

The Patent Regulation Board and the Trade Mark Regulation Board

Agenda

Tuesday 2 November 2021 at 1pm

Gatehouse Chambers, 1 Lady Hale Gate (Gray's Inn), London WC1X 8B

1. Apologies
2. Notification of any conflicts of interest

PART A – NON-CONFIDENTIAL ITEMS

3. Minutes of September 2021 meeting and matters arising
4. Confirmation of decisions taken by email/Chair:
 - a. Compensation arrangements – rule change submission to LSB + RSA complaint
 - b. Appointment of external auditor
5. Action Log (FG)
6. Education Working Group Update (VS/CS)
7. Mercer Review (VS/CS)
8. Governance matters (FG)
9. Progress on Review of regulatory arrangements (EL)
10. Other activities (not covered elsewhere):
 - a. 3 x CEOs: 29 September, 28 October (FG)
 - b. Cost Lawyers Standards Board (CLSB) – Regulators Pioneer Fund challenge group (Chair/FG)

PART B –CONFIDENTIAL ITEMS

11. Complaints update (SE)
12. Registered Professions Advisory Forum- no paper (SE)

13. Red risks (FG)

14. Finance – budget 9me 30 September – to note

15. LSB issues

- a. **Number of consultations/information requests in next 6 months; other LSB meetings and webinars; feedback from Regulators' Forum (FG/SE/VS)**
- b. **2021 Annual regulatory performance assessment – response (FG)**

16. Regulatory Statement

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

IPReg Board Meeting Actions Log - New and Outstanding Actions

Date of Meeting in which action arose	Agenda Item	Action	Responsibility	Status	Notes/Update
September 2021 Board Meeting					
Sep-21	Audit Re-tender	Seek other tenders for Audit	KD	Closed	New auditor appointed
Sep-21	Covid Impact upon IPReg Team	Liaise with OsiT regarding IPReg office options	FG	Ongoing	
Sep-21	Progress on Review of Regulatory Arrangements	Update LSB on the regulatory arrangements review progress	FG	Ongoing	Next update to be provided after 2 November meeting
Sep-21	Compensation Arrangements	Circulate the Compensation Arrangements rule change application to the Board	FG	Closed	
Sep-21	2022 Practising Fees, Budget and Business Plan	Revise and issue consultation document	FG	Closed	
Sep-21	Complaints Review Committee Decisions – Issues Raised	Issue notifications regarding disciplinary-based removals from Register	SE	Closed	
Sep-21	Complaints Review Committee Decisions – Issues Raised	Review approach to PAMIA renewal cycle	SE/MB	Ongoing	
July 2021 Board Meeting					
Jul-21	Progress on Review of Regulatory Arrangements	Review principles	EL/AK	Closed.	Our early engagement with stakeholders gave a good opportunity to test the principles we set for the review. We have refined our messaging in the draft consultation document (which

IPReg Board Meeting Actions Log - New and Outstanding Actions

					was reviewed by the Board sub-group on 20 October).
Jul-21	Progress on Review of Regulatory Arrangements	Map key policy proposals with risk it seeks to address	EL	Ongoing	We have structured the draft consultation document to set out the risks to consumers each proposal is intended to address. Board sub-group members reviewed this analysis on 20 October. We are now in the process of going through the draft Code requirements and mapping them against the risks each provision seeks to address.
Jul-21	BSB investigation report	Delegation Arrangements to be reviewed and paper to Board in due course	FG	Closed	Paper to 2 November Board
Jul-21	Compensation Arrangements	Develop risk profile	FG/SE/MB	Ongoing	To be developed over next 2 years
Jul-21	Governance	Advise Companies House of appointments	KD	Closed	
Jul-21	Finances	Sign and submit Financial Statements	Chair/KD	Closed	
May 2021 Board Meeting					
May-21	Consumer Bodies Engagement	Take forward engagement with consumer bodies	EL/ER	Ongoing	We have contacted a number of industry organisations (by email) that are likely to provide a consumer perspective of the IP legal market. We will write to these bodies as part of the consultation and hope to obtain some feedback.

IPReg Board Meeting Actions Log - New and Outstanding Actions

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	Open	
May-21	IPReg Limited - Auditors	Re-tender for auditors	KD	Closed	
May-21	IPReg Limited - Governance	Update Register of Interests	KH	Closed	To be considered by 2 November Board
May-21	Complaints Update - debt recovery	Pursue bankruptcy petition	SE	Ongoing	Petition filed but not yet served due to Court delay. £5k voluntary payment made
March 2021 Board Meeting					
Mar-21	IPReg Accreditation Handbook	Consult on Accreditation Handbook with qualification agencies	VS/CS	Completed	Updated Accreditation Handbook issued
Mar-21	Historic Examinations Exemptions Consultation	Take forward rule change application to LSB	VS/SE	Completed	Sunset clause triggered as at 1 August 2021 (closes on 31 January 2023)
Mar-21	Mutual Recognition of Qualifications	[REDACTED]	SE	Ongoing	[REDACTED]
January 2021 Board Meeting					

IPReg Board Meeting Actions Log - New and Outstanding Actions

Jan-21	Covid-19 – Impact on IPReg team	Report any relevant issues to LSB	FG	Ongoing	
Jan-21	LSB - Regulatory Performance Framework	Formalise process of considering whether to expedite complaints	SE/MB	Ongoing	
Jan-21	LSB - Regulatory Performance Framework	Continue to liaise with LSB on its survey on small businesses	VS/FG	Ongoing	Contacted Tom May on 8 October, who advised a slight delay on delivery of the dataset to the LSB, expects to provide IPReg with access well ahead of Christmas
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	
January 2020 Board Meeting					
Oct-19	LSB CEO Meeting	Invite Matthew Hill to Board meeting	FG	Open	Discussed with Matthew. Date TBC
April 2019 Board meeting					
Apr-19	Queen Mary University London - progress report	Continue to monitor and take action as required	Education Working Group	Ongoing	

Board Meeting 2 November 2021

Information Paper: Education Working Group Update

Agenda Item: 6

Lead Board Member: Caroline Seddon, Chair of Education 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 (the EWG reports to Board, it does not have delegated authority of its own):

- 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.

1.2 The EWG is chaired by Caroline Seddon, and its members are Lord Smith, Alan Kershaw, Emma Reeve and Nigel Robinson, with officers in attendance Victoria Swan and Shelley Edwards.

1.3 This paper seeks to provide an overview of the activities of the EWG since those reported to the 15 July 2021 meeting of the Board and includes the outputs of the 6 September meeting of the EWG meeting. As the individual who will provide the independent professional practitioner input to the Patent Examination Board (PEB) accreditation and whom reviewed the Competency Frameworks, Keith Howick (KH) attended the 6 September EWG meeting for the first 6 items.

2. Recommendation(s)

2.1 The Board is asked to note this paper.

3. Regulatory Objectives

3.1 Encouraging an independent, strong, diverse and effective legal profession – in its ongoing work programme, business as usual, and dedicated projects, the Education Working Group looks to promote qualification pathways which encourage the profession(s) being independent, strong, diverse and effective.

4. Work plan

4.1 Current status of EWG work plan items:

Quality Assurance Remedy	Status	Work being/to be undertaken
a) publication of accreditation assessment reports, their findings and recommendations made to qualification pathway accreditation applicant bodies	Completed	All accredited qualification agencies formally informed of new policy; the Brunel accreditation assessment report was the first to be published.
b) requiring regular updates on progress against accreditation implementation plans	Completed	Accredited agencies formally informed of new policy.
c) requiring annual reports (to include student feedback, external examiners reports findings, and improvements made as a result)	Completed	All accredited qualification agencies have submitted their first annual reports which have been considered by the Education Group and feedback given. Annual report requirements updated in June 2021 – see items 4.1-4.5 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 now live.
e) cost reflective charges for accreditation (including some allocation of officer time)	Completed	Officer time now included in accreditation exercises, notice of this published on website and mentioned in letter to all qualification agencies informing them of the Accreditation Withdrawal Policy Statement and Procedure.
f) encouraging more pathway providers – other university/ examination offers	To be scheduled	<p>a) Brunel University has confirmed it remains interested in making an application for accreditation of a Double Major Life Sciences and IP Undergraduate Programme; currently seeking confirmation from EPO as to whether it would be afforded STEM status.</p> <p>b) Preliminary informal discussions with an organisation potentially interested in making an application for accreditation of an Advanced Level Qualification.</p> <p>c) Aware of a university, new to IPReg, seeking information on accreditation from an IPReg accredited qualification agency.</p> <p>d) Look at opportunities presented by the apprenticeship levy:- preliminary desktop review undertaken.</p>
g) provision of online Frequently Asked Questions	Completed	Publication of Frequently Asked Questions which seek to address a range

		of admission queries, including current accredited pathway options, exemptions, EU admissions in light of Brexit, and experience requirements.
h) review of the Accreditation Handbook	Desktop review completed; broader review to be scheduled	Desktop review undertaken, consulted with qualification agencies, updated version of the Handbook (and annual reporting requirements) was issued in June 2021; broader review [likely 2022] will require external specialist resource and likely include Advanced Level Qualification syllabus specification (original version defined syllabus of Foundation Level Qualifications owing to the variation of offers, there being one offer each of the patent and trade mark ALQ attorneys route).
i) whether to quality assure the work-based element of attorneys' training	Not to be taken forward	Agreed at 6 October 2020 meeting of Education Group not to take forward.
j) encouraging more pathway providers – consideration given to apprenticeships	To be scheduled	See item f) above.
k) changing our overall work priorities or automating some of the process	Ongoing	For example, the recent desktop review of Accreditation Handbook in the first instance.

5. Update on 6 September Meeting of Education Group

5.1 **Patent Examination Board:** the group considered the PEB's Annual Report to IPReg¹ 2020-21 (alongside side, for context, its previously provided/commented-on Online Examinations Review). The PEB reporting was found to be thorough and transparent and the appointment of an External Examiner for the Final Diploma Examinations² was welcomed. As informed by the review of the report, requests were raised with the PEB on 8 September:-

- that consideration be given to allow more time for examination paper uploads³ in case of technical failure;
- that when known, the likely direction of travel in respect of examinations post-2021 is shared; and

¹ Introduced in April 2020, all accredited qualification agencies are required to annually report to IPReg on a range of specified metrics.

² The Foundation Certificate Examinations already had an External Examiner, appointed, as recommended by the IPReg accreditation assessment of the Foundation Certificate Examinations.

³ No response was received ahead of the 2021 set of examinations which commenced on 11 October and ended 22nd October.

- the PEB implement, as soon as practicable, measures to capture and analyse diversity data so that the PEB can assess the impact of protected characteristics on attainment.
- 5.2 The EWG also advised the PEB it will welcome its response to the CIPA-commissioned, independent, Mercer Review of the education, training and assessment arrangements of entry on the register of patent attorneys, upon the report being published⁴ – please see the Mercer Review agenda item. The Mercer Review response will help inform an agreed way forward on timing and scope of the IPReg accreditation assessment of the PEB Final Diploma examinations (in agreement with the PEB, deferred the accreditation of the Final Diploma examinations, pending the independent, dedicated 2016/17 research in to the issue of the poor pass rate of the FD4 examination, and then the Mercer Review, but the latter is much later than CIPA had originally scheduled meaning it is a significant amount of time over which these examinations have not been accredited.
- 5.3 [Competency Frameworks](#): the dedicated patent and trade mark frameworks outline skills and knowledge sets to enable trainee attorneys and supervisors to track progress towards qualification. The frameworks aim to provide useful tools in understanding the necessary breadth and depth of knowledge and experience expected upon entry on the register. Given the frameworks had not been reviewed in some time, Keith Howick, member of both the IPReg Board and the EWG, until end-June 2021, had undertaken a desktop review to reflect sector developments. The EWG approved the reviewed frameworks for publication (both as a [News Item](#) and at the dedicated [training and supervision area](#) of the website) and notification was made to both CIPA and CITMA of this. The proposed changes of substance:
- the removal of the requirements in respect of EU Trade Marks and EU Designs, given that registration as a UK Patent Attorney or UK Trade Mark Attorney will not give representation rights at the European Union Intellectual Property Office; and
 - adding requirements in respect of Hague Agreement International Designs.
- 5.4 **Nottingham Trent University (NTU) – fast track**: NTU is accredited to provide the Professional Certificate in Trade Mark Practice (PCTMP), the Advanced Level Qualification for the Trade Mark Attorney qualification pathway. Since the 2010-11 winding down of the Joint Examination Board (JEB), and the commencement of the transitional arrangements, NTU has provided an intensive version of the PCTMP, initially established for those with historic JEB passes, but over time a pathway used more frequently (though not prolifically⁵) by solicitors.
- 5.5 Following the triggering of the sunset clause – see item 6.1 below - NTU advised that it would not seek to offer the intensive course for either JEB or solicitors, teaching it out in the 2021-22 academic year. This raised concerns that solicitors would not be afforded a fast track to qualification. However, discussions with the NTU programme team, on behalf of the EWG, determined that course duration, cost and examination diet would remain the same for solicitors, it is how the course will be offered that will vary (by providing full exemption to the litigation module and to elements of other modules), meaning no differentiation of offer or outcome (only a variance in NTU administrative approach to the fast track).

⁴ The Mercer Review was published on 13 October 2021, in the midst of the PEB examinations which ran 11 October - 22 October.

⁵ Since 2017/18 course cohort: 7 solicitors have sat the intensive course (2017/18 – 2; 2018/19 – 0; 2019/20 – 2; 2020/21 – 2; 2021/22 – 1) .

5.6 **Nottingham Trent University – Higher Courts Litigation Course:** NTU is now able to run this course, commencing this month (the EWG asking that the professional membership bodies promote the course, which had been due not to run, owing to insufficient numbers).

5.7 **Regulatory Arrangements Review (RAR):** the 4 items identified by the RAR steering group for EWG to help and/or lead on, were reported:

a) Encouraging more qualification providers – captured in the Education workplan: both [redacted] and [redacted] universities have expressed interest in becoming accredited and Brunel remains interested in principle in providing a Joint Honours Life Sciences Undergraduate Degree;

b) Basic Litigation Skills Certificate – [redacted]

c) [redacted]

[redacted]

d) Impact of education and training requirements on diversity in the professions (incl. apprenticeships) – consideration of an apprenticeship option is captured in long-term Education workplan.

5.8 The EWG meeting considered a desktop review summary of apprenticeships and the associated levy⁶. The apprenticeship levy (0.5% of total annual pay bill) is a compulsory tax upon large employers (a pay bill >£3 million). The levy funds apprenticeship training, including, but not limited to, levy paying firms, with any unspent levy funds supporting existing apprentices and funding apprenticeship training for smaller employers; levy paying employers can transfer up to 25% of their levy funds. There are 600+ apprenticeship roles, 6 of which are in legal services:

Apprenticeship	Level	Typical duration	Maximum government will fund
Solicitor	7 – equivalent to Master’s Degree	60 Months	£27,000

⁶ Looking at any options for targeting the apprenticeship levy paid by the largest firms in the regulated community being a suggestion of the 15 July Board meeting.

Chartered Legal Executive	6 – equivalent to Degree	60 months	£12,000
Licensed Conveyancer	6 – equivalent to degree	18 months	£9,000
Conveyancing Technician	4 – equivalent to Higher National Certificate	12 months	£9,000
Probate Technician	4 – equivalent to Higher National Certificate	18 months	£5,000
Paralegal	3 – equivalent to A Level	24 months	£8,000

5.9 The [Institute for Apprenticeships and Technical Education \(IATS\)](#) is the independent public body which, together with employers, develops Apprenticeship Standards to meets needs of the companies and learners. The [process for developing an Apprenticeship](#):

1. [Trailblazer Group](#): responsible for developing an apprenticeship, must be a group of employers recognised by the IATS and representative of the occupation; expect those employers to employ apprentices and actively promote the apprenticeship;
2. [Developing an Occupation Proposal](#): if agreed with the Relationship Manager (RM), a proposal can be made and reviewed, with the Institute needing to agree to development;
3. [Developing Occupational Standards](#): describes the knowledge, skills and behaviours (KSBs) needed for someone to be competent in the occupation’s duties, qualifications which must be passed and how aligns with professional recognition. If agreed as suitable for an apprenticeship, the Institute will support the group in its development of the occupation standard and end-point assessment;
4. [End Point Assessment \(EPA\)](#): development of an EPA Plan, detailing the independent assessment apprentices must take post-training to determine if have the necessary KSBs;
5. [Funding Band](#): 30 funding bands, the final decision of which band lies with the Secretary of State for Education; the group will need to provide evidence as to their proposed funding band, to include at least three training provider quotes and one EPA organisation quote;
6. [Apprenticeship Builder and Submissions](#): Occupational Standard, End Point Assessment and Funding Evidence must be submitted together via the Apprenticeship Builder; 2 approval cycle submission slots with RM (one for this submission and item 2, before it)
7. [Approval Process](#): 15 employer route panels make a recommendation to the Approvals and Funding Committee which makes the final decision. If approved, an apprenticeship will be funded only when an EPA organisation has given a commitment in principle to deliver the EPA or made a successful application to the register
8. [Promoting New Apprenticeships](#): the group is expected to promote the apprenticeship throughout its development and to use the PR toolkit in doing so
9. [Revisions, Adjustments and Dispensations](#): a change request will need to be made in an instance where a need for change of an approved apprenticeship is identified.

5.10 The levy could be targeted only in the event of development of an intellectual property (attorney or related) apprenticeship(s). It was agreed it would be essential to have CIPA and CITMA on board as an apprenticeship application needs to come from employers. Accordingly, it was requested that the 3 CEOs meeting on 29 September 2021 would gauge the frequency of administrator apprentices in the sector and the appetite for apprenticeships. At the meeting, both CIPA and CITMA reported having looked at apprenticeships in the past and the conclusion they had both reached, as reported in that meeting:

- Not plausible for the attorney qualifications due to the expectation (particularly for patents) that the person will have a graduate degree⁷;
- Whilst possible for admin/paralegal roles, the framework is very complex and would require very significant resources to get anything in place;
- Likely a better use of resources to find a role that has already been agreed as part of the apprenticeship scheme more widely and use that rather than develop a sector-specific one.

5.11 The subject of apprenticeships to be subject to further discussion at a future meeting of the EWG.

6. Update on Other Items

6.1 Historic Joint Examination Board (JEB) examinations and historic courses exemptions – introducing a Sunset Clause⁸: upon Legal Service Board approval of the rule change application, the revised [Rules of Examination and Admission of Individuals to the Register](#), live as of 1 August 2021, now reflect introduction of an 18 month sunset clause to historic qualifications as set out at Schedule 3. The sunset clause closes on 31 January 2023. We have received 3 enquiries since the revised Rules went live, 2 from individuals potentially affected by the sunset clause (both of whom were advised to apply for one of this academic year’s Advanced Level Qualification offers), and one from a qualification agency, which was unsure whether it could still, as standard, offer a place to an individual to whom the sunset potentially applies (yes, if an Advanced Level Qualification, the sunset clause allowing for one more qualification cycle).

6.2 Queen Mary University London (QMUL) – Quality Concerns (Standing Agenda Item): QMUL reported that the Certificate in Intellectual Property was being reconfigured (for the 2022-23 cohort), which included a proposed 90 credit allocation breakdown to reflect significant additional learning hours which had become evident; and also that the administration team has been expanded so not reliant on a single administrator (administration of the programme has been consistently identified as an issue through the CITMA Student Survey). Upon behalf of the EWG, the following response was made:

a) Dual qualification programme credits: please see the [IPReg Accreditation Handbook](#) which requires that dual programmes have 80 credits (as identified in the Handbook a credit is generally taken to be equivalent to 10 hours learning), stipulates how 71 of those credits should be allocated, with the remaining 9 credits to be a balanced reflection of the specified Schedule A subjects (please see items 31b), 36 and 40 of the Handbook). It is against these requirements that reaccreditation of a dual qualification will be made, as it is through the reaccreditation process that any proposed programme specifications and documentation will be reviewed.

b) Programme administration: whilst the steps outlined to improve and streamline programme administration appear positive, we would bring to your attention that a recent standard

⁷ The Education Working Group Meeting of 6 September did not consider an apprenticeship and a degree are necessarily mutually exclusive.

request for information on the timing and cost of element of a QMUL programme took 3 people and > two weeks (and then only after chasing) to be fully answered (and in turn, on different days, the same sunset clause questions were asked by separate members of the programme team, indicating that neither the query nor response was internally shared). Whilst acknowledging it is a very busy time for universities, it is hoped these are internal programme team communication issues rather than reflective of communications with students”.

- 6.3 At the request of QMUL, EWG officer representatives, met, on 11 October, with the Law School Quality Manager and the new Law School Teaching and Learning Services Manager to discuss the accreditation standards and process. Given QMUL wish for proposed reconfigurations to go live in the academic year beginning September 2022, it was agreed it would be beneficial for an accreditation application to be made sooner rather than later. QMUL was advised that accreditation assessment will need to provide confidence that any recommendations are taken forward in the agreed implementation timeframe, this having been a failing of QMUL in the last accreditation round, leading to IPReg introduction of an annual reporting mechanism to include updates on implementation. Additionally, the findings of the next iteration of the CITMA Student Survey (typically issued November) will need to be taken account of.

7. Business As Usual Items for 2022

- 7.1 Accreditations of PEB Final Diploma Examinations and Queen Mary University London Foundation Level Qualifications – both are likely to be significant accreditation exercises, the former in light of the Mercer Review findings and implications for the Final Diploma Examinations, and that the FD examinations have not been subject to review under the Accreditation Handbook (pending the Mercer Review, published much later than originally scheduled); and the ongoing quality issues of the latter. Should the 3 potential other accreditation applications come to pass, these will need to be accommodated, as at item 8.5 below. The accreditation assessments themselves are undertaken by two specialist independent assessors with oversight by the IPReg office and EWG, the latter of which will make a recommendation, or not, to Board, to accredit an application. The assessments are undertaken against the standards, learning outcomes and syllabus as set out in the [IPReg Accreditation Handbook](#).
- 7.2 Annual Reporting – a mechanism introduced in 2020 as a response to QMUL (see item 5.3) failing to deliver on several accreditation commitments and timeframes, updated to include review of online examinations triggered by the Covid-19 pandemic; each of the accredited qualification agencies are required to submit an [annual report](#) which covers a range of metrics as informed by the [IPReg Accreditation Handbook](#):
- Number of students/candidates and commentary including staff-student ratio and short staff biographies (and % increase or decrease on student/candidate numbers since last year);
 - Results breakdown and commentary – pass, fail, resit rates;
 - Progression, awards, destination data – from previous year if available;
 - How any extremes of cohort entry were supported (anonymised details);
 - Diversity profile of cohort;

- Online Delivery of Learning – Provision Considerations and Quality Assurance arrangements;
- Online Delivery of Assessments – Provision Considerations and Quality Assurance arrangements;
- Student Satisfaction Surveys and changes made as a result – Summary Statement;
- Other student feedback mechanisms and changes made as a result- Summary Statement;
- Quality Assurance mechanisms and changes made as a result – Summary Statement;
- External Examiner Reports, Student Liaison Committee and Programme Board findings summary and response
- Any areas for improvement;
- Any areas of good practice;
- Accreditation recommendations update;
- Other – free text for agency to complete.

7.3 The PEB’s Annual Report for the last examination cycle has been submitted and reviewed – see item 5.1. The University of Bournemouth has recently submitted its Annual Report. Its author, [REDACTED] has confirmed the following:-

- the next iteration of the course, beginning January 2022, will be held on campus rather than online; and
- a request for further diversity profiling data, including protected characteristics, has been made to the programme administration (as data provided was limited to gender); and
- that the pandemic has triggered a significant reduction in the number of students across most programmes, though particularly acute for students (home) working full-time, early adulthood trainees and as demonstrated in the reduction in the number of patent attorneys on the course (c50 students on the patent iteration in both 2019 and 2020, down to 25 students in 2021 cohort); by contrast, they have seen an increase in the number of students on the trade mark route (14 students in 2020, 22 in 2021), a number of whom are thought to be self-funded and not currently employed.

7.4 Brunel University’s Annual Report is expected in the first half of November, with those of the universities of Nottingham and QMUL, due in December.

7.5 CITMA Student Survey - in the last quarter of each calendar year the Chartered Institute of Trade Mark Attorneys issues a feedback survey for completion by students who have recently sat, and/or are currently on, any of the trade mark attorney qualification pathways (as offered by the universities of Bournemouth, Brunel, Nottingham and QMUL). It was through the responses to this survey that CITMA, via formal letter, in February 2019, brought to IPReg’s attention the quality issues at QMUL and subsequent surveys have continued to help inform the discussions, correspondence, and oversight of QMUL. When in receipt of the winter 2021 survey findings, the EWG will review and action as determined appropriate.

7.6 European Qualifying Examinations (EQEs) – the European Patent Institute’s ongoing review of the EQEs has the potential to impact upon the exemptions currently afforded to the Patent Examination Board’s Final Diploma 2 ‘Drafting of Specifications’ and 3 ‘Amendment of

Specification Papers' should an individual have passed EQE Paper A or B, or passed the EQEs as a whole. The EWG is keeping a watching brief.

8. Work Programme

- 8.1 Mercer Review – please see dedicated agenda item; it is anticipated that the findings of the report will have significant impact upon the work of the EWG, including, but not limited to, the scope, timings and considerations of the accreditation assessment of the Final Examinations, and the Accreditation Handbook Review.
- 8.2 IPReg Accreditation Handbook Review – the Handbook went live in November 2016 and since then has been subject to desktop review in 2020-21. The two main drivers for the initial development of the Handbook were:
- a) to provide accountability and transparency regarding the standards and expectations for qualification agencies seeking IPReg accreditation, and setting out the principles and procedures applied in the process of accreditation; and
 - b) the variance in syllabus coverage and assessment of the Foundation Level Qualification (FLQ) offers (for instance, competition law accounted for a quarter of the pathway of one of the providers, rather than perhaps one lecture as would be befitting).
- 8.3 Accordingly, the Handbook set out the Core Subjects and Learning Outcomes for the FLQs, but not the ALQs, given there was one offer only for each pathway, and no variance issue to address. Whilst, there remains, for now, one ALQ offer for each pathway, as is indicated in the work programme, the EWG is clear in its ambition for there to be a choice of pathway offers at both FLQ and ALQ levels.
- 8.4 The workplan of the EWG includes a commitment to undertake a root and branch review of the Handbook, likely commencing in 2022 and requiring external resources, to include setting out the expected Core Subjects and Learning Outcomes for the ALQs, for purposes of transparency, accountability and consistency.
- 8.5 Possible first-time accreditation applications – potentially 3 known new accreditation applications might wish to be made in 2022 and should any/all of those materialise this will have resource implications for both the assessors, the office and the EWG.

Board Meeting 2 November 2021

Information paper: Mercer Review

Agenda Item: 7

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 In March 2019, the Council of the Chartered Institute of Patent Attorneys (CIPA), commissioned the Mercer Review¹. The review was triggered by the low pass rate of, and marking concerns, regarding the FD4 (Final Diploma) Infringement and Validity Examination provided by the Patent Examination Board (PEB).

1.2 The Mercer Review Call for Evidence² closed on 14 February 2020. The Mercer Review itself was published in the CIPA Journal (login required) on 8 October 2021 and then on the CIPA website on 13 October 2021 as 'A report on key considerations for all stakeholders involved in patent attorney education, training and assessment'. On 13 October, upon Lee Davies, CIPA Chief Executive, signposted IPReg to the [Mercer Review](#), the report was circulated to the Education Working Group (EWG) for information.

1.3 IPReg, as the independent legal regulator, was not involved in the Mercer Review - other than, along with other stakeholders, submitting a response (Annex B) to the Call for Evidence. However the final report contains a high number of prescriptive recommendations (rather than analysis, considerations and options) specifically for IPReg. Please see Annex A for the report's Conclusions and Recommendations.

1.4 The Foreword of the Report advises that "CIPA Council welcomes comments from all stakeholders...and asks that written responses are sent to CIPA's Chief Executive, Lee Davies, by 31 December 2021". The 8th November dedicated meeting of the EWG will include formulating that initial response.

2. Recommendation(s)

2.1 The Board is asked to note the paper and that the Education Working Group will formulate the initial response of IPReg to the report (and will bring to December Board).

2.2 The EWG welcomes comments from the Board ahead of its meeting as well as comments on the draft response to be brought to the December Board meeting.

¹ Steering Group chaired by Chris Mercer

² Mercer Review, page 2, "The responses gave us a large amount to work on, especially as some of the views were contradictory. In total, there were 48 questionnaire responses and 68 emails to review. Twenty-six of the responses represented whole firms and organisations, with the rest representing the views of individuals".

3. Risks and mitigations

<p>Regulatory Objective(s)</p>	<p><u>Encouraging an independent, strong, diverse and effective legal profession</u> – the Education Working Group will consider the Mercer Review and its findings so as to help inform the scheduled reviews of the IPReg Accreditation Handbook and the PEB Final Diploma Examinations, seeking to continue to promote and encourage qualification pathways which lead to the profession(s) being independent, strong, diverse and effective.</p>
<p>Financial</p>	<p><u>Independent governance and financial control</u>: the Mercer Review Governance Chapter states the following “IPReg should review, with CIPA, the requirement for the PEB to be independent of CIPA in terms of its governance and financial control.</p> <p>The review should include the extent to which the requirement for the PEB to be independent contributes to the financial viability of the UK patent attorney qualifying examinations and perceptions of a lack of transparency or openness. The review should evaluate other models, such as the professional examinations for legal executives, when considering what, if any, improvement could be made”.</p> <p>The Patent Examination Board was established as a Committee of the Chartered Institute of Patent Attorneys. The PEB operates from the CIPA office and its staff are employed by CIPA (and its website is part of the CIPA website). IPReg required the PEB to have independent governance and financial control to remove the conflict of interest inherent in a professional membership body overseeing the examinations (particularly given the independent recommendation of disbandment of the historic Joint Examination Board, of both CITMA and CIPA, on this basis). As above, the Mercer Review questions why the independence requirement is necessary and recommends review of these arrangements.</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
<p>Legal</p>	<p>Outcome 2 of the LSB Guidance on regulatory arrangements for education and training issued under section 162 of the Legal Services Act 2007: <i>Providers of education and training have the flexibility to determine how to deliver training, education and experience which meets the outcomes required.</i></p>

<p>Reputational</p>	<p>The FD4 Validity and Infringement examination is a long (5 hours) examination - handwritten, until the pandemic triggered online examinations - with a historically and consistently low pass rate. Back in 2016, IPReg, CIPA, and the PEB jointly commissioned Middlesex University to undertake research into the examination and the possible reasons for its consistently low pass rate. The research report (the published version is provided at Annex B, as attached to our response to the Mercer Review Call for Evidence, as made in February 2020), published in 2017, suggested consideration of the following³: preparing mentors and trainees; shadowing a real life validity and infringement opinion; review the appropriateness of hand writing for examinations (the Covid-19 pandemic triggered a need for the examinations to be provided online); whether a conventional exam is sufficient to judge the desired learning outcomes; reviewing the FD4 exam marking design scheme for upcoming exams; and aligning learning outcomes to the assessment criteria. IPReg recommended the report and its findings to both CIPA and the PEB. It was agreed that the accreditation of the Final Diploma Examinations would be scheduled for a time that allowed a period of consideration of these, with a hope that implementation might be made in 2018-2019.</p> <p>Then the 2018 round of examinations presented FD4 candidate success was even lower than typical, triggering the PEB to lower the pass rate in response. Even then, only a third of candidates passed. The announcement of this “borderlining process” triggered much social media discussion, discontent and concern⁴, prompting CIPA to announce the Mercer Review. Again, IPReg and the PEB agreed to defer the accreditation exercise until the Mercer Review report was published, given its scope would likely impact upon the framing of the examinations and would be one of the evidence source to inform that assessment exercise. Admittedly, this was initially based upon a much earlier publication of the Mercer Review which has been anticipated now for nearly a year (the consultation closed on 14 February 2020).</p> <p>Both the IPReg accreditation assessment exercise and the review of the Accreditation Handbook – through creation of a syllabus for the Advanced Level Qualifications - will seek to help the PEB address the reputational risk regarding the consistently low pass rate and assessment processes relating to the FD4 examination.</p>
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³ Our response to the Mercer Review Call for Evidence drew attention to this report and its findings (as well as our requirement for the PEB to have the Quality Assurance Agency, or a similar body, to undertake a review of the policies, procedures and processes of the PEB.

⁴ Please see [Gantry-Gate: Have your say in the Mercer Review - The IPKat \(ipkitten.blogspot.com\)](http://ipkitten.blogspot.com) for a flavour of the social media activity regarding FD4.

Resources	The Mercer Review will inform the accreditation exercise of the Final Diploma Examinations, to be undertaken by independent specialist assessors (the costs for which are recharged to the PEB), as well as the external specialist review of the IPReg Accreditation Handbook.
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4. [REDACTED]

4.1 [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

4.2 [REDACTED]

⁵ The Patent Examination Board is the only provider of the patent attorney pathway Advanced Level Qualifications (ALQ), the Final Diploma Examinations. To date, there has been no other application for accreditation of an ALQ offer (in turn, Nottingham offers the only trade mark ALQ) though there have been very preliminary discussions with other potential interested parties, as mentioned in the work plan in the Education Working Group Update elsewhere on the agenda.

5. The Mercer Review Report

5.1 The Mercer Review is separated into the four themed chapters of Skills and Knowledge, Training, Assessment and Governance:

Chapter 1 Skills and Knowledge: looks at all the skills and knowledge that a practising attorney could have and then divides them on both the basis of development stages in development of an attorney's career and whether an attorney should be assessed on them and how; includes a number of specific recommendations made regarding the syllabus coverage of the PEB examinations and 2 relating to the Litigation Skills Courses (as offered by CPD Training UK and Nottingham Trent University);

Chapter 2 Training: looks at the present training environment and the needs of a training attorney; includes recommendations which go outside of the pre-registration education system of patent attorneys, such as Continuing Professional Development recommendations for IPReg, and a recommendation for CITMA regarding the route to qualification as a Registered Trade Mark Attorney and whether should take the form of examinations as the patent attorney route does (CITMA having historically withdrawn from providing examinations, in light of the Sherr Review⁶);

Chapter 3 Assessment: looks at the current examinations arrangements and whether it considers they are suitable for assessing skills and knowledge; includes an analysis that those who passed the PEB'S FC1 Examination (Patent Law) were more successful in both the FD1 Examination (Advanced Patent Law and Practice) and FD4 (Validity and Infringement), than those who attended a university offer (Bournemouth, Brunel, and Queen Mary University London) and which leads it to make a recommendation that all trainees should be required to sit the (5) Foundation Certificate examinations (either as a standalone activity or having also sat the university courses, to then be followed by the FC examinations); and a range of recommendations regarding the PEB examinations, including different approaches to the electronic system.

Chapter 4 Governance: looks at governance, in particular, the relationship between CIPA, the PEB and IPReg; includes comments it is unconvinced of the need for there to be independent governance and financial control for the PEB, recommends creation of a set of occupational standards for patent attorneys, and testing of the agility of the existing examination system, to ensure it is responsive to a rapid change in skills and knowledge needs.

5.2 Other: the report (incorrectly) states that there are no accreditation standards for the Final Diploma Examinations. The [IPReg Accreditation Handbook](#) sets out the accreditation standards which apply to all qualification agencies on the attorney qualification pathway. It is true that the Handbook currently defines only the syllabus of the Foundation Level Qualifications. This, given the

⁶ Historically, CIPA and ITMA (as it was then), acted together as the Joint Examination Board (JEB), administering qualifying examinations for entry on to the attorney registers. The A Sherr, November 2002 Review, 'Where Science Meets Law', included a recommendation that these education and examination systems move away from the professional bodies, as was ultimately actioned through the 2010-11 winding down of the JEB (CITMA accepted the Sherr Review recommendation, CIPA set up the Patent Examination Board).

number of pathway options at Foundation Level Qualification, it was considered important to define the syllabi so that there was consistency of subject and credit coverage across all offers. Given there is currently only one Advanced Level Qualification offer for each of the patent and trade mark routes, the driver for defining the syllabus was lessened. However, given the work programme of the Education Working Group includes the commitment to encourage a diversity of qualification offers, there is now more of a need for this to be defined and as IPReg has been publicly clear, for this reason, the Accreditation Handbook awaited the Mercer Review.

6. Recommendation(s)

6.1 The Board is asked to note the Mercer Review, and that the analysis of which will help inform the accreditation assessment of the Final Diploma Examinations; and the review of the IPReg Accreditation Handbook.

6.2 The EWG welcomes comments from the Board ahead of its meeting as well as comments on the draft response to be brought to the December Board meeting.

Annex A – Mercer Review Conclusions and Recommendations, October 2021

Annex B – IPReg Response to the Mercer Review Call for Evidence, February 2020

ANNEX A – MERCER REVIEW CONCLUSIONS AND RECOMMENDATIONS

CHAPTER 1 SKILLS AND KNOWLEDGE

1. The FC examinations should focus on the core knowledge and skills required by a patent attorney. This will include some basic knowledge of trade mark, design and copyright law, but this should be commensurate with what a patent attorney is likely to face in day-to-day practice. However, the syllabus should include all the 'black-letter' law (basic standard elements or principles) which is relevant for the LSC, so that this law does not need to be duplicated by the LSC.

- The scope of the International Law syllabus be revised to focus on core areas (EP, PCT, US, JP, CN) and instances where there are significant/important differences in patent law (e.g. 30 vs 31-month national phase entry, allowability of method of treatment or second medical use claims, allowability of computer programs as such). Questions should be structured to give sufficient choice for candidates working in different sectors, where the relative importance of countries may differ. We also questioned to what extent it is necessary to examine international law relating to trade marks, designs and copyright.
- All candidates should have a good knowledge of professional ethics prior to registration, and before undertaking the LSC.
- All candidates should have a good knowledge of evidence for the UK court system as it applies to patents and before undertaking the LSC.

5.2. We considered whether the Foundation Certificate should include any elements of drafting or invention spotting, but concluded that:

- candidates were unlikely to have obtained much practical experience by the time of sitting the examinations;
- it would increase the amount of subject matter examined at this stage; and
- it can be adequately examined at Finals/EQE level.

5.3. On the basis of the responses, we concluded that the FD examinations generally cover the relevant areas and are set at an appropriate level, but that they have become overcomplicated and too long, in particular FD4. Thus, we recommend that:

- FD2 should be limited to drafting a patent application, relating to generally-accessible technology, suitable for filing at the IPO in a form where the claims are clear, novel and arguably inventive over the prior art presented in the question and where the description is sufficient;
- FD3 should be limited to answering an official letter from the IPO which raises novelty and inventive step objections and providing a set of claims which deals with the objections and which does not add matter or lack clarity;
- FD4 should be limited to requiring the candidates to demonstrate that they can construe a set of claims according to the case law in the UK, evaluate prior art, determine whether the claims as construed are novel and inventive over that prior art and determine whether the

activities of a potential infringer are infringing acts under UK law and should not require detailed advice on points not relevant to the main topics;

- FD1 should not cover any of the areas covered by the other examinations but should include at least one question about a situation which could arise in litigation of a patent in the UK courts, involving application of the black-letter law on litigation which should be part of the FC syllabus (see above); and
- Similarly, FD2, FD3 and FD4 should not require advice on points which are examined in FD1; there should be less overlap between the content of the syllabi and examinations.

5.4. Any changes to the syllabi for the Foundation and Final examinations should be reviewed to ensure that, as far as possible, they encourage an increase of diversity and inclusion in the profession”.

CHAPTER 2 TRAINING

“8.1. The issues raised by the responses were discussed to see if a consensus position could be found.

8.2. We consider that more information should be given to those who are entering the profession so that they understand what they are getting into. In this respect, we recommend that:

- CIPA should provide better information on its website about what is required to enter the profession and to progress in the profession and keep such information under review;
- CIPA should provide such information to careers services;
- the PEB should make its website easier to navigate;
- IPReg should support registrants
- in making available to any possible recruit details of the training scheme which the recruit will follow, preferably in the form of a training contract; and
- The Informals should continue, with the support of CIPA, its efforts to assist possible recruits in understanding such information.

8.3. We considered that candidates should have available as many ways of being trained as possible, so as to enable recruits from any background to be trained, but that all ways of being trained should lead to the candidate being able to meet the standard set out in Chapter 1 at each level of qualification. In order for the same standard to be reached by all candidates, we recommend that:

that a common examination should be passed by all candidates at each stage.

This avoids any problems which may arise from any differences between the examinations presently available to test the candidates for fitness to move onto the FD examinations. This should allow any provider to provide training, in whatever format the provider wishes to offer. The cost of providing the training should be able to be reduced as the requirement for setting and marking examinations would be removed from the training providers. There would be no need to accredit the providers as market forces would operate to eliminate unsatisfactory providers.

8.4. It is envisaged that providers could use any of the formats currently in use but that it would be possible for other providers to come into the market with different formats. The digital revolution would allow providers to use face-to-face and/or digital teaching and different training schedules. The providers should be able to adapt the teaching to the circumstances of each candidate and his or her employer.

8.5. We also recommend that:

- CIPA should continue to provide train the trainer and other support for those providing training;
- IPReg should accredit the syllabi for the FC and FD examinations and the PEB for setting the FC and FD examinations;
- IPReg should require all candidates to take the PEB FC and FD examinations;
- Any provider should be allowed to provide training for the FC and FD examinations without requiring any accreditation; and
- CIPA and the Informals should co-operate to determine what formats of training are lacking and encourage providers to provide such training.

8.6. On the matter of a minimum training period, we were of the opinion that there was no need to impose such a period. It was felt that the requirement of IPReg for two years' service under a registrant or four years' service otherwise, as well as having passed the FD examinations, was sufficient. The candidates in most cases also have a minimum training period imposed on them by the EQE and so another, possibly different, training period, would be confusing.

8.7. However, it was considered that there is too much pressure on candidates to take the examinations too early to improve career prospects and increase salary. This can be counterproductive as it can induce candidates to take examinations for which they are not properly prepared and then fail. It has been shown that the chances of passing a failed paper, especially FD4, tend to go down. It was felt that not enough candidates use the modular nature of the FD examinations to their advantage. We therefore recommend that:

CIPA and IPReg should encourage its members and registrants to adopt career progression systems which are not solely linked to examination success and training systems which encourage candidates to make use of the modular system so that they take any particular examination only when they appear to be ready to take that examination.

8.8. On the LSC [Litigation Skills Course], we saw that there are advantages in any candidate having the skills taught by the course, not only for UK litigation but also for opposition proceedings before the EPO and litigation in other jurisdictions. However, it was considered that much of the ground covered in the LSC is black-letter law, which should be covered in the FC syllabus and examination, and advising on litigation situations, which should be covered by the FD1 syllabus and examination. Thus, we recommend that:

the LSC course should be cut down to the practical matters of advocacy and the preparation for advocacy; and the black-letter law content of the LSC should be transferred to the FC syllabus and examination, the application of the black-letter law in giving written advice to a client should be transferred to the FD1 syllabus and examination and the practical aspects of the course should be retained in a reduced assessed LSC.

Such practical matters, in our view, cannot be examined in a written examination.

8.9. We consider that there should be a CPD requirement for all registrants and it should be compulsory to report on meeting the CPD requirement to IPReg. We consider that the onus for carrying out CPD should be on each registrant individually and that each registrant should be prepared to provide details of her or his CPD to IPReg on a random basis.

8.10. We also consider that there should be opportunities for registrants to expand their areas of expertise but these should generally be voluntary. We welcome CIPA's decision to make all its webinars more widely available and to expand the scope of the webinars. IPReg and CIPA should also encourage other providers to offer training in non-examined areas.

8.11. There are three areas, trade marks, practical litigation skills and higher court advocacy, where it was questioned whether there should be assessed training.

8.12. As regards trade marks, it used to be possible to become a dual-qualified attorney by an on-the-job examination route. However, at present, it is only possible to become a registered trade mark attorney by following a university course. It is felt that this reduces access to the trade mark profession. Since entry on the trade mark register is the responsibility of IPReg, it is considered that any training for entry onto the register should be assessed by examination. We therefore recommend that:

IPReg, CIPA and CITMA should investigate whether there should be a route to registration as a trade mark attorney other than via a university course, for instance by an advanced examination at the same level of the FD examinations or by following an assessed training course.

8.13. As regards practical litigation skills, it is considered that it should be compulsory for all registered patent attorneys to complete an assessed course on this subject. However, this course should be limited to the practical aspects of litigation skills and that the other parts of the present course should be incorporated into the FC and FD syllabi and examinations (see above).

8.14. As regards higher court advocacy, we consider that the training for this subject should remain as it is, with a requirement to follow an assessed training course before the grant of a certificate".

CHAPTER 3 ASSESSMENT

“12.1. In light of the above, we therefore recommend that:

IPReg, CIPA and the PEB investigate whether early registration of candidates should be implemented.

12.2. We also recommend that:

qualification for the Foundation Certificate should be via the PEB FC examinations, with all course providers teaching to the same syllabus.

12.3. We also recommend that:

- the PEB has as a continuing task of ensuring that the content of each FD examination remains limited to its core area; and
- the PEB has a continuing task of ensuring that the length of all the FD examinations is maintained in a defined size range from year to year.

12.4. We also recommend that:

- the PEB does not make available marking schedules (as occurs with the EQEs) to candidates but provides more detailed examination reports and provides train-the-trainer sessions immediately after release of the results for any FD paper; and
- the PEB should make it clear that, for each of papers FD2, FD3 and FD4 and for each questions in paper FD1, the examiners are looking to see whether the answer as a whole merits a passing mark so that candidates do not concentrate on ‘mark gathering’.

12.5. We also recommend that:

- when taking the FC and FD examinations, candidates should have read-only access to a limited selection of sources to be determined by the PEB.

12.6. We also recommend that:

- the FC and FD examinations should continue to be held online and, if appropriate, should use the same system as is used for the EQE.

12.7. We also recommend that:

- the PEB, together with IPReg and CIPA, should investigate the use of the electronic examination system used for the EQE to see whether it can be adapted to meet the requirements of the FC and FD examinations and allow read-only access to selected sources;

- the PEB should adapt the examinations and marking schedules as necessary so that the maximum working time for any examination can be limited to four working hours, excluding any additional time that is required for e.g. students with reasonable adjustments, breaks, or uploading/downloading time; and
- the PEB and IPReg should consider whether the invigilation system used by the system is sufficient.

12.8. We also recommend that:

- the PEB, IPReg and CIPA should encourage employers to support their candidates in effective use of the modular examination systems without affecting career progression; and
- the PEB, IPReg and CIPA should look at the scheduling of the UK examinations once more is known about how the proposed changes to the EQEs will be implemented in 2024 and beyond, so as to avoid potential clashes.

12.9. We also recommend that:

- the PEB, IPReg and CIPA should investigate whether having two sittings a year is a practical proposition.

12.10. If, as expected, the UK examination system remains in electronic format, we recommend that:

- the examinations should be spread over two weeks so that there is a gap of a day between each FD paper and there is only one FC paper per day.

12.11. We also recommend that:

- IPReg, with the assistance of the PEB and CIPA, should investigate whether the exemptions from FD2 and FD3 in light of a full pass of the EQE are appropriate.

12.12. As noted at the end of chapter 3, any changes should be reviewed to ensure that, as far as possible, they encourage an increase of diversity and inclusion in the profession”.

CHAPTER 4 GOVERNANCE

“4.1. In light of the above, we recommend that:

- IPReg should review, with CIPA, the requirement for the PEB to be independent of CIPA in terms of its governance and financial control.

The review should include the extent to which the requirement for the PEB to be independent contributes to the financial viability of the UK patent attorney qualifying examinations and perceptions of a lack of transparency or openness. The review should evaluate other models, such as

the professional examinations for legal executives, when considering what, if any, improvement could be made.

4.2. We also recommend that:

IPReg should create a set of occupational standards for patent attorneys.

The occupational standards will provide the framework for the establishment of the syllabus for trainee patent attorneys, identifying what knowledge and skills need to be acquired and assessed. The occupational standards can form the basis for the accreditation of examining bodies and the guidance of training providers such as universities. This should be more developed and detailed than the existing IPReg Competency Framework.

4.3. With the establishment of a set of occupational standards, and for the reasons given above, IPReg should consider requiring all trainees to pass a common set of examinations, regardless of the training route undertaken. Where trainees undertake university courses, as is often the case at foundation level, the trainees should sit the relevant examination papers to ensure that the occupational standards have been met. Occupational standards will open up the market to other training providers, who may provide courses or other types of learning such as remote learning, to prepare trainees for examination.

4.4. We also recommend that:

IPReg should test the agility of the existing examination system, to ensure that it can be responsive to a rapid change in the skills and knowledge required by the patent attorney profession.

For example, the pandemic has significantly accelerated to move towards videoconferencing for proceedings before the EPO and other bodies. Patent attorneys are addressing this through CPD and future patent attorneys will need to have this incorporated into initial training and assessment”.

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12 February 2020

Dear Chris

Mercer Review - Call for Evidence

This letter sets out IPReg's response to the Call for Evidence of the "Mercer Review of the Education, Training and Assessment of UK Chartered Patent Attorneys" as issued by CIPA on 6 December 2019.

FD4 Infringement and Validity Examination - jointly commissioned research

We welcome the review in light of the concerns of examination candidates (and an examiner), as well as attorney firms, regarding the Patent Examination Board (PEB) examination process, particularly the awarding process of the FD4 Validity and Infringement Examination in the 2018 cohort.

In relation to that particular exam we would seek to remind stakeholders of the Quality Assurance Agency (QAA)'s 2015 review of the policies, procedures and processes of the PEB. This was a programme of work which IPReg funded and which established a Steering Group, including representatives from the PEB, CIPA and the IP Federation, to commission and manage independent research into this matter.

The outcomes included a recommendation to the PEB to investigate the consistently poor candidate success rate in the FD4 Infringement and Validity examination. The emerging considerations/possible solutions as suggested by the Middlesex University Research Team (Institute for Work Based Learning and the School of Law) related to preparing mentors and trainers; shadowing a real life infringement and validity opinion; the appropriateness of hand-writing for examinations; whether a conventional exam is sufficient to judge the desired learning outcomes; reviewing the FD4 exam marking design scheme for upcoming exams, and aligning learning outcomes to the assessment criteria.

There may be elements of these findings which might still prove beneficial to help answer the ongoing concerns regarding this examination. They might also in fact be considered for broader application across other PEB examinations where appropriate. I enclose a copy of the 2015 report for completeness.

Scope of review

The scope of review appears significantly broader than the particular FD4 concern, and indeed wider than the PEB examinations themselves, including as it does questions regarding regulatory arrangements such as Continuing Professional Development (CPD). It is inherently legitimate for CIPA to have a view on such regulatory arrangements and we will very much welcome a response from CIPA on the CPD consultation which IPReg will hold in due course (as part of our publicly scheduled regulatory arrangements review).

However, we would emphasise that CIPA has delegated the discharge of its regulatory functions to IPReg. Consequently, any CIPA views on these arrangements as a result of the Mercer Review can be made only in the capacity of representative body.

The call for evidence asks for views on the relationship between IPReg, CIPA and the PEB. The framework for the relationship between IPReg and CIPA is set out by the requirements of the Legal Services Board's Internal Governance Rules and the Legal Services Act 2007. The relationship between IPReg and the PEB arises from IPReg's regulatory arrangements including the requirements of our Accreditation Handbook. We do, however, consider that it would be appropriate for the review to consider whether it remains appropriate for the PEB to be a committee of CIPA when all the other examination agencies are independent bodies.

More generally, we suggest that the review should also consider whether any competition concerns are raised by the structure and membership of the PEB and the fact that the PEB is the monopoly provider of the Advanced Level Qualifications for the patent attorney qualification route. We note, for example, that it appears from a recent advert that only CIPA members can [apply](#) for the role of an examiner (the link requires the user to log in to their CIPA account). We recognise that an examiner obviously needs to be an experienced practitioner, but it is not clear to IPReg why the role may be open only to CIPA members. We also note that although the PEB's constitution requires it to be "financially self-supporting" there is limited transparency as to its actual costs. Without transparency as to the true cost of the PEB, alternative providers are unlikely to enter the market, thus limiting choice for prospective patent attorneys as to their route to qualification. Additionally, the Call for Evidence document and website provides little detail on the structure and membership of the PEB, meaning stakeholders may consider more transparency is needed before being able to consider the relationship between CIPA and the PEB in a properly informed way.

IPReg Accreditation Handbook - accreditation standards, subject and learning outcome requirements

For completeness, we would like to bring to your attention that [the IPReg Accreditation Handbook](#) sets out the standards and (Foundation Level Qualification) core subjects requirements of accredited examination and course providers and on which we consulted with all accredited agencies and CIPA and CITMA.

Following a strategic review last year of our accreditation processes, including lessons learned from accreditation exercises, the following provisions were approved by the IPReg Board last year:

- publication on the IPReg website of accreditation assessment reports, their findings and recommendations; and
- requirement, and publication, of regular updates on progress against accreditation recommendations.

These remedies seek to mitigate the risks associated with a lack of transparency of accreditation assessment findings and the risk that accreditation recommendations may not be taken forward within appropriate timeframes.

The IPReg Board is continuing a strategic review of the following:

- whether to require annual reports from providers as part of their maintenance of accreditation status (to include student feedback and improvements made as a result);
- development of a process for withdrawing accreditation from providers which do not continue to meet the accreditation standards;
- encouragement of new qualification pathway providers (likely to include universities, examination bodies and consideration to be given to creation of an apprenticeship scheme);
- whether to apply cost reflective charges for accreditation (to fully account for the substantial administrative costs which presently fall on IPReg); and
- review of the IPReg Accreditation Handbook.

The IPReg Board looks forward to the Mercer Review's recommendations for improving the standards of assessment in patent attorney qualification pathways.

Yours sincerely,

Lord Smith of Finsbury

A handwritten signature in black ink, appearing to read 'Chris Smith', with a horizontal line underneath.

Chair, Intellectual Property Regulation Board

Enc. Middlesex University FD4 Research Report

FD4/P6 EXAM REVIEW

Publication Report

Middlesex University Research Team

Institute for Work Based Learning (IWBL) and the School of Law

Professor Carol Costley

Professor David Boud

Dr Nico Pizzolato

Susan Scott-Hunt

Dr Lisa Clarke

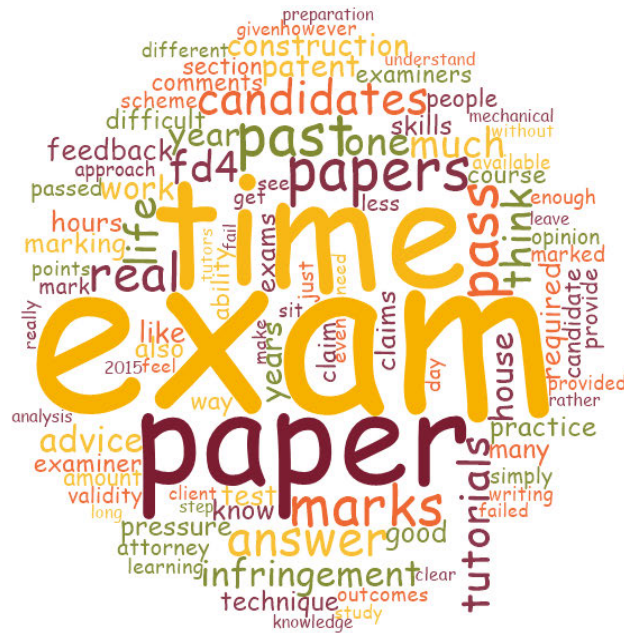
Project Lead

Assessment Expert

IWBL Senior Researcher

School of Law Senior Researcher

Research Fellow



6th March 2017

Abstract

The main focus of the current research project was to investigate issues prompted by the low and variable pass rate for trainee Patent Attorneys taking the FD4/P6 examination paper. The specific aims of the research were to review: the adequacy of the preparation of candidates for the FD4 examination; the appropriateness of the current assessment methodology; the extent to which the current teaching, learning and assessment arrangements are in line with leading pedagogical practice in the area, and the appropriateness of the technical content of the assessment, given the different technical backgrounds of the candidates.

The research project adopted a mixed methods approach, employing both qualitative and quantitative research tools to gauge the breadth and depth of candidate preparedness in training to qualify as a Registered Patent Attorney and to examine the effects of the design of the examination on how candidates prepare. Initially, an online candidates survey was conducted among the 2014 and 2015 cohorts. The next phase of the research involved conducting in-depth telephone interviews with key stakeholders of the FD4/P6 exam, in this case, examiners, tutors and mentors, and employers. The semi-structured interviews with key stakeholders of the FD4/P6 exam provided an opportunity to validate (or not) the concerns and issues arising in the candidates survey.

The findings revealed that there were mixed views regarding the perceived 'fairness' of the FD4/P6 exam in terms of the technical content. Candidates in the survey and the majority of employers felt that the FD4/P6 exam tended to favour trainees from a mechanical engineering background and disadvantage those from a chemistry, life sciences or electronics background. However, the majority of examiners, tutors and mentors indicated that the technical subject matter of the FD4/P6 exam paper was not technically demanding, since it was based on everyday mechanical devices. Nor did the outcome of the exam support this perceived technical bias. In terms of tutor support, one concern identified by some of the candidates in the survey was that tutors who had passed the FD4/P6 exam a long time ago would be employing out-of-date techniques in their training. This view was not shared by many tutors who indicated that they kept abreast of the requirements of or changes to the FD4/P6 exam through their trainees or, more importantly, by doing the paper themselves.

There were mixed views on the important issue concerning whether the FD4/P6 exam appropriately tests knowledge and skills in infringement and validity. The majority of employers thought that the exam was well aligned with real life practice. Some, however, noted that the 'artificiality' of the exam precluded the testing of commercial reality and client care skills. A notable finding was the level of uncertainty expressed by some examiners when

asked about how effectively the learning outcomes were met by the assessment process, commenting that the FD4/P6 exam was not an academic exercise but rather a test of practical skills. In addition, some of the examiners and employers were concerned about the 'strict marking schedule' for the FD4 exam, such that marks appeared to be given away for trivial points which did not reflect real life patent practice nor test the overall competence of candidates in advising their client. There was consensus amongst all stakeholders about calls for greater transparency of the FD4/P6 exam paper in terms of how the examiners write the questions and what they are looking for in the allocation of marks, in order to bridge the gap in understanding between examiners' expectations and what is required of candidates to pass the FD4 exam.

Practising past papers was the main pedagogic approach by examiners, employers, tutors and mentors in preparing candidates for the FD4/P6 exam. Other effective techniques put forward by key stakeholders included: attempt all parts of the paper; be consistent in the analysis; and think about the paper as a whole.

Overall, candidates attributed failure of the exam to inadequacy in the transparency of the exam requirements and lack of training/support, rather than their own lack of preparation. Candidates who passed thought that they were greatly assisted by training, guidance and feedback opportunities, employing strategies for passing and exam preparedness.

Practical suggestions to tackle the issue of the low and variable pass rate of the FD4 exam have been generated from the findings in this report and include: 'training the trainers'; the opportunity for trainees to shadow a real life validity and infringement opinion; reviewing the appropriateness of the exam format in terms of implementing computer-based examinations and enhancing the focus of the FD4 exam to one that is developmental and has a practice requirement, such as doing coursework, undertaking a viva or a case study; reviewing the FD4 exam mark scheme for upcoming exams; and aligning the learning outcomes to the assessment criteria.

Background to the Project

The Intellectual Property Regulation Board (IPReg) had commissioned research by Middlesex University into a review of a specific part of the examinations necessary to qualify as a patent attorney, based on the Quality Assurance Agency's (QAA) report (2015)¹ about the apparently low and variable pass rates of the FD4/P6 exam. The FD4/P6 exam paper tests the knowledge and skills expected of a registered patent attorney in advising on UK patent infringement and validity issues.

Using PEB data for all candidates, the FD4/P6 exam pass rates have fluctuated over the years, but it still has the lowest average pass rate of all the Final Diploma papers in the last five years, reaching as low as 36.45% in 2012, rising to 41.62% in 2014 but then dropping to 38.81% in 2015.

Following the QAA recommendation to investigate carefully the reasons why the FD4/P6 exam paper should have had such a poor candidate success rate over an extended period, the Patent Examination Board (PEB) in collaboration with IPReg, agreed on IPReg's proposal to fund independent research to investigate this issue. As a result, IPReg established a Steering Group to commission and manage this external research project.

IPReg commissioned the expertise and experience of a research team based in the Institute for Work Based Learning (IWBL) and the School of Law at Middlesex University, to undertake independent research in reviewing the preparedness of trainee Patent Attorneys and PEB's assessment methodology for the FD4/P6 examination. The IWBL has a strong track record in practice-based research, pedagogical approaches for work-based learners and professional learning programme content and assessment.

Research Aims

The focus of the research is to investigate issues prompted by the low and variable pass rate for trainee Patent Attorneys taking the FD4/P6 examination paper.

Based on the original Research Brief, the main aims of the research are to review:

- Adequacy of the preparation of candidates for the FD4 examination
- Appropriateness of the current assessment methodology
- Extent to which the current teaching, learning and assessment arrangements are in line with leading pedagogical practice in the area
- Appropriateness of the technical content of the assessment, given the different technical backgrounds of the candidates.

¹ (QAA, 2015) *External assurance of the patent examination board's policies, procedures and processes*, Professor Steve Bristow.

Research Methods

The research project adopted a mixed methods approach, employing both qualitative and quantitative research tools (detailed below). Adopting a mixed methods approach was seen as important to gauge the breadth and depth of candidate preparedness in training to qualify as a Registered Patent Attorney and to examine the effects of the examination on how candidates prepare.

In addressing the key aims of this project, the following research tools were employed:

1. **An online candidates survey** - the initial phase of the project employed a short, online questionnaire, using specialist online survey software, Qualtrics, which is a technique that the research team has used on other projects, and where results can be quickly produced. The questionnaire was designed in collaboration with the Steering Group. It focused on the key research aims and comprised questions on the following topics:

- Preparation for the FD4/P6 examination
- Practice opportunities in the workplace
- Opportunities of support and take up to assist candidates in their training and development for the FD4/P6 exam, including extra support offered to re-sitters
- What candidates believe they need to do to be successful in the exam
- Perceived reasons why candidates felt they failed the exam
- Perceived 'fairness' of the FD4/P6 paper
- Specialist knowledge advantage/ disadvantage

The survey was administered to 2014 and 2015 candidates of the FD4/P6 exam via The Chartered Institute of Patent Attorneys (CIPA) between 6th and 24th September 2016. The survey was disseminated to 340 candidates and 176 respondents completed the questionnaire, giving a response rate of almost 52%. In research, this is considered a good response rate for a survey and, presumably, reflects the importance of reviewing the FD4/P6 examination experiences among trainee patent attorneys.

2. **Semi-structured interviews** – the next phase of the research involved conducting in-depth telephone interviews with key stakeholders of the FD4/P6 exam, in this case, examiners, tutors and mentors, and employers. Seven examiners participated in the research and included the Chief Examiner of the Finals, The Principal Examiner of the FD4 exam and five marking examiners. In conducting interviews with examiners, it was important to distinguish between setters of the paper and the marking scheme and those who mark according to the mark scheme given to them. In this way, we could ask the former group particular questions on the design of the FD4/P6 examination such as, how the exam paper is constructed, and how the construction of the exam and the mark scheme is linked to the learning outcomes.

In terms of training or coaching the FD4/P6 candidates, the interview participants were either tutors or mentors or both. Eight tutors and mentors had participated in the research with diverse experiences of tutoring and/or mentoring FD4/P6 candidates.

The Head of Education at CIPA and a former member of the CIPA Informals Committee facilitated access to examiners and tutors/mentors respectively during October 2016, disseminating at the same time a one page information sheet outlining the research project and the topics for interview. Initially, there was a low response from examiners in their ability to participate in an interview, mainly due to the timing of the research interviews leading up to the FD4 exam in October 2016. As a result, the research team was advised by IPReg to conduct the interviews with examiners at a later date in order to increase their engagement levels. Several interviews with examiners were conducted in late January 2017.

The employer interviews were conducted late November and early December 2016. IPReg facilitated access to the employers by circulating an information sheet to their main points of contact of IPReg registered firms and to the IP Federation requesting that it be disseminated to their members. In total, eight employer interviews were conducted, seven were law firms and one was an industry firm with an in-house patent department. Two of the employers were large firms (i.e. 250 or more employees), three of the employers were medium size firms (i.e. 50-249 employees) and three of the employers were small firms (less than 50 employees). There was an initial concern by the research team about the 'imbalance' of interviews with private practice and industry firms. However, this situation was more representative of IPReg's regulated community (IPReg, personal communication).

The majority of interviews lasted between 35 and 45 minutes, using a semi-structured interview guide, and permission was sought beforehand to tape record the interviews. For the examiners, tutors/mentors and employers, similar topics were covered, as outlined below:

- Design and aims of the FD4/P6 exam paper/knowledge and skills assessed (Examiners)
- Support and training opportunities
- Candidates' concerns of the FD4/P6 exam and expectations of tutor/mentor
- Candidate performance in the exam and reasons for low pass rates
- Time pressure of exam
- Technical content of FD4/P6 exam and advantage/disadvantage
- Candidate preparation for the FD4 exam and techniques for passing

The interviews with examiners, tutors and mentors, and employers provided an opportunity to validate (or not) the concerns and issues arising in the candidates survey.

The research project and research tools had received ethical approval from Middlesex University's Ethics Committee, ensuring the anonymity and confidentiality of the research participants.

Analysis

Data from the survey were analysed using statistical software (e.g. SPSS), to explore the data and identify patterns. Qualitative data techniques were used to analyse the semi-structured interviews, identifying themes to interpret the data, quoting freely from the interviews to illustrate the results. In presenting the findings, the research team have triangulated the different data sources, synthesising both quantitative and qualitative findings, so as to offer an integrated account of issues that impact pass/fail rates, thereby meeting the aims of the research.

Primarily, the analysis has been developed in collaboration with the Steering Group who seek to learn more about the reasons for the low pass rates of the FD4/P6 exam and identify effective strategies to address this issue. Following a presentation of the emerging survey findings to the Steering Group on 10th October 2016, it was recommended that the research team drill down further into the data to identify whether there are any significant relationships between the type of employer (e.g. private practice, industry) that candidates worked for and candidate preparedness, as well as the year that candidates passed the FD4/P6 exam and opportunities of support and take up - since the 2015 candidates were exposed to greater transparency and further support of the FD4 examination, receiving a new style syllabus with the learning outcomes clearly aligned, a mark scheme with the marks clearly allocated, an Examiner's Report that was clearly set out and sample pass scripts showing the percentage mark awarded (CIPA communication).

It should be pointed out here, that a large proportion of candidates in this survey were employed in private practice, either at the time of passing the FD4/P6 exam or, if they had not passed the exam, when they last sat the exam (demonstrated in the findings). As a result, it was not possible to undertake statistically meaningful analysis of the data that identified differences in candidate preparedness and support between those employed in private practice and those employed in industry. However, there are instances in the analysis where mention is given to observed differences between candidates employed in private practice and industry, taking into account the relatively small sample size of respondents employed in industry.

Similarly, a large proportion of candidates in the survey had passed the exam in 2015 or, if they had not passed the exam, almost all of the candidates had last sat the exam paper in 2015 (demonstrated in the findings). As a result, it was not possible to undertake statistically meaningful analysis of the data that identified differences between candidates' opportunities and take up of support in 2014 and 2015. However, there are instances in the analysis where

observed differences between 2014 and 2015 candidates who had passed the FD4/P6 exam are indicated, taking into account the relatively small sample size of the 2014 candidates.

Suggestions to tackle the issue of low pass rates of the FD4 exam

The following ideas and suggestions have been generated from the findings in this report, in this case, from the candidates in the survey and the examiners, employers and tutors and mentors who participated in the semi-structured interviews. These ideas and suggestions will need to be explored further with members of the Steering Group and other interested parties.

Preparing mentors and trainers

The research shows that there is a mismatch between the preparation carried out by tutors and mentors and what is expected of the candidates in the FD4/P6 examination. The majority of tutors and mentors have not undertaken any formal training or systematic briefing, although, they welcome the opportunity to have a clearer idea of the requirements of the exam. Only one of the tutors/mentors had attended a 'tutoring the tutors' programme more than five years ago organised by JEB, which was found to be very helpful since, *"[it provided] clear information about how the paper is going to be marked, which is obviously relevant to how you do the tutorial...It had guidance on how to set up the answer and how to manage your time and it had examples of typical bad reasons for failing"*.

Training the trainers would be particularly beneficial for tutors who had sat the FD4/P6 exam a long time ago and, therefore, they may employ an out-of-date technique in approaching their training as indicated by examiners and candidates in this research. This form of preparation is also important because trainers act as the bridge between candidates and the examination, with the potential to inhibit or facilitate understanding of the FD4/P6 exam as identified in the present research. It is suggested that PEB should provide such courses to 'refresh' tutors' and mentors' ideas and approaches to the exam. Moreover, provision of these 'training the trainer' activities has been considered important in other professions, such as, the Association of Chartered Certified Accountants (ACCA)², which enables the tutors to develop their skills in training their students for professional exams.

In addition, the employers in this study would also welcome information from the examiners about how they can support and prepare their trainees for the FD4 exam as well as inform them about what approach they would need to take to help them meet the appropriate standards.

² See [ACCA new tutor excellence programme](#)

Shadowing a real life infringement and validity opinion

The findings highlighted the lack of validity and infringement experiences identified by the candidates themselves, which is not surprising given the scarcity of such cases in private practice, and the lack of delegation of such high value work to trainees. As a result, one of the mentors in the research, who was previously a tutor for the FD4/P6 exam candidates, suggested that trainees be given the opportunity to shadow a colleague working on an infringement and validity opinion, evaluating this as a useful training aid: “so I have trainees, on occasion, I have asked them to shadow me when I’m doing infringement and validity...[it’s] really really helpful”. Shadowing a real-life validity and infringement opinion could be part of the employers’ checklist of experiences for each of their trainees in the 2-3 years leading up to the FD4 exam. For those without access to such an opportunity a training resource which gives an exemplar of a real case including interviews with experienced practitioners, illustrations of the preparation required, steps undertaken, timelines, etc. would be useful.

The appropriateness of hand-writing for exams

A common issue raised with regard to many examinations is whether it is still necessary for them to be completed in long-hand when almost everyone in the modern workplace and at home uses a keyboard to write text. In the current research, in tackling the issue of time pressure in the exam, which is exacerbated by candidates having to write their answers by hand, the findings suggest that candidates be allowed to use a word processor in the exam since they can type their responses faster. This is the more favourable tool identified by the candidates since they feel that it would enhance their performance in the exam, and a more appropriate exam format for many of the examiners in so far as it improves the marking experience, due to the poor hand writing skills of many candidates taking the exam.

While there has been little research on the use of computer-based examinations in professional contexts, it has been explored in some studies in higher education³. It can be concluded that there is very little difference between hand writing and word processing on

³ See e.g. Melody Charman (2014). Linguistic analysis of extended examination answers: Differences between on-screen and paper-based, high- and low-scoring answers, *British Journal of Educational Technology*, 45, 5, 834–843. DOI:10.1111/bjet.12100

Sigal Eden and Yoram Eshet-Alkalai (2013). The effect of format on performance: Editing text in print versus digital formats, *British Journal of Educational Technology*, 44, 5, 846–856. DOI:10.1111/j.1467-8535.2012.01332.x

Nora Mogey, John Cowan, Jessie Paterson and Mike Purcell (2012). Students' choices between typing and handwriting in examinations, *Active Learning in Higher Education*, 13(2) 117–128. DOI: 10.1177/1469787412441297

Nora Mogey & James Hartley (2013). To write or to type? The effects of handwriting and word-processing on the written style of examination essays, *Innovations in Education and Teaching International*, 50:1, 85-93, DOI: [10.1080/14703297.2012.748334](https://doi.org/10.1080/14703297.2012.748334)

Nora Mogey and Andrew Fluck (2015). Factors influencing student preference when comparing handwriting and typing for essay style examinations, *British Journal of Educational Technology*, 46, 4, 793–802. DOI:10.1111/bjet.12171

the ability of students to complete responses or on the nature of the responses themselves. Some students express a preference for one mode or another, but this is often dependent on their prior experience with them. As word-processing has become more ubiquitous, even more so for office workers than for students, it can be concluded that there is no substantive reason why word processing not be permitted for examinations. The only issues of concern are practical ones. If word processing were used with an unseen examination, then it would need to be conducted in a computer laboratory or with supplied laptops with internet access disabled. A brief practice session prior to the unveiling of the paper should be permitted to enable familiarity with the machine to be gained. Allowing candidates to bring their own machine would not be appropriate in an unseen examination; it would not be practicable to disable internet access under such circumstances.

Is a conventional exam sufficient to judge the desired learning outcomes?

Another key finding of the research was a suggestion for a more practical test of students' abilities, skills and understanding in validity and infringement, in other words, including a developmental or 'professional level' activity as part of the overall exam. Suggestions given by one of the employers included coursework or a viva (and to this could be added a case study) whereby candidates would explain to an examiner how they would handle a real life infringement opinion, which would also demonstrate their 'client care' skills set. This practice requirement has been built into other professional qualifications.

Reviewing the FD4 exam marking design scheme for upcoming exams

As the research identified, candidates in the survey felt strongly that there needed to be more transparency of the marking scheme, so that they could focus their time accordingly. However, the examiners differed in their views about providing the allocation of marks on the exam paper being taken, since to do so would either impact candidates' ability to view and analyse the whole exam paper (concern of an examiner) and, at the same time, lead them to the answers (view of some of the examiners) or, conversely, facilitate candidates' ability to plan and write their answers (view of some of the examiners). These findings do suggest that further discussion is needed in reviewing whether (or not) to provide a mark scheme for the upcoming exam and how this will impact candidates' ability to respond to the paper (either favourably or unfavourably).

Another concern raised by some examiners was the rigidity of the marking schedule such that it had prevented them from awarding marks that they would like to give as these were outside of the marking schedule. The examiners have suggested a 'fundamental review' of the marking scheme to ascertain whether it is an academic mark scheme which tries to find points or whether it seeks to be a practice paper and test the competence of candidates in giving good advice.

There was also some ambiguity amongst the examiners in terms of holistic marking versus section by section marking. For instance, some of the examiners felt strongly that doing well in one section cannot compensate for doing badly in another section of the paper since the

exam is marked holistically in assessing a range of skills. One of the examiners expressed the opposite view in that candidates who give poor advice in one section can compensate in another section of the paper, although this was seen as a negative aspect of the paper. Still another marking examiner held mixed views, identifying that in some cases it is possible to compensate for performing poorly in one section while in other cases this is not possible. This would suggest that examiners revisit the holistic versus section-by-section marking of the FD4 exam paper to ensure transparency and clarity.

Aligning learning outcomes to the assessment criteria

The findings revealed a level of uncertainty among most of the examiners about how effectively the learning outcomes⁴ are met by the assessment process. Moreover, the way the exam is marked does not allow any inferences to be made about whether trainee patent attorneys have met the learning outcomes. Given the improved changes to the 2015 FD4/P6 exam syllabus, in terms of the provision of learning outcomes and examination guidance notes, it is important that examiners (and tutors/mentors) understand and actively engage with the 'language' of learning outcomes and their understanding of how these align with the assessment process - rather than view these as 'educational jargon' - so as to meet PEB's original objective to improve transparency for candidates, making it clearer what knowledge and skills are being tested in the exam so that candidates can be better prepared as well as providing greater transparency on how marks are being awarded.

The ways in which marking was discussed by a range of participants, including examiners, led the research team to a consideration of how the exam operated to enable judgements to be made about the successful meeting of requirements. It was heartening that a key step had been undertaken through expressing requirements in terms of learning outcomes. In a standards-based framework, which is what has been adopted, it is necessary for there to be transparency about the relationship between the elements of the exam and learning outcomes. Any form of assessment must ensure that those who pass can be shown to have met the threshold standards with respect to each learning outcome. The research team found it difficult to discern that this was occurring. The meeting of threshold requirements means that doing well in one part of a test that addresses different outcomes cannot compensate for lack of sufficient attainment with respect to another. The collapsing of marks into a single 'pass mark' does not permit assurance that this has occurred. In a standards-based framework, an overall pass mark takes on lesser significance than reporting that each outcome has been attained. Our experience in other professional contexts suggests that such an approach may require adjustments to statements of learning outcomes, standards and criteria as well as to reporting processes. The disaggregation of performance by outcome

⁴ Taking the QAA definition of learning outcomes: "What a learner is expected to know, understand and/or be able to demonstrate after completing a process of learning". (<http://www.qaa.ac.uk/>)

provides a subsidiary benefit in that candidates and their advisers are better able to identify what they need to address when they fail to meet the requisite standard.

Board Meeting 2 November 2021

Governance matters

Agenda Item: 8

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

Introduction

1. A number of recent publications have highlighted the importance of comprehensive, targeted and robust governance processes in organisations. For example:
 - a. [RICS](#) - Independent Review by Alison Levitt QC;
 - b. [BSB](#) – LSB review under the “well-led” standard of its performance management framework
 - c. [Faculty Office](#) – LSB review under the “well-led” standard of its performance management framework

2. As a result, we have reviewed IPReg’s governance processes to assess whether we need to make any changes. The review covered:
 - a. Board Code of Conduct – Annex A – this has been in place for several years
 - b. Board rules of procedure – Annex B – these were agreed by the Board at its meeting in July 2020 under the Internal Governance Rules
 - c. Register of interests – Annex C
 - d. Board member appraisals
 - e. Scheme of delegations from the IPReg Board – Annex D – this was first agreed by the Board in January 2018
 - f. Schedule of matters reserved to the IPReg Board – Annex E – this was first agreed by the Board in January 2018

3. We have also reviewed the LSB’s reports into the BSB and Master of the Faculties in the context of a letter from the LSB (Annex F). This letter was sent to all the regulators and encouraged them to “consider [their] own decision-making processes in light of our findings”. The letter stated that “we expect all regulators to be proactively and transparently putting the regulatory objectives at the heard of their decision-making”.

Discussion

BSB and Faculty Office reports

4. The BSB review was triggered by the BSB Board’s decision to withdraw from funding Legal Choices. The LSB report criticises:
 - a. Adequacy of information provided to the Board (about Legal Choices funding and reducing the scope of the BSB’s transparency requirements)
 - b. Lack of consumer engagement

- c. Disproportionate weight given to barristers' concerns
 - d. Governance matters
 - e. Duration/frequency of Board meetings.
5. Having reviewed the report, in addition to ensuring that our governance documents are up to date we have decided to make explicit on the face of each Board paper the main regulatory objectives to which the specific policy issue relates.
 6. In terms of Legal Choices, although we received feedback from the consultation on the 2022 practising fees (and previously) that we should not be funding Legal Choices because it does not appear to be relevant to the IP sector, we consider that Legal Choices supports the Legal Services Act's regulatory objectives of: protecting and promoting the public interest; and increasing public understanding of the citizen's legal rights and duties. Our 2022 Business Plan and budget therefore commit to funding Legal Choices.
 7. For issues that are relevant to IPReg, the Faculty Office review also focused on transparency around processes for decision-making including documented governance arrangements. The LSB also recommended that the Faculty Office should engage more with "consumers of notarial services"; IPReg is engaging with the LSB on its research into the legal needs of small businesses and feedback from discussions about the Review with regulated firms is that this sector is predominantly B2B.

RICS report

8. This report by Alison Levitt, QC concluded that "four non-Executive Board members, who raised legitimate concerns that an internal audit report had been suppressed, were wrongly dismissed from the Management Board and that sound governance principles were not followed. The report finds that the origins of what went wrong lay in the governance architecture of RICS. A lack of clarity about the roles and responsibilities of the Boards, the senior leadership and the management left cracks within which the Chief Executive and his Chief Operating Officer had become used to operating with little effective scrutiny. Although they believed they were acting in the best interests of RICS, they were resistant to being challenged."¹
9. Although IPReg does not have a complex governance structure, it would be prudent to ask our new external auditors to review our existing financial controls and processes and to make recommendations for improvement.
10. The IPReg staff handbook also includes a section on whistleblowing. It states that concerns can be raised with the Chief Executive or any Board member. However, it may be appropriate to have two named Board members who can be approached in the first instance and an email sent to staff from the CEO reminding them that they should report concerns as soon as possible.
11. IPReg Board/Chair contracts include provision for dismissal by the Board (i.e. not by an individual) in certain circumstances.

¹ <https://www.rics.org/uk/news-insight/latest-news/news-opinion/rics-governing-council-publishes-independent-review-and-accepts-all-recommendations/>

Recommendation(s)

12. The Board agrees:
 - a. No changes are required to the Board Code of Conduct (Annex A)
 - b. No changes are required to the Rules of Procedure (Annex B)
 - c. To note the Register of Interests (Annex C)
 - d. To schedule follow up/new Board member appraisals
 - e. The minor (tracked) changes to the Scheme of Delegations from the IPReg Board (Annex D)
 - f. The (tracked) changes to the Schedule of Matters Reserved to the IPReg Board (Annex E) - in particular the addition, for the avoidance of doubt, that the IPReg Board considers all audit/financial reports
 - g. To adopt the Gifts and Hospitality policy at Annex G
 - h. To publish this suite of documents to aid transparency about IPReg's governance and how it conducts its work
 - i. Review the suite of governance documents every two years (or sooner if there is another relevant significant report/event)

13. The Board agrees to ask IPReg's new external auditors to review our financial controls and processes and to report back to the Board as soon as possible with recommendations for improvement.

14. The Board notes that processes such as recruitment are included in the IPReg staff handbook which was introduced in May 2018 and reaffirms that in principle all team and Board appointments should be undertaken through open competition.

15. The Board nominates two Board members who the IPReg team can contact if they have any concerns about the way IPReg is being run or any other matters. The IPReg CEO should remind team members of this.

16. The Board considers whether there are any improvements that could be made to the quantity and/or quality of information provided to it in (a) papers and (b) generally.

Risks and mitigations

Financial	There are no direct financial issues
Legal	
Reputational	Good governance processes and transparency about them will be positive for IPReg's reputation
Resources	There are no specific resource issues
Regulatory Objectives	Good governance processes at IPReg should give the regulated community, CIPA and CITMA confidence that IPReg is well led. This should in turn give them confidence in the decisions we make and our approach to regulation generally. This will therefore support all the regulatory objectives.

Board Meeting 2 November 2021

Review of regulatory arrangements – progress update

Agenda Item: 9

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

Summary


1. This paper provides an update on the review of regulatory arrangements focusing on progress towards the planned December consultation which the Board will be asked to consider in full at its next meeting. It also highlights two further policy issues for the Board’s consideration: our proposals for Professional Indemnity Insurance (PII) and mandatory transparency requirements.

Recommendation(s)

2. The Board is asked to note the update on progress with the development of draft regulatory arrangements.
3. The Board is asked to comment on our proposed approach to LSB engagement and the timing of the LSB Continuing Competence consultation.
4. The Board is invited to comment on the idea of a regulatory sandbox for Professional Indemnity Insurance and whether it is something we would like to explore in the consultation.
5. The Board is asked to comment on the proposal that we consult on making our transparency guidelines mandatory.

Risks and mitigations

Financial	<p>We have now paid the fixed fee for the first stage of legal work, a review of the draft framework ([REDACTED]).</p> <p>Work on the second stage of legal work– drafting of regulatory arrangements for consultation is now underway and is expected to be completed this calendar year ([REDACTED]).</p> <p>The final stage of legal work - finalising the regulatory arrangements post consultation – will take place next year ([REDACTED])</p> <p>This brings us within our allocated budget of £40k.</p>
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	<p>We now have in place a small panel of expert advisors to provide challenge and support in key areas including PII, diversity and inclusion, and assessing the likely impact of alternative forms of regulation. The cost is anticipated to be c. £20k over the next 12 months (2 budget years).</p>
Legal	
Reputational	<p>This is a high-profile project that has been welcomed by many of those we regulate. Achieving a comprehensive, principles-based approach to our “post-admission” regulatory arrangements will be a significant achievement and will enhance our reputation. As such, the LSB is scrutinising our progress on this work.</p> <p>Our decision to seek early input from stakeholders has been well received so far and has proved valuable in terms of informing our thinking. If the Board agrees, we plan to meet with the LSB shortly before the consultation opens to talk them through our approach and objectives.</p>
Resources	<p>The appointment of the expert advisors has enabled us to fill the gaps in our resources identified so far, most recently in helping with the development of our regulatory sandbox idea (see paragraphs 17 to 23). The remaining area to consider getting external advice is on the economic impacts of any fee changes at the appropriate point.</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 for consultation will be assessed against the regulatory objectives in more detail through the impact assessment.</p>

Progress update

6. Since the last Board discussion we have continued to make progress towards the planned consultation in December. Key milestones include:
 - Concluding our early stakeholder engagement activity including a presentation and discussion at the CITMA Sole Practitioners' focus group and a meeting with CIPA and CITMA (rescheduled for 28 October);
 - Instructing Kingsley Napley to begin developing draft regulatory arrangements for consultation and working closely with them to refine drafts;
 - Developing an outline consultation document for discussion with the Board sub-group members at a meeting on 20 October;
 - Developing our thinking in relation to PII; and
 - Refining some of our policy proposals in response to stakeholder engagement e.g. making the transparency requirements mandatory.

Update on development of draft regulatory arrangements

7. On 8 September we instructed Kingsley Napley to begin work on developing the draft regulatory arrangements for consultation. We received a first draft of the priority sections on 5 October. [REDACTED]
8. At the time of writing, we are reviewing a reworked version of the new code requirements from Kingsley Napley which will provide the cornerstone of the new regulatory arrangements in terms of setting the standards we expect from the attorneys and firms we regulate. The steer from the sub-group has been to distil these requirements to those which are absolutely necessary in rules, supported by examples and guidance where necessary.
9. We are also considering our approach to the procedural aspects of our regulatory arrangements (which include both the disciplinary and admissions processes). [REDACTED]
10. A further meeting with sub-group members is being scheduled for early November. Our advisors from Kingsley Napley will attend this meeting to ensure any feedback can be captured and fed back directly. [REDACTED]

11. Maintaining the pace of progress is critical over the next few weeks to ensure that we meet the deadline of 25 November for a completed set of draft regulatory arrangements ready for consultation (subject to final Board approval on 9 December). This is a significant focus for us alongside refining the consultation document and impact assessment. [REDACTED]

Recommendation: The Board is asked to note the update on progress with the development of draft regulatory arrangements.

Approach to consultation

12. At its meeting on 20 October, the Board sub-group discussed a draft outline consultation document. The consultation focuses on setting out the overall approach to the new regulatory arrangements and highlighting the key areas of proposed policy change. Sub-group members provided an early steer on the tone and positioning in the document as well as reviewing the policy proposals (please see policy update section for further detail). This included the risk analysis and key principles for the review which have been discussed at previous Board meetings. A full draft of the document is now being developed taking account of the helpful feedback received. For example we will include as many open questions as possible in the consultation to seek a wide range of views. Drafting of the impact assessment is also underway.
13. Sub-group members also agreed that the consultation should be made as accessible as possible (given the length of the document and breadth of topics). As such, we will clearly direct people to the relevant sections and state that individuals and firms are welcome to respond to those areas of direct interest or relevance only. We will also use adequate spacing and consider diagrams where possible to break up the density of the document. We will also take account of accessibility and relevance in relation to any supporting communications activity. We have already agreed with IP Inclusive and IP Federation to work together to promote the consultation and hope to agree a similar approach with CIPA and CITMA. As with the Call for Evidence and the early stakeholder engagement activity, we will be clear that we also welcome discussions with individuals and firms in relation to the consultation.

LSB engagement

14. We wrote to the LSB on 27 September to notify them of the timetable for consultation agreed by the Board at the September meeting. We [REDACTED]
15. At an event on 13 October, the LSB confirmed its plans to consult on its proposals in relation to Continuing Competence from December 2021 to March 2022. This consultation is therefore likely to coincide with our own consultation for the review. As such we will need to be clear in our documentation that we are aware of the consultation and will need to take account of it in relation to

our proposals for reforming our CPD requirements. Sub-group members have endorsed this approach and do not consider there is any reason to delay our consultation. To the contrary members considered that the feedback we receive on this issue may prove helpful to the LSB.

Recommendation: The Board is asked to comment on our proposed approach to LSB engagement and the timing of the LSB Continuing Competence consultation.

Policy update

16. The following policy issues were discussed at the sub-group meeting on 20 October [REDACTED]

Professional Indemnity Insurance

17. The Board will recall that our approach to Professional Indemnity Insurance (PII) has been one of the most challenging aspects of the review. In light of the wider market issues around PII in legal services, there is little we are able to do to increase the number of participating insurers. Our priority has therefore been to look at potential solutions for those firms that unable to obtain insurance (primarily because they are ineligible for PAMIA membership due to their ownership structure or the services they provide). The number of firms in this position may increase if we remove the current restrictions on Multi-disciplinary practices (MDPs).

18. For those ineligible for PAMIA and who are unable to obtain PII with a qualifying insurer – we are exploring the viability of creating a regulatory sandbox.

19. The regulatory sandbox concept has been used extensively in financial services and other regulated sectors. Regulatory sandboxes are a ‘safe space’ in which to test innovation amid enhanced scrutiny but without the usual regulatory penalties for technical breaches. They can also be a helpful way of gathering evidence, so in this case evidence of how the market might respond were the regulatory requirements for PII to be less stringent.

20. [REDACTED]

21. [REDACTED]

[REDACTED]

22. We have sought advice on this proposal from our economics expert and refined our thinking accordingly. We will also be seeking input from our expert in designing regulatory policy frameworks before a further discussion with our PII expert.

23. [REDACTED]

Recommendation: The Board is invited to comment on the idea of a regulatory sandbox for Professional Indemnity Insurance and whether it is something we would like to explore in the consultation.

Transparency requirements

24. One of the key recommendations of the CMA legal services market study was for the frontline legal regulators to take action to: “[...] deliver a step change in standards of transparency to help consumers (i) to understand the price and service they will receive, what redress is available and the regulatory status of their provider and (ii) to compare providers. Regulators should revise their regulatory requirements to set a new minimum standard for disclosures on price and the service provided and develop and disseminate best practice guidance. Importantly, this should include a requirement for providers to publish relevant information about the prices consumers are likely to pay for legal services.”

25. Given the structure of the market for IP legal advice (which is characterised by legal advice mainly to businesses rather than to consumers), we considered at the time that detailed rules would not be proportionate and instead developed guidance in relation to these issues.

26. Through our discussions with stakeholders and responses to the Call for Evidence, we have received reports in relation to various practices that occur in the IP industry which appear to be at odds with the objectives of our guidance. [REDACTED] We are therefore minded to consult on making the requirements in our existing guidance mandatory for all attorneys and firms providing services to the public.

27. Our aim, expressed through a principles based approach, will be for consumers and small businesses to have the information they need to make informed choices about which provider to use ([REDACTED]) and ensure they are given sufficient information about changes to price/services as their matter progresses.

28. A lack of transparency leads to a number of negative impacts for consumers which have been widely discussed in the CMA report (such as inability to make an informed choice and to compare between different providers of legal services). This is especially important given the reported rise in unregulated providers as consumers need to understand the regulatory protections available to them.

29. Lack of information and transparency can also mean that consumers are not sufficiently informed of the costs involved with their matter and there is a risk they are misled ([REDACTED]).

30. Having discussed with sub-group members, we are of the view that the best approach may be to use the consultation to air the issue and seek views on the best way to impose these sorts of requirements. The Board will note that the imposition of mandatory requirements in this area is likely to be controversial among our regulated community.

Recommendation: The Board is asked to comment on the proposal that we consult on making our transparency guidelines mandatory.

Next steps

31. We will continue developing the documentation for consultation ahead of returning to the Board with a full set of documents in December. Sub-group members will be kept up to date on drafting progress

Board Meeting 2 November 2021

Information paper: Complaints update

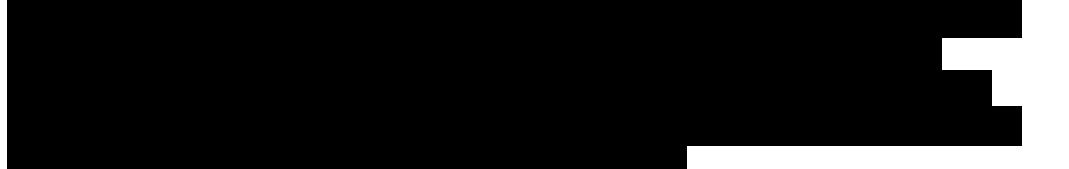
Agenda Item: 11

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 consumers of IP legal services, on receipt of a complaint informs them of their rights (and obligations) when something has gone wrong with a registered attorney/firm.</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)	2	

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

Total open cases	3	Under investigation = █ Complaint initiated = █ CRC stage = █ JDP stage = █ Appeal stage = █
Complaints closed in last month (since last meeting)	2	

Open cases

Case ref	Stage and Status
█	█ █ █
█	█ █ █ █ █ █ █
█	█ █

	[REDACTED]
	[REDACTED]

Closed cases in last month (since last meeting)

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

Recommendation

The Board is asked to note this information paper.

Item 15a

From: [Chris Nichols - Legal Services Board](#)
To: [Fran Gillon](#)
Subject: LSB upcoming consultation timetable
Date: 09 September 2021 15:38 59

Dear Fran,

We are approaching a period in which a number of the LSB workstreams will be reaching the stage of public consultation. These consultations will be of interest to regulatory bodies and approved regulators and we hope that you will respond.

We recognise that it takes time to engage with and respond to a consultation, especially where it concerns significant policy issues. To help with forward planning, I have set out below our current expected timeframes for consultations, over the next 6 months:

Project	Duration	Dates
Consumer empowerment	12 weeks	15 September – 8 December 2021
Ongoing competence	12 weeks	1 December 2021 – 25 February 2022
Business plan 2022/23	8 weeks	6 December 2021 – 4 February 2022
Regulatory Performance framework review	12 weeks	7 March 2022 – 27 May 2022

There are two other policy areas where we may also seek to consult within this period. These are:

- Developing a single digital register across all regulatory bodies
- Developing our expectations around EDI

We will let you know if either of these areas will lead to consultation and, if so, will schedule these consultations taking account of the dates of the existing ones outlined above.

As always, we will seek to provide other opportunities outside of the formal consultation for ongoing engagement and collaboration on all of our workstreams.

Please let me or a member of the team know if you have any questions. We will aim to keep all regulatory and approved regulators updated on changes to the timeframes above.

Thanks,

Chris

Chris Nichols | Director, Policy and Regulation | Legal Services Board

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Board Meeting 21 November 2021

Annual regulatory performance assessment by the LSB

Agenda Item: 15b

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

Summary

1. This paper sets out the draft response to the annual regulatory performance assessment by the LSB.
2. The LSB's 2021 information request of 30 September is at Annex A. The LSB has agreed a short extension to 5 November to enable this Board meeting to consider the response (Annex B).
3. Also provided for information is IPReg's response of 22 July to the LSB (Annex C).

Recommendation(s)

4. The Board considers the draft response at Annex B and delegates final sign off to the Chair and CEO.

Risks and mitigations

Financial	There are no direct financial issues.
Legal	[REDACTED]
Reputational	In its 2020 performance assessment, the LSB found that some of its required standards had not been met. These form some of the focus of the 2022 assessment in addition to the other matters set out in the LSB's information request.
Resources	The annual performance assessment takes a considerable amount of staff time to complete. In addition, as can be seen from the draft response, we have already provided to the LSB a considerable amount of information during the course of 2021. Responding to these LSB information requests (informal or otherwise) takes resources away from the day to day running of IPReg.

By email only

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30 September 2021

Dear Fran

2021 Annual Regulatory Performance Assessment

As part of our ongoing monitoring of regulators' performance against the regulatory standards and outcomes, we will be conducting our annual performance assessment in November. This letter explains the process and timelines, which should reflect relationship management discussions, and sets out the information that we will require from IPReg.

Scope

Our annual assessment will consider:

- Progress towards meeting any outcomes currently graded as 'not met'.
- General performance in relation to the regulatory performance standards and outcomes and any issues that have arisen since our 2020 annual assessment.
- Regulators' approaches to the following aspects of transparency that in our [2020 report](#) (paragraph 42) we said we would be focusing on in 2021:
 - regulatory bodies actively taking account of the regulatory objectives in the Act in carrying out their work, in decision-making and performance monitoring processes; and actively explaining and demonstrating how this occurs.
 - regulatory bodies ensuring that information published on websites is up to date, whether it concerns policies and guidance or disciplinary actions.
 - regulatory bodies demonstrating a commitment to public accountability and transparency in respect of decision-making and how Boards hold Executives to account.

- How regulators have taken account of the [findings of our targeted review](#) of the BSB's performance against the Well-led standard, which we published in July 2021.

Information request

For our assessment we will require a report from you setting out the following, including answering the specific questions in the Annex:

- the steps you have taken to meet the actions set out in our last assessment against outcomes RA2, RA3 and E2 including responses to the specific questions set out in the attached Annex.
- a report on data collected following IPReg's 2020 introduction of a requirement to obtain run-off cover set out in the attached Annex.
- your approach to the aspects of transparency set out above.
- how you have taken account of the findings of the LSB's targeted review of the BSB's performance against the Well-led standard and the actions that you have taken, particularly in respect of governance and consumer engagement.

When preparing your report, in line with the Well-led standard and your Board's role in monitoring IPReg's performance, we would be happy for you to use information in the form that you have already provided to your Board, supplemented by any additional information needed to deal with our specific points.

Please provide us with your response to this information request by **29 October 2021**.

In addition to the information that you provide, our assessment of IPReg's performance will take account of information that the LSB has gathered since our last annual assessment in November 2020. This will include our contacts with you, such as relationship management meetings, CEO and Board-level meetings, applications that you have submitted to us for approval, any information you may have provided since the last assessment round and information from other sources including publicly available material.

Next steps

We will consider your response alongside the information we have already gathered and update our assessment and action plan. In doing so, as we have in previous reviews, we will work with you to agree any new actions and milestones. We will ensure that you have time to fact-check our final assessment before publication in December.

Update on actions on Diversity and Inclusion (D&I) outcomes

[Our Guidance for legal services regulators on encouraging a diverse workforce \(February 2017\)](#) noted that we would be monitoring regulators performance on equality and diversity actions annually. We last sought an update in June 2020. This

year, rather than commissioning a separate update from regulatory bodies, we thought it more efficient to include an update request within the annual performance assessment progress update. Please provide a short summary of the actions you have taken this year to meet the outcomes in our D&I guidance and the three expectations you reported on in June 2020 on demonstrating:

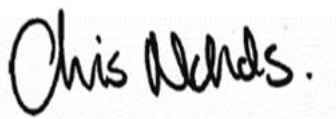
- a. An understanding of the composition of their regulated community;
- b. An understanding of the barriers to entry and progression within the regulated community, and a programme of activity to mitigate those barriers with measures in place to evaluate effectiveness; and
- c. Measures in place to understand any differential impact on protected characteristics within their disciplinary/enforcement procedures.

For IPReg, this is relevant to the action needed to meet RA3 set out in our 2020 report. We note that your July 2021 progress update referred to the actions you are taking with regard to the Guidance. We would be grateful if you would provide any additional or more recent information as part of your response to this information request, where relevant.

This information will provide an up-to-date view on the actions and activities carried out by regulatory bodies and will inform our current work programme, including our plans to work more collaboratively across all regulators.

If you have any questions about the assessment process or the requests for information set out in this letter and its annex, please either contact me or your relationship manager.

Yours sincerely

A handwritten signature in black ink that reads "Chris Nichols." The signature is written in a cursive, slightly slanted style.

Chris Nichols
Director, Policy and Regulation

Annex: Information request for IPReg

Specific questions relating to outcomes

Outcome RA2

Question: During 2021, you have provided several updates on the progress of IPReg’s review of regulatory arrangements. We would be grateful for a further update, in order to reassess your performance, that clearly sets out the following:

- any material changes to the timeframe or scope of the review;
- if there have been any material changes, how any impacts of this on the regulated community and its consumers have been assessed and, if negative, been mitigated;
- what actions you are taking, where relevant, to ensure you have a robust evidence base on which to revise your regulatory arrangements and support you to meet RA2.

We note that in your 22 July update you said, ‘the advice from our external actuary who is supporting us in our work to establish a compensation fund is that a significant amount of research and data gathering will be needed over the next 6-12 months to develop a full risk model...’ We would appreciate if you could explain if and how this relates to your development of revised regulatory arrangements, and what work is underway or under consideration that is relevant to supporting you to meet RA2.

Outcome RA3

Question: During 2021, you have provided several progress updates on the actions you are taking or will consider taking to support you to meet RA3. We would be grateful for a further update, in order to reassess your performance, that clearly sets out the following:

- any relevant actions completed in the period since the last performance assessment in November 2020, including reference to what was set out as ‘action needed’ in November 2020, and how these support you to meet RA3;
- the status of any relevant actions that are currently underway, including when you expect them to be completed by and how they will support you to meet RA3;
- what actions you will consider undertaking in the next 12 months and how you will determine if they are necessary to support you to meet RA3.

In particular, we would appreciate if you could set out clearly what relevant actions are targeted to better understanding the diversity of your regulated community and the needs and use of legal services of IP consumers, including risks or issues facing particular consumers.

Outcome E2

Question: You have previously confirmed that you will address this matter as part of IPReg's review of regulatory arrangements. We would be grateful if you could please provide any relevant updates, where appropriate.

Run-off cover data

Question: In our decision notice of 2 March 2020 in relation to IPReg's application on run-off cover, we set an expectation for IPReg to report on the following data during the first year of operation:

- the extent of non-compliance with PII arrangements.
- any interventions made by IPReg to secure compliance and the outcome of such interventions.
- any use of the compensation insurance policy and any identified consumer impact (such as a financial loss due to the absence of run off cover).

We would welcome any updates on your monitoring since you last provided an update in November 2020.

Transparency matters

Question: Please explain how you:

- actively take account of the regulatory objectives in the Act in carrying out your work, in your decision-making and performance monitoring processes; and actively explain and demonstrate how this occurs.
- ensure that information published on your websites is up to date, whether it concerns your policies and guidance or disciplinary actions.
- demonstrate a commitment to public accountability and transparency in respect of your decision-making and how your Board hold your Executive to account.

Consideration of LSB targeted review of BSB performance against the Well-led Standard

Question: Please explain how you have taken account of the findings of the LSB's targeted review of the BSB's performance against the Well-led standard, particularly in respect of governance and consumer engagement.

ITEM 15b Annex A

The LSB letter of 30 September 2021 set out the scope of, and detailed requirements for, this year's performance assessment:

Scope

Our annual assessment will consider:

- *Progress towards meeting any outcomes currently graded as 'not met'.*
- *General performance in relation to the regulatory performance standards and outcomes and any issues that have arisen since our 2020 annual assessment.*
- *How regulators have taken account of the [findings of our targeted review](#) of the BSB's performance against the Well-led standard, which we published in July 2021.*

Information request

For our assessment we will require a report from you setting out the following, including answering the specific questions in the Annex:

- *the steps you have taken to meet the actions set out in our last assessment against outcomes RA2, RA3 and E2 including responses to the specific questions set out in the attached Annex.*

1. Outcome RA2 - update on progress since December 2020

The LSB's assessment in December 2020 stated:

Outcome		RA2: So they are effective and operate as intended, regulatory arrangements and supporting guidance documentation are regularly reviewed and, where necessary, updated based on a robust evidence-base.
November 2020	LSB assessment	<p>We asked IPReg to provide information about its planned review of regulatory arrangements, including overall delays of the timetable into 2022 and inclusion in its scope a range of additional work that had been planned to progress in 2020. We wanted to understand better the rationale for these changes, because we had previously relied on the review as part of our assurance of IPReg's performance in previous assessments.</p> <p>In response, IPReg advised us that its Board had made independent decisions to delay the review and change its scope. It cited a range of reasons for those decisions, including the impact of the Covid-19 pandemic, and its focus on implementing the new IGR. We understand those reasons, and we also recognise and support the primacy of independent boards of regulators in making strategic and operational decisions.</p> <p>However, it is a consequence of the decisions taken that the assurances previously accepted are not currently available, and our assessment of performance has changed accordingly.</p> <p>We also note that activities that have been delayed constituted clear commitments in previous business plans, as well as practising certificate fee consultations and applications to the LSB for approval. While these decisions are clearly a matter for the IPReg Board, we consider it important to the credibility of regulation in the legal services sector that where commitments are not met – which may be for a range of good reasons – that there is proactive, clear communication with stakeholders, particularly those who fund the work through their fees.</p> <p>Finally, there may have been an opportunity to mitigate this outcome with earlier and clearer communication to the LSB of the changes, preferably with an offer of alternative assurance that recognised any impact of the changes on stakeholders.</p>

Action needed	We expect IPReg to progress its review of regulatory arrangements in accordance with its public commitments in 2021/22. If there are additional delays or changes to the scope of the review, we expect IPReg to communicate this to stakeholders, including the LSB, and explain how any impacts of this on the regulated community and its consumers have been assessed and, if negative, been mitigated.
Timing	Matters relating to timing and scope of the review are primarily for the Board of IPReg. However, the LSB does not currently have assurance in relation to this outcome and it is unlikely, therefore, to be capable of being <i>met</i> until the review is complete (or alternative assurance is provided). We would be grateful for periodic updates, with the next one no later than 31 March 2021.

1.1 IPReg Response

In addition to our letter of 22 July, we also provided updates to the LSB on 28 May and 27 September 2021 setting out progress on the Review – these are attached at **Annex A**.

The LSB requested in its letter of 30 September 2021

Question: During 2021, you have provided several updates on the progress of IPReg’s review of regulatory arrangements. We would be grateful for a further update, in order to reassess your performance, that clearly sets out the following:

- *any material changes to the timeframe or scope of the review;*
- *if there have been any material changes, how any impacts of this on the regulated community and its consumers have been assessed and, if negative, been mitigated;*
- *what actions you are taking, where relevant, to ensure you have a robust evidence base on which to revise your regulatory arrangements and support you to meet RA2.*

We note that in your 22 July update you said, ‘the advice from our external actuary who is supporting us in our work to establish a compensation fund is that a significant amount of research and data gathering will be needed over the next 6- 12 months to develop a full risk model...’ We would appreciate if you could explain if and how this relates to your development of revised regulatory arrangements, and what work is underway or under consideration that is relevant to supporting you to meet RA2.

1.2 IPReg response

There have not been any material changes to the timeframe or scope of the Review. As we said in our 22 July update, the Board has established a Data Group to provide advice and guidance on what data is relevant to our policy decisions going forward. This will include consideration of what data is necessary to underpin the Review of our regulatory arrangements and other policy issues that arise during the year (e.g. the recent development on compensation arrangements). As set out in our previous letter, the Board has also allocated £15k from reserves for research (this had to be reduced from £50k as a result of the need to re-allocate our reserves to finance a compensation fund).

In terms of the work needed on compensation arrangements, this information is contained in Annex 5 of the confidential actuarial report which was provided to the LSB on 5 August. It is not directly related to the Review, except inasmuch as the compensation arrangements are part of our regulatory arrangements. The data gathering is needed to build a more detailed risk model to inform the actuarial review scheduled for around 2 years' time. However, information gathered as part of building the risk model may provide useful evidence about aspects of the market(s) that we regulate that are wider than compensation arrangements.

2. Outcome E2 - update on progress since December 2020

Outcome		E2: The regulator ensures that all complaints are reviewed on receipt and serious cases are prioritised and, where appropriate, referred to an interim orders panel.
November 2020	LSB assessment	<p>IPReg was asked to provide evidence that it meets outcome E2 in the absence of a mechanism for referring cases to an interim orders panel.</p> <p>This information was requested because, as set out in outcome E2, the LSB expects regulators to have an interim orders panel to which they can refer cases where appropriate. All other regulatory bodies have introduced some type of interim orders panel.</p> <p>IPReg said that the LSB has not previously stated that an interim orders panel is required (although it should be noted that standard E2, which refers to interim orders panels, has not changed in this respect since it was introduced in 2018). IPReg also said that we had previously assessed this outcome as <i>met</i> on the basis it has limited powers of suspension as part of the annual return process and to prevent voluntary removal from the register to avoid disciplinary action.</p> <p>We previously assessed this outcome when we completed transitional assessments under the regulatory performance assessment framework in 2018. At that time, IPReg provided assurance that it would review its position on interim orders as part of the review of regulatory arrangements. As noted above, that review has been subject to delays, meaning IPReg is now considerably out of step with practice across the sector in not having the option of interim orders. We also note that IPReg's disciplinary case numbers have increased and the median time to progress cases from initial complaint to final decision is 560 days, during which time no protection is available to consumers or other regulated professionals even in serious cases. Adopting appropriate interim orders arrangements could address this gap in protection.</p> <p>IPReg has noted that it has not had any recent cases that have raised the need for interim orders. The LSB accepts that these are powers that would always be used sparingly and, for a regulator with a small number of disciplinary cases such as</p>
		<p>IPReg, are likely to be used infrequently. However, we do not consider this to negate the need to have suitable public protection arrangements in place for high-risk cases, even if in practice such cases were relatively rare.</p>

Action needed	<p>We expect IPReg to conduct a review of its current position on interim orders panels and note that IPReg has restated its plan to consider its current position as part of its planned review of regulatory arrangements.</p> <p>Following the review, if IPReg does not consider it is necessary to introduce interim orders panels, we would expect IPReg to make clear its reasons for not doing so and how it will address the potential public protection risks identified.</p>
Timing	<p>We would be grateful for an update no later than 31 March 2021.</p>

The LSB requested in its letter of 30 September 2021: Question: You have previously confirmed that you will address this matter as part of IPReg’s review of regulatory arrangements. We would be grateful if you could please provide any relevant updates, where appropriate.

2.1 IPReg response

We confirm our previous response which is that this issue will be consulted on as part of the next stage of the Review which is due to be published in December 2021.

3. Outcome RA3 - update on progress since December 2020

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 regulated community and (d) the market(s) regulated by it which informs its regulatory arrangements and approach.
November 2020	LSB assessment	<p>IPReg was asked to provide information about its evidence base and how this is used to inform regulatory work.</p> <p>Our attention has focused in particular on the quality of diversity data, which IPReg acknowledges is out of date and unreliable. We understand that no data has been collected for a number of years and the dataset is incomplete. We know IPReg will share our concern that it is not in a position to understand diversity issues that may be present in its regulated community, much less take action to address them, and that it will wish to correct this position as soon as possible. We note in this respect that IPReg has undertaken to collect diversity data from registrants in January 2021, which is welcomed as potential progress towards meeting this standard in future.</p> <p>In respect of its wider evidence base, IPReg informed us that it collects information through its annual return and that it meets with stakeholders regularly. It also conducts regular reviews of information provided by bodies such as the LSCP and LSB to draw out relevant themes for the IP sector, although it considers these reviews to have been of limited use. IPReg identified action that it has taken in response to reviewing PII data and a student survey.</p>

Outcome		<p>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 regulated community and (d) the market(s) regulated by it which informs its regulatory arrangements and approach.</p>
<p>November 2020</p>	<p>LSB assessment</p>	<p>However, we note that IPReg has not conducted any thematic or benchmarking reviews, or consumer research, in the past two years. This raises concerns about the wider evidence base that IPReg relies upon and whether it is well placed to understand new and emerging policy issues that may impact the regulated community, the wider market or consumers.</p> <p>We appreciate that as a regulator with a smaller regulated community over which to spread its costs, IPReg may face particular difficulties in developing a capability of this nature. It may wish to consider forming collaborations with other regulators, or other bodies, to enable access to evidential capability in a cost-effective way. We welcome IPReg's interest in collaboration on research into small businesses to build its understanding of issues affecting consumers in its sector.</p>
	<p>Action needed</p>	<p>We expect IPReg to provide evidence that it has a robust evidence base to inform its regulatory approach. We acknowledge that it is already taking steps to ensure this by undertaking a diversity survey of registrants in January 2021. In particular, we expect IPReg to:</p> <ul style="list-style-type: none"> • launch the diversity survey, as planned, in January 2021; • assess its progress against the four outcomes in the LSB's 2017 diversity guidance after it has completed the survey and is in possession of the data; and <p>In order to address our wider concerns about its evidence base, we invite IPReg to provide a plan to the LSB with proposals for how it can develop its evidence base and understanding of its regulatory community and the consumers of these services. This could include, for example, carrying out research or working in collaboration with other regulators to better understand the wider market or consumers' needs.</p> <p>We know that IPReg will wish to address the issues in relation to diversity data as a matter of priority and given previous delays to data collection, we see it as important that its plans for a January 2021 launch are met. Beyond this, timing will primarily be a matter for IPReg's board. However, this outcome is unlikely to be considered <i>met</i> until significant progress has been made in this area, including on the broader issues of access to and use of an evidence base.</p>
	<p>Timing</p>	<p>We would be grateful for periodic updates, with the next one no later than 31 March 2021.</p>

Question: During 2021, you have provided several progress updates on the actions you are taking or will consider taking to support you to meet RA3. We would be grateful for a further update, in order to reassess your performance, that clearly sets out the following:

- any relevant actions completed in the period since the last performance assessment in November 2020, including reference to what was set out as ‘action needed’ in November 2020, and how these support you to meet RA3;*
- the status of any relevant actions that are currently underway, including when you expect them to be completed by and how they will support you to meet RA3;*
- what actions you will consider undertaking in the next 12 months and how you will determine if they are necessary to support you to meet RA3.*

In particular, we would appreciate if you could set out clearly what relevant actions are targeted to better understanding the diversity of your regulated community and the needs and use of legal services of IP consumers, including risks or issues facing particular consumers.

3.1 IPReg response

We provided updates to the LSB on 19 March and 22 July 2021. These are attached at **Annex B** and include information about diversity data.

In addition, the IPReg Data Group has developed [REDACTED] and possible areas of research which takes into account the need to develop a more detailed risk model to inform the actuarial review of our compensation fund in 2 years’ time. The forward plan is attached at [REDACTED]

Please also see response to additional LSB question on diversity set out below.

4.0 Update on run-off cover arrangements

The LSB has requested:

- *a report on data collected following IPReg's 2020 introduction of a requirement to obtain run-off cover set out in the attached Annex. The Annex states:*

Question: *In our decision notice of 2 March 2020 in relation to IPReg's application on run-off cover, we set an expectation for IPReg to report on the following data during the first year of operation:*

- *the extent of non-compliance with PII arrangements.*
- *any interventions made by IPReg to secure compliance and the outcome of such interventions.*
- *any use of the compensation insurance policy and any identified consumer impact (such as a financial loss due to the absence of run off cover).*

We would welcome any updates on your monitoring since you last provided an update in November 2020.

4.1 IPReg response

IPReg has always had a requirement for run-off cover. The rule change that was introduced in 2020 merely made that requirement explicit on the face of the Rules of Conduct.

Since the rule change was introduced, 12 firms have closed, of which 3 were mergers or acquisitions where the PII liability was taken on by the successor firm. Of the 9 that closed and ceased trading, 1 firm did not secure run-off cover insurance. That firm (Wood IP Ltd) and its principle was the subject of a disciplinary hearing for a failure to maintain a policy of PII. Due to the failure to maintain PII, in line with its own commercial policy, the insurer refused to write a run-off cover policy. Equally, as is normal practice in the insurance sector, no other participating insurer would provide such a policy to a firm that did not have a PII policy in place with it.

In that timeframe, 13 sole traders have also been removed from the register, of which 4 were unable to secure run-off cover insurance. Three of those were subject to disciplinary proceedings for a failure to maintain a policy of PII and were subsequently

removed from the register. We understand that all three attorneys may continue to practise in the unregulated sector. The fourth attorney was covered by the insurance policy of one of the 3 disciplined attorneys and, likewise, could not secure a policy of run-off insurance due to the lead attorney allowing the PII policy to lapse; that attorney has left the register.

IPReg's compensation insurance policy (which is no longer in place) was not designed to be used when run-off cover was not in place.

We have no evidence of consumer detriment arising from firms that have closed without putting run-off cover in place.

5.0 Update on IPReg's approach to transparency of governance matters

The LSB has requested:

Your approach to the aspects of transparency set out above: Regulators' approaches to the following aspects of transparency that in our 2020 report (paragraph 42) we said we would be focusing on in 2021:

- *regulatory bodies actively taking account of the regulatory objectives in the Act in carrying out their work, in decision-making and performance monitoring processes; and actively explaining and demonstrating how this occurs.*
- *regulatory bodies ensuring that information published on websites is up to date, whether it concerns policies and guidance or disciplinary actions.*
- *regulatory bodies demonstrating a commitment to public accountability and transparency in respect of decision-making and how Boards hold Executives to account.*

5.1 IPReg response

- *regulatory bodies actively taking account of the regulatory objectives in the Act in carrying out their work, in decision-making and performance monitoring processes; and actively explaining and demonstrating how this occurs.*

Review of regulatory arrangements

As part of our commitment to actively take account of the regulatory objectives, IPReg's new regulatory arrangements will set out, for each individual requirement, which of the regulatory objectives are impacted by it. We consider that this will raise attorneys' awareness of the regulatory objectives since they are unlikely to come across them in their day-to-day work. This analysis will also be developed further in the draft impact assessment which will be considered by the IPReg Board. This shows that our analysis against the regulatory objectives are explicitly considered from the very early part of the policy making process (pre-consultation).

For example (NB this is draft and may change prior to our next consultation), for client money we are likely to set out that these regulatory objectives are impacted:

RO1 - Protecting and promoting the public interest - by maintaining public confidence in regulated attorneys.

RO4 – Protecting and promoting the interests of consumers - by ensuring that money belonging to clients is protected.

RO5 – Promoting competition in the provision of services - by providing greater flexibility for where client money can be held and allowing for different business models.

In terms of our core business functions, we set out below how these actively engage the regulatory objectives:

Core business function	RO/s engaged	Further information / Example
Assessing applications for registration – attorneys	1, 2, 3, 4, 5, 6, 8	<p>Our application and restoration processes are rigorous, proportionate and targeted. We require applicants to evidence their qualifications (foundation and advanced) and provide information about their periods of supervised practice. Where we have doubts as to whether an attorney has been appropriately supervised or completed their minimum requirement for supervised practice, we verify the information provided with the firms/supervisors listed. Where an attorney applies on the basis of a lengthier period of unsupervised practice, we require them to evidence how they meet the expected competencies in their particular practice by way of case summaries, references, training diaries, examples of work undertaken, copies of articles or blog posts authored etc.</p> <p>Attorneys must complete a declaration as to their good character and suitability to be registered (and this declaration must be made each year at the point of registration renewal).</p>

		<p>Where an attorney is applying for restoration to the register after a period of inactive practice, the applications are carefully scrutinised. In order to determine whether the applicant is capable of practising safely and effectively, we will take into account the extent of their experience and relative period of inactive practice, ask them to confirm the reasons they originally left the register, what they have been doing whilst in inactive practice, whether they have been working in any other regulated industry during that period and if so, the details of the regulator, how they have kept up to date with developments in their sector and whether they have a planned programme of CPD in place, their intended mode of practice upon return to the register (in-house, in private practice and whether they will be supervised).</p> <p>We are mindful of the need to balance the requirement to protect and promote consumer interests with encouraging a strong and diverse legal profession which improves access to justice for consumers. Whilst the majority of consumers who use IP legal services are larger commercial enterprises or SMEs, there are a small number of individuals or businesses that need to access IP services at more affordable rates. If an attorney indicates they intend to immediately commence a sole trader practice, we will make additional enquiries as to their business model (direct access to consumers or consulting to large firms/commercial enterprises), management arrangements and safeguards (complaints handling processes, contingency plans, appropriate banking facilities) and PII position.</p>
<p>Assessing applications for voluntary removal from the register – attorneys</p>	<p>1, 2, 3, 4, 6, 7, 8</p>	<p>Where an attorney seeks to leave the regulated sector for any reason, we require them to make an application for voluntary removal. The attorney has to declare that they are not aware of any current or reasonably imminent complaint against them which IPReg may wish to consider, or if they are they must provide IPReg with relevant details. The attorney must also confirm that they will not seek readmission within 5 years to ensure that applications are made on the basis of a genuine intent to leave the profession as opposed to a short-term cessation to avoid payment of registration of fees or short-term regulatory oversight.</p> <p>This process triggers a flag against the attorney’s entry on the relevant public-facing register which makes clear that the attorney is intending to leave regulated practice. The flag, and the attorney’s name, remains on the register for a period of three months. If in that time any information comes to light which suggests an attorney should not be removed from the register because to do so may present a risk or potential risk to clients, client money or any investigative process, IPReg can refuse the application for removal until such time as any investigative or disciplinary process is undertaken. Our website makes clear to consumers that they should contact us if they have a complaint about an attorney who is seeking removal before the removal date to ensure we can still take action.</p>

		<p>IPReg also has a discretion to waive the three-month notification period in suitable cases, such as where the attorney applicant in question has not been in active practice for a significant period prior to applying for removal.</p> <p>Since this process was introduced in late 2018, we have had one case where a complainant notified us of a potential concern which allowed IPReg to suspend the removal process whilst we undertook some enquiries. Once established that there was no risk to clients, client money or any investigation, the process was able to continue. There has been one case where an attorney declared an open complaint against him at the point of seeking removal. IPReg investigated to determine whether it was a matter that may engage its regulatory arrangements, ultimately deciding that it did not and the application was able to progress.</p> <p>This process is a proportionate, targeted consumer safeguard which allows IPReg to give effect to a number of the regulatory objectives focussing on consumer protection and promoting access to justice. It is a valuable mechanism to ensure that attorneys adhere to professional principles by acting with integrity and maintaining proper standards of work as the process ensures that regulated attorneys cannot simply take themselves out of regulation in order to avoid regulatory oversight or sanction.</p>
<p>Annual return process – attorneys and firms</p>	<p>1, 4, 6, 8</p>	<p>Following the development of a new online CRM system in 2019, IPReg has streamlined and improved its annual return process for attorneys and firms to allow IPReg to monitor compliance more accurately with IPReg’s regulatory arrangements.</p> <p>For attorneys, there is a step process which requires them first to confirm they have complied with their CPD obligations. Attorneys are not able to complete the next step in renewing their registration until this process is undertaken. Once the CPD declaration is made, the attorney must submit an annual return in which they must update their contact information, confirm their practice category, confirm they hold a current policy of professional indemnity insurance (PII) (where relevant) and make a good character declaration. Only then are they able to pay their practising fee (or have their employer pay it on their behalf).</p> <p>Firms/employers must confirm their contact information, identity of their statutory role holders, PII policy and provide complaints data. Only once they do that are they able to pay fees and the fees of attorneys who have already submitted their annual returns.</p>

		<p>This process ensures that attorneys and firms cannot renew their registration unless all the information IPReg needs to monitor compliance with its regulatory requirements has been provided. Where an attorney or firm fails to do so, they are automatically suspended from the register three months after the renewal date. During this time, IPReg will send reminders to complete the process, and where necessary, undertake investigation into the firm or attorney to determine whether there are any consumer protection concerns. This would most normally be the case for a Sole Trader who has failed to provide PII information which suggests an immediate public protection issue in relation to which IPReg will take action.</p> <p>Year on year, IPReg will be collecting data on the timeliness of attorneys and firms in completing this process so that targeted communications can be sent out to those who are persistently slow to undertake the process, which itself may suggest systemic practice management issues that pose a risk to consumer confidence and safety.</p> <p>IPReg uses complaints data submitted by firms and sole traders to identify practices which may have systemic issues requiring IPReg's assistance or monitoring.</p>
<p>Consumer awareness of regulation and complaints handling process</p>	<p>1, 2, 3, 4, 6, 7, 8</p>	<p>We publish information about our complaints handling and enforcement process online and allow consumers or members of the public to contact us to report concerns via a medium that best suits them - online form, email, in writing or by telephone.</p> <p>Our website contains information about the types of complaints we investigate, how we approach enforcement and we also publish all past disciplinary decisions.</p> <p>All of our correspondence is tailored to the individual and in early correspondence with complainants, we set out our remit, powers and the limitations on our powers (we cannot direct the payment of compensation or the making of an apology for example). We also signpost the complainant towards the Legal Ombudsman or other agencies who may better assist them if it appears that IPReg is not the appropriate organisation to deal with the matter.</p> <p>Rule 18 of the Rules of Conduct governs IPReg's requirements around publicity of information. The websites, letterhead and emails of attorneys providing services to the public must show the words "Regulated by the Intellectual Property Regulation Board" or "Regulated by IPReg".</p> <p>Rule 18 also provides that all publicity must be fair, honest, accurate and not misleading. Recently we had cause to write to two sole trader attorneys who worked together using a single trading</p>

		<p>name and who described themselves as “a firm regulated by IPReg”. This was inaccurate and misleading as whilst the attorneys themselves were individuals regulated by IPReg, the “firm” was not (in fact the firm was merely a trading name and was not a legal entity). IPReg considered that consumers could be misled into thinking that they were instructing a legally established and regulated firm of attorneys, with all the protections that this brings, when in fact they were instructing a single sole trade attorney who happened to be sharing premises with another, separate practice. Compliance with Rule 18 was eventually achieved.</p>
Assessing applications for registration - firms	1, 2, 3, 4, 5	<p>In terms of our authorisation process for firms, our approach supports the regulatory objectives in the following ways:</p> <p>Protecting and promoting the public interest - we assess the likelihood of there being any negative impact on the public interest in authorising the firm by reference to the background and regulatory history of those seeking to set up new firms;</p> <p>Supporting the constitutional principle of the rule of law - we assess any risks to the rule of law posed by those intending to start new firms;</p> <p>Improving access to justice - one of the driving factors in the authorisation process is improved access to justice through new firms coming into the market;</p> <p>Protecting and promoting the interests of consumers - the application process includes consideration of how firms manage conflicts and handle complaints and assesses the character and suitability of those planning to own and manage firms. We also consider firms' Terms of Business from the perspective of the client, identifying potential unfair contract terms;</p> <p>(e)promoting competition in the provision of - we are encouraging innovation in terms of the services offerings of new firms, including new charging models.</p> <p>We have also changed the format of our reports on applications to refer explicitly to the regulatory objectives.</p>
Rule change applications	Varies	<p>IPReg includes a detailed analysis of the impact on the regulatory objectives in all its rule change applications. For example the Sunset Clause for JEB qualifications and changes to IPReg's Compensation Arrangements.</p>

- *regulatory bodies ensuring that information published on websites is up to date, whether it concerns policies and guidance or disciplinary*

actions

IPReg regularly updates its website to ensure that the information on it is accurate. We publish our Board papers and minutes as soon as possible after each meeting. In addition we publish quarterly updates on our budget/finances. We also update information about the number of regulated attorneys and firms after the annual renewal process is complete.

All attorneys and firms now have an online account and are able to update information in real time. This allows them to change their address/place of work to ensure that it is up to date. All applications for voluntary removal from the registers (e.g. because of retirement) are [published](#) on our website for a 3-month period to enable people to alert us in the event that they might have a complaint against the attorney (in which case we will keep them on the register until the matter is resolved).

Disciplinary decisions are also [published](#) on the website.

- *regulatory bodies demonstrating a commitment to public accountability and transparency in respect of decision-making and how Boards hold Executives to account.*

IPReg publishes its Board papers as soon as possible after each Board meeting. Board papers are redacted before publication where it is appropriate to do so. Our preference is to publish as much information as we can. Our original intention was that we would divide the Board agenda into non-confidential and confidential sections and that we would not publish the papers or minutes of the confidential section. However, on reviewing this approach it became clear that there was a considerable amount of information from the confidential part of the meeting that could nevertheless be published. Although some papers are withheld in their entirety, our policy is to assume that they will be published unless there is a good reason not to.

IPReg Limited's external auditors produce financial statements each year and are filed at Companies House. Our website signposts viewers to Companies House.

6.0 Update on taking account of findings of BSB review

The LSB has asked us to set out:

- *how you have taken account of the findings of the LSB's targeted review of the BSB's performance against the Well-led standard and*

the actions that you have taken, particularly in respect of governance and consumer engagement.

When preparing your report, in line with the Well-led standard and your Board's role in monitoring IPReg's performance, we would be happy for you to use information in the form that you have already provided to your Board, supplemented by any additional information needed to deal with our specific points.

6.1 IPReg response

On 2 November, the IPReg Board considered a detailed paper on the findings of the LSB review of the BSB and their applicability to IPReg. The paper set out the findings of a review that had been undertaken by the CEO into IPReg's governance processes and related documentation. In addition to the BSB review, the paper also considered whether there were any implications for IPReg from the LSB's review of the Faculty Office and of the Levitt Review into RICS. The paper is attached at **Annex D** with draft minutes of this item. **Please note that this has not yet been redacted and must not be published by the LSB without IPReg's agreement. We anticipate that it will be published on our website soon.**

The 2 November Board meeting also considered whether there were any improvements that could be made to the quantity and/or quality of information provided to it in (a) papers and (b) generally. The Board decided [TBC].

The IPReg Board meets 7 times a year, with provision for papers to be considered outside meetings where necessary and additional meetings can be arranged at the request of the Chair. Generally meetings last around 3-3.5 hours with a 20-minute break for lunch. Papers for the meetings are generally circulated 7 calendar days before the meeting to ensure that Board members have sufficient time to consider them in full. In addition to Board meetings, the Board has established an Education Group to steer our work on education/admission requirements and a Review Group to steer our work on the regulatory arrangements review.

7.0 Update on actions on Diversity and Inclusion (D&I) outcomes

The LSB has requested:

[Our Guidance for legal services regulators on encouraging a diverse workforce \(February 2017\)](#) noted that we would be monitoring regulators performance on equality and diversity actions annually. We last sought an update in June 2020. This year, rather than commissioning a separate update from regulatory bodies, we thought it more efficient to include an update request within the annual performance assessment progress update. Please provide a short summary of the actions you have taken this year to meet the outcomes in our D&I guidance and the three expectations you reported on in June 2020 on demonstrating:

- a. An understanding of the composition of their regulated community;*
- b. An understanding of the barriers to entry and progression within the regulated community, and a programme of activity to mitigate those barriers with measures in place to evaluate effectiveness; and*
- c. Measures in place to understand any differential impact on protected characteristics within their disciplinary/enforcement procedures.*

For IPReg, this is relevant to the action needed to meet RA3 set out in our 2020 report. We note that your July 2021 progress update referred to the actions you are taking with regard to the Guidance. We would be grateful if you would provide any additional or more recent information as part of your response to this information request, where relevant.

7.1 IPReg response

7.1.a An understanding of the composition of their regulated community

We have put an Action Plan in place (provided to the LSB in the letter of 22 July) which takes into account the results of our initial diversity survey.

As part of its consultation on its 2022 Business Plan and budget, IPReg asked for responses on whether it should conduct a further diversity survey in 2022. We also consulted on a draft EIA. IPReg's detailed analysis and consideration of the responses has already been provided to the LSB in its [2022 practising fee application](#). In summary, the responses were mixed. CITMA put

forward a proposal to work together with the profession and IPReg to explore how it would be possible to obtain more comprehensive and robust data to use. IPReg has no evidence that there have been significant changes overall in terms of entry to, or exit from, the registers. Our current plan is that we would undertake a further survey in 2023. We welcome the suggestion of a wider discussion during 2022 about how to achieve the best results from the 2023 diversity survey.

7.1.b An understanding of the barriers to entry and progression within the regulated community, and a programme of activity to mitigate those barriers with measures in place to evaluate effectiveness

Accredited qualification providers

As of 17 August 2021, the updated requirements of the IPReg Accreditation Handbook require Equality, Diversity and Inclusion Policies to be provided as part of the (re)accreditation assessments. The annual reporting exercise which underpins accreditation (typically every 5 years) now requires information about the diversity profiles of student/candidate cohorts. We have received annual reports from 2 of the 5 accredited qualification pathway providers (timings of the reports vary according to academic/examination year cycle). For both, we have raised some queries about their EDI data: in one case it was absent and we have asked them that as soon as practicable they introduce their planned measures to capture and analyse this data; in the other case, the diversity data provided was insufficient (it was limited to gender only) and needed to cover all the protected characteristics.

Joint Examination Board (JEB) exemption - rule change application

The Sunset Clause for Historic Exemptions Application made to the LSB on 3 June 2021 looked at a variety of factors regarding an applicant's particular circumstances and the impact of the proposed change on their ability to have completed the qualification and experience in the (minimum) 10 years since embarking on the qualification route and application for entry on the register. The following issues were identified as having the potential to pose a barrier to qualification in what might typically constitute a reasonable timeframe (less than 10 years):

- Disability/Illness – a significant disability (or illness or accident) can mean an individual has to withdraw from their studies or employment for a pronounced period of time, and/or at intervals, this can include mental health conditions with a long-term effect on normal day-to-day activities
- Gender reassignment – the process of reassignment of gender typically involves surgical procedures and hormone

treatment, alongside counselling and support, can mean an individual has had to take time out of their studies or employment, this may be for a pronounced period of time, and/or at intervals

- Pregnancy and maternity – sole parental and/or child caring responsibilities can mean an individual has had to withdraw from their studies or employment, this may be for a pronounced period of time, and/or at intervals
- Other caring responsibilities – caring responsibilities for older people or close family members with health or mental issues may have disrupted an individual's qualification pathway
- Other – financial, such as furloughed due to pandemic and/or firm cannot afford to place the individual on course/examinations;

and that such factors would be balanced against fitness to practise factors.

Apprenticeship levy

A key aspect of the work of IPReg's Education Working Group (EWG) is to encourage a choice of qualification pathway options. On 6 September 2021, the EWG considered whether there were any options for the targeting the apprenticeship levy (a compulsory tax at 0.5% of a total annual £3 million pay bill) paid by the largest regulated firms. The EWG came to the view that the levy could be targeted only in the event of development of an intellectual property (attorney or related) apprenticeship(s).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Apprenticeships will be subject to further discussion at a future EWG meeting.

7.1.c Measures in place to understand any differential impact on protected characteristics within their disciplinary/enforcement procedures.

IPReg's Disciplinary Procedure Rules (and the Appeals Rules) have been drafted to ensure that they are non-discriminatory.

To date, there is no evidence of (and no complaints about) any negative impact of the Rules, or the application of them by IPReg, the Complaints Review Committee or the Joint Disciplinary Panel, on someone who has a protected characteristic. It should be noted that IPReg deals with very few enforcement cases (normally 2-3 each year). If an attorney who is the subject of an investigation or enforcement action brings to our attention that they need appropriate adaptations to be made to our processes, we always try to accommodate them to ensure that they are not discriminated against (for example a current case where the respondent is elderly, has issues accessing information online and is in poor health).

ANNEX A

UPDATES PROVIDED TO THE LSB ON REVIEW OF REGULATORY ARRANGEMENTS

Copy of email from 28 May 2021

Chris

Please find attached a copy of the paper on our review of regulatory arrangements which the IPReg Board considered and agreed at its meeting last week.

In terms of the detailed Annex to your letter of 7 May 2021, in relation to Outcome RA2 the Board paper sets out:

- The detailed timetable for key stages of the project going forward through to completion (paragraphs 20-23)
- Our approach to engagement with stakeholders (paragraphs 16-19)
- A summary of responses – this will be published on our website (Annex A).

Fran

Fran Gillon

Chief Executive

Intellectual Property Regulation Board, 20 Little Britain, London EC1A 7DH

t 020 7632 7174 THE IPREG TEAM IS WORKING REMOTELY. PLEASE CONTACT US BY EMAIL.

e fran.gillon@ipreg.org.uk



EXTRACT to LSB re
Review_Redacted.pc

27 September 2021

Dear Matthew

I wanted to provide an update on the next steps for the review of our regulatory arrangements. The project is progressing well and we have had a busy summer engaging with stakeholders in relation to our developing proposals. We have also now instructed Kingsley Napley to begin the drafting process.

The Board agreed the timetable for the forthcoming consultation at its meeting on 2 September. Detailed proposals for consultation (including draft regulatory arrangements and initial impact assessment) will be considered by the Board at its meeting on 9 December. Subject to the outcome of that discussion we plan to launch a 12 week consultation before Christmas.

Progress will be reviewed on 20 October at a meeting of the Board sub-group with responsibility for overseeing the project.

I would suggest it might be helpful for us to arrange a meeting with your team to discuss the proposals once the consultation has launched so that we can answer any questions you may have.

Yours sincerely

Fran Gillon

Chief Executive

Cc:

Chris Nichols - LSB
Margie McCrone - LSB
Victoria Swan - IPReg