

The Patent Regulation Board and the Trade Mark Regulation Board**Minutes****Tuesday 2nd November 2021 at 1.15pm****Gatehouse Chambers, Gray's Inn, London, WC1X 8B****Attending:**

Rt Hon Lord Smith of Finsbury (Chair)
Justin Bukspan
Samantha Funnell
Alan Kershaw
Victor Olowe
Samantha Peters
Emma Reeve
Nigel Robinson
Caroline Seddon

In attendance: Fran Gillon, Shelley Edwards, Emily Lyn, Victoria Swan (by Zoom)

1. **Apologies** - no apologies were received.
2. **Notification of any conflicts of interest** – none.

PART A – NON-CONFIDENTIAL ITEMS**3. Minutes of September 2021 meeting and matters arising**

3.1 Minutes agreed as a correct record, subject to a minor amendment.

3.2 Matters arising:

4. Confirmation of decisions taken by email**Compensation arrangements – rule change submission to the LSB**

4.1 The Chair reported that the LSB had told IPReg that it would not agree the rule change application (which had been accompanied by actuarial advice) unless we agreed to remove the “exceptional circumstances” requirement for micro businesses introduce a sunset clause. Given the urgent need to have compensation arrangements in place, the Chair had authorised both of these changes to be made to the regulatory arrangements and guidance.

4.2 FG reported that the LSB had issued its Decision Notice to IPReg at 5.45pm on Friday 5 November (the insurance policy provided by Royal Sun Alliance was due to run out at midnight on Saturday 6 November). The detailed Decision Notice states the LSB considers that any future scheme must include eligibility for a wider range of consumers, although there did not appear to be any analysis of the cost to the profession of expanding the scheme in this way and there did not appear to be any actuarial advice underpinning the LSB’s expectation. The sunset clause would expire in

April 2024 which would require data gathering (as planned) but also another consultation and another rule change application (which had not been planned). The Relationship Management meetings and regulatory performance framework would require further updates on progress. The Board noted with concern the potential cost to attorneys of agreeing the LSB's expectation that the scheme would be expanded.

4.3 The Board agreed that the Chair should write to the LSB on this and other areas of concern. The Board made the regulatory arrangements as agreed by the Chair.

Action: Chair to write to LSB

b) Appointment of external auditor

4.4 The Chair reported that this had been agreed by email and that the appointment of [REDACTED] is confirmed.

5. Action Log

5.1 The Board noted the action log.

6. Education Working Group (EWG) Update

6.1 CS and VS presented the paper providing an update on the work of the Education Working Group, particularly highlighting the following:

- concerns regarding some programme reconfiguration proposals from Queen Mary University London - the accreditation assessors will be asked to ensure the credit weightings being proposed are in keeping with the IPReg Accreditation Handbook; the Board discussed maintaining the independence of assessors and agreed this to be an agenda item for the next EWG agenda;
- only one attorney has registered interest in sitting a Higher Courts Advocacy Course; the professional membership bodies to be asked again to promote the course offers;
- that apprenticeships had been discussed with the professional membership bodies; the topic would be discussed further at the next meeting of the EWG which remains committed to a diversity of pathways to qualification.

6.2 The Board noted the paper.

7. Mercer Review

7.1 CS and VS presented the paper setting out the main conclusions and recommendations of the Mercer Review, the final report having now been published, particularly highlighting the following:

- [REDACTED]

- proposes a return to historic arrangements where the examinations are the only route to qualification, in contrast to the EWG direction of travel to diversify the pathways;
- not always clear where there is correlation between a finding and a recommendation;
- some inaccuracies to address;
- not particularly accessible with some seeming contradictions and inconsistencies;
- triggered by FD4 examination issues but review is much broader in its scope and has far reaching and prescriptive recommendations including for IPReg which had not been involved in the review.

7.2 The Board discussed the Mercer Review and agreed the additional points:

- it would be beneficial if all Committee members involved in drafting the report are in attendance when IPReg meets with them to discuss;
- it does not seem that the report has addressed the original issue (consistently low pass rate of FD4 examination);
- concerns regarding the approach to governance and the suggestion that independence between CIPA, the professional body, and the Patent Examination Body, the examination agency, should not be a requirement;

7.3 The Board agreed that the 8 November meeting of the EWG would take account of this feedback and any additional Board member feedback. This would help it to formulate a draft response to the Mercer Review, to be brought to the 9 December meeting of Board for review.

Action: EWG to draft response to Mercer Review

8. Governance Matters

8.1 The Chair outlined developments around governance issues, in particular the [RICS](#) independent review by Alison Levitt QC; and the LSB's governance reviews of the [BSB](#) and the [Faculty Office](#). He confirmed appraisals of Board members would take place over the next few months.

8.3 The Board agreed that the quantity and quality of information provided to it to inform its decision making was appropriate. It welcomed the explicit inclusion of consideration of the regulatory objectives in Board papers.

8.4 The Board discussed the status of the three current working groups on: regulatory arrangements, education and data – and agreed it remains appropriate for them to be working groups rather than committees given the delegation agreements with CIPA and CITMA.

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

8.6 The Board agreed:

- a. No changes are required to the Board Code of Conduct
- b. No changes are required to the Rules of Procedure
- c. To note the Register of Interests

- d. To schedule follow up/new Board member appraisals
- e. The minor (tracked) changes to the Scheme of Delegations from the IPReg Board
- f. The (tracked) changes to the Schedule of Matters Reserved to the IPReg Board - in particular the addition, for the avoidance of doubt, that the IPReg Board considers all audit/financial reports
- g. To adopt the Gifts and Hospitality policy
- h. To publish this suite of documents to aid transparency about IPReg's governance and how it conducts its work
- i. Review the suite of governance documents every two years (or sooner if there is another relevant significant report/event)

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

8.8 The Board nominated VO and CS as two Board members who the IPReg team can contact if they have any concerns about the way IPReg is being run or any other matters. The IPReg CEO would remind team members of this.

Action: Chair and Board to programme in appraisals

Action: FG to develop an Escalation Policy/Procedure (similar to "Speak Up Guardian") and share with Team and Board

Action: FG to amend risk profile wording regarding management and oversight responsibilities

Action: FG to ask auditors to review financial controls and report to Board

Action: governance documents to be published

Action: governance documents to be reviewed in 2 years' time.

9. Progress on review of regulatory arrangements

9.1 AK and EL introduced the report setting out activity since the last Board meeting, including input from a range of stakeholders and working with Kingsley Napley on the drafting. Progress with drafting has put some pressure on the ambitious timetable for the consultation. However, the pace of the last few weeks continues and there is another meeting scheduled to review progress with the draft Code of Conduct ahead of a further meeting of the Board sub-committee on 8 November (which Kingsley Napley will attend). The proposed draft documents and policy proposals will be brought to the 9 December Board meeting.

9.2 EL reported that the current admission and disciplinary regulatory arrangements contain a significant amount of procedure and internal process which could be more appropriately placed in a separate document. We will need to determine in discussion with the Legal Services Board (LSB) if such a document comes under the definition of regulatory arrangements and therefore requires LSB approval.

9.3 The Board agreed that it would be appropriate to brief the LSB on the consultation immediately before it goes live.

Action: EL to arrange meeting with LSB prior to consultation

10. Other activities (not covered elsewhere)

10.1 3 x CEOs 29 September and 28 October: FG reported the following topics had been discussed:

[REDACTED]

10.2 Cost Lawyers Standards Board (CLSB) – Regulators Pioneer Fund Challenge: FG reported that the CLSB has received a £58,000 grant from this fund to consider how Cost Lawyers could reduce the costs of legal services. As part of the governance arrangements a challenge board has been set up, which FG had been invited to join. The Board supported this and noted that it would further contribute to collaboration between smaller regulators.

PART B – CONFIDENTIAL ITEMS

11. Complaints Update

11.1 SE presented the complaints paper.

11.2 [REDACTED]

11.3 [REDACTED] and

11.4 [REDACTED]

11.5 The Board noted the complaints update.

12. Registered Professions Advisory Forum

12.1 SE reported that she had attended an introductory meeting of the forum in September. [REDACTED]

12.2 [REDACTED]

Action: [REDACTED]

13. Red Risks

13.1 [REDACTED]
[REDACTED]
[REDACTED]

14. Finance budget – 9 months ending 30 September

14.1 [REDACTED]
[REDACTED]
[REDACTED]

15. LSB Issues

15.1 2021 Annual Regulatory Performance Assessment Response: [REDACTED]
[REDACTED]
[REDACTED]

Action: FG and Chair to finalise regulatory performance assessment response

16. Regulatory Statement – for Part A and Part B: Confirmation that, except where expressly stated, all matters are approved by the Patent Regulation Board and the Trade Mark Regulation Board.

15. Any Other Business: None.