

# **The Patent Regulation Board and the Trade Mark Regulation Board**

## **Minutes**

**3 November 2022 at 12.30pm**

**20 Little Britain, London and online**

### **Attending:**

Rt Hon Lord Smith of Finsbury (IPReg Chair)

Justin Bukspan

Sam Funnell (Data Working Group Chair)

Alan Kershaw (Review Working Group Chair)

Victor Olowe

Samantha Peters (Governance Committee Chair)

Emma Reeve

Caroline Seddon (Education Working Group Chair)

Nigel Robinson

**In attendance:** Fran Gillon (CEO), Shelley Edwards (Head of Registration), Emily Lyn (Head of Regulatory Arrangements Review), Victoria Swan (Director of Policy)

1. Apologies - no apologies were received.
2. Notification of any conflicts of interest – none declared.
3. Minutes of last meeting – agreed.

### **Items for decision/discussion**

#### **4. 2023 business plan and practising fee**

4.1 The CEO advised the Board that the Legal Service Board (LSB) had agreed the increase of 6% for IPReg's 2023 practising fees. The extension of the power to waive fees in all cases of hardship (not just those arising as a result of the pandemic) had also been agreed. The decision has been published on the LSB's website.

#### **5. Review of regulatory arrangements – update on rule change application**

5.1 The Head of the Regulatory Arrangements Review reported that Kingsley Napley had reviewed the full rule change application that we will send to the LSB. This included more than 10 guidance documents. In Kingsley Napley's view, the application is thorough, comprehensive and reads well. Their feedback was valuable and resulted in some presentational changes such as combining the admissions, disciplinary and waivers operating procedures. The draft application and some sample guidance documents had then been submitted to the LSB for an informal review. Feedback was provided by the LSB's Head of Regulatory Decision Making and had resulted in some changes, none of which are considered substantive.

5.2 The Board was grateful to the LSB for the feedback on the draft application and the quick turnaround for considering it. The Board agreed:

5.2.1 That the application would include a covering letter to provide important context for the changes;

5.2.2 To delegate to the IPReg Chair and the Chair of the Review Working Group the final decision to submit the application to the LSB.

**Action:** Head of Regulatory Arrangements Review to finalise the application.

## **6. Complaints Update**

6.1 The Head of Registration presented the new format of the paper which provides the Board with high level information about how complaints about attorneys and firms are progressing. More cases have been closed than received in the last year. She noted that cases are being closed more rapidly than 3-4 years ago and that this impacts favourably on case handling. The oldest open case is 24 months old; it involves a number of allegations, is very technical and we have obtained 2 expert reports.

6.2 The Board welcomed the change to the structure and content of the report. It discussed whether there were any wider learning points from the type of complaints we received that could be set out in guidance but recognised that the small number of cases and the varied nature of them meant that it was more difficult to identify trends.

6.3 The Board proposed:

6.3.1 Changing the format slightly: bar charts cover 12 months rather than 18 months; pie charts to show the actual number of cases in addition to percentages;

6.3.2 Expanding the section on the regulatory objectives.

6.4 The Board noted the paper.

**Action:** Head of Registration to implement changes to the content of the paper.

CS left the meeting.

## **7. Progress on Governance Action Plan implementation**

7.1 The CEO presented the paper which updated the Board on progress implementing the Governance Action Plan. She reminded the Board that at its July 2022 meeting, the Board adopted a Governance and Transparency Action Plan in response to the LSB's performance management framework assessment. This was published with the July Board papers.

7.2 The CEO reported that overall the actions are on course but consideration of our approach to risk management has been postponed to January 2023 because the strategy morning planned for November was cancelled due to industrial action on the rail network.

7.3 The Board discussed the new format for Board papers. In particular:

7.3.1 The template provides a good framework to provide information and analysis. Discussion of the regulatory objectives should be expanded. There should be a section on what options have been considered and the merits of each (or if only one option has been put forward, an explanation why);

7.3.2 Information about risks and mitigations needs to be crisp and to the point;

7.3.3 Redactions should be minimised.

7.4 The Board noted:

7.4.1 Progress implementing the Action Plan;

7.4.2 That any changes to our approach to risk management will follow after the issue has been considered at the January 2023 strategy day.

## **8. LSB engagement**

**8.1 Regulatory Performance Assessment** – the CEO introduced the paper which set out the:

8.1.1 LSB’s September response to our July performance assessment update;

8.1.2 LSB’s information request of 28 September and our draft response; and

8.1.3 Timetable of 1 January 2023 for implementing the LSB’s new regulatory performance framework which is due to be published w/e 28 October.

8.2 The Board discussed the paper and welcomed the more positive wording used by the LSB in its response and agreed that LSB engagement was an important element of the Board’s strategy. The Board discussed the efforts that had been made to engage consumer bodies and agreed that this should be included in the response. In addition, the response should include: information about the Team’s business as usual activities since these were significant; a copy of this meeting’s Board paper on implementation of the Governance Action Plan.

8.3 The Board agree to submit the response to the LSB’s information request.

**Action:** CEO to amend the response and submit to the LSB.

8.4 **Sanctions** – the CEO introduced the paper which set out the progress that has been made on implementing IPReg’s Sanctions Action Plan to ensure that its regulated firms are compliant with the OFSI sanctions framework. She explained that the key action that has been undertaken was to email all firms and sole traders on 14 September requiring information about their compliance with the sanctions framework.

8.5 The CEO reported that we had received responses from the majority of firms and sole traders. She explained that any queries/issues were being progressed on a case by case basis; attorney who had not yet responded were being contacted. A general licence for receipt of fees for legal advice was issued last week by OFSI in response to a significant increase in requests for individual licences. The LSB has arranged a further sanctions roundtable on 24 November and it was anticipated that the Ministry of Justice would provide more information about the recent announcement of a ban on transactional legal services to Russia. The CEO also drew the Board’s attention to a recent financial

penalty decision by OFSI which stated that IP could be an “intangible economic resource”.

8.6 The Board noted that the responses to the information request indicated that many sole traders did not have formal systems in place to comply with the sanctions framework. It also noted that the new regulatory arrangements will require that material risks to a practice (such as breaching the sanctions framework) are identified, monitored and managed. The Board discussed the importance of firms undertaking due diligence where a client or potential client had a complex corporate structure and noted that the SRA was soon to publish updated guidance on ‘red flags’ which registrants were likely to find helpful.

8.7 The Board agreed:

8.7.1 To note the analysis of the responses;

8.7.2 That we should discuss our findings with the IPO. If further analysis indicates that there may be a regulatory issue with a particular firm or sole trader, we will follow up individually with those firms or sole traders to either: (a) bring them into compliance; or (b) ask them to update the information that the IPO holds about them.

## **9. Speaking Up policy**

9.1 The CEO introduced the paper which set out the background to the development of the Speaking Up policy. She explained that speaking up is an approach that is used to address errors or failings in an organisation as well as an opportunity to make improvements in the way that we do things.

9.2 The CEO reported that the policy arose out of a discussion about how members of team could raise an issue outside the grievance procedure. The policy was developed using resources at the [National Guardian framework](#) and a model policy from [Speak Up Direct](#) used in the health and social care sector.

9.3 The Board discussed:

9.3.1 the scope of the policy and noted that it is not restricted to the protected diversity characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation in the Equality Act 2010;

9.3.2 that the policy should reference the benchmarking resources used.

9.4 The Board agreed to adopt the Speaking Up policy.

**Action:** CEO to draw the policy to the attention of IPReg Team members

## **10. CEO’s Report**

10.1 The CEO introduced the paper which set out the main issues to bring to the Board’s attention that are not subject to a full Board paper.

10.2 The Chair reported on Board recruitment. He confirmed that Henrietta Rooney had been offered a position on the Patent Regulation Board and that it was proposed that she would join the

Board in January 2023 to avoid any perceived or actual conflict of interest with her role as an examiner on the Patent Examination Board. Nigel Robinson will continue in post until then. An offer has also been made to a lay member, subject to references.

10.3 The Board agreed that the appointments should be made, subject to satisfactory references being received.

10.4 The Board welcomed the introduction of a written CEO's report. It discussed:

10.5 CITMA 'Making the best of Brexit' leaflet/campaign. The Board agreed that it would not be appropriate for it to become involved in a campaign which was very much focused on the representative body's priorities. However, it agreed that regulation did provide important elements of consumer protection and that the Review of regulatory arrangements had identified where changes were need (such as the increased transparency requirements);

10.6 Reshaping Legal Services Conference. This had been organised by the LSB and had an emphasis on equality, diversity and inclusion. Amongst other things, it had discussed:

10.6.1 whether there was a disconnect between lawyers providing services in best interests of clients and the public interest duty. A particular example was where an individual may have been badly advised by their lawyer about a Non-Disclosure Agreement;

10.6.2 professionals asking how to raise a concern with their employer or the regulator about unethical behaviour. The Board noted that IPReg's new regulatory arrangements include a rule that prohibits preventing registrants from reporting concerns. The Board considered that whistleblowing policy might be required in due course. The Board also discussed the IPReg Litigators Code of Conduct which requires an attorney to act in the interest of justice even if a client asks them not to. It noted that the duty in the regulatory objectives was to the public interest and there was nothing in statute that imposed a duty towards the general public;

10.6.3 the statistics relating to the very limited numbers of black barristers selected for government panels and that this indicates a need for regulators to review their own EDI data on any legal adviser panels or equivalent.

The Board noted the paper.

### **Items to note**

## **11. Finance Update**

11.1 The CEO presented the paper which updates the Board on IPReg's financial position as at 30 September 2022 and includes projections to 31 December 2022.

11.2 The Board discussed the following matters:

11.2.1 That IPReg's income was higher than the budget as a result of a higher than anticipated number of registrations. Expenditure was also higher than budget due to the cost of disciplinary cases;

11.2.2 Its preference to include the projected position in the published version of the paper in future;

11.2.3 Whether the notes were too detailed given the nature of the report. However, the Board recognised that they provide useful management information and could provide increased transparency to external readers about IPReg's finances.

**Action:** CEO to publish finance update on the IPReg website.

## **12. Action Log**

12.1 The CEO reported a typo on the action about the compensation fund – this has been considered by the actuary (not the auditor).

12.2 The Board noted the Action Log.

## **13. Risk Register**

13.1 The Board noted the red risk.

## **14. Working Group Updates**

14.1 The Board noted the Data Group forward action plan.

## **15. Regulatory Statement**

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