

The Patent Regulation Board and the Trade Mark Regulation Board

Agenda

Thursday 2 November at 2.00 pm

Orwell Room, 20 Little Britain, London EC1A 7DH

Please note that the Board meeting will be preceded in the morning by the Strategy Meeting

1. Apologies
2. Notification of any conflicts of interest

Items for decision/discussion

3. Appointment of Katerina Kolyva as a Director of IPReg Limited
4. Minutes of September meeting and matters arising
5. Review of compensation arrangements (VS/FG) [John Birkenhead will be attending in person]
6. Strategy morning feedback (Chair) – no paper
7. IT system update (SE) – no paper
8. Risk Working Group – report back (VO/VS)
9. Governance Action Plan implementation (SP/FG)
10. Complaints update (SE)
11. CEO's report (FG)
12. Response to LSB consultation on complaint handling processes (VS) – no paper
13. Action Log (FG)

Items to note

14. Red Risks (FG)
15. Finance Report (KD)

16. Regulatory Statement

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

Board Meeting 2 November 2023

Compensation Fund – consultation

Agenda Item: 5

Author: Fran Gillon, CEO (fran.gillon@ipreg.org.uk); Victoria Swan, Director of Policy (Victoria.swan@ipreg.org.uk)

This paper is for decision.

This Board paper will be published.

Annex A will not be published – confidential advice. A summary will be published with the consultation document.

Annexes B and C will not be published – drafts for consultation.

Summary

1. In October 2021, IPReg established a compensation fund to consider claims from clients (or former clients) who have suffered a loss as a result of fraud or failure to account by a registrant. In agreeing the rule change application to set up the compensation fund (before that, compensation arrangements were provided through an insurance policy) the LSB required a sunset clause. This means that the current arrangements end on 30 April 2024.
2. Our actuary advised us on setting up the fund and undertook a review at one year; he has advised on possible changes to the fund and his latest report is at **Annex A** and he will attend the meeting to present his report and answer questions on it. That report has informed the proposed consultation (**Annex B**) which considers the compensation arrangements from 1 May 2024. Kingsley Napley has redrafted the Compensation Arrangements Rules (**Annex C**) and these will be published with the consultation document.
3. We consider that it is appropriate to adopt the SRA's four guiding principles for its compensation arrangements: viability, stability, manageability and transparency for our compensation arrangements. The proposals set out in this paper have been assessed against these principles and we consider that they are consistent with them.
4. Although no changes to the fund are considered necessary from an actuarial perspective, the consultation proposes the following changes to the current arrangements to increase the level of protection for users of regulated IP legal services:
 - a) Extending eligibility to make a claim on the fund to entities with an annual turnover of less than £2 million (from the current criterion which is based on the definition of micro business).¹ In addition, we would no longer use the criteria that are currently used on balance sheet or number of employees. This would make it consistent with the comparable schemes of the

¹ Having two of: (a) a turnover of £632,000 or less; (b) £316,000 or less on its balance sheet; or (c) 10 employees or fewer.

Solicitors Regulation Authority (SRA) and CILEx Regulation. It also brings it closer into line with one of the eligibility criteria used by the Legal Ombudsman;²

- b) Increasing the limit for an individual claim to £30k (from the current £25k). This would benefit claimants by:
- Helping to preserve the cap’s ‘real’ value to reflect recent high inflation;
 - Taking into account the potential impact of the cost of living increase on any assessment of a claimant’s hardship.
- c) Removing the ability for IPReg to “use the Fund to pay any other costs, charges or expenses incurred by in establishing and administering the Fund”.³ This would mean that the entire fund is available to provide compensation, thus providing more certainty and transparency for consumers about the total amount of compensation available in any one year (i.e. £100k). IPReg’s costs (e.g. actuarial and legal fees) would continue to be taken from our income from practising fees.
5. Actuarial advice is that these changes would not undermine the viability of the fund, are consistent with the guiding principles and could be implemented without the need to increase practising fees.

Recommendation(s)

6. The Board is asked to:
- Discuss and note the actuarial report (**Annex A**); and
 - Agree the consultation for publication (**Annex B**); a draft of the new Compensation Arrangements Rules will be included with the consultation.

Risks and mitigations

	Risk	Mitigation
Financial	<p>Fund is insufficient to meet all claims over the next 12 months.</p> <p>There is an opportunity cost to keeping £100k as a ring-fenced reserve that can only be used to pay eligible claims; it cannot be used to fund other regulatory activities.</p>	<p>The report states that the fund is expected to be viable and meet all claims in full for the next 12 months in all but the most extreme scenarios.</p> <p>If there are no claims then IPReg retains the money in the ring-fenced reserve. Subject to actuarial advice, it may be possible to take out the interest earned and keep the fund at</p>

² Legal Ombudsman [Scheme Rules](#) clause 2.1(a) and (b): A complainant must be one of the following: a) an individual; b) a business or enterprise that was a micro-enterprise (European Union definition [Defined in European Commission Recommendation 2003/361/EC – broadly a business or enterprise with fewer than 10 employees and turnover or assets not exceeding €2 million]) when it referred the complaint to the authorised person;

³ Clause 3.1e of the current [Compensation Arrangements](#)

		£100k. ⁴ This differs from an insurance policy where the premium has to be paid each year even if there are no claims.
Legal		
Reputational	A significant number of claims would mean that the fund would be unable to meet all claims. This could damage IPReg's reputation.	The report states that the fund is expected to be viable and meet all claims in full for the next 12 months in all but the most extreme scenarios.
Resources	No specific resource risks. Actuarial and legal drafting resources and costs of £15-20k will be incurred.	We have used the actuary who has previously advised on this matter as he is familiar with our current arrangements and other similar compensation funds. We have instructed Kinglsey Napley as they drafted the regulatory arrangements in the new style.

Background

- From 2014 (when it was designated as a Licensing Authority) to 2021, IPReg provided compensation arrangements (as defined in the Legal Services Act 2007 s21(2)) by means of an insurance policy with Royal Sun Alliance (RSA). The annual cost of ~£30k was funded through practising fees. In 2021, IPReg was informed that RSA was not going to offer terms for renewal of the policy, due to streamlining its portfolio in the run up to a potential sale. No other insurer was willing to offer a similar policy.
- Compensation arrangements protect clients who have suffered a loss as a result of fraud or failure to account by a registrant. No claim has ever been made. When the RSA policy was withdrawn, IPReg established a compensation fund. Individual consumers and micro-businesses⁵ are eligible to make a claim on the compensation fund in the event they suffer loss as a result of fraud or failure to account. In agreeing IPReg's proposed rule change to set up the fund, the LSB required a sunset clause to be added; the current arrangements will end on 30 April 2024.
- Since the 2021 application was made to the LSB, IPReg has increased its evidence base about the type of clients that use regulated IP legal services. In particular, IPReg's work on the Review of our regulatory

⁴ Note that no allowance has been made for investment income (bank interest) or future subrogation recoveries (these are very material for the SRA's fund which last year made grants of c£15m but recovered c£10m). These can therefore provide a 'buffer' for poor claims experience / enable future releases from the fund.

⁵ Micro-entities are very small companies. A company is [a micro-entity](#) if it has any 2 of the following: a turnover of £632,000 or less; £316,000 or less on its balance sheet; 10 employees or less. There were [5.2 million microbusinesses](#) in the UK in 2022, accounting for 95% of all businesses.

arrangements included gathering evidence on specific areas that are relevant to consideration of the design of the compensation fund going forward:

- a. The IP legal services market is largely business to business;
- b. Low levels of client money are held and issues such as mishandling of client money are not common in terms of misconduct or claims on PII;
- c. There are few complaints – the most common reason is complaints about costs information.

10. The Review led to a change in the definition of “client money” to “money held or received by you or your firm in connection with work undertaken for a client, excluding any advance payments for costs received where the terms have been agreed”. This change is likely to result in lower levels of client money being held by regulated firms, with a consequent reduction in the amount of client money at risk from fraud or failure to account.

11. A one-year actuarial interim report (which was considered by the Board in December 2022) found that the fund was expected to be viable for the next 12 months. The current funding/risk model was designed to meet all claims in full until the sunset date in all but the most extreme scenarios. The report found no need to change the total amount of the fund (£100k) or the maximum amount that can be paid for any one claim (£25k). No specific policy alternatives were proposed as a result of the interim review given that there had been no claims and the arrangements could remain until the sunset date of 30 April 2024.

12. This table sets out the previous, current and proposed limits of the fund.

	Previous arrangements (under the insurance policy)	Current arrangements (compensation fund 2021 – 30 April 2024)	Consultation proposals
Individual limit	£22,500 per claim + £2,500 excess ⁶	£25,000 per claimant	£30,000 per claimant
Firm aggregate	£225,000 per practitioner	£100,000 per firm	£100,000 per firm
Total fund	£2.5m	£100,000	£100,000

13. Previous arrangements (under the RSA insurance policy): these applied from 2014 when IPReg was designated as a Licensing Authority (an approved regulator able to license Alternative Business Structures).

14. Current arrangements (compensation fund 2021-now): the RSA insurance policy limit of £25,000 per claim was maintained in the current compensation fund arrangement. This provided a consistent and continuing level of consumer protection and could be implemented without the need to increase

⁶ Under the insurance policy only the excess was payable by IPReg. Under the proposed scheme, IPReg would pay the whole grant from the compensation fund.

practising fees. The maximum level of the fund (£100,000) fund provided both short term viability and the flexibility to run it for the longer term.

15. IPReg proposals for future arrangements from 1 May 2024: the consultation proposes increasing the limit per claim from £25k to £30k; it also proposes extending eligibility to make a claim to firms with up to £2 million turnover; and an amendment to make the entire fund available to pay claims (removing the ability for IPReg to claim costs from the fund; if incurred, these would be paid from practising fees).

Scheme guiding principles

16. We propose adopting the following guiding principles for our policy on compensation arrangements: viability, stability, manageability and transparency.⁷ The following table sets out how our current approach and proposals are consistent with these guiding principles.

Principle	Detail	How met by IPReg Scheme
Viability	Maintain viability of the fund	Scheme initially fully funded (to £100k). Regular actuarial reviews to re-consider balance required for claimant security. Regular review of insurance availability by broker.
Stability	Contributions as manageable as possible	Various 'rating matrices' considered (e.g. by firm turnover, whether client money is held) but these would be overly complex to administer given small annual contribution (c£25k from practising fees)/risk level.
Manageability	Contributions collected in manageable way	Contributions (total £25k), equivalent of c2% of practising fees for most firms. Not cost effective to adapt CRM etc to collect separately.
Transparency	Transparency about fund monies	Separate bank account held. Regular actuarial reviews .

Options and discussion

17. We have considered a number of options for the design of the compensation fund from 1 May 2024.

Do nothing

18. The LSB's Decision Notice on our 2021 application stated:

- a. *While the changes made by IPReg to its proposals [to expand cover to all micro-businesses, not just in exceptional circumstances] provides some reassurance that there will be a minimum level of cover provided under the scheme, IPReg needs to prioritise its work to ensure a longer-term solution is found that will provide ongoing and sustainable consumer protection for a wider range of consumers of legal services provided by persons authorised by IPReg.⁸*

⁷ These are the same as those adopted by the SRA.

⁸ Decision Notice paragraph 28

19. The actuarial report found that, considering proportionality and materiality, there is no new data to suggest that the current fund model needs revision. However, if we do not make changes to increase the eligibility to make a claim, it is possible that the LSB would refuse the rule change application. In the absence of an extension to the sunset clause, that would mean that there were no compensation arrangements in place. Even if the LSB did not refuse the application, there is a reputational risk to IPReg that would arise from any further criticism by the LSB.
20. Actuarial advice is that eligibility to make a claim can be extended in a way that is consistent with the principles of viability, stability, manageability and transparency. The other proposed changes are also consistent with these principles. None of the proposed changes are expected to lead to an increase in practising fees or a change in the way that the fund is funded (i.e. from practising fees rather than by separate defined contributions from each attorney/firm).

Revert to an insurance policy

21. We approached our broker to get advice on the likelihood of an insurer being willing to provide a policy to provide compensation arrangements. The advice was that the kind of cover that we would need “is not widely bought or sold at the levels we are looking at” and that there is “not [...] much at the likely premium size that will make sense given the frictional costs”. The advice was that we would “need to need to credibly commit to injecting £250-500k or so a year to such a fund, with a view to building up a reinsured fund of say £3m, maybe with only the final £1m of a Fund amount reinsured”. Given that IPReg's annual budget is just over £1m, it does not make sense to pursue this option any further. The actuarial advice agrees with this cost/benefit assessment.

Remove the limit per claim

22. We have considered (with our actuary) whether it would be appropriate to remove completely the limit per claim (up to the limit of the fund). The actuarial advice is that a single claim at £100k could be considered as an extreme scenario, so in theory should be affordable. However, we do not consider that this approach would be transparent. Although it could give the impression of providing increased protection to those eligible to claim because a potential claimant might think that they could receive £100k compensation, IPReg would be very unlikely to agree one single claim that would exhaust the entire fund.

Increase the limit per claim

23. We also considered (with actuarial advice) whether to increase the claim limit from £25k. We considered whether increasing the limit to £50k would be proportionate. As with removing the limit per claim, although this could give the impression that we were increasing consumer protection, it lacks transparency because it seems unlikely that a claim that would significantly deplete the fund in one year would be paid in full. We also took into account data from the SRA's [recent report](#) into its compensation fund which shows that on average the value of successful claims between 2014/15 and 2020/21 was around £23k.⁹ In addition, most successful claims on the SRA compensation fund concern fraud or failure

⁹ The amounts vary from £12k in 2017/18 to £38k in 2020/21. However, our actuary advises us that there are substantial biases in the SRA data. For example, these claim statistics includes £10m from a single firm in 2020/21 and

to account in matters related to probate and conveyancing where very large amounts of client money are held; these activities are not conducted by regulated IPReg attorneys and the amount of client money held is significantly less than the amounts held by solicitors.

24. However, the recent high levels of inflation could have an impact on claimants in terms of the hardship that they face if there has been fraud or failure to account. In addition, the level of inflation means that the current limit of £25k per claim has decreased in value in real terms. The high level of inflation and the cost of living crisis may also increase the likelihood of fraud or failure to account (i.e. there may be an increased risk to consumers). In order to take these factors into account, we consider that increasing the limit per claim to £30k would be proportionate and targeted.
25. Actuarial advice is that this change would not undermine the viability of the fund and could be implemented without the need to increase practising fees.

Extending eligibility to make a claim

26. Under the previous compensation arrangements (i.e. those backed by the insurance policy) individual consumers and micro, small and medium sized enterprises were eligible to make a claim. Under the current rules, only individual consumers and micro-enterprises are eligible because in the first year of the scheme we took a prudent approach. However, this was criticised by the LSB in its Decision Notice. We therefore considered whether it would be appropriate to extend eligibility to make a claim to include firms with up to £2 million annual turnover. In addition, we would no longer use the criteria that are currently used on balance sheet or employees. This would mean that this aspect of the IPReg scheme would be consistent with that of SRA and CILEx Regulation. It also brings it closer into line with one of the eligibility criteria used by the Legal Ombudsman (see footnote 2).
27. We estimate that a significantly higher number of businesses will be eligible to make a claim if eligibility to make a claim is increased to include all firms with a turnover of up to £2m. Using information [published](#) by ONS, we estimate that roughly 287,000 more businesses would be eligible to claim.¹⁰
28. This proposal increases consumer protection and provides more consistency (and less confusion) for consumers across legal services markets. Actuarial advice is that this change would not undermine the viability of the fund and could be implemented without the need to increase practising fees.

the top 3 claims in any year are all £1m+ and skewed towards higher value client money scenarios (e.g. probate and conveyancing). Removing these would reduce average claim to ~£20k. The SRA also note that <50% of claims are successful. Since £20k is the average for successful claims, the actual average per claim actually submitted is more likely to be around £10k.

¹⁰ The methodology to calculate this is: Number of businesses with turnover up to £500k = 2,224,560; Number of businesses with turnover up to £2m = 2,570,560; Based on an assumption that the 222,155 firms between £500k-£1m are linearly distributed, we estimate there would be around 58,649 firms between £500k-£632k. If the increase was from £500k to £2m this would mean an increase in the number of businesses covered of 346,000. However, the current limit on turnover is £632k. Using a rough estimate, increasing eligibility to £2m from the current £632k would increase in the number of businesses covered by: 287,000.

IPReg's costs

29. Under the current compensation scheme rules, IPReg can “use the Fund to pay any other costs, charges or expenses incurred by in establishing and administering the Fund”.¹¹ This is a common feature of this type of fund in the legal sector. To date, IPReg has not used the fund for this purpose – the fund has very low day to day running costs (bank charges and some administrative time) and the cost of actuarial and legal advice has been met from practising fees. We consider that this approach has worked well in practice and the actuary has proposed in his report that to provide certainty about the total amount of compensation that is available in any one year, we propose to remove the ability for IPReg to take its own costs from the fund. We would continue our practice of paying costs from practising fees.
30. Actuarial advice is that this change would not undermine the viability of the fund and could be implemented without the need to increase practising fees.

Other options considered

31. The actuarial review did not consider that it was necessary to change the current **claim limit per firm** (£100k); this is considered sufficient to protect the fund from the failure of a single firm. The actuarial review did not consider that the **limit per year** for claims (£100k) should be changed, noting that the fund is only for dishonesty, is a hardship fund of last resort and that PII which covers negligence is a requirement for all firms and sole traders. The actuary’s report also noted that the fund (£100,000) has been set at a level to meet all claims in full in a reasonable, but not catastrophic (worst case), stress test. This is consistent with both the previous insured Scheme and the interim (self-insured) scheme.
32. The actuary’s report also set out a range of other comprehensive options focused on possible different approaches to funding the compensation fund. These included:
- a. A no claims discount at firm level;
 - b. Allowing firms to pay more for higher limits;
 - c. Lower contributions if no client money is held by the firm;
 - d. Requiring run-off contributions if a firm ceases to trade.
33. All of these options would have required changes to our CRM (which would cost money) and significantly increased the complexity (and therefore cost) of administering the fund. Given that the current (and proposed model) are considered sufficient to meet claims (except in a worst case scenario) and are low cost to administer, the actuary does not consider such changes to the funding model would be proportionate.

Next steps

34. We will publish the consultation as soon as possible after the Board meeting. We will share the consultation with CIPA and CITMA ahead of publication. We anticipate that the consultation will close on 3 January 2024.
35. Kingsley Napley has been asked to redraft the Compensation Arrangements Rules so that they are in keeping with the format of the new Core Regulatory Framework that came into force on 1 July 2023.

¹¹ Rule 3.1(e)

Supporting information

Links to strategy and business plan

36. Reviewing the compensation arrangements has been a key area of our work programme. The current compensation arrangements will end on 30 April 2024, in keeping with the sunset clause timeframe agreed with the LSB. This consultation covers what the arrangements will be after this period.

Supporting the regulatory objectives and best regulatory practice

37. This work supports the regulatory objectives of protecting and promoting the interests of consumers; the compensation fund provides recourse for consumers who have suffered loss as a result of fraud or failure to account. It also supports the regulatory objective of protecting and promoting the public interest because targeted and proportionate compensation arrangements provide confidence in the legal services provided by regulated attorneys.

Impacts

38. There are no specific impacts that we can identify on any group of attorneys because we propose to keep the system whereby the compensation fund is financed from practising fees.
39. We estimate that a significantly higher number of businesses will be eligible to make a claim if eligibility to make a claim is increased to include all firms with a turnover of up to £2m. Using information [published](#) by ONS, we estimate that roughly 287,000 more businesses would be eligible to claim.¹²
40. To the extent that eligibility to make a claim will be increased to include firms with a turnover of up to £2m, this may give confidence to those running small businesses who need IP legal advice. The most recent [data published](#) on the Gov.uk website shows that in 2021, 6.1% of small and medium enterprise (SME) employers were led by a majority of people from an ethnic minority (excluding white minorities). The BEIS [small business survey](#) showed that in 2021, 19% of SME¹³ employers were led by women (meaning that they were either led by one woman or by a management team of which a majority are women). Women-led SMEs with no employees accounted for 20% of all SMEs with no employees in 2021.

Communication and engagement

41. We will share the consultation with CIPA and CITMA before publication. We have already notified the IP Practice Directors' Group that the consultation will be published around mid-November. We will email all registrants, IP Inclusive, the IP Federation, our small firms contact and the Legal Services Consumer Panel to notify them.
42. Publishing this Board paper, the Executive Summary (Opinion) of the actuarial report (the actuary has agreed to publication of his Opinion letter, as in previous years) and the consultation paper, will provide transparency on the fund's operation.

Equality and diversity

¹² Please see footnote 10

¹³ Those employing 0 – 249 people.

43. We have not been able to identify any specific equality and diversity considerations.

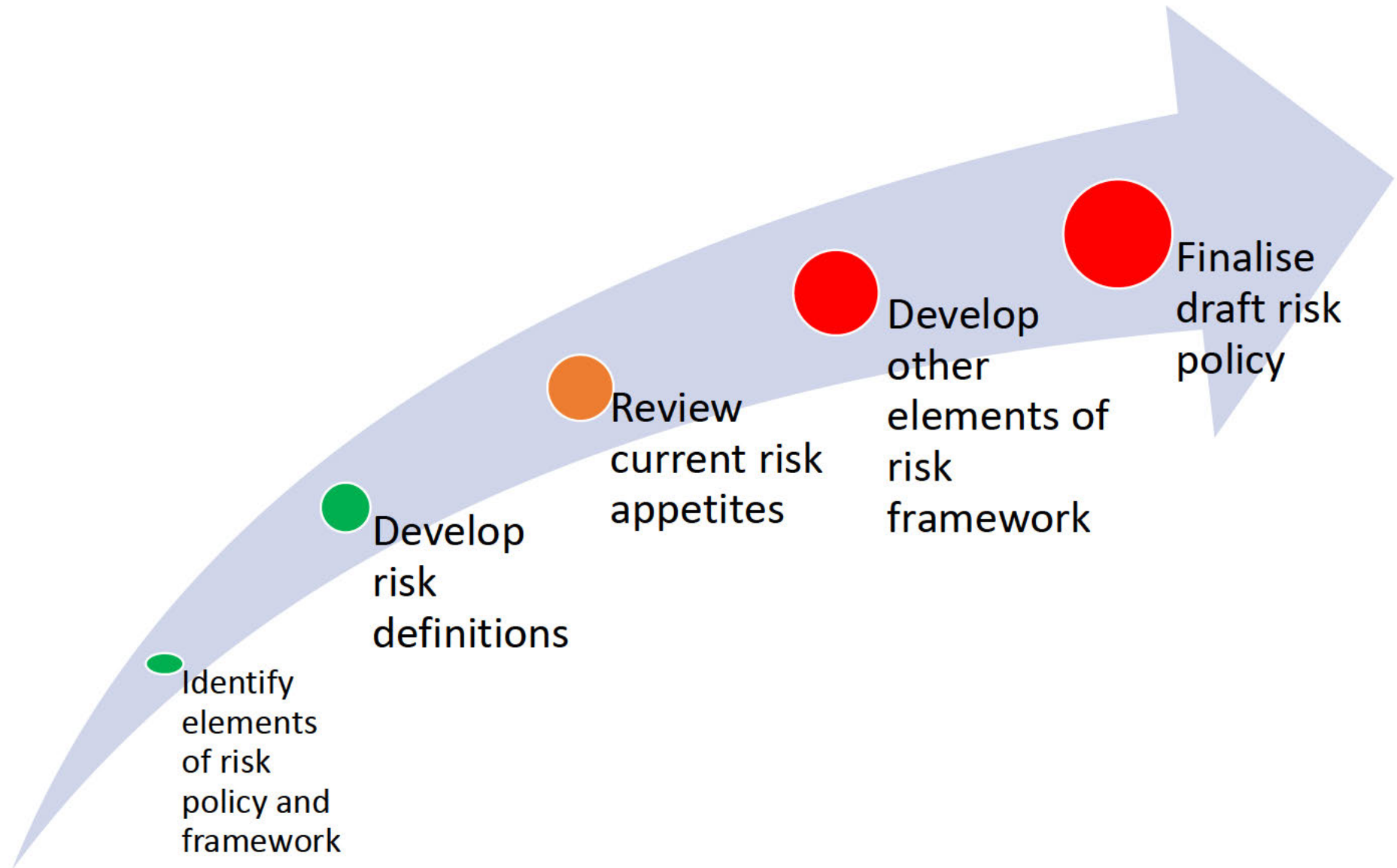
Evidence/data and assumptions

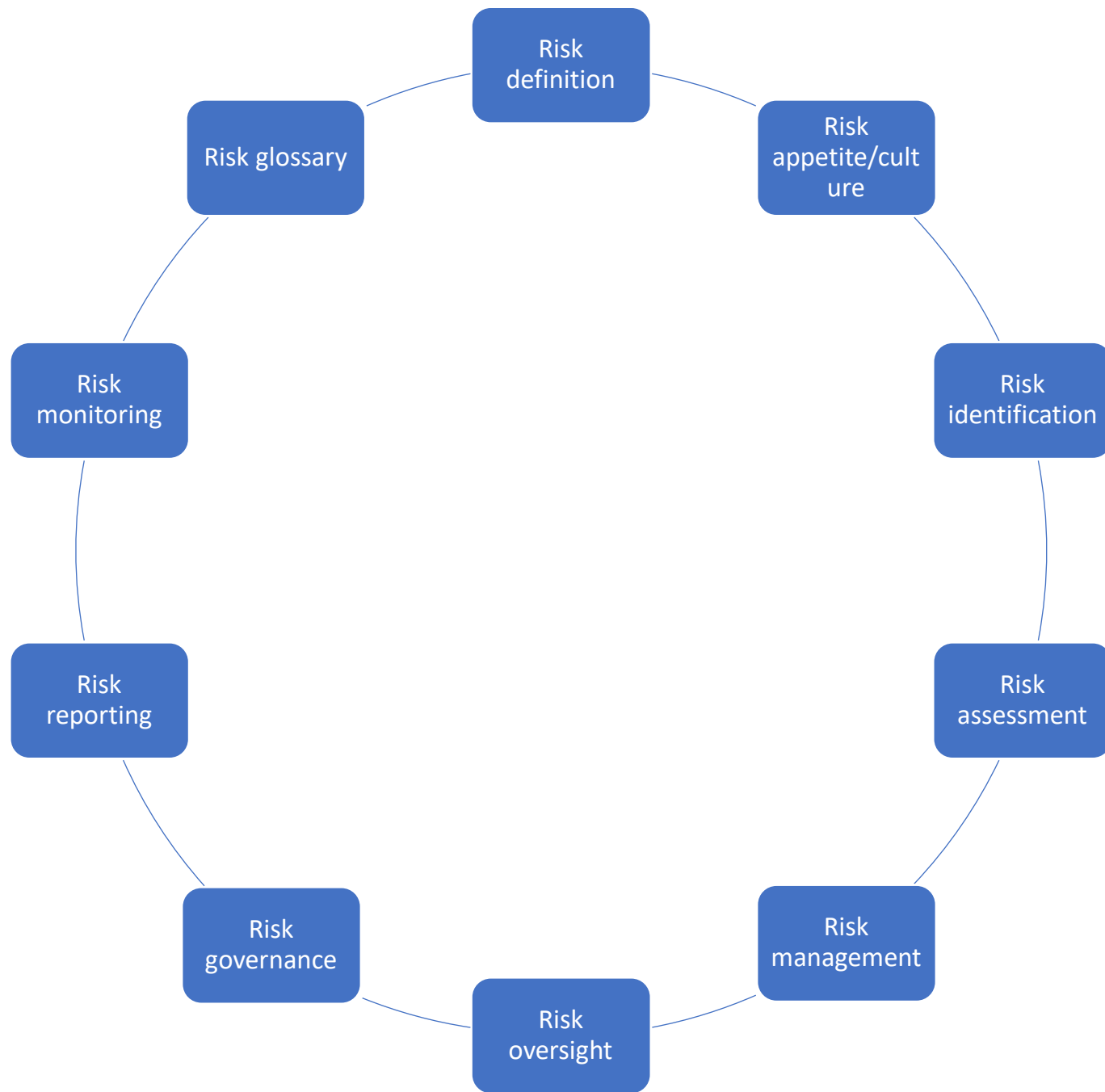
44. The evidence and data used in this paper are set out above.

RWG Update

Board Meeting – 02 November 2023

Progress to date





Risk definitions

- Risk is the effect of an uncertain event or set of events on the achievement of objectives.

Next steps

- To identify relevant risks under each strategic objective and associated desirable risk appetite

Next steps

Strategic Objective 1	Risk Appetite
To <u>improve consumer knowledge and empowerment by increase increasing the public profile of IPReg to the regulated community and users of IP legal services.</u>	

Next steps

Risk Categories	Nature of Risks Identified	Current Risk Appetite	Desired Risk Appetite
Strategy risks			
Governance risks			
Operations risks			
Legal risks			
Financial risks			
People risks			
Technology risks			
Data and Information Management and Security			
Project/Programme risks			
Reputational risks			
Social and Environmental Risks			

Next steps

- To explore the underlying reasons for divergence in some risk categories through the lens of specific examples e.g PII sandbox, compensation fund approach.
- To explore the alignment between the stated intent in relation to risk appetite and the associated behaviours

Key Questions for the Board

- Are we moving in the right direction?
- What would be helpful to the board to enhance their engagement with this piece of work?
- Are there any other specific areas that the RWG should consider?

Board Meeting 2 November 2023

Governance and Transparency Working Group (G&TWG) Report

Agenda Item: 9

Author: Samantha Peters (Chair, G&TWG)

This paper is for decision.

Annex A to this Board paper will not be published – confidential.

Annex B (Governance Handbook) will be published separately.

Summary

1. This paper provides a brief report of the September 2023 meeting of the G&TWG, which was convened to consider progress in implementing the current Governance Action Plan.

Recommendation(s)

2. The Board is asked to:

- NOTE the Group’s meeting action log (set out in **Annex A**)
- AGREE to review deadlines for any outstanding elements of the Governance Action Plan in January 2024 to ensure that they remain realistic.
- AGREE to assess stakeholders’ perceptions of transparency through a survey and/or focus groups (at the end of the project).
- AGREE to incorporate a review of ‘how well’ we have implemented the original recommendations of the Working Group, into the planned external Board evaluation.
- AGREE to produce a high-level strategic plan document which drives future annual business plans, performance indicators and risks.
- AGREE that the completed Governance Handbook (**Annex B**) can be published.

Discussion

3. At this meeting the Working Group considered overall progress. It reviewed the draft governance handbook prior to its presentation to the Board. It also considered progress on transparency in more detail (as requested by the Board) and identified additional actions to enhance this area of work.

Risks and mitigations

	Risk	Mitigation
Financial	There may be unforeseen costs associated with the Governance Action Plan.	As far as possible, this work is being accommodated within the current budget.
Legal	[REDACTED]	[REDACTED]

Reputational	Boards which make decisions ineffectively, or in ways that lack transparency, expose their organisations to reputational risk.	This work should assist IPReg with assurance that it is not exposing itself to such risks.
Resources	The main resources currently being expended on this are staff time. However that may not be sufficient.	The need for external support may be sought should internal capacity require it.

Next steps

4. To update the Governance Action Plan to incorporate any outcomes from this Board meeting.

Supporting information

Links to strategy and business plan

5. The Governance Action Plan has been incorporated into plans for this year in keeping with recommended timelines.

Supporting the regulatory objectives and best regulatory practice

6. Good governance enables the Board to discharge its objectives effectively and transparently. Improvements to IPReg's governance should support the Board's ability to deliver its regulatory objectives in a manner which is open, transparent, and accountable.

Impacts

7. The main impact of this work lies in enhancing the governance systems IPREG uses to ensure its decisions are taken undertaken accountably and that it is complying with relevant codes and legal requirements.

Communication and engagement

8. The Governance Action Plan has been published.

Equality and diversity

9. Equality and Diversity was considered as part of the Group's work, and the Governance Action Plan incorporates specific actions for addressing equality and diversity strategy.

Evidence/data and assumptions

10. The Governance Action Plan drew on recognised corporate governance codes in undertaking its work.

Board Meeting 2 November 2023

Complaints Update

Agenda Item: 10

Author: Shelley Edwards, Head of Registration (shelley.edwards@ipreg.org.uk 020 7632 7175)

This paper is to note

Summary

1. This paper stands as an update on complaints received and processed by IPReg. From 1 July 2023, the complaints process is governed by Chapter 4 of the [Core Regulatory Framework](#) and the Investigation and Disciplinary Requirements [Standard Operating Procedure](#).

Recommendation(s)

2. The Board agrees to note this paper.

Risks and mitigations

	Risk	Mitigation
Financial	We have allocated a budget of £35,000 for costs associated with processing complaints and conducting disciplinary hearings. There is a risk that an unanticipated increase in cases will cause us to exceed the budgeted figure	It is IPReg's policy to seek the external costs incurred in bringing disciplinary cases before a tribunal from the respondent, and recover any debt as appropriate.
Legal	[REDACTED]	[REDACTED]
Reputational	There may be a risk to IPReg's reputation if it were considered that IPReg was not conducting its investigation and enforcement process appropriately - pursuing cases with no evidential basis, not taking enforcement action where there is a clear breach of regulatory arrangements, poor decision-making at hearings etc.	IPReg has developed, in conjunction with legal advisers, a comprehensive decision-making policy to underpin its new enforcement and disciplinary procedures which form part of the regulatory arrangements review. A new Joint Disciplinary Panel has recently been appointed following a comprehensive recruitment campaign, and all new members have received training and induction.

Resources	IPReg manages the initial triage and investigation of cases internally, between the Assurance Officer and Head of Registration. There is a risk that a significant increase in cases will outstrip the internal capacity of the team	Analysis of complaints data over the last 6 years shows that whilst the number of complaints received seems to be increasing, IPReg has become more efficient at resolving these cases, resulting in cases being closed more quickly and the number of open cases in any given month holding steady or reducing
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Background

3. The Board has routinely been updated on Complaints information, including the number of new complaints received and closed per month with a focus on the nature of individual complaints and the anticipated timetable for resolving them. The Board has not, to date, received information about the subject of the complaint due to IPReg’s former disciplinary process which may have resulted in Board members sitting as decision makers on the Complaint Review Committee.
4. The Board has indicated it would find different information helpful, focussing less on the individual complaint and more on general trends and timeliness.

Discussion

5. The Board should note the information in this paper.

Next steps

6. The Board should note the information in this paper.

Supporting information

Links to strategy and business plan

7. The investigation and enforcement of complaints made about regulated persons is an integral part of IPReg’s remit.

Supporting the regulatory objectives and best regulatory practice

8. A robust investigation and enforcement process protects and promotes the public interest by demonstrating that regulated persons who breach any of IPReg’s regulatory arrangements are appropriately investigated and taken through a fair and transparent disciplinary process. IPReg’s process supports the constitutional principle of the rule of law in that justice must be done and be seen to be done in accordance with the principles of natural justice. Publishing decisions about disciplinary matters, protects and promotes the interests of consumers, promotes competition within the regulated community and increases public understanding of their legal rights by allowing consumers to make fully informed choices about their legal representatives. A clear, transparent and proportionate enforcement policy encourages an

independent, strong, diverse and effective legal profession by creating a deterrent to poor practice or professional misconduct.

9. IPReg follows best regulatory practice in the identification, investigation and processing of complaints and disciplinary hearings. Internal decision makers have backgrounds in regulation and professional discipline, and one is a practising solicitor. Members of the [Disciplinary and Interim Orders Tribunal](#) receive regular training on best practice in decision making, and are supported by legal advisers with a regulatory and professional discipline specialism. Best regulatory practice is therefore at the forefront of all decisions across all aspects of investigation and the running of disciplinary hearings.

Impacts

10. There are no specific impacts on any type of regulated person, consumer or group.

Communication and engagement

11. Disciplinary decisions are published on IPReg's website [here](#) and, where applicable, against the name of the attorney or firm on the [online register](#).

Equality and diversity

12. There are no specific equality and diversity issues.

Evidence/data and assumptions

Cases by numbers

As at 19.10.23

- | | |
|-----------------------------------|----|
| • Total open cases | 5 |
| • Cases opened since last meeting | 0 |
| • Cases closed since last meeting | 2 |
| • Change (from last meeting) | -2 |

Year to date (from 1 January 2023)

- | | |
|------------------------|---|
| • Total cases received | 8 |
| • Total cases closed | 9 |

Legal Ombudsman

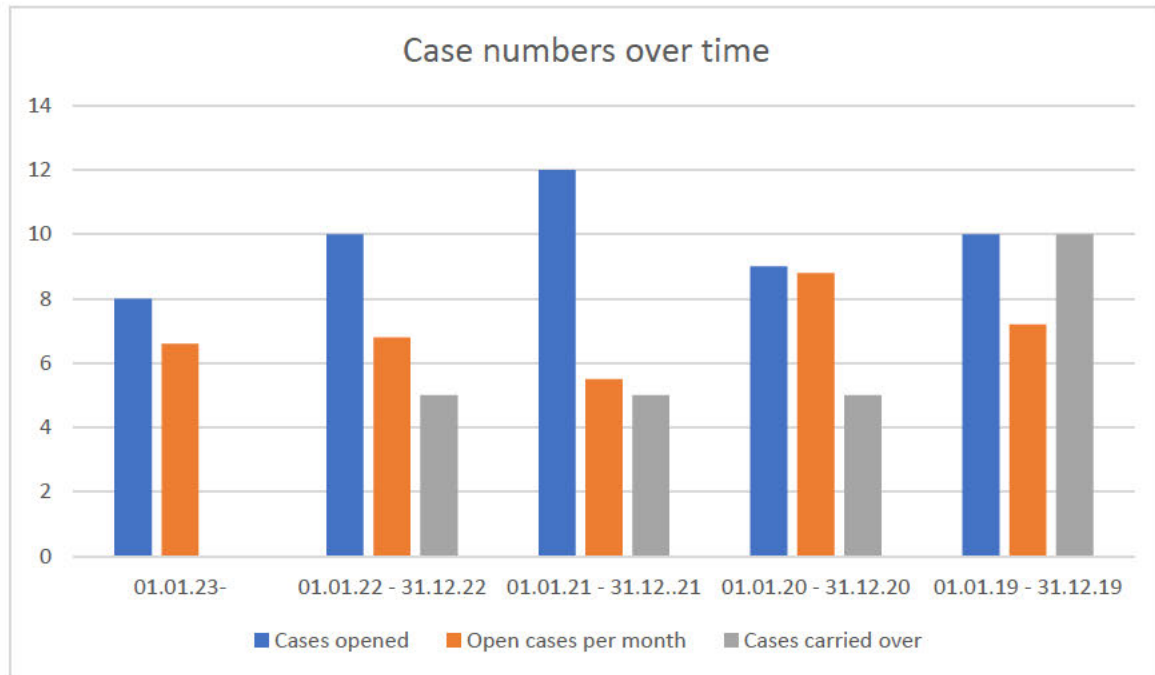
- | | |
|-----------------------------------|---|
| Complaints received in last month | 0 |
| Cases open | 0 |

Timeliness

- | | |
|------------------|-------------------|
| Oldest open case | 157 weeks (3y 1w) |
|------------------|-------------------|

Newest open case 10 weeks
 Mean 45 weeks
 Median 22 weeks

Analysis and trends (12 month periods)

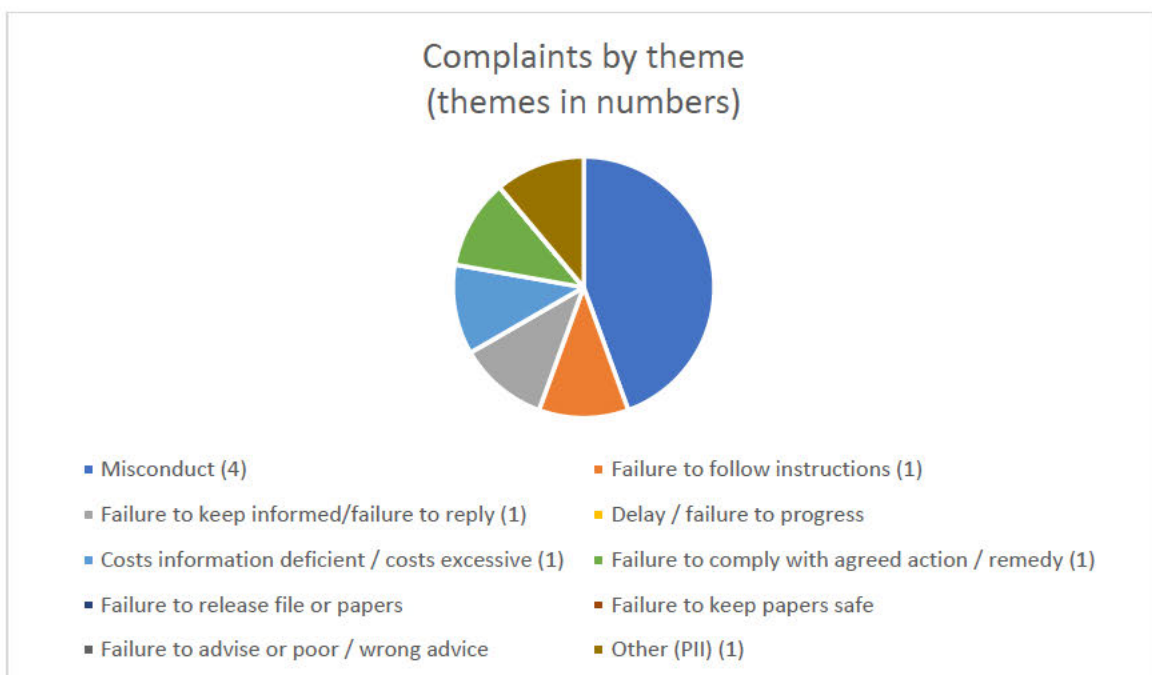


	01.01.23 - date	01.01.22 - 31.12.22	01.01.21 - 31.12.21	01.01.20 - 31.12.20	01.01.19 - 31.12.19 (4 cases carried over from previous period)
New cases opened / received	8	10	12	9	10
Total open cases during period	14	16	17	19	14
Overall case numbers open	5 - 9	6 - 9	3 - 8	5 - 12	5 - 9

per month (range)					
Overall case numbers open per month (avg)	6	6.8	5.5	8.8	7.2
Cases carried over to next period		5	5	5	10
Cases closed/resolved within 12 weeks*	56%	50%	50%	44%	10%
Cases closed/resolved within 26 weeks*	67%	60%	58%	50%	50%

*Of cases closed this calendar year

Open complaints by theme



Misconduct includes:

- Misappropriation of funds (2 cases)
- Unprofessional / inappropriate conduct with a third party (2 cases)

Board Meeting 2 November 2023

CEO report

Agenda Item: 11

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

This paper is for discussion.

The following Annexes will not be published: Annex A (advice to Board), Annex B (commercially confidential)

Summary

1. This paper sets out the main issues to bring to the Board's attention that are not subject of a full Board paper.

Recommendation(s)

2. The Board is asked to:
 - a. Note this paper;
 - b. Agree that the 2024 fee collection process can start around the beginning of December (see paragraph 4).

Risks and mitigations

	Risk	Mitigation
Financial	No specific financial risks	N/A
Legal	████████████████████	██
Reputational	No specific reputational risks.	N/A
Resources	No specific resourcing risks	N/A

Background

3. This report sets out information about IPReg's activities that are not covered elsewhere in today's agenda.

2024 practising fees

4. The LSB's decision to agree our 2024 practising fees has been circulated to Board members. Changes are being made to the annual renewal process to reflect changes to regulatory requirements such as CPD. Subject to the onboarding process with IE Digital being completed successfully, we should be able to start fee collection as normal in early December.

Meetings

CIPA and CITMA

5. The 3 CEOs met on 29 September and discussed:
 - a. 2024 business plan and practising fee consultation including timing of consultation;
 - b. CIPA and CITMA likely views on IPReg Limited's company structure;
 - c. Feedback from the CPD webinar and preparations for the transparency webinar.

LSB engagement

6. At the relationship management meetings on 13 September and 19 October we discussed:
 - a. Regulatory Performance – Information request next steps;
 - b. 2024 practising fee application/LSB decision;
 - c. LSB Project Updates;
 - d. LSB staff turnover;
 - e. IPReg corporate structure;
 - f. PII Sandbox;
 - g. IPReg September Board meeting update;
 - h. Potential changes to IPReg's compensation arrangements.
7. Our new relationship manager is Vibeke Bjornfors.
8. The Chair and Head of Registration met the LSB Chair and CEO on 5 October. An oral update will be provided at the meeting.
9. On 24 August, the LSB issued a [consultation paper](#) on rules, guidance and a policy statement on first tier complaints (i.e. those made to firms under their complaints procedures). The consultation closes on 17 November and our in principle response is considered as a separate agenda item.
10. Our response to the LSB's consultation on statutory guidance in relation to innovation and technology has been [published](#) on our website.
11. The next Reshaping Legal Services conference, organised by the LSB and the LSCP the next Reshaping Legal Services Conference is on Thursday 7 March 2024, at the King's Fund, Cavendish Square, London W1G 0AN. Please [register direct](#) if you would like to attend.

Conferences/webinars attended by Team and Board members

CPD webinar

12. On 21 September, the CEO and Head of Registration presented an hour long webinar on our new approach to continuing competence. The event was facilitated by CITMA. There were around 460 attendees and we answered a range of questions from them.

Next Steps for EDI in the Legal Profession

13. On 20 September the Education and Diversity Officer attended this conference which was organised by the Westminster Legal Policy Forum. The conference was broken into four separate panel discussions with a Q&A:
 - a. The role of regulation in promoting EDI in the legal sector;
 - b. Practical approaches to developing diverse systems - assessing progress, best practice in tackling barriers, reporting and the use of data, and setting priorities and targets for the future;
 - c. Supporting the social mobility of minority groups – widening access to education, recruitment and retention and a shift from mentoring to sponsorship;
 - d. Developing inclusive workplace culture to support career progression.
14. The Role of Regulation item discussed some of the progress that has been made but went on to discuss some of the continuing challenges. For example, not all sectors of the legal profession have an up-to-date data set which makes it difficult to fully understand sector make-up and the issues that they face. This fed into the session on data and setting priorities. There was a great degree of emphasis of regulators bring together other stakeholders. Regulators spoke about how they were reviewing equality rules to focus on outcomes rather than targets. It was noted that the joint equality statement signed by all regulators was a good, visible, first step, but this needed to be followed up with action - particularly, not shying away from enforcement action where misconduct has been identified. The key takeaways from the speakers for regulators to focus on were:
 - a. Assessing current progress;
 - b. Encouraging and increasing reporting and the use of data;
 - c. Updating rules and guidance;
 - d. Taking action against firms and individuals where necessary.
15. The discussion on social mobility went into great detail, with panellists setting out evidence and data on the barriers faced by certain groups. The discussion raised the key issue of intersectionality. The discussion focussed on how the sector needs to find alternative ways to bring people into the legal profession and one of the main barriers to entry is cost of education/training. There was a detailed discussion on the merits of apprenticeships, as well as

a move away from simply mentoring prospective students, to actually providing financial support to help to reduce barriers to entry.

16. There were a number of speakers that would be useful to speak to as we embark on our Education and EDI workstreams. We will be reaching out to some of the speakers to invite them to discuss some of our work and if they would be interested in partnering with us.

Effective Regulation in a Climate of Innovation

17. On 3 October, the Director of Policy attended the Effective Regulation in a Climate of Innovation webinar hosted by the National Audit Office . Alan Clamp was one of the event panellists. The event identified challenges for effective regulation include the scale and pace of change - such as EU exit, costs of doing business and of living, legacy IT issues and keeping up with Artificial Intelligence, identifying vulnerable consumers – and building capability and capacity to meet this; competing priorities and the importance of identifying what works/what is required (the need to review impact of what you do and what works). Regulation needs to be technology neutral, building in flexibility to allow an element of stability whilst also enabling innovation.
18. Evaluation by design: be clear which policy options were considered at the outset, targeting regulation, defining risk appetite and undertaking costs and benefits appraisals for all stakeholders, determining whether the policy ultimately chosen had the intended impact (and/or any unintended impact). The independent Regulatory Policy Committee undertakes Post Implementation Reviews (PIRs) scrutiny of government policies. PIRs should be typically undertaken within 5 years post implementation, though in reality less than 40% are completed in that timeframe, often due to insufficient resources and lack of political will to expose policy weaknesses.
19. The NAO has published [key takeaways](#) from the webinar.

Generative AI

20. On 10 October, the Head of Registration attended a Generative AI (“GAI”) event hosted by Clifford Chance and chaired by Sir Geoffrey Vos, Master of the Rolls. Speakers included Kriti Sharma from Thomson Reuters, Phillip Southa from Clifford Chance, and Katie Atkinson from the University of Liverpool. In addition, GAI providers, Rafiq Faruq from Genie AI, Richard Green from Microsoft and Jess Goodwin from Avail attended and spoke about their products.
21. GAI is the ability to create new content based on the analysis of texts, images etc. It creates this content from prompts and data given to it, so will only be as accurate as the data it stores. Accuracy of the GAI output will improve as it takes on and stores more data but it is incumbent on those using the product to check the output to ensure it is accurate, fair, not biased and is trustworthy. Users should treat the output from GAI products as they would output from a trainee lawyer – “a good first draft that requires checking”.

22. Speakers were clear that GAI was already widely in use and that legal providers would not be serving the interests of justice and their clients if they did not make use of the technology available, due to the benefits which include cost reduction, efficiency (analysing vast quantities of text in a short period of time) and accuracy. At present, the GAI products most frequently used in legal services involved those capable of document review, analysis, drafting and predicting outcomes, though not all types of legal services will be suitable for GAI. Clients expect their legal services providers to use GAI in combination with lawyers to provide their legal services – a “layering” approach.
23. Those using GAI must exercise caution and be mindful that they as legal services providers remain 100% responsible for the work they deliver including any GAI product utilised. Those using it must ensure they have robust governance frameworks in place, ensuring that existing policies take into account any extra complexities associated with GAI. These will include:
- a. Privacy policies – where GAI uses protected data, it will need to comply with GDPR and other privacy laws. Data subjects need to be able to exercise their rights (e.g. the right to be forgotten);
 - b. Cyber-security;
 - c. Contractual restrictions, NDAs and confidential information – how can this be used to ‘feed’ the GAI product?
 - d. Procurement policies and those related to the development, servicing and monitoring of IT;
 - e. Environmental policies – GAI requires vast amounts of computer power to store and process the data it uses. This will only increase.

Regulatory Performance

24. The LSB still plans to send its assessment of our response to us in October (this had not been received at the date of drafting this document (25 October)). We will have a three week turnaround to comment on the substance of its report as well as on factual accuracy. Final reports will be issued by the LSB in November.

Sanctions

25. We have received the analysis of IPO data and are undertaking a review of it to decide what, if any, action we should take.

Waivers

26. PII Sandbox – no applications have been received, although we have had a discussion with an interested firm.

Horizon scanning and research

27. The External Market Update report is provided at **Annex A**.

Contracts (commercially confidential information about contracts will be redacted)

IE Digital

28. I have signed the contracts with IE Digital:

- a. Onboard and rehost: [REDACTED] inc. VAT;
- b. Drupal 10 upgrade: [REDACTED] inc. VAT;
- c. Support services: [REDACTED] inc. VAT (annual cost).

Equantiis

29. To support us on the onboarding and rehosting work with IE Digital, I have agreed 10 days support with Equantiis for [REDACTED] inc. VAT.

QCG

30. The Board members who considered the initial QCG benchmarking report, reviewed a proposal from QCG to carry out external benchmarking for our seven roles (**Annex B**). The cost will be [REDACTED] including VAT and the report should be completed by Christmas.

31. For contracts with a value between £5,000 - £24,999 our procurement policy states:

Obtain at least three quotes from separate suppliers. Where possible, use established networks such as MemberWise to identify who to invite to quote.

If money has not been allocated in the Business Plan/budget then Chair or Board approval will be required once quotes have been obtained.

The procurement policy can only be waived in exceptional circumstances. The requirement to conduct a full tender [>£25,000] can only be waived by the IPReg Board.

32. The Board members considered the procurement policy and agreed that there was a strong argument that the requirement to obtain 3 quotes could be waived for the following reasons:

- a. QCG has access to a significant amount of data through its annual pay and benefits survey of regulators including some of the legal regulators. They propose to supplement this with information from annual reports where appropriate. This means that they will be able readily to compare the roles that the IPReg team carries out with those of similar bodies. Although these are likely to be larger than IPReg, QCG has considered this and

will “make individual adjustments to matches to mitigate the impact on pay rates of roles from organisations with a significant difference in size, scope, impact and/or complexity to IPReg” to ensure appropriate job weighting is reflected in the benchmarking;

- b. QCG already has information about IPReg's pay and benefits because we are participants in its 2023 survey, the results of which I understand it is now processing. They also reviewed the existing job descriptions as part of the initial benchmarking exercise which you have seen; this means that they are already familiar with IPReg's structure and functions. So other than the interviews themselves there should not be much additional work for us;
- c. The approach outlined in the Briefing Note seems very comprehensive and includes an option for a discussion with the Chair to get a Board perspective on the drivers for the work. This recognises the importance of understanding the Board's strategic rationale for conducting the exercise;
- d. We already have an established relationship with QCG who have been very helpful in terms of explaining their annual benchmarking exercise and how to interpret its results;
- e. The amount quoted is towards the lower end of the procurement bracket. There is sufficient money in the budget to meet the cost this year.

33. I have therefore asked QCG to proceed with the project.

Other matters

IPReg Finance Report

34. See separate agenda item.

Legal Services Consumer Panel (LSCP)

35. N/A for this meeting.

Discussion with the SRA

36. The Chair and CEO met their counterparts at the SRA on 13 September to discuss the SRA's consultation on regulating CILEx registrants. An oral update will be given to the meeting.

Government consultation

37. On 2 October the government launched a [review](#) of regulators to cut burdens for businesses in post-Brexit regulatory framework and improve consumer outcomes. This follows the publication on 10 May of a policy paper [Smarter Regulation to grow the economy](#). The review has started

with a [Call for Evidence](#) on what works and what could be improved across the landscape of UK regulators; the Call for Evidence closes on 7 January 2024.

Press reports and other published information

38. None this meeting.

IPReg Board Meeting Actions Log - New and Outstanding Actions

November 2023 Board meeting:

Text highlighted **in blue** – update to be provided at the meeting

Text highlighted **in pink** – suggested changes to be considered to close actions

Date of Meeting in which action arose	Agenda Item	Action	Responsibility	Status	Notes/Update
September 2023 Board Meeting					
Sep-23	2024 Business plan and practising fees	CEO to submit draft application to the LSB and take forward any required changes prior to a formal application.	FG	Closed	
Sep-23	PII Sandbox	Head of Registration to notify the applicant and update information on the IPReg website.	SE	Closed	
Sep-23	Action Log	CEO to review Action Log contents	FG	Closed	Changes to this document to be considered at November 2023 meeting.
July 2023 Board Meeting					
Jul-23	IT Upgrade	CEO to pursue discussions with ClearCourse	FG	Closed	
May 2023 Board Meeting					

IPReg Board Meeting Actions Log - New and Outstanding Actions

May-23	Governance Action Plan Implementation	CEO to include these matters in the Governance Handbook and publish it	FG	Closed	
May-23	Working Group Reports - Education	Education and Diversity Officer to include litigation qualification in the wider work on education	GS	Ongoing	
December 2022 Board Meeting					
Dec-22	Education Working Group	Review EWG terms of reference and the scheme of delegation	EWG	Ongoing	To be considered at the December 2023 Board meeting
November 2022 Board Meeting					
Nov-22	Speaking Up Policy	CEO to draw the policy to the attention of IPReg Team members	FG	Closed	
July 2022 Board Meeting					
Jul-22	Financial Statements (IPReg Ltd), Directors' Report and Letter of Representation	Update financial procedures	KD	Ongoing	TBC
Jul-22	Governance and Transparency Working Group – Report on findings and recommendations	Take forward Action Plan including regular updates to Board Meetings	FG	Ongoing	
Jul-22	Risk Register	Review risk wording	FG	Closed	Matters are being taken forward by the Risk Working Group

IPReg Board Meeting Actions Log - New and Outstanding Actions

January 2022 Board Meeting					
Jan-22	Annual Renewal Process Update	Review annual return information categories similar to PAMIA questions	SE	Ongoing	TBC
November 2021 Board Meeting					
Nov-21	Governance Matters	Governance documents to be reviewed in 2 years' time	FG	Closed	November 2023 Board will review the Governance Handbook
July 2021 Board Meeting					
Jul-21	Compensation Arrangements	Develop risk profile	FG/SE	Closed	December 2023 Board considering consultation on changes to compensation scheme
May 2021 Board Meeting					
May-21	Diversity - next steps - workshop feedback	Implement the diversity initiatives	FG	Closed	Diversity initiatives set out in the Governance Action Plan will be considered by the January 2024 Board meeting. New diversity survey to be undertaken in 2024. Other diversity work forms part of the barriers to the patent profession project.
May-21	Diversity - Inclusive Language	Adopt and publish Inclusive Language Policy	FG	Closed	This was an initiative that was being led by a former Board member.

IPReg Board Meeting Actions Log - New and Outstanding Actions

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	Closed	
January 2020 Board Meeting					
Oct-19	LSB CEO Meeting	Invite Matthew Hill to Board meeting	FG	Closed	Suggest that this is no longer needed given recent meeting of LSB and IPReg Chairs (October 2023)