

## **IPReg PCF Questions**

These queries/requests for additional information are aimed at providing the LSB with a better understanding of the material presented in the application. The responses will assist the LSB in completing its assessment under Section 51 of the Legal Services Act 2007 and are of relevance to the proposed alteration to the drafting of IPReg's Practising Fee Regulations.

### ***Distribution of costs amongst the regulated community***

1. Please set out an explanation of any change to the distribution of costs amongst IPReg's regulatory community.

### **IPReg Response:**

There are three minor changes to how IPReg intends to apply fees (or distribute costs) from 2024. These are as follows:

1. Not applying the increase to non-practising attorneys
  - a. We consider that not increasing the fees for attorneys who are not actively practising may have a beneficial EDI impact. This was a point made specifically by IP Inclusive in their response to our consultation, although it was directed to those of retirement age. As attorneys may be in this category for a number of other reasons such as long term sickness, career breaks and maternity or caring leave, we considered it appropriate not to increase this category for those of retirement age only (for which we do not have a separate category) but for all, because of the EDI benefits.
  - b. The overall cost to IPReg is around £1,550 (0.12% of budgeted PCF income). Attorneys that are non-practising present a low risk profile due to the fact that they are not providing legal services to clients, nor do they have any access to client monies. We therefore consider it would be disproportionate to raise the practising fee level for this small proportion (~3%) of the register, given the lack of evidence of risk to consumers and to the other regulatory objectives.
2. A new application fee for registered bodies
  - a. We do not currently charge an application fee to entities that are wholly owned and managed by lawyers, whereas we do for licensed bodies. Our current approach means that the cost of processing a registered body application is borne by all attorneys and firms whereas the costs for a licensed body are paid by the applicant firm. There seems no justification for this inequality. The proposal was supported by all but one respondent. Although it is not possible to estimate the income that may be generated from this change in future years, had it been in place in the 2022 practice year, approximately £3000 in fees would have been received. These fees do not form part of the budgeted practice fee income as it is impossible to estimate the number of applications that may be received year on year, but the impact on income is negligible.
3. Abolishing an automatic waiver of registration fees for attorneys and entities applying to the register in November and December

- a. Our custom and practice has been that attorneys and entities who apply for registration between 1 November and 23 December pay no practising fee, even though the process and the work required to assess and process the applications and the cost of regulating the attorney or entity is the same. The cost of these regulatory functions is therefore effectively borne by those already registered. If applicants had been required to pay practising fees in 2022, it would have generated £1,744 (0.14% of budgeted PCF income) in additional fees, based on 2023 rates, although it may have resulted in some applicants delaying their application until the start of the following year.
2. What consideration has IPReg given to amending its overall approach to the distribution of costs?

**IPReg Response:**

IPReg's current approach to apportionment of practising fees is based on the practice categories that attorneys generally fell into at the time when the practising fee rules were first drafted. These are:

- a. Working in private practice (i.e. within an IPReg or SRA regulated firm);
- b. Working in industry in-house (i.e. for a company that does not provide legal services to the public)
- c. Working as a sole trader or as a sole trader employing other regulated attorneys, solicitors or other professionals (e.g. a European Patent Attorney). Sole Traders would practise on their own account, not through a regulated company or firm. This category also include Consultants who provide services to a regulated firm but who are not employed by them;
- d. Not currently in active practice (for a variety of reasons, see above).

Practising fees are distributed amongst those categories, in accordance with the risk the attorney's practising model poses to consumers, with Sole Traders being treated as the most high-risk, followed by attorneys in private practice, those in industry and finally those not practising at all. The current rules allow for an attorney to work in one category only for the purpose of paying IPReg's fees.

The definitions of those practice categories need reviewing to keep account of how attorneys are currently practising, and whether they are practising in the UK (and practising UK patent or trade mark attorney law) or elsewhere. A review of how practice types are categorised (and whether the existing assumptions around risk are correct), was originally in scope of the Regulatory Arrangements Review and we posed in our consultation, a potential framework that could be used to categorise attorneys based on risk and the need to have professional indemnity insurance. The responses we received demonstrated that this is a very complex area which will have a significant impact not only on individuals and firms in terms of fees, but also on IPReg's IT infrastructure as many of the functions of the CRM and online register are based on current fee categories.

We therefore considered following the consultation, that it was prudent to look at this as a

separate exercise in the future, particularly as it became clear that our new CRM would need to be rebuilt following the necessary change from the Drupal 7 platform to Drupal 10. We anticipate that any changes to current fee-paying categories will not take place until 2025 at the earliest.

**Anticipated numbers**

3. The application projects income of £1,249,331. Please provide a breakdown of the numbers of regulated attorneys and firms that are anticipated based on that number.

**IPReg Response:**

IPReg estimates the level of practising fees for the previous year and then makes an adjustment for net growth in attorneys (allowing for admissions, voluntary removals and removals). The estimate is consistent with previous years and the new growth for 2024 was estimated at 120 attorneys. We do not make any estimation for increases in the number of entities because there is no consistency about the number that will enter the market. In addition, usually most new entities tend to be small single attorney firms whose entity fee of £146 (2023 fee) would not make a material difference to the figures. The following figures put the number of attorney admissions in context:<sup>1</sup>

<u>Attorney numbers as at:</u>	<u>No:</u>	<u>Increase</u>
1st April 2023	3,439	97
1st April 2022	3,342	136 *
1st April 2021	3,206	79
1st April 2020	3,127	76
1st April 2019	3,051	145
1st April 2018	2,906	96
1st April 2017	2,810	77
1st April 2016	2,733	92
1st April 2015	2,641	

The following figures put the number of entity admissions in context:

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<sup>1</sup> \* European qualifying examinations (EQE) which provide an element of exemption from IPReg accredited final examinations offered by the Patent Examination Board did not take place in 2020. Those individuals took the examination in 2021, entering the register when they passed the examinations increasing the number of admissions in that year.

<u>Entities as at:</u>	<u>No:</u>	<u>Increase</u>
31 <sup>st</sup> December 2022	248	1
31 <sup>st</sup> December 2021	247	11
31 <sup>st</sup> December 2020	236	12
31 <sup>st</sup> December 2019	224	-3
31 <sup>st</sup> December 2018	227	-2
31 <sup>st</sup> December 2017	229	4
31 <sup>st</sup> December 2016	225	2
31 <sup>st</sup> December 2015	223	

***How the benefits of those activities which are regulatory functions will be assessed.***

4. We note that IPReg has provided a business plan for 2024/25 at Annex 4 of the application. At paragraph 6 of the draft business plan, we note that IPReg intends to gather evidence about the benefits of, and issues raised by its current approach to Education. Paragraph 9 of the Business Plan confirms IPReg will commence a review of its Accreditation Handbook as it does not include requirements for the advanced level qualifications. Paragraph 10 of the Business Plan confirms IPReg's plans to review the IPReg Competency Frameworks for both professions.

Please provide some additional information setting out how IPReg will assess the benefits of those activities which are regulatory functions.

**IPReg Response:**

Post-implementation thematic reviews are scheduled for the recently introduced regulatory arrangements relating to Continuing Professional Development, transparency provisions and the Professional Indemnity Insurance Regulatory Sandbox. These reviews will look at how regulated persons have engaged with the new requirements, any barriers to compliance and benefits (and any unanticipated consequences) of the new rules. Feedback from stakeholders including CITMA, CIPA and regulated persons will form part of these reviews.

We are reviewing the interim compensation arrangements, in keeping with the sunset clause required by the LSB as part of the 2021 rule change approval. This will be informed by both actuarial advice and horizon scanning as well as by stakeholder consultation feedback. We will be issuing the related consultation next month, following its consideration by the early November meeting of the IPReg Board.

We undertook an objective assessment of our regulatory functions under Regulatory Standards 1 (Well-Led) and 2 (Effective Regulatory Approach), submitted to the LSB earlier this year. We will be undertaking a self-assessment against Regulatory Standard 3 (Effective Operational Activity) before year end.

The Competency Framework and Accreditation Handbooks will be reviewed as part of the patent attorney entry barriers work. With the first meeting of the IPReg team in relation to this is scheduled for 30 November 2023 it would be premature to establish a theory of change, and accompanying assessment framework, until this workstream has been more precisely scoped. This piece of work will be likely carried out in conjunction with external advisors and will require significant input from qualification providers, CIPA and CITMA, and registered firms which employ and train prospective attorneys. This to gain a rounded picture of what is currently working well, what isn't, and to determine advantages and disadvantages of not only the current system, but potential alternative systems.

A Risk Working Group first met for the first time on 1 September and has timetabled in monthly meetings to inform redevelopment of the organisational approach to risk, including risks to regulatory functions. The aim is to provide a suite of documents to clearly set out the organisation's approach to risk, its risk appetite, and the risks it is facing and how addressing them. A horizon scanning exercise is currently being undertaken to inform this. This will also require input from external advisors.

All regulatory policy proposals are subject to specific and consistent considerations under the Board paper template, which include risks, links to strategy and business plan, regulatory objectives and best regulatory practice, evidence and analysis, and impacts.

### **Reserves**

5. The PCF Rules expect there to be a clear policy in relation to different types of reserves held (PCF, other), detail of the risks connected to each distinct type of reserve and the rationale for setting the target level of each reserve.

We note the reserves policy is attached at Annex 5 of the application. Paragraph 20 of the application touches on the allocation of committed and uncommitted reserves.

Paragraph 2 of IPReg's Reserves policy states "*Reserves are considered by the Board annually when the operating balance for the preceding financial year is identified. Decisions about the transfer of part or all of specific reserve(s) to or from the income and expenditure account will be considered and made by the Board at this meeting*". The policy does not detail the risks with each type of reserve or set out the rationale behind the setting of the various target levels.

Please provide an explanation of IPReg's assessment of risk associated with each type of reserve.

### **IPReg Response:**

The Board has assessed the potential "known risks" as:

1. The inability to collect practice fees either because of a delay of some kind to the implementation of PCF changes or through a systems failure which makes the completion of regulatory requirements for each attorney and/or entity difficult and which consequently delays the renewal process. The General Contingency Reserve has been set aside for this purpose. The target level for this is approximately 3 months budgeted expenditure.

2. The possibility that external costs in respect of assurance issues and/or dealing with complaints (e.g very complex cases requiring expert witnesses, more days for cases to be heard, more cases) may exceed the budget. The Assurance Disciplinary & Litigation Reserve has been set up to cover such occurrences and is effectively ring-fenced. Level is set at £210,000.

Other ring-fenced reserves are the Funding Diversity Initiatives Reserve and the IT/Website Reserve for specific workstreams which can be funded through Reserves rather than practising fees and can also be used to mitigate against unexpected costs.

Our Reserves policy sets out that Reserves can be transferred if in the Board's judgement it is appropriate to do so. In previous years, the Board has utilised this to create the Compensation Fund Reserve and to set aside ring-fenced reserves related to specific workstreams. On the completion of the workstream, unused reserves were released and reallocated. With the ambitious programme of work next year, the Board found it difficult to predict whether we may need to draw on reserves and for which workstream and they determined that rather than setting up a number of ring-fenced work stream related reserves, it was appropriate instead to amalgamate these into a General Operational Reserve, an approach that our auditors are content with. Such a Reserve would be available to cover any unexpected costs on any workstream or expenditure, to increase the Compensation Fund if the review recommendation is to do so (we are currently undertaking a review of the compensation fund which will also advise if the Reserve is set at the correct level) and also to cover any shortfall on the other ring-fenced reserves if required.

### ***Budgeting***

6. In each of the past two years, IPReg has budgeted lower amounts for salary increases than the actual amount spent (2.5% budgeted vs 5% actual in 2022 and 5% budgeted vs 9.3% actual in 2023). Please provide an additional explanation of the impact of these changes along with commentary on whether the budgeted amount for 2024 (5%) is likely to be an under-estimate.

### **IPReg Response:**

Staff contracts allow for an annual review increase in January each year. Any increase is discretionary but any increase will take into account the most recent Consumer Price Index at the time the decision is made.

IPReg can only estimate the level of % CPI increase for each year for budget purposes and an estimate of 5% was used for 2024. This will be reviewed once the December 2023 CPI index figure is released by ONS and the Board will take this into account when making its decision (consistent with previous years). CPI increase was 10.5% for December 2022 and the Board decision was to award a 9.3% increase to all staff salaries.

Given the current uncertainty over inflation in the UK, IPReg cannot say at this stage whether the budgeted amount of 5% is likely to be an underestimate.

Impact of the % increases are: increased staff salary costs and potentially Employers National Insurance (this figure is also dependent on any changes made by the

Government that had not been announced at the time of budget setting). The pension scheme is based on the qualifying earnings for employees that have opted to remain in the scheme which means there is a maximum contribution that can be paid for some staff members whereas others may not be entitled to the maximum due to the level of the salary. A different % increase will not impact the pension contribution expense line materially.

### ***Exemption Direction 181***

7. The amendments to the drafting of IPReg's practising fee regulations cannot be implemented unless approved or exempted by the LSB. Please set out IPReg's position on why the alterations to its Practising Fee Regulations are suitable to be made via notification under [Exemption Direction 181](#). If possible, please include a marked-up version of the regulations or some other document explaining the changes that have been made.

### **IPReg Response:**

Paragraph 5 of the PCF application mentions the fee regulations were "redrafted so they are consistent with IPReg's new Regulatory arrangements". This was also set out in the consultation document (see Q7).

I can confirm that the Practice Fee Regulations included with the application have been re-drafted by Kingsley Napley so that they are consistent with the style and definitions in the new regulatory arrangements which have been approved by the LSB and are now in force. The redrafting of the Practice Fee Regulations was to ensure that the language and terminology, style and definitions are consistent with the new regulatory arrangements. This means that it is easier for attorneys and firms to understand the new practising fee regulations and this approach is consistent with regulatory best practice.

I can also confirm that there has been no change to the policy underlying the Practice Fee Regulations (albeit that waivers for hardship are now covered in the wider regulatory arrangements already approved by the LSB and so are not duplicated here) or to the substantive meaning of them.

The LSB has subsequently advised that it would not consider the changes as a notification under ED181 as it specifically excludes alterations that involve extensive restructuring or renumbering. As requested, IPReg is therefore submitting a table setting out each of the 10 new numbered provisions in the Practising Fee Regulations 2023 and comparing them directly with the associated provision from the Practising Fee Regulations 2022. A narrative is provided setting out the exact nature of any change between the two provisions, and the rationale for that change.