionate approach to remedy the risk to consumers from the current information asymmetry was to focus on increasing the transparency of these charges and not to require the provision of detailed pricing information.

8.5 Application to private life: EL reported that many respondents had expressed concern about the proposal that the Overarching Principles should apply outside an attorney’s practice. Respondents were particularly concerned about the requirement to encourage diversity. [REDACTED] response compared the approaches of regulatory bodies which was very helpful. Legal advice is that [REDACTED]

The Board discussed some examples of when the Overarching Principles might extend to private life and noted that each case would have to be decided on the evidence. It agreed that clear guidance which would be reviewed or drafted by Kingsley Napley was important.

KD joined the meeting.

8.6 Continuing Professional Development – EL reported that some respondents had proposed a hybrid approach under which IPReg would continue to specify a number of hours of CPD that would be acceptable under the new outcomes framework. However the Working Group’s advice is that an approach that emphasis the importance of outcomes that attorneys achieve from undertaking CPD means that specifying hours was unlikely to be appropriate. The Board agreed that it would be important to move away from an hours-based approach and that in order to allow time for attorneys and firms to adapt there should be a transitional period of 18-24 months. During this time, implementation would be kept under review and IPReg guidance would be updated as necessary and IPReg’s approach to enforcement of the requirements would be clarified.

8.7 The Board noted that the LSB’s statutory Statement of Policy on Ongoing Competence would probably be published after the LSB’s July Board meeting.

**Action: roundtable with stakeholders to be arranged**

8.8 Litigation Skills – EL reported that views on the principle of moving the training on basic litigation skills for patent attorneys into the pre-admission phase (and therefore amending the current requirement to obtain a basic litigation certificate prior to admission or within three years of admission to the register) had been mixed. The Board discussed the regulatory implications of keeping the status quo and the risks of individuals working outside of their competence. The Board ultimately determined that given the wide range of views and the need to engage with course

providers in order to implement any changes, the IPReg Board decided that there was a very low risk to consumers if it retained the current approach (because attorneys do not practise outside their areas of competence by undertaking litigation if they are not qualified to do so) and that the issue would best be explored as part of a possible wider review of the regulatory arrangements relating to education.

8.9 Terms of Reference – the Board agreed the proposed ToR for the working group.

8.10 Data and evidence base – the Board noted that the consultation had provided data and evidence about the amounts of client money that firms held and the predominantly B2B nature of the client base. The Board considered that, taking into account the burden that formal information requests placed on firms and the good quality of the information received, no further information requests would need to be issued.

8.11 Fee categories – the Board noted the responses on the proposed approach to fee categories which would align them more closely with how attorneys currently work. However, the Board agreed that given the scale of the changes already being made and the fact that any changes to fee categories would necessitate changes to the CRM, this work would require further consultation and should be undertaken on a longer timescale.

8.12 Diversity monitoring – the Board noted that the proposed introduction of mandatory diversity monitoring by firms would be a significant change for some firms. In the Board’s judgment, this should therefore also be subject to further consultation and introduced over a longer timescale.

## 9. LSB engagement

9.1 Governance and Transparency Working Group update: SP reported that the group is part way through benchmarking IPReg against other legal services regulators. This exercise includes comparing IPReg’s documented governance practices, board papers and minutes with those of other regulators. It also involves assessing IPReg’s practices against any new initiatives adopted by the Faculty Office and Bar Standards Board in the light of their recent LSB governance reviews. So far, these exercises have yielded a number of common themes. These include:

- the need to develop IPReg’s board papers and minutes;
- the need to ensure we have well-documented governance policies and procedures which are easy to access and understand;
- the importance of board evaluation and appraisal; and
- the scope to enhance our annual report to aid external understanding of our decision-making practices.

9.2 The Working Group has started producing an Action Plan for the July Board meeting. In doing so, it has identified the importance of producing a plan which is practicable, deliverable, suited to our size and the structure of the team, as well as sensibly timetabled. The Working Group is due to meet again in the week beginning 23 May and will be reviewing a first draft of the Action Plan.

9.3 The Board discussed the paper and noted the significant progress that the Working Group had made.

9.2 IPReg and LSB Board to Board meeting 1 June: the Chair reported a number of Board members will attend this meeting. We had proposed that the meeting would discuss the regulatory arrangements review, regulatory performance framework and the LSB's statement of policy on continuing competence.

9.3 LSB consultation on changes to regulatory performance framework: FG reported that the LSB is proposing to change the regulatory performance assessment framework, moving to a system where regulatory boards could determine their own regulatory outcomes with the LSB setting high level Standards and Characteristics. The consultation closes on 1 July. The Board agreed to delegate authority to the Chair and FG to formulate a draft response with circulation to Board ahead of its submission to the LSB.

**Action: FG to draft response and circulate to Board members**

9.4 Data Group forward work plan update: FG presented the updated workplan which the Board noted. [REDACTED]

## 10. IPReg website upgrade

10.1 SE reported that ClearCourse, had recently told us that Drupal 7 will not be supported from late 2023. We have been advised that we will need to migrate to Drupal 9. The Board agreed that we could not have an unsupported system and noted that we had contacted [REDACTED]

## 11. Red risks

11.1 The Board noted the red risk - [REDACTED]

EL and VS left the meeting.

## 12. Finance update

12.1 The Board noted the actual v budget to 31 March 2022 and the year end projection.

## 13. Regulatory Statement

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