

The Patent Regulation Board and the Trade Mark Regulation Board

Minutes

Thursday 2 November 2023 at 2.00 p.m.

Orwell Room, 20 Little Britain, London EC1A 7DH

Attending:

Rt Hon Lord Smith of Finsbury / Chris Smith (IPReg Chair)
Justin Bukspan (Risk Working Group Member)
Alan Clamp (Education Working Group Member)
Sam Funnell (Data Working Group Chair and Risk Working Group Member)
Katerina Kolyva (Education Working Group)
Victor Olowe – Attending Remotely (Risk Working Group Chair and Governance Working Group Member)
Samantha Peters (Governance Working Group Chair and Risk Working Group Member)
Emma Reeve (Education Working Group and Governance Working Group Member)
Henrietta Rooney (Education Working Group Member)

In attendance: Fran Gillon (CEO), Shelley Edwards (Head of Registration), Victoria Swan (Director of Policy), Gurdas Sually (Education and Diversity Policy Officer)

Guest speaker: John Birkenhead (HJC Actuarial)

1. No apologies had been received.
2. No conflicts of interest were declared.

Items for Decision/Discussion

3. Appointment of Katerina Kolyva as a Director of IPReg Limited

- 3.1. The Board approved the appointment.

4. Minutes of September Meeting and Matters Arising

- 4.1. The Board approved the minutes subject to the minor amendments to item 8.3.

5. Review of Compensation Arrangements

- 5.1. HJC Actuarial introduced the paper, which was a full review of the relevant rules and guidance. IPReg had had no claims over the last 10 years and so there was no claims data to use in a risk model. However, HJC Actuarial had used the level of the previous insurance premium of £30,000 together with information about the number of attorneys and their risk profile to estimate that the cost of the fund was around £5 per attorney.
- 5.2. The risk model shows that risk profile was improving slightly because of the change in the balance of employed attorneys compared to sole traders. The new client money definition would reduce the amount of client money held, reducing the risk of a significant amount

of money being lost through fraud or failure to account. There was no evidence that the overall level of the compensation fund needed to be increased. The proposed changes maintained the prudent approach followed to date and could be funded from the current level of practising fees.

5.3. The Board paper set out possible changes to the fund, together with their advantages and disadvantages. The paper recommended expanding eligibility to make a claim on the fund to entities with an annual turnover of less than £2 million. Another recommendation was to increase the per-claim limit from £25,000 to £30,000 to allow for inflation. The final recommendation was to remove the rule that allowed IPReg's costs to be charged to the fund; this would mean that all of the fund would be available in the event that a claimant could prove loss resulting in hardship.

5.4. The Board discussed the following matters:

5.4.1. HJC Actuarial confirmed that there were no concerns about the data that IPReg had provided to develop the risk model. IPReg operated within an extremely specialised and small profession and there was a strong incentive to comply with the regulatory arrangements. However, a fund still needed to be kept in place to fund possible claims in the future. IPReg had demonstrated an appropriate degree of prudence in its approach to the fund.

5.4.2. The differences between IPReg's approach and the schemes offered by the SRA and CILEx Regulation. The Board noted that significantly larger amounts of client money were at risk because the SRA and CILEx Regulation regulated conveyancing and probate and that this meant that there were higher limits per claim. Prior to 2021 when IPReg had an insurance policy in place, the level of cover had been higher than was necessary, probably because IPReg had followed the SRA's approach. It was important to note that IPReg's compensation arrangements were for loss causing hardship.

5.4.3. How IPReg was meeting the four guiding principles for its compensation arrangements: viability, stability, manageability and transparency. In relation to stability, the budget provision for the fund was geared towards ensuring it remained stable over a number of years. Despite the lack of claims, £100,000 had been put into the fund to cover any claims that arose in future.

5.4.4. The impact on equality, diversity and inclusivity. The CEO stated that the consultation document had looked at the increased number of businesses that were eligible to claim, incorporating ONS data on the ownership of SMEs by women and ethnic minorities.

5.4.5. That merging with another regulator's fund had been considered when RSA withdrew the insurance policy in 2021. However, to do so would have been extremely complex and would have meant that practising fees from patent and trade mark attorneys

would have been used to provide a compensation fund for other lawyers where the risk of a claim was much higher.

5.4.6. Whether there would be any impact on firms in the PII sandbox. The CEO explained that the sandbox allowed the minimum terms and conditions for PII to be waived, whereas the compensation fund was used when PII did not cover an event, for example fraud or failure to account. The number of firms in the sandbox would not impact the likelihood of claims, as the sandbox PII policies would cover negligence, not fraud or failure to account.

5.4.7. Whether the amount paid into the fund from practising fees each year (£25,000) should be aligned with the proposed increased claim limit (£30,000). HJC Actuarial explained that this would make no difference because of the small risk of a claim. If there were no claims, the fund remained at £100,000.

5.4.8. The difference between a hardship fund and a general compensation fund. HJC Actuarial explained that widening the scope to more than hardship would have cost implications and would probably be unaffordable.

5.4.9. Whether, for the purposes of transparency, the profession should be given the opportunity to comment on the proposal to remove the ability for IPReg to use the compensation fund to pay its costs. The CEO explained that this was included in the consultation paper but there was no other means of paying the costs besides practising fees. The £100,000 fund would only be depleted if there were claims by people who had suffered hardship and IPReg's other costs such as legal and actuarial fees would come from the general income from practising fees. Interest earned could go into IPReg's operational accounts to help pay ongoing costs. HJC Actuarial explained that the rules currently allowed the fund to indemnify IPReg for costs. As fees were trivial in comparison to IPReg's total income, paying the costs from practising fees was the most proportionate approach.

5.4.10. Whether the size of the fund should increase over time in case there was a single large claim. HJC Actuarial advised that annual reviews were not cost effective given the claim history and the Board therefore agreed that an appropriate approach would be to have triennial actuarial reviews of the fund, with interim reviews carried out in the event of a claim. This would mean that the fund was viable and stable.

5.5. The Board decided:

5.5.1. To consult on the proposed changes to the compensation fund.

5.5.2. To conduct triennial reviews of the compensation fund, in addition to interim reviews in the event of a claim.

Action: Director of Policy to publish consultation document once final actuarial report received

6. Strategy Morning Feedback

6.1. The Chair reported that the strategy morning had included a presentation on technology and innovation in legal services and a private session for Board members. The private session had focused on the need to ensure that IPReg had sufficient capacity as a regulator, including medium and long-term staffing capacity, structures and responsibilities. Board members had discussed different approaches to increasing capacity including the use of associates with a retaining fee for advice or continuing work, how to enable senior staff to delegate and outsource more work and the desirability of senior executive team members engaging with stakeholders more broadly. Finally, Board members had discussed strategic priorities. Some minor changes had been suggested, although Board members agreed that the three strategic priorities were: consumer empowerment and knowledge, good quality education and effective regulation.

7. IT System Update

7.1. The Head of Registration reported that the rehosting was scheduled to take place on 8 November. Testing had been carried out to ensure that the system was working. Due to the rehosting, the system would be taken offline from the late afternoon on 7 November until the morning of 9 November. During that time, users would be unable to access their IPReg accounts.

7.2. Regarding the migration to Drupal 10, Pantheon had indicated that it would continue to support Drupal 7 for a year longer than originally planned. Phase 2, which was the migration to Drupal 10, was already underway and this work was currently on schedule.

8. Risk Working Group

8.1. The Risk Working Group Chair reported that the Group's work was still in its early stages. The plan was to present a final draft policy to the Board in March. The Risk Working Group was still looking for an affordable risk consultant to support this work. So far, the Risk Working Group had identified elements that needed to be covered as part of a comprehensive risk policy.

8.2. A survey had been sent out to Board and Team members to better understand perceptions of IPReg's risk appetite across various categories. The results showed an unsurprising diversity of views, highlighting the need for further work to understand what was meant by each category and develop a common understanding of the Board's risk appetite. The Risk Working Group had since decided to look at each objective and to identify which categories of risk were relevant in each case, arriving at an aggregate view of risk appetite for each objective. This would help to identify and resolve any mismatches.

8.3. The Board discussed the following matters:

8.3.1. The aims of the Risk Working Group. While there was currently a detailed risk register, it was developed in the absence of a more comprehensive risk management policy. A common understanding of terminology was needed. The aim was to produce a single, sufficiently comprehensive policy that would enable a stronger understanding of when to take risks or mitigate against risks. This would then be aligned with the risk register. The Risk Working Group had looked at risk management policies used within other organisations, but it had also created a bespoke definition of risk that was clear and relevant for IPReg.

8.3.2. The Risk Working Group would continue to develop IPReg's approach to risk management and oversight. Progress would be reported to the January 2024 Board meeting.

9. Governance Action Plan Implementation

9.1. The Governance Working Group Chair introduced the paper. The paper provided a brief report of the September 2023 meeting of the Governance and Transparency Working Group, which had been convened to consider progress in implementing the current governance action plan. In particular, the Board was asked to approve the publication of the governance handbook.

9.2. The Board discussed the following matters:

9.2.1. The term of appointment for Board members. The CEO explained that IPReg's practice on reappointments had been to appoint Board members for an initial three years, renewable for a further three years. Although advertisements stated the terms as 'up to four years' followed by 'up to three years', providing for the possibility of seven years in total, Board members had always served for six years in practice. The extension process for Board members beyond 6 years in certain circumstances had been formalised in the governance handbook; it allowed up to six months to ensure an overall lay majority on boards which was required by the LSB's internal governance rules. Amending the wording in the plan so that it described two terms of three years each, followed by an optional one-year extension, would better align with what was done in practice.

9.2.2. The issue of financial delegation and whether the Scheme of Delegations needs to make explicit that the CEO was authorised to agree expenditure that was set out in the budget, although there should be a requirement to report back to the Board if there was a 5% (or more) overspend.

9.2.3. Regarding the procurement policy, Board members suggested that there could be a panel of pre-approved suppliers or an expert panel who could be called on for specific areas of support. The current approach was risk-averse and did not provide sufficient delegation to the executive team. However, it was important to take into account that IPReg was a regulatory body and needed to demonstrate that it was following fair

processes in terms of how money from practising fees was spent. There were concerns about setting the procurement limits at too low a level as this could mean additional burdens running tender processes. The Board agreed that the procurement policy should be taken out of the governance handbook while the executive looked through the various categories and came back to the Board with a proposal.

9.2.4. Whether there were any policies missing from the governance action plan. The CEO stated that there was a separate staff handbook that included the data protection policy, the health and safety policy and the whistleblowing policy.

9.2.5. The Chair noted that further recommendations from the Governance and Transparency Working Group would be presented to the Board in January to ensure that deadlines were realistic. An external Board appraisal would be organised in 2024 and, as part of this, progress on implementation of the working group's recommendations would be reviewed.

9.3. The Board decided:

9.3.1. To take the procurement policy out of the governance handbook, putting in a note to confirm that the policy was under review. In the meantime, the CEO would consider how the procurement policy could be improved, making it easier to work with while remaining within appropriate parameters.

9.3.2. To publish the remainder of the governance handbook.

9.3.3. To survey stakeholders on their views of IPReg's transparency in due course.

Action: CEO to finalise and publish Governance Handbook

Action: CEO to review draft procurement policy

10. Complaints Update

10.1. The Head of Registration introduced the paper. Currently, there were six open cases. Since the previous Board meeting, one case had been opened and two had been closed. Overall, there had been no significant change in terms of case levels.

10.2. Regarding the Mr Burrows case, the courts had found in IPReg's favour. IPReg had been awarded the full costs of £27,000, in addition to interest. It was hoped that this case would be resolved by the time of the next Board meeting. As IPReg's first appeal case, there had been learnings to take from the process. IPReg would continue to email all sole trader attorneys and small business owners at the end of April to remind them to pay their PII premiums. The new regulatory arrangements improved IPReg's ability to deal with a lack of engagement during the disciplinary process.

10.3. A Board member asked how joint disciplinary panel members might be impacted by a lack of workload. The Head of Registration stated that there was frequent correspondence with the chairs of the disciplinary and interim orders tribunals. A case was currently listed for

February. The lay member panellists were very experienced and were continuing to keep up their knowledge of cases. Refresher training and legal support was provided to all panel members.

10.4. The Board noted the update.

11. CEO's Report

11.1. The CEO introduced the paper.

2024 practising fees

11.2. The LSB had approved IPReg's 2024 practising fees; the decision documents had been circulated to Board members previously. The switch to a new server provider and IE Digital was expected to proceed smoothly, with no impact on the fee collection process, which would begin in early December.

LSB engagement

11.3. The Chair and Head of Registration met the LSB Chair and CEO on 5 October. IPReg had explained to the LSB the progress it had made as a regulator. The LSB had shown a strong interest in the PII sandbox and was particularly keen to understand IPReg's experience of the sandbox in the context of the LSB's overall review of PII across the legal profession. The LSB had emphasised the CMA's requirement to improve legal information services, highlighting that this should be seen as a development, rather than a replacement, of what was already in place with Legal Choices. IPReg had a new relationship manager at the LSB. The LSB had shown a strong interest in the new regulatory arrangements, particularly relating to continuing competence. IPReg had been pleased to report high levels of engagement from the profession with several hundred attending webinars on the new regulatory arrangements. IPReg was currently awaiting the LSB's response to the regulatory performance review; some constructive criticisms were expected.

Sanctions

11.4. The Head of Registration reported that Clarivate had conducted data triangulation work on compliance with sanctions and had provided IPReg with the results. These were now being analysed to assess whether any action was required and, if so, IPReg would contact the firms in question.

Discussion with the SRA

11.5. The CEO reported that a meeting with the SRA had been held to discuss the consultation relating to the SRA taking over regulation of individuals and firms currently regulated by CILEx Regulation.

12. Response to LSB Consultation on Complaint Handling Processes

- 12.1. The Director of Policy stated that the LSB was consulting on new rules, statutory guidance and a statement of policy on first-tier complaints. The LSB wanted to see a step change in complaint handling by lawyers. This was being driven by data analysis suggesting that a quarter of second-tier complaints to the Legal Ombudsman had not been adequately dealt with at the first tier. 25% of dissatisfied legal services users did not make a complaint; only just over 50% stated that they would know how to make a complaint.
- 12.2. The LSB had identified two outcomes that they expected all regulators to deliver on within 12 months of the new policy statement and guidance going live. These outcomes would be included in IPReg's new performance assessment framework. The first was that regulators had to deliver the best possible complaints resolution system for legal service users by using information and intelligence gathered from first and second-tier complaints. The second was that regulators had to deliver a culture of continuous improvement and learning from complaints and feedback to improve legal services. Furthermore, there were specific requirements within those outcomes, such as capturing and analysing data on protected characteristics, informing consumers of the complaints procedure and resolving complaints within eight weeks.
- 12.3. IPReg endorsed the principle of the consultation, but was concerned about number of the proposals including:
- 12.3.1. whether IPReg would have to change its core regulatory framework in response to the new requirements;
 - 12.3.2. the UK GDPR grounds under which law firms and regulators could process special categories of data about complainants' protected characteristics;
 - 12.3.3. that seeking to achieve the "most effective" complaints system might be a more proportionate goal rather than the "best possible" system. The consultation was due to close on 17 November.
- 12.4. Board members noted that the requirement for an eight-week timeframe to deal with a complaint was already in place in IPReg's core regulatory framework but the proposed reporting requirements about whether the eight week target had been met were new.
- 12.5. The Board approved the response in principle and delegated authority to the Chair and CEO to sign it off.

Action: Director of Policy to finalise response

13. Action Log

- 13.1. The action log was noted.

14. Red Risks

14.1. The red risk was noted.

15. Finance Report

15.1. The finance report was noted.

16. Regulatory Statement

16.1. It was confirmed that, except where expressly stated, all matters were approved by the Patent Regulation Board and the Trade Mark Regulation Board.

17. Any Other Business

17.1. There being no other business, the meeting closed at 16.36.