

The Patent Regulation Board and the Trade Mark Regulation Board

Minutes

Thursday 27 September 2018 at 12 noon

The Seminar Room, Hardwicke Building, New Square, Lincoln's Inn, London WC2A 3SB

Attending:

Rt Hon Lord Smith of Finsbury (Chair)
Alicia Chantrey
Jonathan Clegg
Samantha Funnell
Steve Gregory
Keith Howick
Emma Reeve
Nigel Robinson
Caroline Seddon (by telephone)
Nick Whitaker

In attendance: Fran Gillon, Shelley Edwards, Karen Duxbury (until item 5), Victoria Swan, Rachel Greensides

1 Apologies

Alan Kershaw

2 Notification of any conflicts of interest

None

3 Presentation by [REDACTED] – business case for new CRM system

3.1 [REDACTED] joined the meeting and presented to the Board the business case for a new CRM system.

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

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

3.7 The Board discussed the need for a CRM Committee, to consist of the Chair, two other Board members and the CEO, to oversee the project until its completion. The Board noted that SF and AK had expressed interest in joining the CRM Committee.

3.8 The Board agreed:

- to establish the CRM Committee (to consist of the Chair, who would chair the committee, FG, SF and AK);
- that the terms of reference for the CRM Committee are as set out in Annex A to the paper;
- to explore whether another firm could provide a better and less expensive service for the vendor selection and project management and implementation work and asked the CRM Committee to oversee this element of the project;
- that the overall level of reserves allocated to the CRM project should remain at £122k; and
- for the avoidance of doubt, a decision whether to award a contract to the supplier is not delegated to the CRM Committee; it must be made by the Board.

4 2019 Business Plan, budget and practising fees (FG/KD)

4.1 FG presented a paper to the Board about the 2019 business plan, budget and practising fees and the responses to IPReg's consultation on them. FG reported that IPReg had received 44 responses from individual attorneys or firms as well as responses from each of CIPA and CITMA. IPReg had also discussed the proposed increase with CIPA and CITMA on 19 September.

4.2 The Board noted that CIPA's response (which had been provided in its representative capacity) stated that there was no justification for an increase in fees and CITMA's response (which had been provided in its capacity as a representative body and an Approved Regulator) stated that an RPI increase (but no more) might be justified. Many of the other responses echoed these views. Where additional points had been raised, IPReg had also considered them fully. The paper provided suggested responses which the Board discussed. The Board noted in particular:

- 4.2.1 Regarding CIPA's response in relation to budget presentation, we had in fact included a comparison with the 2018 budget this year as well as providing clearer descriptions of expenditure to improve transparency. It was noted that IPReg would provide a breakdown by fee-paying category once a decision had been made on the level of 2019 fees.

- 4.2.2 In relation to CIPA's response that IPReg should be reducing fees, the Board noted that IPReg had not increased fees since 2016 and had only increased practising fees twice since 2011: in 2015 and 2016. In both cases, this was due to the need for additional staffing levels to support ABS regulation.
- 4.2.3 Regarding IPReg's possible relocation, the Board noted the desirability for more accessible office space and that the £25,000 relocation reserve was not merely to search for new offices but should also cover any break costs that may be incurred as a result of terminating the lease prior to its expiry in February 2020.
- 4.2.4 Regarding CITMA's point relating to the lack of information on efficiency savings that could be made by the new database, the Board considered that it would be difficult to quantify immediate savings now. Nevertheless, there were anticipated efficiency gains and any consequential savings would be reflected transparently in the accounts and fed into future years' budget proposals.
- 4.2.5 In relation to CITMA's suggestion that IPReg should review whether its processes for handling disciplinary cases is the most efficient and effective mechanism and whether there would be any scope for using other regulators' skills, the Board was open to exploring with other regulators in due course whether they would be able to provide this type of service, the cost of any arrangements and whether this approach would be consistent with our statutory duties and overall strategy. However, any discussions would be resource-intensive for both parties and this was therefore not an immediate priority. In addition, any changes would almost certainly require consultation on rule changes by both regulators, subsequent applications to the LSB for approval of changes to regulatory arrangements and would therefore be a very lengthy process.
- 4.2.6 The point raised by a registrant regarding the need to be competitive with unregulated IP firms and solicitors who conduct IP work was discussed. The Board recognised the competitive environment within which IP attorneys work and that an increase in practising fees might lead to a reduction in the number of attorneys and/or firms on the register(s). However, the Board's experience was that many individual attorneys and firms see commercial value in being able to tell their clients that they are regulated by IPReg and the protection that brings. It was also noted that IPReg's fees and the absolute increases that had been consulted on were relatively low compared to other legal regulators.
- 4.3 The Chair explained that CIPA and CITMA had asked that consultations on fees were not held in August as this was the summer holiday period. The Board noted that this timing was driven by the need to get LSB approval of practising fees in order to be able to implement them in time for the re-registration process. The Board noted that a significantly earlier start to the consultation process could mean that the projected budget figures would be less accurate. This was particularly significant because, where an increase is proposed, the LSB required

budget projections for three years (although these are not binding). However, it would consider beginning discussions with CIPA and CITMA earlier than it had done in the past.

4.4 FG reported that she had had reviewed the business plan and resource needs during the consultation period and in the light of the responses received. This review had highlighted the need for a 2-3-year business plan rather than one that only covered one year. FG explained that, in addition to the business as usual activities, there are core business needs (a new database/CRM system and a review of the regulatory arrangements) to be addressed in the next 2-3 year period. There was also a possible office move prior to the expiry of IPReg's current lease in February 2020 and before the start of the 2020 fee collection process in Q4 2019.

4.5 The Board noted that it would be difficult to provide sufficient financial or staff resources to cover the costs of the new database/CRM system and office move concurrently with a review of the regulatory arrangements. The Board discussed amending the 2019/20 Business Plan so that the focus (in addition to business as usual activities) for the next 9-12 months would be developing and implementing the new database/CRM system and a possible office move, and that work on reviewing IPReg's regulatory arrangements would not start in earnest until that work is substantially complete.

4.6 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] The Board noted that there was a logic behind focusing on the new database/CRM system prior to the review of the regulatory arrangements as the review would be likely to include, amongst other things, changes to the fee-paying categories; these cannot be implemented on IPReg's current system and so a more flexible system would have to be in place prior to any changes to the regulatory arrangements.

4.7 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] The Board noted that a new CRM system would be more user-friendly and efficient for registrants. Invoicing would be integrated and there would be a requirement for on-line applications. The new CRM system should also lead to staff cost savings for IPReg as it would not have to employ temporary staff or pay for extra time of existing staff during the annual renewal process.

4.8 Having discussed all the issues raised by the respondents, the need for a new CRM and possible office move, the Board then discussed the implications for the 2019 budget. FG explained that it was clear from the responses to the consultation that a large fee increase (e.g. of RPI + 10%) was particularly unacceptable. Different scenarios of lower fee increases

(RPI, 5%, 6% and RPI + 5%) had therefore been modelled. These included provision of an extra £30k or £50k for additional staff time to develop and implement a new CRM in 2019 and for recruitment of a paralegal in 2020 to enable better use of more experienced staff. They also included using reserves to fund, amongst other things, the new CRM external costs and costs associated with relocation. In each case, the likely budget deficit and the impact on reserves had also been modelled. The income projections included an estimate of admission of 124 attorneys each year, based on previous years' figures; no provision had been made for entity admissions since these could not be predicted with any certainty. The Board noted that the figure for anticipated income for 2018 had increased from £806k to £814k since the consultation was published.

4.9 The analysis showed that in all but one scenario (an increase of RPI+5% and an additional £30k) there would be likely to be a budget deficit (with the consequent impact on reserves of funding the deficit). The analysis showed that the Reserves Policy could be breached by the end of 2019 in a number of the scenarios.

4.10 The Board discussed the different scenarios and the implications they had for meeting the Board's objective of ensuring that IPReg is as effective and efficient as possible in the way it discharges its regulatory functions. The Board considered that it was important to provide a better service to registrants, improved information for consumers and good quality data on the market(s) it regulates. This would further help to ensure that IPReg's approach to regulation is targeted and proportionate.

4.11 Taking into account the: responses to the consultation; updated budget information; modelling of different fee increases; [REDACTED] the Board decided that, in its judgement, it would be a proper exercise of its regulatory powers to:

- adopt a 2-3 year Business Plan that prioritised in 2019 the development of a new CRM (to be in place by September/October) and a possible office move prior to Q4;
- delay the full review of its regulatory arrangements until 2020, but take the opportunity during 2019 to discuss its approach to the review as widely as possible; and
- use a significant amount of its reserves (£154.5k) to finance, amongst other things, the development and implementation of the new CRM.

4.12 The Board then agreed that, taking into account: the need for a 2-3 year Business Plan and use of reserves; the issues set out in the papers and its discussion of them; in its judgement, in order to discharge its regulatory functions in a way that is compatible with the regulatory objectives and the principles of better regulation it was necessary that:

- all 2019 practising fees should increase by RPI (3.8%) plus 5%; and
- the Practice Fee Regulations should therefore be amended as set out at Annex A to the paper.

The Board delegated authority to the Chair and CEO to finalise the application to the LSB, including the revised Business Plan and income projections for the next three years based on fee increases of RPI in 2020 and 2021.

Action: FG/CS to finalise application to the LSB

Action: KD to provide 3 years of budget projections for the November Board

4.13 The Board discussed whether it should stop the custom and practice of not charging practising fees for attorneys who register between 1 November and 31 December each year and decided that, as there were a number of issues involving fees to be considered, the issue should be dealt with as part of a wider review and the November/December waiver should remain.

4.14 KD left the meeting.

5 Minutes of July 2018 meeting and matters arising

5.1 FG reported against the item 10.2 of the July 2018 minutes that IPReg had made its £1,000 contribution to IP Inclusive to be used for its website upgrade. The Board agreed the minutes of the July 2018 meeting.

6 Action Log

6.1 SE reported against the action arising from item 4(d) of the October 2017 Board meeting that IPReg was meeting PAMIA on 18 October. The Board noted the Action Log.

7 Chair and CEO activities (not covered elsewhere)

7.1 Discussions with CIPA/CITMA (CS/SG)

SG reported that he, the Chair, NW and SE (as deputy for FG) had attended a positive and constructive meeting with CIPA and CITMA where they had discussed in detail the proposed 2019 Business Plan, budget and practising fees.

7.2 MoJ policy officers 17 August (FG)

[REDACTED]

7.3 LSB CEO 17 August (FG)

[REDACTED]

7.4 LSB IGR workshop 22 August (SE)

SE reported that she had attended the LSB’s IGR workshop for the regulatory bodies. The LSB had explained that the aim of the new IGRs would be to provide greater clarity and they would include a pro-active requirement to report non-compliance. The IGRs would be high-level but with principled detail underpinning them. The draft IGRs would be considered by the LSB’s Board in October, with consultation from mid-November for 6 weeks, a finalised draft in January and final Board decision in February.

7.5 3 x CEOs 29 August (FG)

[REDACTED]

7.6 MoJ – [REDACTED] (FG)

[REDACTED]

8 Risk Register

8.1 [REDACTED]

the annual re-registration process. Reminders will continue to be sent every month until the CPD compliance deadline on 1 January.

[REDACTED]

12 Regulatory Statement

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