



Review of Regulatory Arrangements: proposals for change

Consultation paper

16 December 2021

This consultation closes at 5pm on 17 March 2022

Section One - Introduction and background to the review

About this consultation

1. IPReg is consulting on proposed changes to our regulatory arrangements and therefore seeking views on both the proposed regulatory arrangements and the key policy change proposals (including our draft Impact Assessment at **Annex D**).
2. Our regulatory arrangements cover the full range of activities undertaken by regulated individuals and firms – from the requirements to qualify as a patent or trade mark attorney, the process for admission, conduct and other requirements, complaints and disciplinary matters and removal or retirement from the register.
3. Education and training requirements will be looked at as part of the review but we are not proposing changes at this time. We await the interesting debate and discussions following the Mercer Review¹. The only exception is the matter of basic litigation skills where we are seeking views on the principle of moving the acquisition of basic litigation skills into the pre-admission phase (and therefore amending the current requirement to obtain a basic litigation certificate prior to admission or within three years of admission to the register). We are also seeking views on proposed changes relating to our Continuing Professional Development (CPD) requirements.
4. In advance of this consultation we issued a Call for Evidence, which closed in February 2021. The responses to our Call for Evidence provided a comprehensive range of views which have informed the development of this consultation. A summary is available [here](#).
5. We subsequently engaged in a series of discussions with a range of stakeholders to help us to understand the impacts of our proposals in practice. We are grateful to all those who took time to respond to the Call for Evidence and to speak to us; their views and ideas have been invaluable in developing these proposals. This consultation is an opportunity to test our proposals further and we are keen to hear from as wide a range of people as possible to help build our evidence base.
6. This consultation document itself sets out:
 - our approach including proposals for the overarching Principles and Code of Conduct that all regulated persons will be subject to (see **section 2** of the consultation document and **Annex A**);
 - our proposals for key policy changes (**section 3** of the consultation document) including our requirements relating to client money, CPD,

¹ The Mercer Review was commissioned by CIPA Council to examine the education, training and assessment arrangements for entry as a Registered Patent Attorney (RPA) onto the UK Register of Patent Attorneys maintained by IPReg and for election as a Fellow and Chartered Patent Attorney (CPA) of CIPA
<https://www.cipa.org.uk/news/review-aims-to-modernise-and-improve-patent-attorney-training-in-the-uk/>

- litigation skills, transparency and proposed changes to our disciplinary policy and process;
- some wider issues relating to competition and innovation that have arisen through the review process (see **section 4** of the consultation document) including our proposals for practising categories, Professional Indemnity Insurance (PII) and to enable multi-disciplinary practices.
7. We appreciate it is a long document and there is no need to respond to all the topics it covers. We welcome thoughts and observations on individual areas that specifically interest or impact you.
 8. We also welcome comments on the draft regulatory arrangements (see **Annexes A and B**) and our draft Impact Assessment (**Annex D**).
 9. The consultation closes at 5pm on 17 March 2022.
 10. Please send your response to: info@ipreg.org.uk. If your response is confidential, please make that clear.
 11. If you would prefer to speak to us about any aspect of the consultation, we positively welcome those discussions so please do get in touch through info@ipreg.org.uk.

Why we are doing this

12. As a regulator, it is best practice to periodically review regulatory arrangements to assess how they are working and refine in light of the evidence available. The current regulatory arrangements have been in place for a number of years and we have identified, from our experience of applying them as well as feedback from those we regulate, that there are some areas that would benefit from amendment, clarification or modernisation. In reviewing them we have paid particular attention to the eight regulatory objectives set out in the Legal Services Act 2007 (the “Act”)². Our aim is to ensure that our regulatory arrangements are fit for purpose and so far as possible compatible with the regulatory objectives. A full analysis in relation to the regulatory objectives is included in the draft Impact Assessment that accompanies this consultation.
13. In 2019, the IPReg Board set out its strategic priorities. The Board wants to be more externally focused to ensure that its regulatory arrangements encourage and

² Under section 28 of the Legal Services Act, IPReg is under a duty to promote the regulatory objectives. The regulatory objectives are: (1) protecting and promoting the public interest; (2) supporting the constitutional principle of the rule of law; (3) improving access to justice; (4) protecting and promoting the interests of consumers; (5) promoting competition in the provision of services; (6) encouraging an independent, strong, diverse and effective legal profession; (7) increasing public understanding of the citizen's legal rights and duties; and (8) promoting and maintaining adherence to the professional principles.

support innovation. We therefore noted with interest the Competition and Markets Authority (CMA) report on Competition and Regulation (the “CMA Report”)³. In particular, the recommendation that regulation should support innovation and disruption and that it is critical that regulators “understand and take into account how regulatory measures affect new entrants and innovation”.

14. Responses to the Call for Evidence highlighted a number of key themes affecting the IP professions including:

- Market changes brought about through the impact of Brexit
- Globalisation, and increasing competition from the unregulated sector
- Importance of maintaining standards and meaningful regulation to ensure the “badge” of IPReg regulation continues to help regulated attorneys differentiate themselves from the unregulated sector.

15. We heard that for many attorneys, regulation was a conscious choice (as most of their work constitutes activities that do not need to be regulated). This must also be balanced against the need to provide flexibility where we can to ensure that regulation helps and supports businesses to compete.

Our aims and objectives

16. With this in mind we have set out the following key principles for the review:

- **Reduce the burden of regulation** by ensuring that we do not inadvertently add costs through unnecessary regulatory requirements. For example we have proposed amending the requirement to complete the Basic Litigation Skills Course and obtain a Litigation Certificate (prior to admission or within three years of admission to the register). Instead we have proposed exploring how the core skills and knowledge needed in relation to litigation could be integrated into the pre-admission phase, potentially at a lower cost and removing the administrative step of having to apply for the litigation certificate at a key point in an attorney’s career.
- **Focus on the issues that really matter** by setting reasonable standards and not gold plating them. For example we have proposed a new approach to CPD whereby attorneys will be required to reflect on their own competence and identify the areas where they need to focus their professional development. This has the potential to increase the regulatory burden at the outset as attorneys become used to the new approach but this is likely to be outweighed by the potential benefits in terms of assuring the competence of attorneys and maintaining high standards.

³ CMA 2016 market study <https://www.gov.uk/cma-cases/legal-services-market-study> and subsequent review of progress <https://www.gov.uk/government/news/cma-publishes-review-of-progress-in-legal-services-sector>

- **Maintain proportionate consumer protection** by striking the right balance. For example, we have introduced mandatory requirements for transparency of costs information as a lack of information about this remains the most common reason for first-tier complaints. Our aim is for consumers and small businesses to have the information they need to make informed choices about which provider to use (including full transparency about any uplifts to prices, administrative fees or reciprocal referral arrangements) and are given sufficient information about changes to price/services as their work progresses.
- **Principles not detailed rules (unless evidence demonstrates rules are necessary).** For example, we have proposed introducing an alternative option for keeping client money safe by allowing attorneys and firms to use a Third Party Managed Account - a form of escrow account which allows client money to be held by a third party with the added protections of FCA regulation thereby removing the need for firms to operate a client account.
- **Facilitate innovation.** For example we are consulting on allowing a broader range of non-legal services to be provided by IPReg regulated firms (beyond IP affiliated work) and have put forward proposals for a regulatory “sandbox” to facilitate the testing of alternative PII arrangements. The regulatory sandbox concept has been used extensively in financial services and other regulated sectors. Regulatory sandboxes are a ‘safe space’ in which to test innovation amid enhanced scrutiny without the usual regulatory penalties for technical breaches. They can also be a helpful way of gathering evidence.
- **Streamlined and consistent framework.** We have restructured the regulatory arrangements and redrafted to ensure consistency.
- **Resilient to change.** For example we have proposed a simplification of the current practising categories so that the register is clear, meaningful and able to adapt to changes in models of practice.

Impact Assessment

17. A key part of this consultation is our Impact Assessment (IA) which provides an initial analysis for consultation. The IA addresses the potential impact (positive and negative) of the proposed changes on:
 - the regulatory objectives, which includes the impact on competition and consumers; and
 - equality and diversity.
18. One of the regulatory objectives in the Legal Services Act 2007 is “encouraging an independent, strong, diverse and effective legal profession”. In early 2021, IPReg ran

a survey to gather information about the diversity of the trade mark and patent attorneys that we regulate. We have drawn on the findings of the survey to assist in the development of the IA. We will continue to work with a wide range of stakeholders to improve diversity and inclusion in the IP sector.

19. In addition to diversity data, the IA draws on a range of sources of information including:

- responses to IPReg's Call for Evidence;
- feedback from discussions with attorneys and firms and other stakeholders;
- registrant data - e.g., number of attorneys and firms, fee categories, etc.;
- complaints information;
- data on IPReg's disciplinary activities;
- PII claims information;
- applications data - we receive a certain amount about how firms intend to operate from their applications, their corporate structure etc.; and
- information received from H M Treasury relating to the prevention of money laundering and terrorist financing.

20. This consultation is also an opportunity to gather further evidence and as such we have included some specific questions relating to client money and the client base of those we regulate.

21. The IA will be finalised following consultation and prior to the Board's final decision on changes to the regulatory arrangements.

Consultation question 1: What are your views on our Impact Assessment and specifically the impact of our proposals in relation to equality, diversity and inclusion?

Section two - Our approach to the new regulatory arrangements

22. The proposed new regulatory arrangements are provided at **Annex A⁴**. This document is to be IPReg's Core Regulatory Framework (CRF) as it contains in one place all the regulatory arrangements that are relevant to IPReg regulated attorneys and firms in terms of their ongoing duties and responsibilities.
23. We have tried to keep the drafting simple and clear, removing prescriptive requirements where unjustified and relying on broadly stated principles wherever possible. We have adopted a plain English, gender neutral approach throughout. The regulatory arrangements will be underpinned by guidance to give context to the higher level principles where appropriate. In the case of the procedural rules (such as those concerning admission and disciplinary), we will publish our Standard Operating Procedure (SOP) which will set out the more procedural aspects of the arrangements. We have provided an example at **Annex C**.
24. We consider that this approach will ensure the new regulatory arrangements are clear, accessible and better able to withstand the test of time. This is especially important in light of the market changes outlined in the Call for Evidence responses, as well as any unforeseen changes such as those brought about over the last 20 months as a result of the pandemic and subsequent changes in ways of working.
25. All of the defined terms are set out in the glossary provided at **Annex B**. We have sought to ensure that defined terms match the statutory terms where applicable to ensure the new arrangements are as clear and consistent as possible.

Principles and Code of Conduct

26. At the core of our new regulatory arrangements are the overarching Principles and Code of Conduct.
27. The Principles set out the ethical behaviours that IPReg expects all regulated persons to uphold in all aspects of their life, be this within professional practice or private life. Should any of these Principles come into conflict with one another, those which safeguard the wider public interest (such as upholding the rule of law and upholding public confidence) will take precedence.
28. Supporting the Principles is the new Code of Conduct. These provisions set out the standards of professionalism that IPReg expects of all regulated persons in whatever context they are working, such as private practice or in-house. This includes registered patent attorneys and registered trade mark attorneys, IPReg registered and licensed bodies, authorised role holders such as a body's Head of Legal Practice (HoLP), Head of Finance and Administration (HoFA), managers and owners and –

⁴ IPReg Rules for the Examination and Admission of Individuals 2011, Compensation Arrangements Rules 2021 and Practice Fee Regulations will continue to stand alone.

where the context applies - employees. The Code also makes clear that regulated persons are responsible for the work of those they employ or sub-contract with.

29. The Code goes into more detail with specific provisions targeted to the risks posed but remains principles based in approach. For example 3.8 requires that *Workforce diversity data is monitored, reported and published as determined by IPReg*. We expect to develop supporting guidance to help attorneys make decisions as to how these obligations apply in practice based scenarios – for example guidance on the conflict of interest requirements and the diversity monitoring example

Consultation question 2: What are your views on the eight Principles we have set out?

Consultation question 3: What are your views on the Code of Conduct – does it capture the right requirements or is there anything missing?

Consultation question 4: We would be interested in your views on where guidance is required to support attorneys and firms with compliance? Are there any specific examples or particularly difficult issues?

Procedural rules – admissions and disciplinary

30. These sections set core aspects of our regulatory processes including admission to the register and our powers in relation to disciplinary policy and process.
31. Supporting these rules will be our Standard Operating Procedures. We consider that uncoupling detailed IPReg processes from our rules will be more user friendly in terms of presenting the information than expecting attorneys or prospective attorneys to refer to detailed rules. This will also support a consistent approach with some flexibility to respond to individual circumstances. We have provided an example at **Annex C**.
32. Chapter 3 of the new regulatory arrangements concerns our admissions and authorisation requirements. For the most part the provisions reflect our updated style only.
33. One change that we would like to highlight relates to overseas qualifications where we are proposing to recognise an applicant's overseas qualification or may direct an applicant to undertake additional steps where there are substantial differences between the skills, knowledge and training they have received (see 1.3 of Chapter 3 – admission and authorisation requirements). The applicant must provide detailed evidence that they meet the minimum standards of competence set out in the relevant Competency Framework. Advanced level competency is not required in all areas, but the applicant must demonstrate they have the breadth and depth of knowledge and experience required of a newly qualified attorney who trained in the

UK. This process is set out in more detail in the draft Standard Operating Procedure (see paragraphs 20-26).

34. The proposed changes to our disciplinary policy and process are set out later in this consultation paper at section three. These changes are reflected in the new regulatory arrangements at chapter 4 - investigation and disciplinary requirements

Waivers

35. Our new regulatory arrangements include a broad but not unfettered waiver power that can be applied to any of the provisions. An exception is the qualification requirements where exemptions to examinations or specific modules are a matter for education providers and not for IPReg. Nor can we waive any statutory requirements.
36. Decisions relating to waivers are to be made by the Chief Executive and a summary of those decisions will be published. There is no appeal route as we consider the application for a waiver is in effect a request for IPReg to review its policy in light of particular circumstances. However as with any decision made by IPReg an applicant has the right to seek a Judicial Review.

Section three – key policy changes

Client money

Background

37. Our rules around client money were identified in a number of the responses to our Call for Evidence as an area where we could potentially reduce the burden of regulation. Several respondents commented that the majority of client money held by attorneys relates to advance fees and disbursements. The risks therefore tend to be quite different to many other types of legal services provider – for instance those handling ‘transactional money’ such as funds for conveyancing or probate. The only exception is litigation where attorneys may on occasion receive settlement monies on their client’s behalf.
38. The ‘business to business’ nature of IP services also presents a very different risk profile. We have heard from several stakeholders that the nature of IP work (which moves to a fixed timetable) means that advance payments for disbursements do not tend to sit in client account for long and that often liability for payment (such as foreign filing fees) generally rests with the attorney. We have also received some evidence that our current guidance relating to the £250k limit is unnecessarily restrictive and should be reviewed.
39. More fundamentally, what has become clear is the need for clarity and a well understood definition of client money.

Proposed approach

40. Our proposed rules for client money are included in the draft Code of Conduct. The definition of client money is included in the Glossary.
41. We are proposing a definition of ‘client money’ that will not include payments for services or fees where the attorney/firm have agreed the scope and cost of the work to be carried out, i.e. it is only money that rightfully belongs to the client. Payment for disbursements where the liability for payment rests with the attorney (for example foreign filing fees) will not be considered client money. Payment on account would still be considered client money but advance payment for work agreed and not yet completed would be treated as the firm’s money as is the case with many other services. We understand that this will remove a lot of the current administrative burden involved with moving money between accounts which has the potential to bring real benefits for attorneys and firms. Importantly, all money that belongs to the client will continue to be held in client account. This will include, for example, settlement monies.
42. Where IPReg regulated attorneys and firms hold client money, they will be under a duty to keep this money safe by keeping it separate from money belonging to the

attorney/firm and returning it promptly to the client as soon as it can be. The underlying principle in our approach is that it should always be clear who the money belongs to – the client or the attorney/firm.

43. Clients must also be made aware of where their money is being held - including where this is held on trust – the reasons for this and the regulatory protections afforded to them.
44. Under our proposals, attorneys and firms will have the option to use a Third Party Managed Account (TPMA) which provides the additional safeguard of being held by a third party. A TPMA must be regulated by the Financial Conduct Authority (FCA)⁵ and reasonable steps must be taken to ensure the client is informed and aware of the contractual arrangements in place. This includes clients understanding whether any fees are payable for the account, who is responsible for paying them and their right to terminate the arrangement.
45. To help us build our evidence base and understand the risks involved, we are also proposing to introduce a new requirement to notify IPReg if attorneys or firms are holding client money and an indication of how much. We are likely to suggest bandings, for example less than £100k, £100-500k and over £500k.
46. Where residual balances in client account remain and a client is unable to be located (despite all reasonable efforts), we are proposing to allow this money to be donated to a registered charity subject to IPReg being notified and it being less than £500. This is an area where we expect to issue further guidance on how the notification process will work and our expectations in terms of reasonable efforts to locate the client.

Risks to consumers

47. Keeping client money in a client account offers protection in the event of insolvency as the money is separate from the firm's money. A requirement to keep client money separate from the firm's money therefore remains an important consumer protection.
48. In allowing firms to use a TPMA, we are making it easier for those firms that do not wish to hold client money or who only handle client money very occasionally. This also provides a potential alternative option for consumers. TPMAs must be authorised by the FCA and therefore would be covered by the Financial Services Compensation Fund in the event of loss (up to £85k)⁶.
49. Keeping client money in a separate client account does not mitigate the risk of dishonesty (e.g. theft). In these circumstances we would expect the client to

⁵ You can check the authorisation status of a potential provider by searching the [Financial Services Register](#).

⁶<https://www.fscs.org.uk/>

complain to IPReg which would prompt an investigation and potentially further regulatory action. Financial redress for the loss might be available from LeO or a claim on the IPReg compensation fund.

50. If money for disbursements does not need to be held in client account, there is some risk that the money is used for another purpose and the disbursement is then not paid and/or delayed. We understand that with most disbursements, e.g. foreign filing fees, liability rests with the attorney in which case the risk becomes more one of negligence and in such cases the client may have recourse to compensation from a claim on PII. We would also expect that firms have in place systems and processes to mitigate the risk of this happening in the first place.

Summary analysis of the Regulatory Objectives impacted (see draft Impact Assessment for our full assessment)

51. RO4 – Protecting and promoting the interests of consumers by ensuring that money belonging to clients is protected.
52. RO5 – Promoting competition in the provision of services by providing greater flexibility for where client money can be held and allowing for different business models.
53. RO1 - Protecting and promoting the public interest by maintaining public confidence in regulated attorneys.

Consultation question 5: What are your views on the proposed approach to the definition of client money and the requirements included within the Code? Do you think we have missed any benefits or risks in our analysis?

Consultation question 6: For regulated attorneys and firms, please tell us in confidence how much client money you hold and how that would change under the proposed definition?

Continuing Professional Development

Background

54. Best practice for Continuing Professional Development (CPD) has moved on in the last few years towards a more modern approach based on outputs, i.e. what you have learned and what impact it has on how you do your job, rather than inputs (hours completed irrespective of outcome).
55. Our discussions with stakeholders and the responses to our Call for Evidence have revealed some misunderstanding about CPD - for example that it should be based on an understanding of the regulatory requirements. We are therefore keen to clarify

that the purpose of CPD is to help maintain professional knowledge and skills and therefore provide some assurance of competence beyond the point of admission to the register. Training and development should not stop when an attorney qualifies.

56. The Legal Services Board has been looking at the issues around Continuing Competence⁷ and at the time of this consultation will be consulting on its proposed approach. We await the outcome of that consultation with interest.

Proposed approach

57. We are proposing to introduce a new requirement for Continuing Professional Development that is:

- Based on reflection - How can I do things better in the future?
- Output not input – avoid ‘box-ticking’
- Relevant to practice
- Flexible
- Mix of formal and informal
- Led by individual attorneys

58. Attorneys will be expected to maintain an individual log where they record all CPD activity and relate it back to their particular learning needs. The options for CPD activity will be broad and might include, for example:

- Writing up a case study
- A report of a discussion with a peer regarding a particular topic
- Work shadowing
- Coaching/mentoring
- Research of a legal topic in a specialist area
- Attending a training course
- Presenting an in-house training or information seminar for colleagues or clients

59. What might be appropriate for one attorney might not be for another. For example your level of seniority will be relevant, as will practice area, whether you are in-house or in private practice and any significant changes to the scope of your practice or role. Each year may be slightly different with some years needing more in terms of reflective practice than others. For instance changes in key legislation or the

⁷ <https://legalservicesboard.org.uk/our-work/ongoing-work/ongoing-competence0>

development of case law may make the need for CPD in one year much more significant than in others.

60. As is the case now, attorneys will be required to confirm on an annual basis, that they have carried out CPD relevant to their identified training needs. We are developing a proposal that we might call in a random sample of records as a means of monitoring compliance and providing some general feedback to attorneys to help support them with the new approach. Areas of good practice can be shared with the wider regulated community and it will allow IPReg to address any widespread misconceptions about the CPD framework and its purpose.
61. Where an attorney fails to make their annual declaration in respect of CPD they will not be able to renew their registration for the following practice year, so non-compliance with the CPD framework will therefore be resolved administratively rather than through disciplinary action. However, if IPReg has evidence to suggest that an attorney has falsely declared they have complied with the CPD requirements, we may consider disciplinary action.

Risks to consumers

62. CPD requirements are a key regulatory tool in ensuring the competence of those we regulate beyond the point of admission and reinforce the notion that registered attorneys maintain a minimum threshold of skill and knowledge throughout their developing careers, not merely at the point of registration.
63. We consider our current requirements can be significantly improved by putting more of an emphasis on targeted and meaningful CPD activity as opposed to completion of a certain number of hours.
64. For consumers we hope this will help to mitigate the risk of poor quality advice and service.

Summary analysis of the Regulatory Objectives impacted (see draft Impact Assessment for our full assessment)

65. RO6 – Encouraging an independent, strong, diverse and effective legal profession by ensuring attorneys maintain their professional knowledge and skills throughout their career. The new system will also provide flexibility which is likely to have a positive impact in relation to diversity.
66. RO4 – Protecting and promoting the interests of consumers by ensuring our ongoing competency requirements for attorneys are sufficiently robust.

Consultation question 7: What are your views on our proposals in relation to CPD?

Consultation question 8: For regulated attorneys and firms, what would be helpful in terms of guidance and resources for the proposed new CPD requirements?

Litigation skills

Background

67. One of the issues raised in the responses to our Call for Evidence was whether or not the requirement to complete the Basic Litigation Skills Course and obtain a Litigation Certificate (prior to admission or within three years of admission to the register) was justifiable when many attorneys do not conduct litigation.⁸ A small number of respondents commented that if litigation skills remain a requirement, these skills should be assessed before the point of registration (as is the case for trade mark attorneys).
68. At present, the Basic Litigation Skills Course does not form part of the training for patent attorneys (unless undertaken independently in addition to their training), and it is IPReg's policy that patent attorneys should take the course and obtain the Litigation Certificate within 3 years of the end of their first year of registration.
69. Early stakeholder engagement has confirmed our view that basic litigation skills are essential to all attorneys as it is necessary to understand the implications of any advice should a matter become contentious. Many stakeholders have also gone further and suggested that it is necessary to have these skills at the point of registration.
70. This is important even where attorneys do not intend to conduct any litigation and reflects the commercial realities of practice. For example, trade mark attorneys advise brand owners on whether their use of the brand is authorised and how those brand owners may prevent third parties from stopping unauthorised use. Essentially, understanding and awareness are the foundations of what is important.
71. We have also received feedback that the timing of the current requirement where the course is completed post admission has the potential to impact negatively in terms of diversity and inclusion due to the timing (and associated costs) of the Basic Litigation Skills Course often coinciding with the point at which attorneys may have family or other responsibilities.

⁸ Under the current arrangements attorneys must hold an Intellectual Property Litigation Certificate (LC), a Higher Courts Litigation Certificate (HCLC) or a Higher Courts Advocacy Certificate (HCAC), in order to litigate or act as an advocate before the Intellectual Property Enterprise Court or a County Court, or to appeal from the Intellectual Property Office to the High Court. An LC can be granted where an attorney has completed a Basic Litigation Skills Course or where they had previously held (but have now ceased to hold) a LC.

Proposed approach

72. We are keen to explore the principle that all attorneys complete some sort of litigation training before they are admitted. In practice this could be achieved through alterations to the existing training for patent attorneys or through the development of an additional course. Our intention would be to then remove the post-admission requirements for basic litigation skills.
73. We are particularly interested to hear from education providers how this might work in practice. We would also like to hear from employers and those who have completed the course as to the impact of the current requirement for patent attorneys to take time away from work to complete the Basic Litigation Skills Course within the first three years of admission.
74. We are not proposing to make changes to the advanced requirements at this stage.

Risks to consumers

75. Those we have engaged with so far consider it is important from the consumer perspective that an attorney has a basic understanding of the implications of their advice if the matter becomes contentious. This is only likely to improve the quality of the advice provided and result in a better outcome for consumers.

Summary analysis of the Regulatory Objectives impacted (see draft Impact Assessment for our full assessment)

76. RO5 – Promoting competition in the provision of services through better targeting of our regulatory arrangements.
77. RO6 – Encouraging an independent, strong, diverse and effective legal profession by ensuring attorneys have the necessary skills at the point of admission.

Consultation question 9: What are your views on the principle that all attorneys should obtain basic litigation skills before the point of admission? How do you think this could work in practice?

Consultation question 10: Do you think that any changes are needed in respect of advanced litigation skills?

Transparency requirements

Background

78. In May 2019, following the CMA Report, we issued guidance in relation to transparency⁹. The guidance sets out two outcomes:
- consumers and small businesses that may need IP advice make informed choices about which provider to use, based on clear and accurate pre-engagement information that is prominently displayed on providers' websites and in their client-facing communications; and
 - as their matter progresses, clients are provided with information about changes to prices and/or services.
79. The guidance suggests that those we regulate consider making information on price and service available to consumers before the point of instruction (such as on their website). This includes information on referral arrangements and fees as well as information on the nature of disbursements including any additional "administration" charges. The guidance also covers the types of information that should be made available in relation to regulatory status.
80. Since this review started, we have received reports from stakeholders about various practices that occur in the IP sector including additional margins on foreign exchange fees, reciprocal arrangements, uplifts etc. We have therefore reconsidered whether the current guidance should become mandatory.
81. As we set out in the guidance, there is a substantial amount of research which shows that providing better information about price and services is likely to have commercial advantages for regulated firms.

Proposed approach

82. We propose to make the requirements in our existing guidance mandatory for all attorneys and firms providing services to the public.
83. We are therefore consulting on the following provisions in our proposed Code of Conduct:

Clients receive sufficient and clear information about your work and costs, both at the time of engagement and, when the context applies, as work progresses. This is so that clients can make informed decisions about the services they need, how their work will be handled and the options available to them.¹⁰

⁹ <https://ipreg.org.uk/new-ipreg-guidance-%E2%80%93-improving-information-for-consumers-and-small-businesses>

¹⁰ 1.1 of Code of Conduct, Chapter 2, IPReg Core Regulatory Framework

Information about any referral arrangements in place, including the payment of a referral fee and fee sharing arrangements is provided to the *client*.¹¹

*Clients receive an account of any financial benefits, including but not limited to any commission, disguised *disbursements*, foreign exchange uplifts, discount or rebate received as a result of their instructions.*¹²

84. We do not intend to prescribe how you must do this. Rather, our aim is for consumers and small businesses to have the information they need to make informed choices about which provider to use (including full transparency about additional margins on foreign exchange transactions, any uplifts to prices, administrative fees or reciprocal referral arrangements) and are given sufficient information about changes to price/services throughout.
85. We acknowledge that for many attorneys the work they carry out for a client may be portfolio work and not one-off transactional matters. We would therefore take a pragmatic approach in relation to keeping clients informed on costs, changes etc.
86. We are therefore particularly interested in feedback on how these requirements might work in practice.

Risks to consumers

87. A lack of transparency leads to a number of negative impacts for consumers which have been widely discussed in the CMA report. These include inability to make an informed choice and to compare between different providers of legal services. This is especially important given the reported rise in unregulated providers as consumers need to understand the regulatory protections available to them. Moreover, costs information remains the most common reason for complaints.
88. Lack of information and transparency can also mean that consumers are not sufficiently informed of the costs involved with their matter and there is a risk they are misled (particularly in relation to foreign exchange fees, uplifts or administrative charges).

Summary analysis of the Regulatory Objectives impacted (see draft Impact Assessment for our full assessment)

89. RO5 – Promoting competition in the provision of services by providing information to assist consumers in choosing their provider (including price and regulatory status).

¹¹ 1.3 of Code of Conduct, Chapter 2, IPReg Core Regulatory Framework

¹² 4.3 of Code of Conduct, Chapter 2, IPReg Core Regulatory Framework

90. RO8 – Promoting and maintaining adherence (by authorised persons) to the professional principles by ensuring high standards of professionalism are adhered to in relation to charging practices.
91. RO1 - Protecting and promoting the public interest by ensuring confidence is not undermined through a lack of transparency.

Consultation question 11: What are your views on how the proposed transparency requirements might work in practice for both regulated attorneys and consumers of IP legal services? Are there any particular elements of it that might be costly or difficult to implement?

Disciplinary policy and process

Background

92. A key part of the Review has been to look at our disciplinary policy and process. Having a transparent, robust and fair disciplinary process is one of our core regulatory functions. We have therefore looked at how we can streamline and improve the process end to end in line with best regulatory practice.
93. In reviewing our processes, we have identified the following two outcomes which we seek to achieve:
 - Protection of the public; and
 - Increasing and maintaining confidence in the professions by demonstrating that we have the systems and processes to identify any misconduct and impose sanctions where necessary.

Our proposed approach

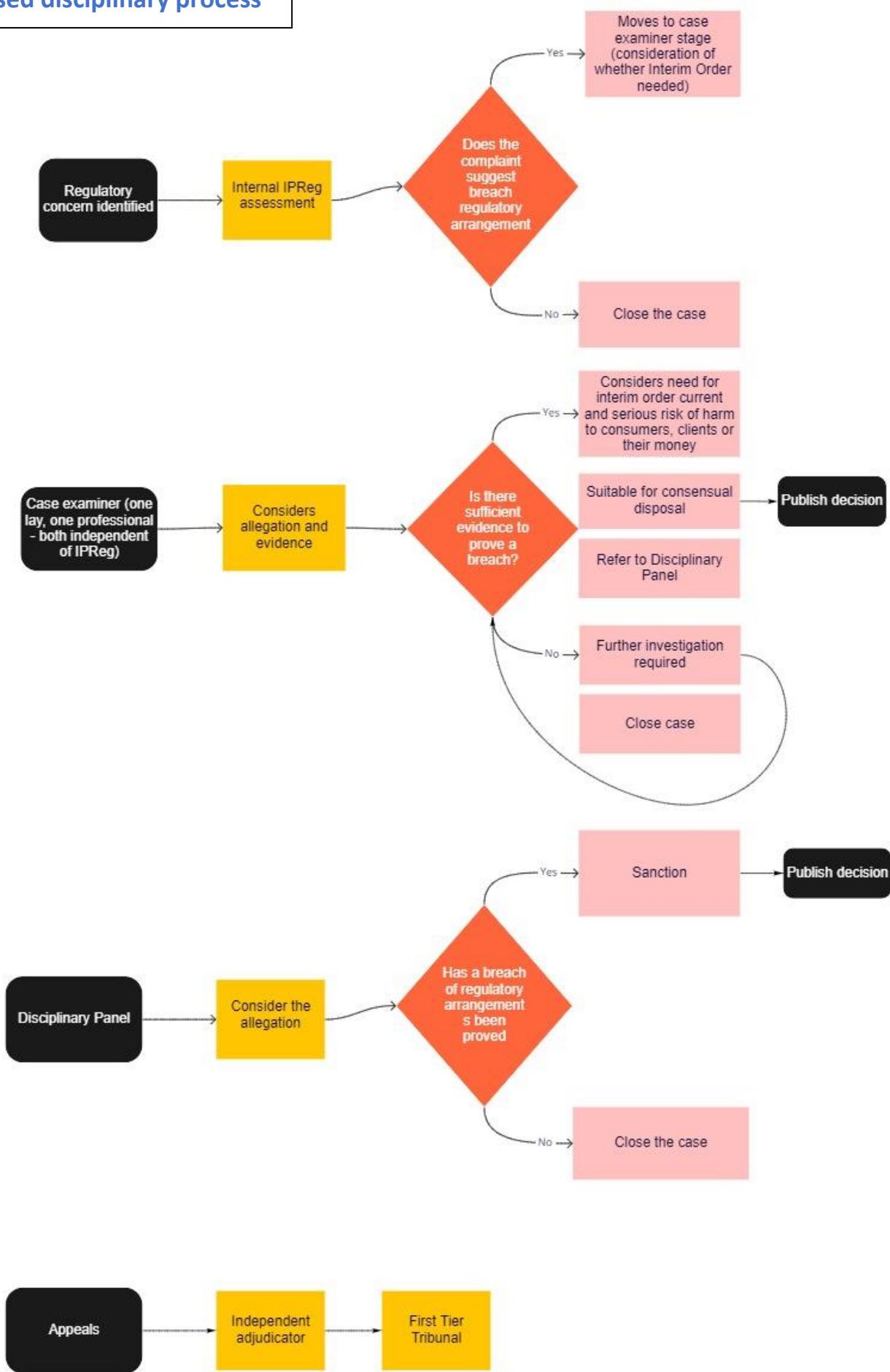
94. In making changes to our disciplinary policy and process our objectives are to have processes which are:
 - Agile
 - Transparent
 - Timely
 - Fair
 - Efficient

95. The new process has four stages which are set out in the diagram below: Internal Assessment, Case Examiner Consideration, Disciplinary Hearing and Appeal. Whilst the existing disciplinary process also has four key stages, the new framework makes clearer the transition between the internal assessment and preliminary decision-making (case examiner consideration) stages, provides for independent (from IPReg) decision makers at the preliminary investigation stage, and introduces broader powers for cases to be resolved earlier without the need for a full disciplinary hearing. We have also included a proposed change to the disciplinary panel appointment process which would widen the pool of legal professionals that we are able to appoint. This change is set out in more detail at paragraph 90.
96. The full disciplinary process is set out in the Core Regulatory Framework at Chapters 4 and 5 and is supported by the draft Standard Operating Procedure.
97. We are also consulting on new powers to apply for an interim order as part of the disciplinary process. An interim order, if obtained, will suspend, or limit the registration of an attorney or firm where evidence is obtained that demonstrates there is an immediate and a serious risk of harm to clients or their money. An interim order may be sought at any stage during the disciplinary process, either at the outset when a complaint is first referred to IPReg for investigation, or at any point during the investigation when evidence is received which suggests that such an order is necessary and is a proportionate response to the risks identified.
98. The decision as to whether an interim order should be imposed will be a matter for an Interim Orders Panel who would in most cases, convene remotely to consider any evidence or submissions submitted by IPReg and, where provided, the regulated individual.
99. For many larger regulators an Interim Orders Panel would consist of different members to the disciplinary panel. However, recruitment and training of such a panel is likely to be costly and resource intensive. Given the relatively low numbers of disciplinary cases handled by IPReg, and the low likelihood of us requiring an interim order, we consider a more proportionate approach would be to establish a single Tribunal, the “Disciplinary and Interim Orders Tribunal”, from which panel members will be drawn to service both the Interim Orders Panels and the Disciplinary Panels, as required. IPReg will ensure that in cases where both an Interim Order Panel and Disciplinary Panel are utilised, the members of each panel are constituted differently.
100. Members of the Tribunal and panels would include both lay and professional members. Under our proposals, professional members must be regulated legal professionals but will not necessarily need to be a registered attorney. A wider pool such as this would offer significant benefits over our current system (in which professional members for disciplinary panels have to be either registered or former registered attorneys). We have found recruitment to be challenging due to the size of the professions, conflicts of interest and a broader reticence of attorneys to sit in

judgement on their peers. The proposed approach also allows us to potentially develop a pool of individuals with wider experience of sitting in different tribunals, for example for another regulator. Where the case deals with the competency of an attorney or otherwise requires technical knowledge in order to understand and adjudicate on the issues, a specialist technical adviser, either a currently or previously registered attorney, could be appointed to advise the panel on technical issues in the same way that a legal adviser is appointed to assist the panel with legal issues.

101. We are also interested in exploring the potential to pool lay members with other regulators.
102. All panellists would require training on both interim orders and disciplinary hearings. This training would need to be refreshed on a regular basis.
103. To support the new disciplinary process we will be issuing updated decision making guidance, indicative sanctions guidance and an updated publications policy.

Proposed disciplinary process



Risks to consumers

104. An effective disciplinary process is one of our core functions and essential to protection of the public. The proposed changes will enable us to continue to discharge this function in a more effective way.

Summary analysis of the Regulatory Objectives impacted (see draft Impact Assessment for our full assessment)

105. RO1 - Protecting and promoting the public interest by ensuring public confidence in our regulation through an efficient and effective disciplinary process.

106. RO4 – Protecting and promoting the interests of consumers by ensuring that regulatory issues are addressed swiftly and effectively.

107. RO6 – Encouraging an independent, strong, diverse and effective legal profession by allowing sufficient flexibility to respond to the needs of those subject to our disciplinary process.

Consultation question 12: What are your views on our proposal to introduce independent case examiners to our disciplinary process?

Consultation question 13: What are your views on our proposal to widen the range of consensual disposal options and therefore increase the option to dispose of a case at an early stage in order to reduce the cost and burden of regulation? Are there any sanctions which should be reserved to the disciplinary tribunal only?

Consultation question 14: What are you views on our proposal to widen the pool of professional panel members to include non-attorneys?

Consultation question 15: What are your views on our proposal to introduce new powers for interim orders?

Section four – Competition and innovation

108. In considering how our regulation affects new entrants and innovation, we have identified some specific issues that we wish to address through the Review. These include:

- current restrictions on legal and non-legal activities that are not IP ancillary services
- our PII requirements and the interaction with PAMIA's membership requirements, particularly where specific ownership models are ineligible for PAMIA membership

Multidisciplinary practices

109. IRPeg currently restricts the non-legal services of the firms which it regulates in the following ways¹³:

- the non-legal services offered by the firm/sole practitioner must be ancillary to the legal services; and
- no firm/sole practitioner may conduct certain types of legal service including a) criminal law; (b) family or matrimonial law; (c) conveyancing other than conveyancing of intellectual property rights; (d) real estate related legal services; (e) probate and the drafting of wills; (f) immigration law; (g) personal injury litigation, including medical negligence; and (h) administrative law, except in so far as it relates to intellectual property; or any related services.

110. For the avoidance of doubt, we are proposing to retain the existing prohibition on the types of legal services set out in the second bullet point above. These restrictions were intended to limit the types of services provided by the entity to those which IPReg had the expertise to regulate and also reflected the PII available at the time.

111. The first restriction creates a barrier to entry for an existing entity which provides other non-legal services which are not ancillary to its proposed legal services, although it is not a complete prohibition on other non-legal services.

112. IPReg proposes to remove the limitation on non-legal services, i.e., that they be limited to those ancillary to the legal services. This would enable those we regulate (or new entrants looking to be regulated by IPReg) to provide a wider range of services, including non-legal services. However, IP legal services would need to continue to be one of the main legal services provided.

¹³ See Annex A of the IPReg Registered Bodies Regulations 2015.

Consultation question 16: We are interested in views on this proposal including the potential practical implications of an IPReg regulated businesses broadening its range of services. For instance, is this likely to present particular issues in respect of conflicts, confidentiality or PII?

Professional Indemnity Insurance

113. IPReg-regulated firms and individuals can only take out a PII policy with “participating insurers” that have agreed to provide cover that meets our minimum terms and conditions (MTCs). This is to ensure that there is a basic standard of consumer protection in place across all regulated firms and attorneys. We currently have in place two participating insurers – PAMIA Limited (who cover the majority of IPReg regulated attorneys and firms) and Allianz Global Corporate and Specialty SE. We are aware that in some cases attorneys may not be eligible for PAMIA insurance because they do not meet the criteria for PAMIA membership.
114. Through the Review, we have considered the issues around PII and the options for attracting more insurers so that there are more options available to those we regulate. We have reviewed the MTCs and sought expert advice. Our conclusion has been that the current market conditions for PII and the emergence of a “hardening” market make it very difficult to have an impact on the number or range of participating insurers.
115. Our preliminary analysis of PII models in other markets has led us to query whether a mutual with a large market share and a qualifying insurer regime with MTCs is a viable model in the IP market. The proposals for a regulatory sandbox that are set out below may help us to build up an evidence base that will test this theory.
116. In terms of our regulatory requirements we remain of the view that PII continues to be an important regulatory protection. As such as we have included a requirement in the draft Code of Conduct that where attorneys provide services to the public, PII must be in place that is commensurate with the risks presented by the business and which meets the MTCs. We have also retained the existing requirement to take out run-off cover in the event that an attorney ceases to practise (unless there is a successor practice).
117. The main change in relation to PII is that attorneys who exclusively act as consultants will no longer be required to have their own PII if they are not providing services directly to the public. They will however be subject to the requirement to have PII if they are providing services to the public, e.g. through the business to which they provide consultancy services. For example by inclusion of their name on the MTC PII policy held by their client firm if their ultimate client is a member of the public. The broader principle here is that PII is in place to protect the consumer and that it does not matter whether that insurance is held by the consultant themselves

or the firm with which they are contracting. The exact nature of the arrangement is likely to depend on the contractual arrangement in place and it will be up the attorney to satisfy themselves that coverage is provided.

118. We are also proposing to create a regulatory sandbox through which attorneys and firms could apply to IPReg for approval of alternative insurance arrangements which we would then monitor closely.

119. The regulatory sandbox concept has been used extensively in financial services and other regulated sectors. A sandbox provides a ‘safe space’ in which to test innovation amid enhanced scrutiny but without the usual regulatory penalties for technical breaches. They can also be a helpful way of gathering evidence, so in this case evidence of how the market might respond were the regulatory requirements for PII to be less stringent.

120. Our working assumption is that these arrangements would not replicate the MTCs – but would be focused on the specific risks posed. We would expect applicants to demonstrate to us how they had satisfied themselves that the PII arrangements were appropriate. Information to be provided to IPReg might include:

- Details of the policy and coverage
- An assessment of how this meets the risks posed, for instance a firm may decide not to hold client money to reduce their risk profile
- Evidence of advice obtained from a broker or PII expert

121. We would then use our own expert (whose costs will be charged to the applicant) to assess the information and determine whether any conditions of practice are needed.

122. We anticipate that the sandbox may appeal to those ineligible for PAMIA membership due to:

- Firm structure (including those with more than 50% non-attorney ownership)
- Services provided (i.e. they provide a broader range of non-legal services), and who are unable to get PII with a participating insurer
- Working for a firm that is not regulated for IPReg, e.g. attorneys working in private practice for non-UK regulated firms (perhaps because the head office is based overseas)

123. It is our understanding that those who have allowed their PII to lapse will be unlikely to get insurance anywhere else.

Consultation question 17: What are your views on the proposal to introduce a regulatory sandbox for PII?

Practising categories including sole traders

Background

124. The current practising categories or fee categories for individual attorneys are:

- Attorney solely undertaking corporate work
- Attorney in private practice
- Attorney not in active practice
- Sole trader attorney employing other attorneys or other professionals
- Sole trader not employing other attorneys or other professionals

125. These categories have been in place since 2010 and working practices have changed significantly during this time. We have also gained experience of regulating attorneys and firms, and as a result have a better understanding of the issues that arise. Further, we consider that some of the current fee categories simply do not make sense (e.g. “sole trader employing others” where the “others” are also registered attorneys or other legal professionals).

126. Responses to our Call for Evidence highlighted the need for simplicity and clarity of which requirements apply to different models of practice, for example PII.

Our proposed approach

127. Our aim in relation to changes to the practice categories is to maintain the integrity of the register whilst simplifying it and providing clarity as to how the regulatory requirements apply to each category.

128. We would like for the categories to align as closely as possible to the real world however we recognise that not all practice models will fit neatly. We also intend to future proof as much as possible.

129. The key distinction in our proposed model is whether you are providing services to the public or not as clearly the regulatory risks are very different in each scenario. We have then sought to differentiate within those categories, based on risk (see table below for the proposed categories).

130. Where an attorney has a portfolio practice that cuts across different risk groups (e.g. consultant to firms but also services the public directly), for fee calculation and PII purposes they will be placed in the highest risk group so will be required hold PII and pay a higher practice fee.

131. As there is no statutory definition of “the public” we have considered a number of options. The first option is to treat “the public” as anyone who can complain to the Legal Ombudsman¹⁴. That is:

¹⁴ Who can complain is defined at Rule 2.1 of the Legal Ombudsman Scheme Rules, April 2019

- a) an individual;
- b) a business or enterprise that was a micro-enterprise (European Union definition);
- c) a charity that has an annual income net of tax of less than £1 million;
- d) a club/association/organisation, the affairs of which are managed by its members/a committee/a committee of its members, that had an annual income net of tax of less than £1 million; or
- e) a trustee of a trust that has an asset value of less than £1 million.

132. We consider this has the advantage of being an established definition. However, it would mean that certain regulatory protections that we are proposing are only required if providing services to the public (such as PII) would not be in place for all clients – for example charities or businesses with an income over £1m.
133. The second option would be a broader definition, i.e. “the public” is anyone that is not your employer. This would have potential consumer protection benefits but is unlikely to be a proportionate solution. It may also present potential issues for consultants.

Table 2- Proposed categories

Attorneys providing services to the public	Fee risk rating 1	Attorneys providing services to the public without the infrastructure of a firm – sole traders and single attorney firms	MTC level PII required or Sandbox exemption
	Fee risk rating 2	<p>Attorneys in private practice providing services through a registered entity and registered entities with more than 1 attorney director or manager or a licensed entity.</p> <p>Overseas attorneys providing services to UK clients/consumers of UK legal services¹⁵ (whether or not through an IPReg registered firm)</p>	MTC level PII required or Sandbox exemption

¹⁵ This is deliberately wider than just UK clients - we have had complaints before from non-UK clients who engaged an attorney to advise on the UK part of a transaction/patent portfolio etc.

Attorneys not providing services to the public	Fee risk rating 3	In-house attorneys Attorneys not in active practice Attorneys providing consultancy services other than to the public Attorneys based overseas and providing services to non-UK clients or in relation to non-UK patent/TM services	No PII requirements

134. We have removed the category of “sole trader employing others” as we consider this is an artificial characterisation which is potentially confusing to consumers. This will mean that those currently within this category will become registered firms paying the cost-neutral associated fees.
135. We are also proposing that attorneys consulting to one or more third parties, and who are not providing services directly to the public, will no longer be required to have PII.
136. Attorneys based overseas are categorised based on whether they are providing services to the public and if so, the nature of the services they are providing (e.g. UK or non-UK patent and trademark services) and where the clients are located.
137. If we proceed with these changes there will be impacts on the fee categories and as such the amount we charge to be entered on and remain on the register. These changes will be modelled once the final categories have been decided and will be the subject of consultation as is the case with any of our fee changes. We do not anticipate that these changes would take effect until 2024 at the very earliest.

Risks to consumers

138. Categorising attorneys based on whether they are providing services to the public or not will ensure that regulatory requirements are targeted at the risks posed. Simpler and more meaningful categories will also make things clearer for consumers that choose to look at our register to help them find an attorney.

Summary analysis of the Regulatory Objectives impacted (see draft Impact Assessment for our full assessment)

139. RO1 - Protecting and promoting the public interest by ensuring the register has integrity.
140. RO4 – Protecting and promoting the interests of consumers by providing greater clarity as to the capacity in which an attorney is practising.
141. RO6 – Encouraging an independent, strong, diverse and effective legal profession by allowing sufficient flexibility as to how attorneys can practise.
142. RO5 – Promoting competition in the provision of services by removing the requirement to have PII for attorneys consulting to one or more third parties, and not providing services to the public,

Consultation question 18: What are your views on the proposed changes to the practising categories?

Consultation question 19: For regulated attorneys and firms, please can you tell us whether you provide services to the public and if so, what proportion are individual clients and which are business clients?

Section five – How to respond

143. We welcome responses to the consultation from individuals as well as firms and organisations. Please make clear who you are writing on behalf of and whether some or all of your response is confidential.
144. A full list of the consultation questions is provided below. You do not need to respond to all of the questions if only certain areas are of interest or relevant.

Please provide responses by 5pm on 17 March 2022 to: info@ipreg.org.uk.

Section six – next steps

145. Once the consultation has closed we will consider all the responses received. We expect the Board to make decisions on next steps in summer 2022.
146. All changes to our regulatory arrangements are subject to approval by the Legal Services Board. At this point we do not anticipate implementing any changes until Spring 2023 at the earliest. We will keep attorneys and firms updated via the website and our usual channels.

Section seven - Consultation questions

Consultation question 1: What are your views on our Impact Assessment and specifically the impact of our proposals in relation to equality, diversity and inclusion?

Consultation question 2: What are your views on the eight Principles we have set out?

Consultation question 3: What are your views on the Code of Conduct – does it capture the right requirements or is there anything missing?

Consultation question 4: We would be interested in your views on where guidance is required to support attorneys and firms with compliance? Are there any specific examples or particularly difficult issues?

Consultation question 5: What are your views on the proposed approach to the definition of client money and the requirements included within the Code? Do you think we have missed any benefits or risks in our analysis?

Consultation question 6: For regulated attorneys and firms, please tell us in confidence how much client money you hold and how that would change under the proposed definition?

Consultation question 7: What are your views on our proposals in relation to CPD?

Consultation question 8: For regulated attorneys and firms, what would be helpful in terms of guidance and resources for the proposed new CPD requirements?

Consultation question 9: What are your views on the principle that all attorneys should obtain basic litigation skills before the point of admission? How do you think this could work in practice?

Consultation question 10: Do you think that any changes are needed in respect of advanced litigation skills?

Consultation question 11: What are your views on how the proposed transparency requirements might work in practice for both regulated attorneys and consumers of IP legal services? Are there any particular elements of it that might be costly or difficult to implement?

Consultation question 12: What are your views on our proposal to introduce independent case examiners to our disciplinary process?

Consultation question 13: What are your views on our proposal to widen the range of consensual disposal options and therefore increase the option to dispose of a case at an early stage in order to reduce the cost and burden of regulation? Are there any sanctions which should be reserved to the disciplinary tribunal only?

Consultation question 14: What are your views on our proposal to widen the pool of professional panel members to include non-attorneys?

Consultation question 15: What are your views on our proposal to introduce new powers for interim orders?

Consultation question 16: We are interested in views on this proposal including the potential practical implications of an IPReg regulated businesses broadening its range of services. For instance, is this likely to present particular issues around conflicts, confidentiality or Professional Indemnity Insurance?

Consultation question 17: What are your views on the proposal to introduce a regulatory sandbox for PII?

Consultation question 18: What are your views on the proposed changes to the practising categories?

Consultation question 19: For regulated attorneys and firms, please can you tell us whether you provide services to the public and if so, what proportion are individual clients and which are business clients?

Annexes

- Annex A: Draft regulatory arrangements
- Annex B: Draft glossary
- Annex C: Example Standard Operating Procedure
- Annex D: Draft Impact Assessment

IPReg's Core Regulatory Framework

Chapter 1 - Overarching Principles

These Principles set out the ethical behaviours that *IPReg* expects all *regulated persons* to uphold in all aspects of their life, be this within professional practice or private life. Should any of these Principles come into conflict with one another, those which safeguard the wider public interest (such as upholding the rule of law and upholding public confidence) will take precedence.

You must:

1. act in a way that upholds the constitutional principle of the rule of law and the proper administration of justice.
2. act in a way that upholds public confidence in the regulated profession.
3. act with independence.
4. be honest.
5. act with integrity.
6. act in a way that encourages equality, diversity and inclusion.
7. act in the best interests of each *client*.
8. maintain proper standards of work.

Chapter 2 – Code of Conduct

The provisions set out in this Code of Conduct are the standards of professionalism that *IPReg* expects of all *regulated persons* in whatever context they are working. This includes working in private practice and in-house and, where the context applies, working on a pro bono basis. This Code of Conduct applies to *registered patent attorneys* and *registered trade mark attorneys*, *IPReg registered* and *licensed bodies*, authorised role holders such as a body's *HoLP*, *HoFA*, *managers* and *owners* and – where the context applies - *employees*. *Regulated persons* are responsible for the work of those they employ or sub-contract with.

1 - Client care

- 1.1 *Clients* receive sufficient and clear information about your work and *costs*, both at the time of engagement and, when the context applies, as work progresses. This is so that *clients* can make informed decisions about the services they need, how their work will be handled and the options available to them.
- 1.2 *Publicity* in relation to your work is accurate, fair and not misleading.
- 1.3 Information about any referral arrangements in place, including the payment of a referral fee and fee sharing arrangements is provided to the *client*.
- 1.4 You do not undertake work for a *client* where your duty to act in the best interests of that *client* conflicts, or there is a significant risk it may conflict, with your own interest in respect of that work or related work.
- 1.5 You do not act for two or more *clients* in relation to the same work or related work when there is a significant risk that their interests are or will be in conflict.
- 1.6 You do not act for a *client* where your duty to act in their best interests will conflict with your duty to keep another *client's* affairs confidential unless there is no risk of such disclosure.
- 1.7 You keep your *client's* affairs confidential save as permitted by law.
- 1.8 You exercise a lien over *client* papers and other materials belonging to a *client* only when, and to the extent that, the lien is available in law or the lien is an express term of business to which the *client* has agreed.

2 - Competence

- 2.1 You only undertake work that is within your expertise and competence.
- 2.2 You maintain your continuing competence in accordance with *IPReg's* requirements and guidance.
- 2.3 Those with management responsibility ensure that appropriate training and supervision arrangements are in place for those working at all levels.

3 – Managing your practice

Accountability, cooperation and provision of information

- 3.1 You are accountable for your work and the work delivered by those you supervise or subcontract with.
- 3.2 Effective governance arrangements are in place so that you and those you contract with can comply with *IPReg's regulatory arrangements*.
- 3.3 You cooperate with *IPReg*, other regulatory, supervisory and enforcement bodies and the *Legal Ombudsman*.
- 3.4 Any information which suggests a breach any of *IPReg's* or another *approved regulator's regulatory arrangements* is reported promptly to *IPReg* or another *approved regulator*, as appropriate.
- 3.5 You do not inhibit anyone from providing information to *IPReg* or any of the types of body set out at [3.3] above or subject anyone to detrimental treatment who provides or proposes to provide information in this way.
- 3.6 *IPReg's* requests for information, documentation and payment of fees are complied with within timeframes determined by *IPReg*.
- 3.7 *IPReg* has up-to-date details for you and the practice and is promptly notified of any material changes to this information or circumstances, including matters which may impact upon your suitability and entitlement to remain a *regulated person*.
- 3.8 Workforce diversity data is monitored, reported and published, as determined by *IPReg*.

Risk management

- 3.9 All material risks to the practice are identified, monitored and managed.
- 3.10 Where you provide services to the public, professional indemnity insurance (PII) is in place that is commensurate with the risks presented by your business and which meets *IPReg's* current Minimum Terms and Conditions (MTCs).
- 3.11 When you cease to operate, you take out run off cover unless there is a *successor practice*.
- 3.12 Once it becomes clear that a practice will cease to operate, those with management responsibilities effect the orderly wind-down of the business and promptly notify *IPReg* in accordance with [3.7] above.

4 - Client money

- 4.1 *Client money* is kept safe in the following ways:
 - 4.1.1 it is always identifiable and is kept separate from money belonging to the firm; and
 - 4.1.2 it is returned promptly to the *client* as soon as it can be.

- 4.2 *Clients* are aware of where their money is being held – including where this is held on trust – the reasons for this and the regulatory protections afforded to them.
- 4.3 *Clients* receive an account of any financial benefits, including but not limited to any commission, disguised *disbursements*, foreign exchange uplifts, discount or rebate received as a result of their instructions.
- 4.4 Where *client money* is held in a *third party managed account*, reasonable steps are taken to ensure the *client* is informed and aware of the contractual arrangements in place. *Clients* understand whether any fees are payable for the account, who is responsible for paying them and their right to terminate the arrangement.
- 4.5 *IPReg* is to be notified if you hold *client money*.
- 4.6 *IPReg* is to be notified in circumstances where *client money* cannot be returned to the *client* and any residual balances exceeding the amount *prescribed* which relate to that *client* must be donated by you to a charity of your choice.

5 – Complaints handling

- 5.1 *Clients* are informed, in writing, at the time of engagement about:
 - 5.1.1 their right to complain about your work and associated *fees*;
 - 5.1.2 how a complaint can be made and to whom; and
 - 5.1.3 any right they have to make a complaint to the *Legal Ombudsman* and when they can make any such complaint.
- 5.2 Where a *client* has made a complaint about your work or associated *fees*, if this has not been resolved to the *client's* satisfaction within eight weeks following the making of that complaint, they are informed, in writing:
 - 5.2.1 of any right they have to complain to the *Legal Ombudsman*, the time frame for doing so and full details of how to contact the *Legal Ombudsman*; and
 - 5.2.2 if a complaint has been brought and your complaints procedure has been exhausted:
 - 5.2.2.1 an explanation of why you cannot settle the complaint;
 - 5.2.2.2 the name and website address of an alternative dispute resolution (ADR) approved body which would be competent to deal with the complaint; and
 - 5.2.2.3 whether you agree to use the scheme operated by that body.
- 5.3 Complaints are dealt with promptly, fairly, and free of charge.

6 - Requirements for licensed bodies

These provisions are the requirements which relate specifically to *licensed bodies* and must be read in conjunction with the standards of professionalism that *IPReg* and the public expect of all *regulated persons* set out at [1 to 5] above.

- 6.1 At all times, there is an individual designated as *HoLP* and an individual designated as *HoFA*, whose designation *IPReg* has approved.
- 6.2 *Compliance officers* comply with their legislative and regulatory obligations and duties as determined by *IPReg* and as set out in Schedule 11 to the *LSA*.
- 6.3 Effective governance arrangements are in place to ensure that your *compliance officers* are able to discharge their duties.
- 6.4 *Licensed bodies* have a practising address in England or Wales.
- 6.5 No one is employed who is disqualified under section 99 of the *LSA* from being an *employee* or a *manager* of a *licensed body*.
- 6.6 Non-authorised *owners* are approved in accordance with *IPReg*'s requirements relating to authorisation [see 6.3 of Chapter 3] and any accompanying guidance and in accordance with Schedule 13 to the *LSA*.

Chapter 3 – Admission and authorisation requirements

1. Admission to the register - requirements for individuals

- 1.1 An individual will qualify for admission to the *patent attorney register* if they are able to demonstrate to the satisfaction of *IPReg* that they:
 - 1.1.1 possess the necessary *academic qualifications*;
 - 1.1.2 have passed the *prescribed qualifying examinations*;
 - 1.1.3 have completed the *prescribed work experience*;
 - 1.1.5 meet *IPReg's character and suitability requirements*; and
 - 1.1.5 are able to comply with any other requirements *prescribed by IPReg*.
- 1.2 An individual will qualify for admission to the *trade mark attorney register* if they are able to demonstrate to the satisfaction of *IPReg* that they:
 - 1.2.1 possess the necessary *academic qualifications*;
 - 1.2.2 have passed the *prescribed qualifying examinations*;
 - 1.2.3 have completed the *prescribed work experience*;
 - 1.2.4 meet *IPReg's character and suitability requirements*; and
 - 1.2.5 are able to comply with any other requirements *prescribed by IPReg*.
- 1.3 In accordance with its standard operating procedure, *IPReg* may authorise entry to the relevant *register*, with or without conditions, where it is satisfied an applicant meets the *prescribed admission and eligibility requirements*.
- 1.4 In accordance with its standard operating procedure, in order to authorise entry to the relevant *register*, *IPReg*:
 - 1.4.1 will recognise an applicant's *overseas qualification*; or
 - 1.4.2 may direct that an applicant undertakes additional steps where there are substantial differences between the skills, knowledge and training of an applicant with an *overseas qualification* and that of an applicant who possesses the necessary *academic qualifications* or has passed the *prescribed qualifying examinations* within the *UK*.
- 1.5 In accordance with its standard operating procedure, *IPReg* may set out the circumstances in which it can refuse an application for registration and how an applicant can appeal such a refusal.
- 1.6 An individual entered onto the relevant *register* will be authorised to practise within the scope of *IPReg's regulatory arrangements*.

2 Admission to the register - requirements for bodies

- 2.1 In accordance with its standard operating procedure, *IPReg* will register a body, with or without conditions, if it is satisfied that:
- 2.1.1 other than for a *licensable body* seeking entry onto the relevant *register*, all *managers* or *partners* of that body are *authorised persons*, with at least one being a *UK-registered patent attorney* or *UK-registered trade mark attorney*, as appropriate;
 - 2.1.2 a *licensable body* has a practising address and is domiciled, or has a real and effective industrial or commercial establishment in England or Wales;
 - 2.1.3 a body other than a *licensable body* has a practising address and is domiciled, or has a real and effective industrial or commercial establishment, in the *UK*;
 - 2.1.4 all non-authorised *managers* of that body are approved in accordance with [3.3] below;
 - 2.1.5 in the case of a *licensable body*, all non-authorised *owners* of that body are approved in accordance with [6.3] below and Schedule 13 to the *LSA*; and
 - 2.1.6 a body will abide by *IPReg's regulatory arrangements* and with the terms and conditions of its registration.
- 2.2 *IPReg* may refuse a body's application for registration and will specify how an applicant body can appeal such a refusal.
- 2.3 A body entered onto the relevant *register* will be authorised to practise within the scope of *IPReg's regulatory arrangements*. If that body is a *licensed body*, its entry to the relevant *register* constitutes the grant of a licence under the *LSA*.

3 Scope of Practice

- 3.1 *Registered persons* are authorised to carry on the *reserved legal activities* in respect of which *CIPA* and *CITMA* are designated as an *approved regulator*.
- 3.2 A *licensed body* may carry on a licensed activity through a person who is entitled to carry on that activity.
- 3.3 *IPReg* will register *persons*, with or without conditions, if it is satisfied that it has suitable *regulatory arrangements* in place to regulate them in accordance with *IPReg's statutory duties* and the *LSA regulatory objectives*.
- 3.4 *Registered persons* must not provide (to whatever extent) legal services in any of the following areas:
- 3.4.1 criminal law;
 - 3.4.2 family or matrimonial law;
 - 3.4.3 conveyancing other than conveyancing of intellectual property rights;

- 3.4.4 real estate;
 - 3.4.5 probate and the drafting of wills;
 - 3.4.6 immigration law;
 - 3.4.7 personal injury litigation, including medical negligence;
 - 3.4.8 administrative law, except in so far as it relates to intellectual property; or
 - 3.4.9 any other related services.
- 3.5 In the case of a body applying to be entered in the *patent attorney register*, it must undertake as one of its main activities, legal services relating to any of the development and protection, and management and exploitation of patents and registered designs (alone or in combination with the legal services described in [3.6] below), including but not limited to the business of acting as an agent for others for the purpose of:
- 3.5.1 applying for or obtaining patents and registered designs, in the *UK* or elsewhere; and/or
 - 3.5.2 conducting proceedings before the Comptroller General of Patents, Designs and Trade Marks relating to applications for, or otherwise in connection with, patents and registered designs;
- together with the provision of any other legal or non-legal services concerning or relating to the creation, development, maintenance, exploitation or otherwise of intellectual property and activities ancillary to it.
- 3.6 In the case of a body applying to be entered in the *trade mark attorney register*, it must undertake as one of its main activities, legal services relating to any of the development and protection, and management and exploitation of trade marks and registered designs (alone or in combination with the legal services described in [3.5] above), including but not limited to the business of acting as agent for others for the purpose of:
- 3.6.1 applying for or obtaining the registration of trade marks and registered designs, in the *UK* or elsewhere; and/or
 - 3.6.2 conducting proceedings before the Comptroller General of Patents, Designs and Trade Marks relating to applications for, or otherwise in connection with, the registration of trade marks and registered designs;
- together with the provision of any other legal or non-legal services concerning or relating to the creation, development, maintenance, exploitation or otherwise of intellectual property and activities ancillary to it.
- 4. Annual renewal of registration for registered persons**
- 4.1 By the *prescribed* date each year, a *registered person* must renew their registration in accordance with the requirements set out in *IPReg's* standard operating procedure.

- 4.2 If a *registered person* fails to renew their registration within one calendar month of the renewal date, they may be suspended from the relevant *register* in accordance with *IPReg's* standard operating procedure.
- 4.3 If a *registered person* is suspended from the relevant *register* under [4.2] above, they may be removed from the *register* at *IPReg's* discretion, having regard to any factors set out in *IPReg's* standard operating procedure.
5. **Additional provisions relating to registration, remaining on the register and re-entry to the register**
 - 5.1 A *registered body* or *licensed body* which is a body corporate will be registered under its corporate name.
 - 5.2 A *registered body* or *licensed body* which is unincorporated must choose a name under which it will be registered with *IPReg*.
 - 5.3 *IPReg* will set out:
 - 5.3.1 any ongoing requirements with which a *registered person* must comply to remain on the relevant *register*;
 - 5.3.2 the circumstances in which it may make amendments to or impose further conditions on a *registered person's* registration;
 - 5.3.3 the circumstances it will consider and the procedures it will follow in determining whether to suspend a *registered person* from the relevant *register*, or to end such a suspension, and any associated rights of appeal;
 - 5.3.4 the circumstances it will consider and the procedures it will follow in determining whether to remove a *registered person* from the relevant *register* and any associated rights of appeal;
 - 5.3.5 the circumstances in which registration is deemed to remain effective in unforeseen circumstances;
 - 5.3.6 the circumstances in which the *CEO* may, suspend or remove, or withhold certain information about, a *registered person* from the relevant *register*;
 - 5.3.7 the requirements as to how a *registered person* obtains re-entry to the relevant *register*.
 - 5.4 In respect of [5.3.1 to 5.3.7] above, *IPReg* will specify the details of such matters in its standard operating procedure.
6. **Authorisation requirements for role holders within a registered body**
 - 6.1 A person who is not a *registered attorney* may be a *manager* of a *licensed body* if they have been approved by *IPReg*.

- 6.2 Any person already on the *patent attorney register* and/or the *trade mark attorney register* will be deemed approved by *IPReg* as a *manager*.
- 6.3 A non-authorised person may be an *owner* of a *licensed body* if that person has been approved by *IPReg* to be an *owner* in accordance with Paragraph 6 of Schedule 13 to the *LSA* and in accordance with any other *prescribed* requirements.
- 6.4 *IPReg* may withdraw a role holder's approval in accordance with the circumstances set out in *IPReg*'s standard operating procedure.

7. Approval of compliance officers

- 7.1 In accordance with *IPReg*'s standard operating procedure, *IPReg* may approve an individual's designation as *HoLP* or *HoFA* of a *licensed body* if satisfied that they meet the *prescribed* requirements relating to the *compliance officer* roles and that they are in a position of sufficient responsibility to fulfil the duties of *HoLP* or *HoFA* (as applicable) in relation to the *licensed body*.
- 7.2 The *licensed body* must cooperate with, and demonstrate to, *IPReg* that the prospective role holder meets the criteria for approval.
- 7.3 An application seeking approval as a role holder must be completed and the outcome notified to the relevant individuals in accordance with *IPReg*'s standard operating procedure.
- 7.4 *IPReg* may withdraw a *compliance officer*'s approval in accordance with the circumstances set out in *IPReg*'s standard operating procedure.

Temporary approval of compliance officers

- 7.5 Within seven days of an unforeseen event resulting in the *licensed body* ceasing to have an approved *HoLP* or *HoFA*, the *licensed body* must:
 - 7.5.1 inform *IPReg* that this has occurred;
 - 7.5.2 designate a suitable person to act as a replacement; and
 - 7.5.3 make an application for the temporary approval of that person.
- 7.6 In accordance with *IPReg*'s standard operating procedure, *IPReg* will provide for the manner and form in which a *licensed body* should make an application to *IPReg* for temporary approval of a *HoLP* or *HoFA*.
- 7.7 *IPReg* may withdraw a temporary approval in accordance with the circumstances set out in *IPReg*'s standard operating procedure.
- 7.8 A *licensed body* may appeal *IPReg*'s decision to withdraw temporary approval in which case the withdrawal is suspended pending determination or discontinuance of the appeal unless *IPReg* considers the circumstances warrant the withdrawal to take immediate effect.

8. Exiting the registers or removal from the registers

- 8.1 *IPReg* may suspend or revoke a *registered person's* registration and must follow the notification processes in accordance with *IPReg's* standard operating procedure.
- 8.2 *Registered persons* can, unless subject to disciplinary proceedings, apply to *IPReg* for voluntary removal from the *register*, in accordance with *IPReg's* standard operating procedure.
- 8.3 A *registered person* will have no right of appeal from *IPReg's* decision to refuse to grant an application for voluntary removal from the *register*.

9. Additional practising rights – litigation and advocacy certificates

- 9.1 A *registered attorney* may apply to *IPReg* for an *advocacy* or a *litigation certificate*.
- 9.2 In accordance with *IPReg's* standard operating procedure, *IPReg* will:
 - 9.2.1 set out the conditions and requirements a *registered attorney* will need to meet for additional practising rights to be granted;
 - 9.2.2 provide for the manner and form in which a *registered attorney* should make an application to obtain these additional practising rights, including any associated application fees to be paid;
 - 9.2.3 set out the additional practising rights that holders of an *advocacy* or a *litigation certificate* will have;
 - 9.2.4 set out the renewal process for holders of an *advocacy* or a *litigation certificate*;
 - 9.2.5 set out the circumstances in which an *advocacy* or a *litigation certificate* might lapse or can be revoked.
- 9.3 *IPReg* may refuse a *registered attorney's* application for additional practising rights and will specify how an applicant can appeal such a refusal.

10. Requirements relating to education and training providers

- 10.1 In accordance with its *standard operating procedure*, *IPReg* may:
 - 10.1.1 accredit;
 - 10.1.2 reaccredit; or
 - 10.1.3 withdraw accreditationof an education and training provider for the delivery of examinations and awarding of qualifications.

Chapter 4 - Investigation and disciplinary requirements

1 Complaints

- 1.1 Where *IPReg* has or receives information which suggests a *regulated person* may have breached any of its *regulatory arrangements*, it may, in accordance with its standard operating procedure, investigate to whatever extent it considers necessary.
- 1.2 *IPReg* will appoint individuals to the following roles and panels to help it consider *cases*:
 - 1.2.1 *Case Examiners*;
 - 1.2.2 *Interim Orders Panels*;
 - 1.2.3 *Disciplinary Panels*; and
 - 1.2.4 *Independent Adjudicators*.
- 1.3 Whether or not an investigation takes place, *IPReg* may, in accordance with its standard operating procedure:
 - 1.3.1 close the *case* with or without advice being given to the subject of the complaint;
 - 1.3.2 refer the *case* to the *Disciplinary and Interim Orders Tribunal* for consideration of an *interim order*; or
 - 1.3.3 refer the *case* to the *Case Examiners* for further consideration.
- 1.4 Where a *case* is referred to the *Case Examiners*, *IPReg* will, in accordance with its standard operating procedure:
 - 1.4.1 serve a notice on the respondent, together with a summary of the complaint and any evidence obtained which supports the complaint;
 - 1.4.2 invite the respondent to make submissions and/or provide any material they wish the *Case Examiners* to consider; and
 - 1.4.3 carry out any further investigation it considers necessary as a result of any submissions made and/or material provided by the respondent.
- 1.5 The *Case Examiners* will, in accordance with *IPReg*'s standard operating procedure, consider whether there is a *case to answer*.
- 1.6 After consideration of the *case*, the *Case Examiners* may determine that:
 - 1.6.1 the *case* be closed with or without advice being given to the respondent;
 - 1.6.2 further investigation needs to take place and provide such advice or direction to *IPReg* as they consider appropriate;
 - 1.6.3 the *case* be resolved by mutual agreement between the parties, by way of one or any combination of:

- 1.6.3.1 a *warning*;
 - 1.6.3.2 a *reprimand*;
 - 1.6.3.3 the signing of *undertakings*;
 - 1.6.3.4 a financial penalty;
 - 1.6.3.5 suspension from the *register*;
 - 1.6.4 the *case* be referred to the *Disciplinary and Interim Orders Tribunal*.
- 1.7 The *Case Examiners* must reach a mutual decision and where the *Case Examiners* cannot agree, the *case* should be referred to the *Disciplinary and Interim Orders Tribunal*.
- 1.8 The *Case Examiners'* decision will be recorded in writing and *IPReg* will provide a copy to the respondent and any complainant in accordance with its standard operating procedure.
- 1.9 There is no right to appeal any decision of the *Case Examiners*.
- ## 2 **Interim Orders**
- 2.1 An *Interim Orders Panel* drawn from a pool of individuals from the *Disciplinary and Interim Orders Tribunal*, and supported by a *legal adviser* and, where necessary, a *technical adviser*, will consider and determine applications for *interim orders*.
- 2.2 When determining whether an *interim order* needs to be imposed, the *Interim Orders Panel* will need to be satisfied that imposing such an order:
- 2.2.1 is necessary for the protection of the public; is otherwise in the public interest; or is in the *registered attorney's* own interests; and
 - 2.2.2 is a proportionate response to the risks identified.
- 2.3 *IPReg* will prescribe:
- 2.3.1 the factors to be taken into account when determining whether an *interim order* should be imposed;
 - 2.3.2 any maximum duration for which an *interim order* can be imposed;
 - 2.3.3 the frequency and manner in which an *interim order* will be reviewed;
 - 2.3.4 the procedures in place through which a party can apply for the terms and conditions of an *interim order* to be varied;
 - 2.3.5 the circumstances in which an *interim order* may be withdrawn and the procedures in place for doing so.
- 2.4 A *regulated person* may appeal the imposition of an *interim order* or the variation of an existing order.

3 Disciplinary stage

- 3.1 A *Disciplinary Panel* drawn from a pool of individuals from the *Disciplinary and Interim Orders Tribunal* will consider and determine referrals made by the *Case Examiners*.
- 3.2 In accordance with its standard operating procedure, *IPReg*:
 - 3.2.1 will serve on the respondent, details of the allegation against them and any evidence upon which it seeks to rely;
 - 3.2.2 will appoint a *legal adviser* to assist the *Disciplinary Panel*;
 - 3.2.3 may, where necessary, appoint a *technical adviser* to assist the *Disciplinary Panel*; and
 - 3.2.4 may at any time before the commencement of the *Disciplinary Panel* hearing, request a case management hearing be scheduled either on its request or that of the respondent where it considers it appropriate to do so.
- 3.3 In accordance with *IPReg*'s standard operating procedure, the *Disciplinary Panel* will:
 - 3.3.1 appoint from its number, a Chair;
 - 3.3.2 delegate to the Chair, the authority to agree and conduct case management hearings;
 - 3.3.3 consider *cases* referred to it by the *Case Examiners*, applying the civil standard of proof to any questions of fact;
 - 3.3.4 conduct the hearing in whatever manner it considers appropriate to ensure the fair and expedient hearing of the *case*;
 - 3.3.5 record its decision in writing and provide reasons;
 - 3.3.6 specify when a sanction imposed under [3.4] below takes effect.
- 3.4 Taking account of any Sanctions Guidance prepared and published by *IPReg*, the *Disciplinary Panel* may order that no further action is taken, or do any one or more of the following:
 - 3.4.1 issue a *warning*;
 - 3.4.2 issue a *reprimand*;
 - 3.4.3 impose a financial penalty;
 - 3.4.4 impose conditions on the *regulated person*'s registration and/or authorisation;
 - 3.4.5 suspend registration, authorisation and/or a litigation certificate;
 - 3.4.6 revoke a litigation certificate;

- 3.4.7 disqualify a *person* from being an *employee, manager* or approved role holder of a *registered body*;
 - 3.4.8 remove a *registered person* from the relevant *register*.
- 3.5 In respect of [3.4.7] above:
- 3.5.1 *IPReg* must notify the *LSB* of:
 - 3.5.1.1 any decision taken by *IPReg* to disqualify a *person*;
 - 3.5.1.2 the outcome of any review by *IPReg* of that disqualification; and
 - 3.5.1.3 any decision by *IPReg* that a person's disqualification should cease to be in force.
 - 3.5.2 A disqualification:
 - 3.5.2.1 can be imposed for a definite or an indefinite period, with an optional non-review period; and
 - 3.5.2.2 following any applicable non-review period, must be subject to a review, either at the request of the *person* upon whom the disqualification has been imposed or earlier by *IPReg* if *IPReg* is satisfied there is sufficient evidence to demonstrate it is no longer necessary, proportionate or in the public interest to maintain the disqualification order.
- ## 4 Appeals
- 4.1 The *Independent Adjudicator* may, on application by the respondent who is subject to the sanction imposed, review a disciplinary decision of:
- 4.1.1 the *Disciplinary Panel*;
 - 4.1.2 the *PRB* and / or the *TRB*; and
 - 4.1.3 the *CEO*;
- other than a decision to refuse an application for voluntary removal and a decision to grant a waiver.
- 4.2 Appeals under [4.1] may be sought on one or more of the following grounds:
- 4.2.1 an error of law;
 - 4.2.2 a procedural flaw;
 - 4.2.3 a mistake of fact;
 - 4.2.4 the discovery of new evidence which was not available at the time the decision which is now the subject of appeal was first made.
- 4.2 In accordance with *IPReg's* standard operating procedure, *IPReg* will specify:

- 4.2.1 the manner in which an appeal must be lodged, including the form of an appeal, associated costs and any time limitations;
 - 4.2.2 the standard timeframe for the hearing and determination of an appeal, unless there is a reasonable need to deviate from that timeline.
- 4.3 In the event that the *Independent Adjudicator* dismisses an appeal sought under [4.1], in whole or in part, the applicant may further appeal to the First Tier Tribunal of the General Regulatory Chamber.

5 Costs

- 5.1 In accordance with *IPReg*'s standard operating procedure, costs may be awarded by the *Case Examiners*, a *Disciplinary Panel*, an *Independent Adjudicator* and the *PRB* or *TRB*.

6 Publication

- 6.1 In accordance with *IPReg*'s standard operating procedure, it may publish decisions made by *Case Examiners*, an *Interim Orders Panel*, a *Disciplinary Panel* and an *Independent Adjudicator*.

Chapter 5 – Appeals provisions

1 Appeals

- 1.1 *IPReg* may:
 - 1.1.2 correct any administrative errors in relation to any decision made under this Core Regulatory Framework; and
 - 1.1.2 review any decision made under this Core Regulatory Framework.
- 1.2 The following decisions may be appealed in accordance with *IPReg*'s standard operating procedure:
 - 1.2.1 refusing an application for registration or a licence;
 - 1.2.2 imposing conditions on a licence;
 - 1.2.3 modifying a licence by imposing or removing conditions;
 - 1.2.4 refusing an application for or revoking additional practising rights;
 - 1.2.5 refusing to approve a person as a *HoLP* or *HoFA* or a *licensed body*;
 - 1.2.6 withdrawing the approval or temporary approval, as applicable, of a role holder, a *HoLP* or a *HoFA*;
 - 1.2.7 disqualifying a person from any role within a *licensed body*;
 - 1.2.8 suspending or revoking a licence;
 - 1.2.9 imposing an interim order on a *registered person*;
 - 1.2.10 withdrawing the accreditation of an education and training provider.
- 1.3 An application for an appeal cannot be made in respect of a decision made by mutual agreement.
- 1.4 The *PRB* or *TRB*, as applicable, may on request and subject to [1.6] below, consider an appeal of a decision made in:
 - 1.4.1 [1.2.1], [1.2.4], [1.2.5], [1.2.6], and [1.2.8] in respect of administrative revocations only; and
 - 1.4.2 [1.2.2] and [1.2.3] in respect of *licensed body* applications only.
- 1.5 The *Independent Adjudicator* may on request and subject to [1.6] below, consider an appeal of a decision at [1.2.2], [1.2.3], [1.2.4], [1.2.6], [1.2.7], [1.2.8], and [1.2.9], where made by a *Disciplinary Panel*.
- 1.6 Appeals under [1.4] and [1.5] may be sought on one or more of the following grounds:

- 1.6.1 an error of law;
 - 1.6.2 a procedural flaw;
 - 1.6.3 a mistake of fact;
 - 1.6.4 the discovery of new evidence which was not available at the time the decision, which is now the subject of review, was first made.
- 1.7 The *Independent Adjudicator*, the *PRB*, or the *TRB* may make any of the following decisions:
- 1.7.1 to uphold the original decision;
 - 1.7.2 to overturn the decision in whole or in part;
 - 1.7.3 to substitute their decision for that of the original decision-maker;
 - 1.7.4 to remit the decision for reconsideration.
- 1.8 In the event that the *Independent Adjudicator*, the *PRB*, or the *TRB* dismisses an appeal, in whole or in part, the applicant may further appeal to the First Tier Tribunal of the General Regulatory Chamber.
- 1.9 In accordance with *IPReg*'s standard operating procedure, *IPReg* will set out the procedural requirements for reviews of disqualification orders which may only be sought once any non-review period has passed or if *IPReg* is satisfied there is sufficient evidence to demonstrate the disqualification order is no longer required, or it is no longer necessary, proportionate or in the public interest to maintain the disqualification order.

Costs

- 1.10 In accordance with *IPReg*'s standard operating procedure, the *Case Examiners*, a *Disciplinary Panel*, an *Independent Adjudicator* and the *PRB* or *TRB*, may make an award of costs.

Chapter 6 – Miscellaneous requirements

1 Service of documents and notifications

- 1.1 Any notice or document can be provided to or served upon a *regulated person* or *IPReg* in accordance with *IPReg*'s standard operating procedure.

2 Waivers

- 2.1 In accordance with *IPReg*'s standard operating procedure, *IPReg* will provide for:

- 2.1.1 the manner and form in which a *regulated person* should make an application for a waiver under this Core Regulatory Framework;
- 2.1.2 the factors it will take into account when considering and determining any such application.

3 Registers

- 3.1 *IPReg* must keep, in electronic form, *registers* for *registered persons*.
- 3.2 *IPReg's registers* will be available via its website.
- 3.3 *IPReg* may correct a *register* to remedy entries made in error or as a result of fraud.

Registered attorneys

- 3.3 In accordance with [3.1], *IPReg's register* for *registered attorneys* will contain the following:
- 3.3.1 the name of the *registered attorney*;
 - 3.3.2 whether the *registered attorney*'s registration is suspended or revoked, and the date the suspension or revocation took place;
 - 3.3.3 any enforcement action taken against or any sanction imposed upon the *registered attorney*, excluding administrative fines;
 - 3.3.4 the date they were entered onto the *register*;
 - 3.3.5 the *registered attorney*'s practising address(es);
 - 3.3.6 the *reserved legal activities* the *registered attorney* is authorised by *IPReg* to undertake.

Licensed bodies

- 3.4 In accordance with [3.1], *IPReg's register* for *licensed bodies* will contain the following:
- 3.4.1 the name of the *licensed body*;
 - 3.4.2 whether the *licensed body*'s licence is suspended or revoked, and the date the suspension or revocation took place;

- 3.4.3 any enforcement action taken against or any sanction imposed upon the *licensed body*, its *owner(s)* or any *employee*, excluding administrative fines;
- 3.4.4 any trading name for the *licensed body*;
- 3.4.5 any previous names for the *licensed body*;
- 3.4.6 all company registration numbers, charity numbers or equivalent;
- 3.4.7 the date the licence was issued;
- 3.4.8 the registered address of the *licensed body*;
- 3.4.9 the practising address(es) of the *licensed body*;
- 3.4.10 the names of the *HoLP* and *HoFA*;
- 3.4.11 the authorising body of the *HoLP*;
- 3.4.12 the services the *licensed body* is authorised by *IPReg* to undertake.

Registered bodies

- 3.5 In accordance with [3.1], *IPReg's register for registered bodies* will contain the following:
 - 3.5.1 the name of the *registered body*;
 - 3.5.2 whether the *registered body's* registration is suspended or revoked, and the date the suspension or revocation took place;
 - 3.5.3 any enforcement action taken against or any sanction imposed upon the *registered body*, its *owner(s)* or any *employee*, excluding administrative fines;
 - 3.5.4 any trading name of the *registered body*;
 - 3.5.5 any previous names of the *registered body*;
 - 3.5.6 all company registration numbers, charity numbers or equivalent;
 - 3.5.7 the date of the body's registration;
 - 3.5.8 the registered address of the *registered body*;
 - 3.5.9 the practising address(es) of the *registered body*;
 - 3.5.10 the names of the *owners* and *managers*;
 - 3.5.11 the *reserved legal activities* the *registered body* is authorised by *IPReg* to undertake.

4 Avoidance of regulatory conflict

- 4.1 To avoid regulatory conflict as defined in Sections 52 and 54 of the *LSA*, the *PRB* or *TRB*, as applicable, may waive in writing the provisions of this Core Regulatory Framework in any

Annex A
Chapter 6 – Miscellaneous requirements

particular case or cases where the professional practice of a *registered person* is fully regulated by another professional regulator.

Chapter 7 - Transitional and saving provisions

[Drafting to be provided at a later stage further to decisions being made on implementation]

IPReg DRAFT GLOSSARY

Academic qualifications	has the meaning set out in Schedule 2 to the Rules for the Examination and Admission of Individuals to the Registers of Patent and Trade Mark Attorneys 2011
Advocacy or Litigation Certificate	means a Higher Courts Advocacy Certificate; an Intellectual Property Litigation Certificate; or Higher Courts Litigation Certificate
Approved regulator	means a body listed as an approved regulator in paragraph 1 of Schedule 4 to the LSA or designated as an approved regulator by an order under paragraph 17 of that Schedule
Authorised person	means a person who is authorised by an <i>approved regulator</i> to carry on a <i>reserved legal activity</i> as defined under section 12 of the LSA
Case	means a matter referred or reported to IPReg for investigation in respect of a <i>regulated person</i>
Case Examiner	means an individual or panel appointed by IPReg in accordance with [1.2.1] of Chapter 4 of the Core Regulatory Framework, to determine whether there is a <i>case to answer</i> in respect of a <i>case</i> referred to them for further consideration
Case to answer	means that the facts alleged against the <i>regulated person</i> , if proved, support a finding of a breach of IPReg's <i>regulatory arrangements</i>
CIPA	means the Chartered Institute of Patent Attorneys
CITMA	means the Chartered Institute of Trade Mark Attorneys
CDPA	means the Copyright Designs and Patents Act 1988 (as amended)
CEO	means IPReg's Chief Executive Officer and includes their role as Registrar (an appointment made in accordance with the 2009 Regulations) to maintain the <i>registers</i>
Client	means the principal on whose behalf a <i>regulated person</i> acts as agent and includes any <i>person</i> for whom the <i>regulated person</i> is address for service for any right regardless of the nature of any current relationship. In the case of foreign originating work, the "client" remains the principal for whom the work is ultimately being done, although the instructions may come from an intermediary foreign <i>patent or trade mark attorney</i> , to whom the <i>regulated person</i> will also owe a duty of professional care. Where a <i>regulated person</i> is instructed via such an intermediary, any obligation to provide information to a client under the Core

	Regulatory Framework may be discharged by providing such information to that intermediary
Client money	means money held or received in connection with work undertaken for a client, excluding any advance payments received where the terms have been agreed
Code of Conduct	means <i>IPReg's</i> rules of conduct and standards of professionalism applicable to all <i>regulated persons</i>
Compliance officer	means a body's <i>HoLP</i> and/or <i>HoFA</i>
Costs	means <i>fees</i> and <i>disbursements</i>
Disbursements	means any costs or expenses paid or to be paid to a third party on behalf of the <i>client</i> or trust (including any VAT element) save for office expenses such as postage and courier fees
Disciplinary and Interim Orders Tribunal	means the pool from which an <i>Interim Orders Panel</i> and a <i>Disciplinary Panel</i> will be drawn to consider <i>interim order</i> applications and disciplinary matters in respect of a <i>regulated person</i>
Disciplinary Panel	means a panel appointed by <i>IPReg</i> under [1.2.3] of Chapter 4 of the Core Regulatory Framework and drawn from the <i>Disciplinary and Interim Orders Tribunal</i> , to consider disciplinary matters in respect of a <i>regulated person</i>
Employee	means an individual who is: <ul style="list-style-type: none"> (a) engaged under a contract of service by a <i>registered person</i> (b) engaged under a contract for services made between a <i>registered person</i> and: <ul style="list-style-type: none"> i. that individual; ii. an employment agency; iii. a company which is not held out to the public as providing legal services and is wholly owned and directed by that individual; or iv. under which the <i>registered person</i> has exclusive control over the individual's time for all or part of the individual's working week.
Fees	means your own charges or profit costs (including any VAT element)
HoFA	means a Head of Finance and Administration as per the meaning of Paragraph 13(2) of Schedule 11 to the LSA
HoLP	means a Head of Legal Practice as per the

	meaning to Paragraph 11(2) of Schedule 11 to the <i>LSA</i>
Independent Adjudicator	means an individual appointed by <i>IPReg</i> with suitable qualifications and experience to consider and determine a review in accordance with [4.1] of Chapter 4 of the Core Regulatory Framework
Interim order	means an order made in respect of a <i>regulated person</i> by an <i>Interim Orders Panel</i> on the application of <i>IPReg</i> , having regard to the matters set out in [2.2] of Chapter 4 of the Core Regulatory Framework
Interim Orders Panel	means a panel appointed by <i>IPReg</i> under [1.2.2] of Chapter 4 of the Core Regulatory Framework and drawn from the <i>Disciplinary and Interim Orders Tribunal</i> , to consider <i>interim order</i> applications in respect of a <i>regulated person</i>
<i>IPReg</i>	means the Intellectual Property Regulation Board Limited
Legal adviser	means an individual appointed by <i>IPReg</i> with suitable qualifications and experience to advise an <i>Interim Orders Panel</i> or a <i>Disciplinary Panel</i> on matters of law
Legal Ombudsman	means the scheme administered by the Office for Legal Complaints under Part 6 of the <i>LSA</i>
Licensable body	has the meaning set out at section 72 of the <i>LSA</i> and is a body eligible for entry onto the <i>patent attorney register</i> and/or the <i>trade mark attorney register</i>
Licensed body	has the meaning set out at section 71(2) of the <i>LSA</i> and is a body which has been entered onto the <i>patent attorney register</i> and/or the <i>trade mark attorney register</i> in accordance with the requirements set out at [2] of Chapter 3 of the Core Regulatory Framework
LSA	Legal Services Act 2007
LSB	means the Legal Services Board, established under section 2 of and Schedule 1 to the <i>LSA</i>
Manager	has the meaning set out at section 207 of the <i>LSA</i>
Overseas	means outside of England and Wales
Owner	means a <i>person</i> who has a material interest in a body, phrases “ <i>person</i> ” and “ <i>material interest</i> ” having the same meaning as in Schedule 13 to the <i>LSA</i> , save that, in relation to a <i>partnership</i> , a person has a material interest in the <i>partnership</i> if they are a <i>partner</i>
Partner	means a person who is or is held out as a partner in a <i>partnership</i>

Partnership	means a body that is not a body corporate (i.e. a company) and is a body in which persons are, or are held out as, <i>partners</i>
Patent attorney register	means the <i>register</i> kept under section 275 of the <i>CDPA</i>
Person	includes a body of persons (corporate or unincorporated)
PRB	means the Patent Attorney Regulation Board
Prescribed	means as determined by <i>IPReg</i> from time to time
Publicity	includes all promotional material and activity, including the name or description of your firm, stationery, advertisements, brochures, websites, directory entries, media appearances, promotional press releases, and direct approaches to potential <i>clients</i> and other persons, whether conducted in person, in writing, or in electronic form, but does not include press releases prepared on behalf of a <i>client</i>
Qualifying examination	has the meaning set out in the Rules for the Examination and Admission of Individuals to the Registers of Patent and Trade Mark Attorneys 2011
Register(s)	means in respect of <i>registered attorneys</i> or <i>registered bodies</i> other than a <i>licensed body</i> , the register kept under section 275 of the <i>CDPA</i> ("the <i>patent attorney register</i> "); or the register kept under section 83 of the <i>TMA</i> ("the <i>trade mark attorney register</i> "); and in respect of a <i>licensed body</i> means <i>IPReg's</i> register kept under section 87 of the <i>LSA</i>
Registered attorney	means: (a) a <i>registered patent attorney</i> ; and (b) a <i>registered trade mark attorney</i> .
Registered body	means: a body other than a <i>licensed body</i> (corporate or unincorporated) entered (or where clear in the context, applying to be entered) in the <i>patent attorney register</i> and/or the <i>trade mark attorney register</i> and includes a <i>single attorney practice</i> "registration" and "registered" shall be construed accordingly and for the avoidance of doubt, references to "registration" and "register" are to initial registration and any renewal of registration
Registered patent attorney	means an individual whose name is entered in the <i>register</i> kept under section 275 of the <i>CDPA</i>

Registered person	means all of the following collectively: (a) a <i>registered attorney</i> ; (b) a <i>licensed body</i> ; and (c) a <i>registered body</i> .
Registered trade mark attorney	means an individual whose name is entered in the <i>register</i> kept under section 83 of the <i>TMA</i>
Regulated Person	includes those authorised by <i>IPReg</i> to carry on a <i>reserved legal activity</i> and those not so authorised but who are a <i>manager</i> or <i>employee</i> of those authorised to carry on a <i>reserved legal activity</i>
1991 Regulations	means the Regulations for the Examinations of Patent Agents & Trade Mark Agents 1991 as amended and including, but not limited to, the June 2010 Transitional Provisions of the Joint Examination Board
2009 Regulations	means the Patent & Trade Mark Attorney Qualification and Registration Regulations 2009, and references to "2009 Regulations" are construed accordingly
Regulatory arrangements	has the meaning set out at section 21 of the <i>LSA</i>
Regulatory objectives	has the meaning set out at section 1 of the <i>LSA</i>
Reserved legal activity	has the meaning set out at section 12(1) of the <i>LSA</i> and the scope as set out in Schedule 2 to the <i>LSA</i> .
Single attorney practice	means the practice of a sole <i>registered patent attorney</i> or <i>registered trade mark attorney</i>
Successor practice	means a practice identified in this definition as 'B' where: a. 'A' is the practice which B succeeds; and b. 'A's owner' owns A immediately prior to transition; and c. 'B's owner' is the owner of B immediately following transition; and d. 'transition' means merger, acquisition, absorption or other transition which results in A no longer operating as a discrete legal practice.
Technical adviser	means an individual appointed by <i>IPReg</i> with suitable qualifications and experience to advise an <i>Interim Orders Panel</i> or a <i>Disciplinary Panel</i> on matters of a technical nature
Third party managed account	means an account held at a bank or building society in the name of a third party which is an authorised payment institution or small payment institution that has chosen to implement safeguarding arrangement in accordance with the Payment Services Regulations (as each defined in the Payment Services Regulations 2017) regulated by the <i>FCA</i> , in which monies are owned beneficially by the third party, and which

	is operated upon terms agreed between the third party, you and your <i>client</i> as an escrow payment service
TMA	means the Trade Marks Act 1994 (as amended)
Trade mark attorney register	means the <i>register</i> kept under section 83 of the TMA
Trade mark attorney work	means work done in the course of carrying on the business of acting as agent for others for the purpose of applying for or obtaining trade marks in the UK or elsewhere or of conducting proceedings before the Comptroller relating to applications for or otherwise in connection with trade marks
TRB	means the Trade Mark Attorney Regulation Board
UK	means United Kingdom, made up of: England, Scotland, Wales and Northern Ireland
Undertaking	means a statement, given orally or in writing, whether or not it includes the word "undertake" or "undertaking", to someone who reasonably places reliance on it, that you or a third party will do something or cause something to be done, or refrain from doing something

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Admission to the register - requirements for individuals

- 1.3 In accordance with its standard operating procedure, *IPReg* may authorise entry to the relevant *register*, with or without conditions, where it is satisfied an applicant meets the *prescribed* admission and eligibility requirements.

General requirements

1. Attorneys should make their application for registration to the relevant *register(s)* via *IPReg*'s online application form¹. Applicants seeking registration on the basis of foreign qualifications should use the relevant form published on the *IPReg* website².
2. An application for registration will not be processed until the fee, equivalent to the annual practising fee in the relevant practice category, has been received.
3. *IPReg* aims to reach a final decision on applications for admission within 20 working days³.
4. Decisions on registration are usually made by the Registrar or the Head of Registration (on authority delegated by the Registrar). Where the decision maker has any doubt as to whether an application should be granted, the matter can be referred to the relevant Regulation Board for determination.
5. References to attorney work being “in the UK” refers to the nature of the work (that is, it is UK attorney work focussing on UK law and practice) rather than physical location.
6. *IPReg* may seek to verify any information provided.
7. Decisions to refuse applications may be appealed in accordance with Chapter 5 of the Core Regulatory Framework.

Examinations and Qualifications

8. The necessary academic qualifications and *prescribed* qualifying examinations (“QE”) referred to at [1.1.1, 1.1.2, 1.2.1 and 1.2.2] of Chapter 3 of the Core Regulatory Framework

¹ A hardcopy application form can be obtained from *IPReg* should an applicant require one

² Yet to be drafted at time of writing

³ Between 1 April 2020 and 31 March 2021, the average time spent processing an application was 2.1 days with the shortest time taken being 0 days (same day) and the longest time taken 46 days

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are set out in the Rules for the Examination and Admission of Individuals to the Registers of Patent and Trade Mark Attorneys 2011 (“Examination and Admission Rules 2011”).

9. An applicant may request an exemption from the relevant course provider or examination agency and no other exemptions may be granted.
10. With the exception of QE set out in Note 3 to Schedule 3 of the Examination and Admission Rules 2011, there is no requirement to apply for registration within any set time period after the qualifications are awarded. However, to ensure an applicant has the skills, knowledge and experience to be admitted to the relevant *register*, where an applicant seeks to rely on qualifications awarded a considerable time before application, their application must be accompanied by the following information:
 - 10.1 any reason for the delay in applying for registration after the qualifications were gained;
 - 10.2 what the applicant has been doing in the time since those qualifications were awarded and whether they were working in the area of intellectual property either in the UK or abroad;
 - 10.3 whether the applicant has been working in any other regulated industry (whether or not relevant to intellectual property) since the qualifications were awarded, and if so, the industry and body they were regulated by;
 - 10.4 evidence the applicant has kept their knowledge of patent or trade mark attorney work up to date and whether they have completed any CPD, ongoing learning or training since the qualifications were awarded, and evidence of same; and
 - 10.5 how the applicant intends to practise if they are granted entry to the relevant *register*. For example, will they be in a supervised setting, providing services directly to the public or working in-house and do they intend to set up their own practice?
11. Where an applicant wishes to rely on those QE set out in Note 3 to Schedule 3 of the Examination and Admission Rules 2011 and where they have extenuating circumstances, they may apply to IPReg for recognition of those qualifications. The applicant must demonstrate their case for extenuating circumstances and provide the following information:
 - 11.1 the reason for the delay in applying for registration;
 - 11.2 what they have been doing in the time since the qualification(s) was/were awarded and whether they have been working in the area of intellectual property either in the UK or abroad;
 - 11.3 whether the applicant has been working in any other regulated industry (whether or not relevant to intellectual property) since the qualifications were awarded. If so, the industry and body they were regulated by;

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- 11.4 evidence the applicant has kept their knowledge of patent or trade mark attorney work up to date, and whether they have completed any CPD, ongoing learning or training since the qualifications were awarded, and evidence of same;
- 11.5 how they intend to practise if granted entry to the relevant *register*. For example, will they be in a supervised setting, providing services directly to the public or working in-house and do they intend to set up their own practice?

Prescribed work experience

12. The *prescribed* work experience referred to in [1.1.3 and 1.2.3] of Chapter 3 of the Core Regulatory Framework is:
 - 12.1 not less than two years' full time practice in the field of intellectual property including substantial experience of either patent or trade mark attorney work in the UK where that work was supervised by a *registered attorney* or barrister/solicitor engaged in or with substantial experience of patent or trade mark attorney work in the UK; or
 - 12.2 not less than four years' full time practice in the field of intellectual property including substantial experience of either patent or trade mark attorney work in the UK where that work was not supervised.
13. The *prescribed* work experience should be undertaken immediately, or no longer than 12 months, before making the application for registration. Where an applicant has completed supervised or unsupervised practice more than 12 months before making their application to *IPReg*, their application must be accompanied by the following information:
 - 13.1 any reason for the delay after the *prescribed* work experience in applying for registration;
 - 13.2 what the applicant has been doing in the time since the *prescribed* work experience was obtained and whether they have been working in the area of intellectual property either in the UK or abroad;
 - 13.3 whether the applicant has been working in any other regulated industry (whether or not relevant to intellectual property) since the *prescribed* work experience was obtained and if so, the industry and body they were regulated by;
 - 13.4 evidence the applicant has kept their knowledge of patent or trade mark attorney work up to date and whether they have completed any CPD, ongoing learning or training since the *prescribed* work experience was obtained; and
 - 13.5 how the applicant intends to practise if granted entry to the relevant *register*. For example, will they be in a supervised setting, providing services directly to the public or working in-house and do they intend to set up their own practice?
14. An applicant can apply on the basis of a hybrid of supervised and non-supervised experience. Any gaps in experience must be explained.

Supervised practice

15. The names of the supervisor(s), the place the supervision took place and the relevant dates must be provided.
16. Where the supervisor is not a *registered attorney* (i.e. they are a solicitor or barrister) evidence of their admission to the roll or Bar, as applicable, and that they have substantial experience of patent or trade mark experience in the UK must be provided to *IPReg*.

Unsupervised practice

17. In the absence of a supervisor with whom *IPReg* can verify information provided by the applicant, the applicant must provide detailed evidence, which addresses the matters described in paragraphs 18 and 19 below, that they meet the minimum standards of competence set out in the relevant Competency Framework.
18. Advanced level competency is not required in all areas, but the applicant must demonstrate they have the breadth and depth of knowledge and experience required of a newly qualified attorney.
19. Applicants must provide examples of their work from at least a four year period and demonstrate how the examples provided meet the competency criteria.

Overseas qualifications

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| 1.4 | In accordance with its standard operating procedure, in order to authorise entry to the relevant <i>register</i> , <i>IPReg</i> : |
| 1.4.1 | will recognise an applicant's <i>overseas</i> qualification; or |
| 1.4.2 | may direct that an applicant undertakes additional steps where there are substantial differences between the skills, knowledge and training of an applicant with an overseas qualification and that of an applicant who possesses the necessary academic qualifications or has passed the <i>prescribed qualifying examinations</i> within the UK. |

20. The applicant should complete the application form published on *IPReg's* website⁴.
21. The applicant must provide detailed evidence, as explained in paragraph 22 below, that they meet the minimum standards of competence set out in the relevant Competency Framework.

⁴ A hardcopy application form can be obtained from *IPReg* should an applicant require one

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22. Advanced level competency is not required in all areas, but the applicant must demonstrate they have the breadth and depth of knowledge and experience required of a newly qualified attorney who trained in the *UK*.
23. The applicant must explain how they intend to practise if granted entry to the relevant *register*, and in particular whether:
 - 23.1 they will be living and practising in the *UK* or elsewhere;
 - 23.2 they will be practising in a supervised setting, and if so, whether they will be supervised by a *registered attorney*;
 - 23.3 they will be providing services directly to the public or working in-house; and
 - 23.4 they intend to set up their own practice.
24. *IPReg* may make any of the following determinations in relation to an application based on foreign qualifications:
 - 24.1 refuse to recognise the qualifications and direct that the QE set out in the Examination and Admission Rules 2011 be undertaken in full before the applicant's admission is authorised;
 - 24.2 recognise the qualifications but direct that before admission is authorised that:
 - 23.4.1 any one or more of the QE set out in the Examination and Admission Rules 2011 be undertaken;
 - 23.4.2 a period of supervised practice be undertaken;
 - 23.4.3 CPD or training be undertaken in any area(s); or
 - 23.4.4 any other activity be undertaken, or further evidence or information as required be provided to *IPReg*.
25. Where *IPReg* considers that external advice is required to make its determination, the applicant will bear associated costs and the application will not be processed further until those costs are paid.
26. *IPReg* will aim to process applications and make final determinations within four months of receipt of a completed application. The application will not be deemed to have been completed until all information required and all fees due, have been received.

Refusing an application

- 1.5 In accordance with its standard operating procedure, *IPReg* may set out the circumstances in which it can refuse an application for registration and how an applicant can appeal such a refusal.

27. *IPReg* will refuse any application for admission to a *register* where it is not satisfied that an applicant:
 - 27.1 possesses the necessary *academic qualifications* and has passed the *prescribed QE* or holds qualifications obtained outside of the *UK* which are equivalent to the

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- qualifications an attorney would obtain following the standard *UK* qualification pathway;
- 27.2 has completed the *prescribed* work experience;
- 27.3 has the required character of a *registered attorney* or is otherwise unsuitable; and
- 27.4 can or will comply with any of *IPReg's other regulatory arrangements*.
28. Where an application for admission is refused, *IPReg* will advise the applicant in writing setting out the reasons for the decision.
29. *IPReg* will advise the applicant of their right to appeal to the *PRB* or *TRB*, as applicable and the timeframe within which the appeal must be received by *IPReg*.

Admission to the register – requirements for registered and licensed entities

- 2.1 In accordance with its standard operating procedure, *IPReg* will register a body, with or without conditions, if it is satisfied that:
- 2.1.1 other than for a *licensable body* seeking entry onto the relevant *register*, all *managers* or *partners* of that body are *authorised persons*, with at least one being a *UK-registered patent attorney* or *UK-registered trade mark attorney*, as appropriate;
- 2.1.2 a *licensable body* has a practising address and is domiciled, or has a real and effective industrial or commercial establishment in England or Wales;
- 2.1.3 a body other than a *licensable body* has a practising address and is domiciled, or has a real and effective industrial or commercial establishment, in the *UK*;
- 2.1.4 all non-authorised *managers* of that body are approved in accordance with [3.3] below;
- 2.1.5 in the case of a *licensable body*, all non-authorised *owners* of that body are approved in accordance with [6.3] below and Schedule 13 to the *LSA*; and
- 2.1.6 a body will abide by *IPReg's regulatory arrangements* and with the terms and conditions of its registration.

General requirements

30. Applications for registration to the relevant *register(s)* must be made via *IPReg's online application form*.

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31. The application must be made by a person with authority to make that application⁵.
32. An application for registration will not be processed until the fee, equivalent to the annual practising fee in the relevant practice category together with the *compliance officer* fees (where applicable), has been received.
33. *IPReg* will reach a final decision on applications for admission of a body within six months of a completed application⁶.
34. *IPReg* may issue an extension notice at any time before the expiry of six months from the time the application was received, providing reasons for the extension. The total time taken to decide any application must not exceed nine months. If a decision is not made within nine months, the application will be deemed refused.
35. Decisions on registration are usually made by the Registrar or the Head of Registration (on authority delegated by the Registrar). Where the decision maker has any doubt as to whether an application should be granted, the matter can be referred to the *PRB* or *TRB*, as applicable, for determination.
36. *IPReg* may verify any information provided by an applicant in support of the application and may undertake any such enquiries as it considers necessary to determine whether the body or any of its individuals should be authorised.

Refusing an application

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| 2.2 | <p><i>IPReg</i> may refuse a body's application for registration and will specify how an applicant body can appeal such a refusal.</p> |
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37. *IPReg* may seek any information it considers necessary in order to determine whether the body is suitable to be regulated by *IPReg*.
38. *IPReg* will refuse any application where it is not satisfied that:
 - 38.1 it has suitable *regulatory arrangements* in place to regulate the body;
 - 38.2 the body has in place systems and controls that will allow it provide a safe and effective legal service to UK consumers; and
 - 38.3 the requirements of [2.1] of Chapter 3 of the Core Regulatory Framework are met.
39. Where an application for admission is refused, *IPReg* will advise the applicant in writing setting out the reasons for the decision.

⁵ Normally a manager, director, owner, proposed Head of Legal Practice (HoLP) or Head of Finance and Administration (HoFA) of the body

⁶ Between 1 April 2020 and 31 March 2021, the average time spent processing an application was 19 days with the shortest time taken being 5 days and the longest time taken 85 days

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40. *IPReg* will advise the applicant of their right to appeal to the *PRB* or *TRB*, as applicable, and the timeframe within which the appeal must be received by *IPReg*.

Conditional registration

- 1.3 In accordance with its standard operating procedure, *IPReg* may authorise entry to the relevant *register*, with or without conditions, where it is satisfied an applicant meets the *prescribed* admission and eligibility requirements.

- 40 Where it considers it necessary to do so, *IPReg* may:
- 40.1 grant registration subject to conditions in the case of a new *registered person*; or
 - 40.2 impose conditions on the registration of an existing *registered person*.
- 41 *IPReg* may impose conditions as a short term measure to:
- 41.1 address a falling short of the standards of practice required;
 - 41.2 address a specific deficiency identified in the *registered person's* practice; or
 - 41.3 compel the *registered person* to undertake a particular activity.
- 42 Conditions will be time limited, though may be extended where necessary, and will not normally be imposed on a long term or permanent basis.
- 43 In determining whether to impose conditions on a registrant's registration, *IPReg* will take into account relevant factors, including:
- 43.1 whether the *registered person* has demonstrated an inability or unwillingness to comply with *IPReg's regulatory arrangements* (if so, consideration should be given to whether disciplinary action is more appropriate);
 - 43.2 whether the applicant or *registered person* is capable of abiding by the conditions imposed;
 - 43.3 the impact on the *regulatory objectives*; and
 - 43.4 the likelihood that the conditions will achieve the required aim.
- 44 Before making the decision to impose conditions, *IPReg* will advise the applicant or *registered person* of its intention to impose conditions and offer them the opportunity to make submissions.
- 45 Where *IPReg* makes a decision to impose conditions, it will:

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- 45.1 explain in writing, why conditions have been imposed, with reference to the *regulatory objectives*;
- 45.2 specify any remedial action required by the applicant or *registered person* in order to remove the conditions;
- 45.3 set out any requirements for compliance with those conditions;
- 45.4 set out how *IPReg* intends to monitor compliance with those conditions;
- 45.5 specify the length of time the conditions will be in place;
- 45.6 specify when any review may take place in which it will be determined whether the conditions are still appropriate and necessary;
- 45.7 specify the means by which a variation or review of the conditions may be sought before the expiry of the conditions; and
- 45.8 explain how the decision to impose the conditions may be appealed.

Authorisation requirements for role holders within a licensed body

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| 6.3 A non-authorised person may be an owner of a <i>licensed body</i> if that <i>person</i> has been approved by <i>IPReg</i> to be an <i>owner</i> in accordance with Paragraph 6 of Schedule 13 to the <i>LSA</i> and in accordance with any other <i>prescribed</i> requirements. |
| 7. Approval of compliance officers |
| 7.1 In accordance with <i>IPReg's</i> standard operating procedure, <i>IPReg</i> may approve an individual's designation as <i>HoLP</i> or <i>HoFA</i> of a <i>licensed body</i> if satisfied that they meet the <i>prescribed</i> requirements relating to the <i>compliance officer</i> roles and that they are in a position of sufficient responsibility to fulfil the duties of <i>HoLP</i> or <i>HoFA</i> (as applicable) in relation to the <i>licensed body</i> . |
| 7.3 An application seeking approval as a role holder must be completed and the outcome notified to the relevant individuals in accordance with <i>IPReg's</i> standard operating procedure. |

General requirements

- 46 Applications for authorisation of a non-authorised person, a *HoLP*, a *HoFA* or a role holder will be made via *IPReg's* online application form.
- 47 *IPReg* will assess all applications within six months taking into account the complexity of the application and the quality of the information provided.

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- 48 An application for authorisation or approval will not be processed until the fee, as specified on *IPReg's website*, has been received.
- 49 Approval will be deemed granted on the date specified by *IPReg* and will be communicated in writing to the *registered body* or *licensed body*, as applicable, and the *person concerned*.
- 50 Decisions to refuse approval will be communicated in writing and may be appealed.
- 51 *IPReg* will advise the applicant of their right to appeal to the *PRB* or *TRB*, as applicable, and the timeframe within which the appeal must be received by *IPReg*.

Approval criteria

- 52 A person seeking approval as a *manager*, *owner* or *compliance officer* must satisfy *IPReg* that they are suitable to be involved in the provision of legal services, and to exercise influence over the conduct of the *licensed body*.
- 53 *IPReg* will not consider the person suitable where, either in this jurisdiction or another:
 - 53.1 they or any *licensed body* or other body of which they have previously been a *manager*, *owner* or *employee* has been:
 - 53.1.1 refused registration with, or authorisation by, another *approved regulator*;
 - 53.1.2 the subject of disciplinary sanction by a professional or regulatory tribunal, or regulatory authority, whether in England and Wales or elsewhere; or
 - 53.1.3 notified in writing by *IPReg* that it has not provided a satisfactory explanation as to matters at *IPReg's request*;
 - 53.2 they have been disqualified from being a company director;
 - 53.3 they have been disqualified from being a *manager*, *owner*, *HoLP* or *HoFA* under the *LSA*;
 - 53.4 they have been removed from the office of trustee for a charity by an order within the terms of s72(1)(d) of the Charities Act 1993
 - 53.5 they are an undischarged bankrupt, or have been adjudged bankrupt and discharged;
 - 53.6 they have entered into a voluntary agreement or a *partnership* voluntary arrangement under the Insolvency Act 1986;
 - 53.7 they have been a *manager* of a company, LLP or other body which has been the subject of a winding up order, an administration order or administrative receivership or which has entered into a voluntary arrangement under the Insolvency Act 1986 or has otherwise been wound up or put into administration in circumstances of insolvency;
 - 53.8 they lack capacity (within the meaning of the Mental Capacity Act 2005) and powers under sections 15 to 20 or section 48 of that Act are exercisable in relation to that person;
 - 53.9 they are the subject of outstanding judgments involving the payment of money;
 - 53.10 they have been sentenced to a term of imprisonment in criminal proceedings;

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- 53.11 they are currently charged with an indictable offence, or have been convicted of an indictable offence or any offence under the LSA, the Solicitors Act 1974, the Financial Services and Markets Act 2000, the Immigration and Asylum Act 1999 or the Compensation Act 2006;
 - 53.12 they have been the subject of an order under section 43 of the Solicitors Act 1974;
 - 53.13 they have been involved in other conduct which calls into question their honesty, integrity or respect for the processes of law;
 - 53.14 they have committed an offence under the Companies Act 2006; or
 - 53.15 they have a previous conviction which is now spent for a criminal offence relating to bankruptcy, IVAs or other circumstances of insolvency.
- 54 IPReg will not approve as a *manager*, *owner*, *HoLP* or *HoFA* any corporate entity:
- 54.1 that has been the subject of a winding up order, an administration order or administrative receivership or which has entered into a voluntary arrangement under the Insolvency Act 1986 or has otherwise been wound up or put into administration in circumstances of insolvency;
 - 54.2 where other matters that call its fitness and propriety into question are disclosed or come to light; or
 - 54.3 in circumstances when the *licensed body* or the person concerned fails to disclose, refuses to disclose or seeks to conceal any matter within 54.1 or 54.2 above in relation to the approval application.

Specific requirements for Compliance Officers

- 55 A person seeking to be the *HoLP* must satisfy IPReg that they are:
- 55.1 a *manager* of the *licensed body*, which in this context means a director of a company, a member of an LLP or a *partner* in a *partnership*;
 - 55.2 in a position of sufficient responsibility to fulfil the duties of *HoLP* in relation to the *licensed body*;
 - 55.3 designated by the *licensed body* to be its *HoLP*; and
 - 55.4 a *registered patent* or *registered trade mark attorney* or another type of regulated lawyer that IPReg deems appropriate.
- 56 A person seeking to be the *HoFA* must satisfy IPReg that they:
- 56.1 are a *manager* or an *employee* of the relevant body, though as such they may be provided with training and support by an external firm;
 - 56.2 are in a position of sufficient responsibility to fulfil the duties of *HoFA* in relation to the *licensed body*;

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- 56.3 are suitably qualified to fulfil the role of *HoFA* and designated by the *licensed body* to be its *HoFA*; and
 - 56.4 have experience of managing the finances of a firm within a legal services market, although they need not hold any particular professional qualifications.
- 57 In making its decision as to the suitability of a person to be a designated *HoLP* or *HoFA*, *IPReg* will take into account the candidate's:
- 57.1 seniority within the *licensed body*;
 - 57.2 experience and qualifications relevant to the role, including matters such as their experience of such roles within similar bodies;
 - 57.3 ability to fulfil their obligations taking into account the governance arrangements within the *licensed body*;
 - 57.4 access to information concerning the systems and controls of the *licensed body*;
 - 57.5 capacity to undertake the role, given any other commitments and conflicts of interest that may be apparent; and
 - 57.6 their knowledge and understanding of the legal services market and in particular patent and trade mark attorney firms.

Specific requirements for Owners

- 58 A person seeking approval to be an *owner* must satisfy *IPReg* that the requirements in Paragraph 6 of Schedule 13 to the *LSA* are met.

Withdrawal of a role holder's approval

- 6.4 *IPReg* may withdraw a role holder's approval in accordance with the circumstances set out in *IPReg's* standard operating procedure.

- 59 *IPReg* may withdraw a role holder's approval, if:
- 59.1 it is not satisfied that the role holder continues to be suitable to carry out their role;
or
 - 59.2 it is satisfied that the role holder has breached any of *IPReg's regulatory arrangements*.
- 60 *IPReg* will give notice in writing to the *registered body*, the role holder, and where appropriate the registered *manager*, that approval will be withdrawn and set out the reasons for the withdrawal. The decision to withdraw approval may be appealed.

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- 61 *IPReg* will advise the role holder of their right of appeal, and the timeframe within which the appeal must be received by *IPReg*.

Unforeseen events

- 5.3 *IPReg* will set out:

- 5.3.5 the circumstances in which registration is deemed to remain effective in unforeseen circumstances;

- 62 If a *registered body* or *licensed body* experiences an unforeseen event resulting in them ceasing to comply with *IPReg's regulatory arrangements* set out in the Core Regulatory Framework, *IPReg* may deem the *registered body* or *licensed body* to have remained compliant where:

- 62.1 they have reported to *IPReg* in writing the unforeseen event within 7 days; and
62.2 the non-compliance is remedied within 28 days.

- 63 In such a case, the *registered body* or *licensed body* will be deemed to have been compliant with *IPReg's regulatory arrangements* and will not be liable for suspension or removal from the *register* by virtue of the temporary breach.

- 64 If the *registered body* or *licensed body* complies with the requirements of paragraph 59, *IPReg* will notify the *HoLP* or *registered manager*, as appropriate, in writing that they have been deemed to be compliant with *IPReg's regulatory arrangements*.

Temporary approval

- 7.6 In accordance with *IPReg's standard operating procedure*, *IPReg* will provide for the manner and form in which a *licensed body* should make an application to *IPReg* for temporary approval of a *HoLP* or *HoFA*.

- 65 *IPReg* may approve a *compliance officer* on a temporary basis due to any unforeseen event where, within 7 days of that event, the licensed body:

- 65.1 has reported to *IPReg* in writing that they cease to have a *HoLP* or *HoFA* and that this was an unforeseen event;
65.2 has designated a suitable person to act as *HoLP* or *HoFA*, as appropriate, on a temporary basis;
65.3 has made an application for temporary approval of the *HoLP* or *HoFA* in the form required as published on *IPReg's website*.

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66 Paragraphs 53 – 57 above apply to applications for temporary approval of *compliance officers*.

67 *IPReg* may suspend an *licensed body* where the unforeseen event(s) resulting in non-compliance have not been:

67.1 adequately addressed; or

67.2 addressed within the timeframes set out above.

7.7 *IPReg* may withdraw a temporary approval in accordance with the circumstances set out in *IPReg's* standard operating procedure.

68 *IPReg* may withdraw approval of any approved person, whether approved on a temporary basis or not, if:

68.1 it is not satisfied that the approved person continues to meet the criteria for approval; or

68.2 it is satisfied that the approved person has breached any of *IPReg's regulatory arrangements*.

69 *IPReg* will give notice in writing to the *licensed body*, the approved person, and where appropriate the *HoLP* and *HoFA*, that approval will be withdrawn and set out the reasons for the withdrawal. The decision to withdraw approval may be appealed.

70 *IPReg* will advise the approved person of their right of appeal, and the timeframe within which the appeal must be received by *IPReg*.

Annual renewal of registration for registered persons

4.1 By the *prescribed date* each year, a *registered person* must renew their registration in accordance with the requirements set out in *IPReg's* standard operating procedure.

71 Every *registered person* must renew their registration annually by 1 January. Registration is considered to be renewed when, in the case of each registered person:

71.1 their Annual Return has been submitted via their online *IPReg* account or as otherwise specified by *IPReg*; and

71.2 their practising fee has been received for the practice year which runs from 1 January to 31 December.

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72 *IPReg* may allow *registered persons* to renew their registration on a date earlier or later than 1 January as may be specified from year to year. *IPReg* will aim to allow *registered persons* a period of at least six weeks to renew their registration before any regulatory action is taken.

73 *IPReg* will notify *registered persons* via electronic mail when they may renew their registration each year. *IPReg* may send reminder notifications to attorneys via electronic mail as it considers appropriate.

74 *Registered persons* that have not renewed their registration before 1 February in each year will be issued with a warning letter advising that failure to renew their registration before 1 March of that year will result in their registration being suspended. The warning letter will:

- 74.1 be sent by electronic mail and/or postal/courier service to the *registered person's* last known practice address;
- 74.2 set out the consequences of suspension from the relevant *register*; and
- 74.3 state that a penalty fee will be applied in accordance with the Practice Fee Regulations 2020, to the practising fee of any *registered attorney* if the *registered attorney* fails to renew their registration before 1 March of that year. No penalty fee will be applied to a *registered or licensed body*.

4.2 If a *registered person* fails to renew their registration within one calendar month of the renewal date, they may be suspended from the relevant *register* in accordance with *IPReg's* standard operating procedure.

75 *Registered persons* that have not renewed their registration before 1 March in each year may be suspended from the *register* with immediate effect. In such circumstances, the *registered person's* entry on the relevant *register* will show that they are suspended from practice.

76 *IPReg* will notify the *registered person* that they have been suspended. The notification will:

- 76.1 be sent by electronic mail and/or postal/courier service to the *registered person's* last known electronic mail and practice address;
- 76.2 set out the consequences of suspension from the *register*;
- 76.3 state that a penalty fee will be applied to the practising fee of any *registered attorney* if they seeks to renew their registration before 1 June of that year; and
- 76.4 advise that unless they renew their registration before 1 June, their name will be removed from the relevant *register(s)*.

77 If a *registered person* who has been suspended renews their registration before 1 June by submitting their annual return and paying their practising fee and any penalty fee, their suspension will be revoked by *IPReg*.

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78 *IPReg* may, in its absolute discretion, waive any late payment penalty fee.

4.3 If a *registered person* is suspended from the relevant *register* under Rule [4.2], they may be removed from the *register* at *IPReg's* discretion, having regard to any factors set out in *IPReg's* standard operating procedure.

79 *IPReg* may decide not to remove any *registered person* from the *register(s)* if it considers that due to extenuating circumstances it would be inappropriate to do so. The *registered person* must demonstrate that extenuating circumstances apply.

80 *IPReg* will notify the *registered person* that their name has been removed from the *register*, of their right to appeal and the timeframe within which the appeal must be received by *IPReg*.

Other ongoing requirements

5.3 *IPReg* will set out:

5.3.1 any ongoing requirements with which a *registered person* must comply to remain on the relevant *register*

81 *Registered attorneys* must comply with all of the requirements set out in the Core Regulatory Framework, but for the purposes of [5.3] of Chapter 3 of the Core Regulatory Framework, the following are ongoing requirements with which a *registered person* must comply in order to remain on the relevant *register*:

81.1 the requirement set out in [2.2] in the Code of Conduct in Chapter 2 of the Core Regulatory Framework to maintain continuing competence and provide any such confirmation or evidence as *IPReg* requires;

81.2 the requirement set out in [3.10 and 3.11] in the Code of Conduct in Chapter 2 of the Core Regulatory Framework to take out and maintain a policy of Professional Indemnity Insurance and, where necessary, run-off cover insurance; and

81.3 the requirements set out in [3.3 – 3.7] in the Code of Conduct in Chapter 2 of the Core Regulatory Framework in relation to the provision of information to *IPReg* or any other regulatory supervisory and enforcement bodies or the *Legal Ombudsman*.

82 Where *IPReg* suspects that a *registered person* may have failed to comply with any of the requirements of registration in [78] above, the *registered person* will be issued with a warning letter advising that continued failure to comply with the requirements may result in suspension from the *register*. The warning letter will:

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- 82.1 be sent by electronic mail and/or postal/courier service to the *registered person's* last known practice address;
- 82.2 set out the non-compliant conduct identified;
- 82.3 set out the consequences of suspension from the *register*; and
- 82.4 specify the remediation that needs to take place in order to avoid suspension from the *register* and the timeframe in which it must take place.

5.3 *IPReg* will set out:

- 5.3.3 the circumstances it will consider and the procedures it will follow in determining whether to suspend a *registered person* from the relevant *register*, or to end such a suspension, and any associated rights of appeal;

- 83 If the *registered person* does not comply with the suspension warning letter in the timeframe specified, *IPReg* may suspend the *registered person* from the *register*. The *registered person* will be notified in writing that they have been suspended. The notification will:
 - 83.1 be sent by electronic mail and/or postal/courier service to the *registered person's* last known practice address;
 - 83.2 set out the reasons for the suspension;
 - 83.3 set out the consequences of suspension from the *register*;
 - 83.4 advise that unless the non-compliance is addressed within the timeframe specified, their name will be removed from the relevant *register(s)*; and
 - 83.5 set out their right to appeal and the process to be followed.

Removal from the register

5.3 *IPReg* will set out:

- 5.3.4 the circumstances it will consider and the procedures it will follow in determining whether to remove a *registered person* from the relevant *register* and any associated rights of appeal;

- 84 *IPReg* may remove a *registered person* from the *register* where:
 - 84.1 the registration was granted due to error or fraud; or
 - 84.2 the *registered person* fails to address their non-compliance with ongoing registration requirements in paragraphs [81]-[82] above in the timeframe specified.

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- 85 IPReg may decide not to remove any *registered person* from the *register(s)* if it considers:
- 85.1 that due to extenuating circumstances, it would be inappropriate to do so;
 - 85.2 that disciplinary action should be taken; or
 - 85.3 that to remove the *registered person* from the *register* could pose a risk to *clients*, their money or to any imminent or ongoing investigation.
- 86 In considering whether to remove any *registered person* from the *register*, IPReg will take into account the following factors:
- 86.1 the *regulatory objectives*;
 - 86.2 the likelihood that the *registered person* will comply with *IPReg's regulatory arrangements* in the future;
 - 86.3 any correspondence from or engagement by the *registered person*;
 - 86.4 whether disciplinary action is appropriate and therefore whether the *registered person* should remain suspended pending the outcome of any disciplinary action; and
 - 86.5 whether removing the *registered person* from the *register* could pose a risk to *clients*, their money or to any imminent or on-going investigation.
- 87 The *registered person* will be notified in writing that they have been removed from the *register*. The notification will:
- 87.1 be sent by electronic mail and/or postal/courier service to the *registered person's* last known practice address;
 - 87.2 set out the reasons for the removal;
 - 87.3 set out the consequences of removal from the *register*; and
 - 87.4 set out their right to appeal and the process to be followed.

Voluntary Removal

- 8.2 *Registered persons* can, unless subject to disciplinary proceedings, apply to IPReg for voluntary removal from the *register*, in accordance with IPReg's standard operating procedure.

- 88 A *registered attorney* may apply to remove themselves from either or both *registers* at any time. The attorney should read the Voluntary Removal guidance and submit a Voluntary Removal application form via their IPReg account.

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- 89 A *registered body* or *licensed body* may apply to remove itself from either or both *registers* at any time. A person with the authority to do so, should contact *IPReg* to advise of their intent to wind down the business and/or remove it from the *register(s)*. The body will need to demonstrate that:
- 89.1 all *clients* have been notified and all matters have either been completed or transferred (with the *client's* consent) to a new practice;
 - 89.2 all *client money* and other property have been returned to the *client*;
 - 89.3 there are no outstanding *client* complaints;
 - 89.4 all third party agencies have been informed as appropriate (e.g. HMRC); and
 - 89.5 there has been compliance with [3.11] of the Code of Conduct in Chapter 2 of the Core Regulatory Framework.
- 90 Where *IPReg* has any concerns that to remove the *registered person* from the *register* could pose a risk to *clients*, their money or to any imminent or ongoing investigation, *IPReg* will decline any Voluntary Removal application or refuse any request to remove *registered person* from the register until:
- 90.1 *IPReg* is satisfied that there is no longer any risk to *clients*, their money or any investigation;
 - 90.2 any application or request is withdrawn; or
 - 90.3 any action taken under the disciplinary procedure is concluded.
- 91 *IPReg* will advise the *registered person* in writing if their application has been refused and when their name has been removed from the *register*, as appropriate.

Additional grounds to remove or suspend a registered person

- 8.1 *IPReg* may suspend or revoke a *registered person's* registration and must follow the notification processes in accordance with *IPReg's* standard operating procedure.

- 92 *IPReg* may remove or suspend a *registered person* from the *register* if it is satisfied that:
- 92.1 the registration or the licence was granted as a result of error or fraud;
 - 92.2 the *registered person* no longer meets the requirements for registration;
 - 92.3 the *registered person* has breached one or more terms or conditions of its registration or licence;

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- 92.4 the *registered person* has been deemed compliant with *IPReg's regulatory arrangements* despite a breach due to unforeseen circumstances, and the breach has not been remedied within 28 days;
 - 92.5 a Non-Authorised person is an *owner* of the *registered person*;
 - 92.6 a Non-Authorised person who is subject to the duty in section 90 of the *LSA* fails to comply with that duty;
 - 92.7 the body, a *manager*, an *owner*, a *compliance officer* or an *employee* of the body fails to comply with any duty imposed by *IPReg* or under any enactment including s176 of the *LSA*;
 - 92.8 the body has ceased to practise;
 - 92.9 an *approved regulator* other than *IPReg* has authorised the body;
 - 92.10 *IPReg* has received an application for voluntary removal as set out above at [86];
 - 92.11 for any other reason it would be against the *regulatory objectives* for that body's registration to continue.
- 93 Decisions to suspend or remove a *licensed body* or *registered body* will be communicated to the body and its *HoLP* or registered *managers* as appropriate, setting out the reasons for the suspension or removal and the process for appealing the decision.

Restoration to the register

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| 5.3 <i>IPReg</i> will set out:
5.3.7 the requirements as to how a <i>registered person</i> obtains re-entry to the relevant <i>register</i> . |
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- 94 An attorney or body whose name has been removed from the *register* may be restored to the *register*, upon application, and at the absolute discretion of *IPReg*.
 - 94.1 An attorney seeking restoration to the *register* should make an application using the form published on *IPReg's* website⁷; or
 - 94.2 A person with authority on behalf of a body should contact *IPReg* to discuss arrangements to apply for restoration.
- 95 An application for restoration will not be processed until any fee, equivalent to the annual practising fee in the relevant practice category together with the *compliance officer* fees (where applicable), has been received.

⁷ A hardcopy application form can be obtained from *IPReg* should an applicant require one

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- 96 In the case of an individual attorney, *IPReg* may direct that a penalty fee be payable where restoration is sought following removal for failure to renew registration.
- 97 The attorney or body's application must be accompanied by the following information:
- 97.1 where removal was due to a failure to renew registration:
- 97.1.1 an explanation of their failure to renew their registration in accordance with the requirements of this standard operating procedure;
- 97.1.2 an explanation of any failure to respond to *IPReg*'s correspondence in connection with registration renewal; and
- 97.1.3 an explanation as to how they will ensure they renew their registration in a timely manner going forward; and
- 97.2 in the case of an attorney:
- 97.2.1 whether they have continued to work,
- 97.2.2 whether they have worked in any other regulated industry (whether or not relevant to intellectual property) since their removal from the *register* and if so, what industry it was and who they were regulated by; and
- 97.2.3 how they have kept their knowledge of patent or trade mark attorney work up to date, whether they have completed any CPD, ongoing learning or training since they had been removed from the *register* and evidence of same; or
- 97.3 in the case of a body, whether it had continued to trade during the period in which it was removed from the *register*, including whether it had provided any *reserved legal services* in that time.
- 98 *IPReg* will refuse the application for restoration if it is not satisfied that the attorney or body is capable of complying with any of *IPReg*'s regulatory arrangements.
- 99 *IPReg* will notify the applicant, in writing, of the outcome of their application, advising them of rights of appeal and the timeframe within which the appeal must be received by *IPReg*.

Investigation and disciplinary requirements

Standard Operating Procedure

Investigation and disciplinary requirements

Disciplinary and Interim Orders Tribunal

- 1 The *Disciplinary and Interim Orders Tribunal* will be appointed by *IPReg* from time to time and will consist of both lay and professional members none of which may have been a member of the *IPReg Board*, of the CIPA or CITMA Councils, or staff of *IPReg*, in the three years prior to their appointment. Professional members may be current or retired registered attorneys or those currently or formerly regulated by another *approved regulator*.

Investigatory steps

- 1.1 Where *IPReg* has or receives information which suggests a *regulated person* may have breached any of its *regulatory arrangements*, it may, in accordance with its standard operating procedure, investigate to whatever extent it considers necessary.
- 2 *IPReg* may receive complaints from any *person* about a *regulated person*.
- 3 A complaint must be lodged on the Complaint Form as published by *IPReg* from time to time. *IPReg* may consider complaints lodged by electronic mail or by post, but all complaints must be made in writing.
- 4 Within 10 working days of receipt of a complaint, *IPReg* will assess whether further information is required to determine whether it should investigate. If further information is required:
 - 4.1 from the complainant or a third party, *IPReg* will write to the relevant person setting out the information required and providing a reasonable timeframe within which to respond; or
 - 4.2 from the subject of the complaint, *IPReg* will write to that *regulated person*, setting out:
 - 4.2.1 an overview of the complaint received;
 - 4.2.2 the information *IPReg* is requesting the regulated person provide and the timeframe within which it should be provided; and
 - 4.2.3 the possible outcomes of any investigation which may follow.
- 5 Within 20 working days of receipt of the information requested under 4.1 and/or 4.2, *IPReg* may take any investigatory steps it considers appropriate including:

Annex C: IPReg Standard Operating Procedure

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- 5.1 making any further request for information from any other person, setting out the timeframe within which that information should be provided; and
 - 5.2 appointing a third party to assist with, advise on or conduct an investigation, including:
 - 5.2.1 external investigators;
 - 5.2.2 legal advisers, including specialists and / or experts to provide technical advice; and/or
 - 5.2.3 members of the *PRB* or *TRB*, as appropriate.
- 6 A failure by a *regulated person* to respond to any request for information may constitute a breach of *IPReg's regulatory requirements* and may lead to disciplinary action.

IPReg decisions

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| 1.3 Whether or not an investigation takes place, <i>IPReg</i> may, in accordance with its standard operating procedure: <ol style="list-style-type: none">1.3.1 close the <i>case</i> with or without advice being given to the subject of the complaint;1.3.2 refer the <i>case</i> to the <i>Disciplinary and Interim Orders Tribunal</i> for consideration of an <i>interim order</i>; or1.3.3 refer the <i>case</i> to the <i>Case Examiners</i> for further consideration. |
|---|
- 7 A *case* may be closed under [1.3.1] of Chapter 4 where, upon consideration of the information before it, including any information arising out of an investigation in accordance with this standard operating procedure, *IPReg* is not satisfied there is sufficient evidence of a breach of its Core Regulatory Framework.
 - 8 Advice given under [1.3.1] of Chapter 4 may include:
 - 8.1 Advice as to future conduct;
 - 8.2 Advice to undertake or cease to undertake an action or particular practice; and
 - 8.3 Any other advice *IPReg* deems appropriate having regard to all the information obtained.
 - 9 In respect of [1.3.2] of Chapter 4, *IPReg* may apply to the *Disciplinary and Interim Orders Tribunal*, for an *interim order* in respect of the relevant *regulated person*, where it has concerns that an order is:
 - 9.1 necessary to protect the public;
 - 9.2 is otherwise in the public interest; or

Investigation and disciplinary requirements

- 9.3 is in the *registered attorney's* own interests. The procedure and notice requirements of such an application are set out below in [20] – [27].
- 10 A case may be referred to the *Case Examiners* under [1.3.3] of Chapter 4, where, upon consideration of the information before it, including any information arising out of an investigation, IPReg is satisfied there is sufficient information to demonstrate there may be a breach of its Core Regulatory Framework.

Case Examiner referral and preparation

- 1.4 Where a case is referred to the *Case Examiners*, IPReg will, in accordance with its standard operating procedure:
- 1.4.1 serve a notice on the respondent, together with a summary of the complaint and any evidence obtained which supports the complaint;
 - 1.4.2 invite the respondent to make submissions and/or provide any material they wish the *Case Examiners* to consider; and
 - 1.4.3 carry out any further investigation it considers necessary as a result of any submissions made and/or material provided by the respondent.

- 11 A notice under [1.4.1] of Chapter 4 will:
- 11.1 set out a summary of the complaint received;
 - 11.2 set out a summary of the provisions of the Core Regulatory Framework the *regulated person* is alleged to have breached;
 - 11.3 contain a bundle of the evidence to be put before the *Case Examiners* for consideration; and
 - 11.4 specify the date upon which any submissions or material must be provided by the *regulated person*, being 20 working days from the date of the notice, unless an extension is sought and obtained from IPReg.
- 12 Upon receipt of any submissions or material provided by the *regulated person* under [11.4] above, IPReg may carry out any further investigation as required.
- 13 IPReg will make appropriate arrangements for the appointment of *Case Examiners* to consider the case, including if appropriate, a set date upon which the *Case Examiners* will consider the case.
- 14 Upon receipt of any submissions or material provided by the *regulated person* under [11.4] above, or failing the receipt of any submissions or material by the date set out in the notice above, IPReg may:
- 14.1 decide that no further action is required and close the complaint; or

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- 14.2 prepare a bundle of papers for the *Case Examiners* containing:
 - 14.2.1 a summary of the complaint received;
 - 14.2.2 a summary of the provisions of the Core Regulatory Framework the *regulated person* is alleged to have breached;
 - 14.2.3 the bundle of evidence served on the *regulated person*; and
 - 14.2.4 any submissions or materials provided by the *regulated person*,
- 15 Where the *case* is to be referred to the *Case Examiners*, IPReg will provide the bundle set out at 14.2 above to the *Case Examiners* and to the *regulated person* no less than five working days before the date the *Case Examiners* will consider the papers and make a decision.

Case Examiners – Consideration and Decision

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| 1.5 | The <i>Case Examiners</i> will, in accordance with IPReg's standard operating procedure, consider whether there is a <i>case to answer</i> . |
| 1.6 | After consideration of the <i>case</i> , the <i>Case Examiners</i> may determine that: <ol style="list-style-type: none">1.6.1 the <i>case</i> be closed with or without advice being given to the respondent;1.6.2 further investigation needs to take place and provide such advice or direction to IPReg as they consider appropriate;1.6.3 the <i>case</i> be referred to the <i>Disciplinary and Interim Orders Tribunal</i>;1.6.4 the <i>case</i> be resolved by mutual agreement between the parties, by way of one or any combination of:<ol style="list-style-type: none">1.6.4.1 a <i>warning</i>,1.6.4.2 a <i>reprimand</i>;1.6.4.3 the signing of <i>undertakings</i>;1.6.4.4 a financial penalty;1.6.4.5 suspension from the <i>register</i>;1.6.5 the <i>case</i> be referred to the <i>Disciplinary and Interim Orders Tribunal</i>. |

- 16 IPReg will appoint *Case Examiners* from the *Disciplinary and Interim Orders Tribunal*, comprising:
 - 16.1 one lay person; and

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- 16.2 one professional person, being any *LSA authorised person*,
to consider a *case* referred under [1.3.3] of Chapter 4.
- 17 The appointed *Case Examiners* will consider the bundle prepared in accordance with 13.3 without an oral hearing and will be asked to decide whether or not there is a *case to answer* in respect of *IPReg's* concerns.
- 18 Where the *Case Examiners* decide under [1.6.1] of Chapter 4 that there is no *case to answer*, they may prepare advice for *IPReg* to provide to the *regulated person*.
- 19 Where the *Case Examiners* decide that further investigation is required in accordance with [1.6.2] of Chapter 4 before they can reach a decision, they may give such advice or direction to *IPReg* as to the investigatory steps to be taken. In such circumstances, the complainant (where applicable) and the *regulated person* will be given written notice of this decision.
- 20 Where the *Case Examiners* decide that there is a *case to answer*, but that the *case* is suitable for resolution by mutual agreement between the parties, the *Case Examiners* will:
- 20.1 recommend a proposed sanction from those contained in [1.6.4] of Chapter 4;
 - 20.2 set out a proposed costs order;
 - 20.3 provide the *regulated person* with notice of the *Case Examiners'* decision and recommended proposed sanction and costs order; and
 - 20.4 invite the *regulated person* to reach an agreement with *IPReg* on facts and to provide any additional material in mitigation.
- 21 If after a reasonable period of time, being no less than 20 working days, a mutual agreement cannot be reached, the *Case Examiners* will be informed and will refer the *case* to the *Disciplinary and Interim Orders Tribunal* for consideration and determination.
- 22 Where the *Case Examiners* decide that there is a *case to answer* in accordance with [1.6.3] of Chapter 4, the *case* will be referred to the *Disciplinary and Interim Orders Tribunal* for consideration and determination.

Case Examiner Decisions

- 23 Within 5 working days of the *Case Examiners'* decision, *IPReg* will provide a copy of that decision to the *regulated person* and to the complainant, informing them of the outcome and the next steps, as appropriate.

Interim Orders

- 2.1 An *Interim Orders Panel* drawn from a pool of individuals from the *Disciplinary and Interim Orders Tribunal*, and supported by a legal adviser and, where necessary, a *technical adviser*, will consider and determine applications for *interim orders*.

Investigation and disciplinary requirements

- 24 *IPReg will appoint an *Interim Orders Panel* consisting of two lay members, one of whom will be appointed as Chair, and one professional member, being any *LSA authorised person*.*
- 25 *IPReg will appoint a *legal adviser* to assist the *Interim Orders Panel*.*
- 26 *IPReg may appoint a *technical adviser* to assist the *Interim Orders Panel* where the case deals with the competency of an attorney, or otherwise requires technical knowledge in order to understand and adjudicate on the issues.*
- 2.2 When determining whether an *interim order* needs to be imposed, the *Interim Orders Panel* will need to be satisfied that imposing such an order:

2.2.1 is necessary for the protection of the public; is otherwise in the public interest; or is in the *registered attorney's* own interests; and

2.2.2 is a proportionate response to the risks identified.
- 27 *IPReg may in accordance with [1.3.2] of Chapter 4, apply to an *Interim Orders Panel* for an *interim order* in respect of a *regulated person*.*
- 28 Any application under 27 must, unless there are reasonable grounds not to, be served on the respondent *regulated person* and set out:
- 28.1 the grounds for the application, addressing the factors in [2.2] of Chapter 4;
- 28.2 whether notice is being given to the *regulated person* and if not, why;
- 28.3 the duration and terms of the proposed order;
- 28.4 that the *regulated person* may, within five working days of the date of the application, provide a response consenting to the application or setting out why the application should be refused; and
- 28.5 the date on which the *Interim Orders Panel* will consider the application.
- 29 *IPReg will convene, on the date set out in its application, the appointed *Interim Orders Panel*, *legal adviser* and *technical adviser*, where appointed, to consider *IPReg's* application, any submission from the *regulated person* and oral argument from both parties.*
- 30 If the *Interim Orders Panel* is satisfied of the matters in [2.2] of Chapter 4, they may impose an *interim order* and in doing so must set out:
- 30.1 the restrictions imposed by the *interim order*;
- 30.2 the duration of the order;
- 30.3 the reasons for making the order;

Annex C: IPReg Standard Operating Procedure

Investigation and disciplinary requirements

- 30.4 when the first review must take place and that reviews are to occur every six months, thereafter;
 - 30.5 that an earlier review may take place on application of *IPReg* or the *regulated person*, where there is information to indicate that the order should be varied, or withdrawn, sooner.
 - 30.6 that the *regulated person* may appeal the *Interim Orders Panel's* decision to an *Independent Adjudicator*.
- 31 If the *Interim Orders Panel* is not satisfied of the matters in [2.2] of Chapter 4, they must refuse to impose an order.
- 32 Where possible the same *Interim Orders Panel* that imposed the original order should consider any review or application to vary or withdraw the *interim order*.

Disciplinary stage

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| 3.1 A <i>Disciplinary Panel</i> drawn from a pool of individuals from the <i>Disciplinary and Interim Orders Tribunal</i> will consider and determine referrals made by the <i>Case Examiners</i> . |
| 33 <i>IPReg</i> will appoint a <i>Disciplinary Panel</i> comprising two lay members, one of whom will be appointed as Chair, and one professional member, being any <i>LSA authorised person</i> . |
| 34 <i>IPReg</i> will appoint a <i>legal adviser</i> to assist the <i>Disciplinary Panel</i> . |
| 35 <i>IPReg</i> may appoint a technical adviser to assist the <i>Disciplinary Panel</i> where the case deals with the competency of the respondent, or otherwise requires technical knowledge in order to understand and adjudicate on the issues. |
| 3.2 In accordance with its standard operating procedure, <i>IPReg</i> : <ul style="list-style-type: none">3.2.1 will serve on the respondent, details of the allegation against them and any evidence upon which it seeks to rely;3.2.2 will appoint a <i>legal adviser</i> to assist the <i>Disciplinary Panel</i>; and3.2.3 may, where necessary, appoint a <i>technical adviser</i> to assist the <i>Disciplinary Panel</i>; and3.2.4 may at any time before the commencement of the <i>Disciplinary Panel</i> hearing, request a case management hearing be scheduled either on its request or that of the respondent where it considers it appropriate to do so. |
| 36 Following referral by the <i>Case Examiners</i> to a <i>Disciplinary Panel</i> , <i>IPReg</i> must serve a formal allegation on the respondent that particularises the alleged breaches of the Core Regulatory Framework. |

Investigation and disciplinary requirements

- 37 At any point after the formal allegation is served, the respondent may admit some or all of the allegations. Admitted allegations will be deemed proved.
- 38 After service of the formal allegation, either party may request a case management hearing take place at which:
- 38.1 the respondent may be asked whether any of the allegations are admitted;
 - 38.2 directions for progression of the *case*, including the exchange of evidence, skeleton arguments or any other materials, may be given;
 - 38.2 a date for final hearing may be set; and
 - 38.3 any other directions required, may be given.
- 39 The parties may agree a timetable ahead of any such case management hearing, which may be conducted on the papers.
- 40 Either party may request additional case management hearings be scheduled. Such requests should be made in writing to the Chair of the Disciplinary Panel who may, at their discretion, accept or refuse such a request.

Disciplinary Panel hearing procedure

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| 3.3 | In accordance with IPReg's standard operating procedure, the <i>Disciplinary Panel</i> will: <ul style="list-style-type: none">3.3.1 appoint from its number, a Chair;3.3.2 delegate to the Chair, the authority to agree and conduct case management hearings;3.3.3 consider <i>cases</i> referred to it by the <i>Case Examiners</i>, applying the civil standard of proof to any questions of fact;3.3.4 conduct the hearing in whatever manner it considers appropriate to ensure the fair and expedient hearing of the <i>case</i>;3.3.5 record its decision in writing and provide reasons;3.3.6 specify when an order imposed under [3.4] below takes effect. |
| 41 | <i>Disciplinary Panel</i> hearings will take place on the papers, but may take place orally at the request of either party, by way of an application to the <i>Disciplinary Panel</i> . Any such application will need to demonstrate why the applicant considers that an oral hearing is necessary. |

Investigation and disciplinary requirements

- 42 Where an application for an oral hearing is granted, such a hearing will ordinarily take place remotely via a video conferencing facility, and will proceed in the following stages:
- 42.1 consideration of and determination as to facts;
 - 42.2 consideration and determination as to misconduct;
 - 42.3 consideration and determination as to sanction.
- 43 Each party may be legally represented.
- 44 Each party will present its *case* on the allegation(s) in dispute, and call its witnesses, including, where applicable, any experts.
- 45 The *Disciplinary Panel* may ask questions of each of the parties.
- 46 If at the facts stage at [42.1] above, the *Disciplinary Panel* finds that *IPReg* has not, to the civil standard, proved the matters alleged, the *Disciplinary Panel* must dismiss the *case*.
- 47 If at the misconduct stage at [42.2] above, the *Disciplinary Panel* finds that the breaches found proven do not amount to misconduct, the *Disciplinary Panel* must make no finding as to impairment or sanction.
- 48 If at the misconduct stage at [42.2] above, the *Disciplinary Panel* finds that the breaches found proven amount to misconduct, the *Disciplinary Panel* may progress to make a finding as to sanction.
- 49 Should the *Disciplinary Panel* consider a sanction is warranted, it must have regard to:
- 49.1 any aggravating or mitigating features of the proven conduct; and
 - 49.2 *IPReg's Sanctions Guidance* in force, and
- may seek and receive submissions from the parties as to the appropriate sanction to be imposed.
- 50 The *Disciplinary Panel* may impose one or more of the sanctions set out in 3.4 of Chapter 4, and in doing so, must make an order as to when the sanction takes effect.

Review of disqualification orders

- 3.5.2 A disqualification:
- 3.5.2.1 can be imposed for a definite or an indefinite period, with an optional non-review period; and
 - 3.5.2.2 following any applicable non-review period, must be subject to a review, either at the request of the *person* upon whom the disqualification has been imposed or earlier by *IPReg* if *IPReg* is satisfied there is sufficient evidence to demonstrate the disqualification order is no longer required, or it is no longer necessary, proportionate or in the public interest to maintain the disqualification order.

Investigation and disciplinary requirements

- 51 On application of *IPReg* or the disqualified person, and in accordance with the requirements in [3.5.2.2] of Chapter 4, the *Disciplinary Panel* will review the imposition of that order. Where possible, the *Disciplinary Panel* that imposed the disqualification order will conduct the review.
- 52 An application to review a disqualification order must set out the grounds upon which the review is sought, being that:
- 52.1 the applicant is satisfied that there is sufficient evidence to demonstrate that the disqualification order is no longer required; and
 - 52.2 it is no longer necessary, proportionate or in the public interest for the disqualification order to remain in place.
- 53 Where an application is made by the disqualified person, *IPReg* may within 10 working days, serve submissions in response to that application.
- 54 Where an application is made by *IPReg*, *IPReg* must ensure the disqualified person is given the opportunity to provide any submissions in response to that application.
- 55 The Panel will consider such an application on the papers, unless one or both parties apply for an oral hearing, which if granted, will ordinarily take place remotely.

Appeals

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| <p>4.2 Appeals may be sought on one or more of the following grounds:</p> <ul style="list-style-type: none">4.2.1 an error of law;4.2.2 a procedural flaw;4.2.3 a mistake of fact;4.2.4 the discovery of new evidence which was not available at the time the decision which is now the subject of appeal was first made. <p>4.2 In accordance with <i>IPReg's</i> standard operating procedure, <i>IPReg</i> will specify:</p> <ul style="list-style-type: none">4.2.1 the manner in which an appeal must be lodged, including the form of an appeal, costs and any time limitations;4.2.2 the standard timeframe for the hearing and determination of an appeal, unless there is a reasonable need to deviate from that timeline. |
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- 56 An appeal to an *Independent Adjudicator* or to the *PRB* or *TRB*, as applicable, must be made within 20 working days of the decision which is the subject of the appeal being made.
- 57 Such an appeal must be lodged on the Appeal Form as published by *IPReg* from time to time and must:

Annex C: IPReg Standard Operating Procedure

Investigation and disciplinary requirements

- 57.1 specify the decision and order, if applicable, being appealed;
 - 57.2 specify the ground(s) on which the appeal is being made, being one or more of those specified in [4.2] of Chapter 5; and
 - 57.3 be accompanied by any supporting witness statement, other submissions and evidence.
- 58 *IPReg* may, within 20 working days of receipt of the appeal document, provide a response to the appeal to the appellant.
- 59 Within 10 working days of *IPReg*'s response being provided to the appellant, *IPReg* will:
- 59.1 in the case of matters appealable to an *Independent Adjudicator*:
 - 59.1.1 appoint an *Independent Adjudicator* to consider and determine the appeal; and
 - 59.1.2 schedule an appeal hearing,
 - 59.2 in the case of matters appealable to the *PRB* or *TRB*, as applicable:
 - 59.2.1 notify the *PRB* or *TRB*; and
 - 59.2.2 schedule an appeal hearing.
- 60 The *Independent Adjudicator* or *PRB* or *TRB*, as applicable, will consider an appeal on the papers but an oral hearing may take place at the request of either party, by way of an application. Any such application will need to demonstrate why the applicant considers that an oral hearing is necessary.
- 61 *IPReg* will communicate the outcome of the appeal to the Appellant within five working days of the decision being made.

4.3 In the event that the *Independent Adjudicator* dismisses a request for an appeal, in whole or in part, the applicant may further appeal to the First Tier Tribunal of the General Regulatory Chamber.

- 62 An appeal to the First Tier Tribunal of the General Regulatory Chamber must be lodged within 20 working days of the appeal decision being communicated to the appellant.

Costs

- 63 In the event of a finding in favour of *IPReg* by the *Case Examiners*, a *Disciplinary Panel*, the *Independent Adjudicator* or the *PRB* or *TRB*, *IPReg* may make an application to the applicable decision maker for its reasonable costs in investigating and bringing proceedings against the *regulated person*.

Investigation and disciplinary requirements

Publication

- 64 IPReg will publish its allegation against a *regulated person* five working days before a scheduled disciplinary hearing.
- 65 IPReg will publish the outcomes and decisions of:
 - 65.1 *Case Examiners*, in respect of mutual agreements; and
 - 65.2 the *Interim Orders Panel*, *Disciplinary Panel*, *Independent Adjudicator* and the *PRB* and *TRB*.
- 66 The following publication periods will apply:
 - 66.1 a decision to impose a warning will be published for two years or any lesser period determined by the decision making body;
 - 66.2 a decision to impose a reprimand will be published for five years or any lesser period determined by the decision making body;
 - 66.3 a decision to impose a fine will be published for a period of five years;
 - 66.4 a decision to impose an *undertaking* will be published for a period of five years;
 - 66.5 a decision to impose conditions on the practice of a *regulated person* will be published for the period of time the conditions apply or any other specified time period;
 - 66.6 a decision to suspend a *registered person* will be published for the duration of the suspension or any other specified time period;
 - 66.7 a decision to remove a *registered person* from the *register* will be published for a period of five years;
 - 66.8 a decision to impose a disqualification order will be published for the duration or the disqualification, or until the disqualification ceases to be in force;
 - 66.9 a decision to award an order for costs against a *regulated person* will be published for the period of time for which any other order imposed will also apply.

IPReg

Review of Regulatory Arrangements: proposals for change

DRAFT Impact Analysis

16 December 2021

1 Background and Introduction

1.1 Market picture

1.1.1 Overview

1. Intellectual property rights cover trade marks, patents, copyrights and designs. The intellectual property legal profession operates across the UK, European and world markets. In 2011, the UK intellectual property market had an estimated worth of **£63.5 billion**. According to the World Intellectual Property Organisation¹ (WIPO) the UK was ranked 7th in the world in 2019 for patent and designs filing activity.

1.1.2 Regulation by IPReg and ways of practising

2. IPReg regulates trade mark and patent attorneys and their firms under the Copyright, Designs and Patents Act 1988, the Trade Marks Act 1994 and the Legal Services Act 2007.
3. These firms differ in size from single attorney firms to large plcs². In terms of numbers of qualified staff practising in the firm, our firms range from sole practitioners to one firm with 128 attorneys and 4 other authorised managers.
4. In terms of firms, as of 1 December 2021, there were 247 firms registered with IPReg. This figure includes single attorney companies but does not include individual attorneys practising as a sole attorney on a self-employed basis, of which there were 123.
5. The firms take different forms, including unincorporated businesses, partnerships, limited companies, LLPs and plcs and the introduction of alternative business structures (ABSs) has led to some firms converting to ABSs in order, for example, to receive private equity investment, or to introduce new board members³. As at 1 December 2021, 21 per cent of IPReg's firms were ABSs.
6. As of 1 April 2021, there were 3206 registered attorneys of which: 248 were registered as both a patent and a trade mark attorney, 2,197 were registered as patent attorneys and 760 were registered as trade mark attorneys⁴.
7. Attorneys practise in a number of different ways. The majority are in private practice either as part of a firm or as a sole practitioner, whereas others are in-house⁵. Attorneys in private practice, either practise in an IPReg-regulated firm or an SRA-regulated firm. Approximately 9% of attorneys registered with IPReg have a practising address outside the UK.
8. Recent developments in the market include an increasing numbers of consultants, who are self-employed or have their own companies, but who act as consultants for other firms and tend not to have their own clients.
9. In addition, from the applications received, and the responses to the Call for Evidence, IPReg has evidence of changes in approaches to charging and resourcing of firms (for example with the use of consultants and increased use of outsourced service providers).

¹ Taken from the [WIPO Indicators 2020](#) report.

² Size can be measured in various ways, including income/profitability, number of managers and numbers of professionally qualified staff.

³ In its 2016 Legal Services Market Study on the legal services market, the Competition and Markets Authority stated that, “*Though the impact of ABSs on competition has so far been limited, there are signs that ABSs are adopting more innovative business models like those operated by HR consultancies.*”

⁴ Data taken from IPReg's [website](#).

⁵ In the 2021 Diversity Survey, which IPReg considers to be a representative sample, 78% of respondents were in private practice, 18% in-house and 8% classified themselves as “other”.

10. IPReg is also aware that a small number of firms may be considering whether to switch regulator, for example, from the SRA to IPReg.
11. As yet, firms are not permitted to be multidisciplinary practices. See section 4 of the consultation paper.

1.1.3 *Clients*

12. Much of the work of patent and trade mark attorneys is business to business, and the percentage of clients of a firm/sole practitioner who are individuals is smaller compared to other types of law firm, although this does of course vary from firm to firm.

1.1.4 *Market influences*

13. Significant influences on the market for intellectual property legal services, and the manner in which legal services are provided, are discussed in the consultation paper. In particular, recent years have seen the growth of unregulated firms⁶. This in part reflects the fact that many of the services provided by trade mark and patent attorneys are not reserved legal activities⁷. In addition, Brexit has meant that some firms have lost work in Europe.

1.1.5 *Equality, diversity, inclusion and belonging*

14. In the fourth quarter of 2020, IPReg conducted a Diversity and Inclusion Survey. The findings from the survey were published on IPReg's website in March 2021. In particular, IPReg noted:
 - “*The number of female and attorneys with disabilities has increased [since the 2017 survey] and is now closer to the UK benchmark, whilst the diversity in ethnicity is broadly constant, albeit at or close to the benchmark. However, there is still work required to fully close the gaps, particularly with respect to the employment of people with a disability and Black attorneys.*”
 - “*The profession has a slightly older profile than the UK benchmark, and has a greater proportion of people who do not have a religion. However, it is broadly in line/slightly more diverse with respect to sexual orientation and transgender.*”

1.2 **Background to the review**

15. The background to the Regulatory Arrangements Review (the Review) is set out in the consultation paper. Key drivers for the review were:
 - The strategic priority of the IPReg Board to encourage and support innovation;
 - Changes in the legal services market, particularly related to patent and trade mark attorneys, due to the changes to ownership and management of law firms permitted by the Legal Services Act 2007, Brexit, globalisation, and the increased use of legal technology;
 - The Competition and Markets Authority’s (CMA’s) Review of the legal services market study in England and Wales; An assessment of the implementation and impact of the CMA’s market study recommendations. The CMA conducted a three month review, the results of which were published on 17 December 2020, of the extent to which its recommendations in the 2016 Legal Services Market Study had been taken forward;

⁶ The Competition and Markets Authority’s *Review of the legal services market study in England and Wales; An assessment of the implementation and impact of the CMA’s market study recommendations* noted “signs of growth in the unauthorised sector with emerging lawtech.” (page 16.)

⁷ However, note that section 276 of the Copyright, Designs and Patents Act 1988 prohibits the use of certain protected titles by individuals and firms unless the individual/firm is registered and section 83 of the Trade Marks Act establishes a register for “persons who act as agent for others for the purpose of applying for or obtaining the registration of trade marks.”

- Increasing competition from the unregulated sector and evidence of firms switching between regulators. The CMA's Review estimated that, "the use of for-profit unauthorised providers range from 1% to around 5.5% on aggregate, with substantially higher figures in certain areas of law"⁸;
 - IPReg's own assessment of the effectiveness and sustainability of its regulatory arrangements and the need to have regulatory arrangements that are, so far as possible, future-proofed against market changes and innovation, new ways of working, greater use of RegTech and Law Tech, etc.;
 - The limited number of insurance providers for firms and sole practitioners, particularly for smaller firms, including those with a high percentage of non-lawyer ownership;
 - The need for greater transparency in IPReg's regulatory processes;
 - New ways of working which IPReg has observed in the last 3 years, such as the increase in the numbers of consultants.
16. The governing principles for the review are set out in the consultation paper. In summary, IPReg is seeking to put in place revised regulatory arrangements which:
- provide proportionate consumer protection;
 - are principles-based in their approach: removing prescription and detailed rules unless evidence demonstrates necessary;
 - facilitate new ways of working and new service offerings; and
 - are streamlined and consistent.
17. The desired outcomes of these changes will be a reduction in the burden of regulation, greater competition, the facilitation of innovation and regulatory arrangements which are resilient to change.
18. The proposed changes will address shortcomings identified in the current arrangements which are overly-prescriptive and disproportionate in places, place unnecessary constraints on new entrants and the existing regulated community, do not reflect current ways of working and lack agility and flexibility.
19. Indicators that the Regulatory Arrangements Review will have achieved the desired outcomes will be:
- a clearer, coherent set of regulatory arrangements;
 - fewer operational issues with applying our regulatory arrangements;
 - a more obvious alignment between the risks posed by types of registrants and the burden of regulation on them;
 - a fees framework where registrants' practice fees more accurately reflect their risk profiles;
 - greater competition including new market entrants;
 - innovation in the manner in which services are offered to clients;
 - more streamlined processes;
 - reasoned decision-making in line with published policies and processes reflecting current regulatory best practice;

⁸ See section 5.38 of the Report.

1.3 Rationale and evidence to justify the level of analysis used in this IA (proportionality approach)

19. This impact assessment (IA) is an initial analysis for consultation. The IA will be finalised following the consultation and prior to the Board's final decision on changes to the regulatory arrangements. In undertaking this impact assessment, we have made use of the following sources of information:
 - responses to IPReg's Call for Evidence;
 - feedback from discussions with attorneys and firms and other stakeholders;
 - registrant data - e.g., number of attorneys and firms, fee categories, etc.;
 - diversity profile data, in particular from IPReg's Diversity Survey 2021;
 - complaints information;
 - data on IPReg's disciplinary activities;
 - PII claims information;
 - applications data - we receive a certain amount about how firms intend to operate from their applications, their corporate structure, etc.;
 - information received from H M Treasury relating to the prevention of money laundering and terrorist financing.
20. In certain areas, e.g., in relation to levels of holding of client money by firms and sole practitioners, we have relied on information received in discussions with firms and individuals. IPReg has endeavoured, in these discussions, to capture a cross-section of our regulated community.

1.4 Approach to impact assessment

21. This impact assessment addresses the potential impact (positive and negative) of the proposed changes on:
 - (i) the regulatory objectives⁹, which includes the impact on competition and consumers; and
 - (ii) equality and diversity.
22. The impact on equality, diversity and inclusion (EDI) is assessed by reference to the protected characteristics set out in section 4 of the Equality Act 2010¹⁰.
23. The assessment also addresses the costs and benefits to registrants, clients and consumers and IPReg of the changes. The costs and benefits have not been quantified at this stage and we are seeking feedback on the costs and benefits in the consultation paper¹¹.
24. The impacts have been assessed in relation to:

⁹ Under section 28 of the Legal Services Act, IPReg is under a duty to promote the regulatory objectives. The regulatory objectives are: The regulatory objectives are: (1) protecting and promoting the public interest; (2) supporting the constitutional principle of the rule of law; (3) improving access to justice; (4) protecting and promoting the interests of consumers; (5) promoting competition in the provision of services within subsection (2); (6) encouraging an independent, strong, diverse and effective legal profession; (7) increasing public understanding of the citizen's legal rights and duties; and (8) promoting and maintaining adherence to the professional principles.

¹⁰ The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

¹¹ See section 7 of the consultation paper.

- (i) consumers;
 - (ii) IPReg's registrants (individuals and firms);
 - (iii) new market entrants;
 - (iv) IPReg and other stakeholders (e.g., other legal services regulators).
25. Where an impact might be felt most by a particular size of firm or type of registrant, this has been highlighted.
26. The cost and benefit impacts have been assessed in relation to:
- (i) the overall impact of the regulatory arrangements review and
 - (ii) the specific impacts of each aspect of the changes, taking the headings from the consultation paper.
27. The impact of the Review as a whole is set out in section 3 and the specific impacts of the various changes addressed in the consultation paper are set out in section 4.

1.5 Assumptions

28. In conducting this impact assessment, we have made certain assumptions. These are:
- that merely changing IPReg's guidance would not bring about the changes sought through the review;
 - numbers of Registered Patent Attorneys and Registered Trade Mark Attorneys and registered firms are unlikely to rise/fall significantly, although the trend for consolidation identified in the responses to IPReg's Call for Evidence is likely to continue, as will the numbers of non-regulated firms;
 - the IP market is likely to remain buoyant, although the impact of Brexit will continue to be felt;
 - that additional application and supervisory costs for MDPs will be passed on to these firms, i.e., there will be no element of cross-subsidy;
 - that a market which is subject to proportionate regulation will encourage consumer confidence in purchasing services and could have a positive benefit on business confidence to invest, innovate and expand;
 - that a principles-based approach will allow registered persons autonomy to identify and manage their own risk, giving them the time and space to focus on their core business of serving consumers and will reduce their costs;
 - a move to a more principles-based approach may facilitate switching between regulators.

2 Detailed analysis – impact of Review as a whole

29. This section assesses the impacts of changing the regulatory arrangements as a whole. The following section assesses the impacts of the specific areas of change, following the consultation paper.

2.1 High-level options considered

30. In conducting the Regulatory Arrangements Review, IPReg needed to adopt a two-stage approach. In essence, this involved assessing all possible options in relation to the regulatory arrangements in the light of the drivers for change at the macro level, followed by an assessment of each area of change.

Option 0 – retain the current regulatory arrangements

31. This option would have had the benefit that firms and attorneys are familiar with the existing arrangement and there would have been no direct costs associated with any changes for those whom we regulate.
32. However, for the reasons outlined above, IPReg considered it imperative to make changes to the regulatory arrangements. We had already identified that the existing arrangements were out of date and did not reflect modern IP practice in some key areas and believe that the indirect impact on firms and attorneys of retaining the current regulatory arrangements would eventually have been significant. Indeed, some of the harms that IPReg was endeavouring to prevent were: potential constraints on new entrants caused by unjustifiable regulatory complexity, current and future obsolescence in the regulatory arrangements caused by arrangements which have not kept up with changes to the manner in which legal services are delivered, and insufficient ways for IPReg to deal with malpractice.
33. Moreover, there was support for change from amongst those whom we regulate¹², in addition to external stakeholders such as the Competition and Markets Authority.

Option 1 – revise the regulatory arrangements and associated guidance.

34. Our preferred option, and the one with which IPReg has proceeded, is Option 1. The reason for this is that none of the other options would have enabled IPReg to achieve its stated objectives for the Review.
35. In summary, the regulatory arrangements could only be made clearer and more coherent by re-drafting the provisions, as opposed to issuing further guidance. To issue further guidance without re-drafting the regulations would simply have created confusion and contradiction. Similarly, no changes could be made to our practising categories without re-drafting the regulations, facilitating the alignment of the risks posed by types of registrants, the costs to IPReg of regulating them and the fees paid by registrants.
36. By revising not only the form but also the content of regulations, we are better able to achieve consistency in the wording of the regulations, which not only benefits our

¹² See the [Summary of Responses to IPReg's Call for Evidence](#).

regulated community but also IPReg in its supervision and discipline of regulated persons.

37. Adopting a more principles-based set of regulatory arrangements will also help to remove barriers to entry into the market for legal services related to intellectual property.

Option 2 – retain the existing rules, publish revised guidance and change the approach to supervising firms and attorneys

38. IPReg considered whether it would be possible to achieve its objectives through changes to its guidance and the manner in which regulated persons will be supervised. We concluded that it was the content and drafting of the regulatory arrangements themselves which hindered the achievement of IPReg's objectives. If the arrangements remained unchanged, updated guidance would have no impact other than to create the potential for confusion and ambiguity. Amendments to the regulatory arrangements themselves were required to drive the change needed in the regulation of intellectual property professionals.

Option 3 – remove significant elements of the regulations and replace these with greater use of licence conditions

39. Another option considered was to have minimal regulations and manage the risks posed by firms through the use of licence conditions. The benefit of this option is that it is truly risk-based, since the requirements imposed on each attorney or firm would be driven by our assessment of the risks. However, we consider that this option lacks transparency, making it difficult to assess the overall burden of regulation, risks inconsistency and potential unfairness, imposes a greater burden on IPReg staff (and potentially higher fees for firms and attorneys, due to the level of supervision required for each firm and duplication of work as each firm/attorney is assessed). In addition, certain elements of our rules relating to our regulatory procedures, necessitate more detailed rules to ensure procedural fairness.

2.2 Policy objective in changing the regulatory arrangements and timing

40. Section 1 of the consultation paper sets out the objectives for the Regulatory Arrangements Review. Although other changes are under consideration, at this point IPReg intends to introduce the majority of these changes together, rather than in stages. However, a final decision on our approach to implementation will be taken following consultation.
41. The rationale for doing so is that the arrangements are changing both in content and form. In order to make the drafting changes and the move to a more consistently principles-based approach, it is necessary to review the arrangements as a whole. This will also facilitate the introduction of a glossary which will apply to all of the regulatory requirements.
42. The intention is that the new arrangements will come into effect no earlier than Spring 2023. Our final plans for implementation will be developed post consultation to allow us to take account of the views provided.

2.3 Regulatory objectives

- 43. The impact on the regulatory objectives of the Review as a whole is considered to be positive.
- 44. RO1 - protecting and promoting the public interest – it is in the public interest that regulators have robust regulatory arrangements which reflect the current market and its consumers and are sufficiently flexible to sustain future changes in the market and permit different models of business.
- 45. RO2 - improving access to justice – in revising the regulatory arrangements IPReg is seeking to remove some of the current restrictions on permitted business models, thereby providing greater access to justice for consumers from a wider variety of firms.
- 46. RO4 - protecting and promoting the interests of consumers – the new arrangements have been drafted to protect consumers in relation to the key risks identified. The specific risks to consumers (and the benefits arising from the Review) have been considered both in the overall approach to a more principles-based approach and in relation to each of the specific proposals.
- 47. RO5 - promoting competition in the provision of services - in addition, the changes to IPReg's ways of working, including the greater use of waivers, facilitates new forms of business. This is because new forms of business sometimes reveal unanticipated constraints of business in regulatory arrangements; waivers facilitate the removal of these constraints.
- 48. With a principles-based approach, as opposed to detailed rules, there is always a risk that registered persons and new market entrants do not think through, for themselves, what is required of them by the regulator. The new guidance proposed by IPReg should help to address any lack of understanding.
- 49. RO6 - encouraging an independent, strong, diverse and effective legal profession – the principles-based approach encourages firms to take responsibility for compliance and how this is achieved, strengthening the profession. Where more detailed rules are justified, these have been retained in order to ensure that there is clarity of understanding for firms of their duties, and that their delivery of legal services is effective. A principles-based approach facilitates also different forms of working which may have a positive impact on diversity.
- 50. RO8 - promoting and maintaining adherence to the professional principles – the emphasis of the principles-based approach is the professional principles underpinning legal work.

2.4 Costs and benefits

- 51. The costs and benefits associated with each aspect of change are discussed in the following section.
- 52. The key costs associated with the changes as a whole cover the short-term costs of implementation and the ongoing costs. From its discussions, IPReg believes that the costs to firms of a one-stage implementation, rather than introducing changes in stages, are lower. This is because the analysis suggests that firms will find it easier to

assess the impact of the changes as a whole and make any necessary changes to their operations and systems and controls, rather than to experience a “drip feed” of changes over a longer period.

- 53. In addition, IPReg intends to reduce the impact both on firms and on itself of the changes to its regulatory processes by transitional provisions. The Board will also be considering a grace period for coming into compliance with the new provisions, in much the same way as with previous changes to the regulatory arrangements.
- 54. Stakeholders are of the view that legal services providers benefit from the removal of unnecessary restrictions and a principles-based approach. In responding to regulators’ consultations on transparency, the Legal Services Ombudsman stated, *“It is not in the interests of the legal services market to make regulation difficult to manage or even detrimental to provision, and as such we believe it is appropriate to allow for flexibility wherever possible.”*¹³

2.5 Impact on Equality and Diversity

- 55. IP Inclusive’s response to IPReg’s Call for Evidence, stated that, “The more flexibility available to professionals and their employers, in determining how they comply with the high-level principles, the more likely they are to be able to accommodate and nurture a diverse and inclusive workforce.”¹⁴
- 56. The principles-based approach is designed to encourage new forms of working and new models of firm. This should support those whose hours of work are non-standard, for example because of caring responsibilities and those who are moving from one stage of their career to another, for example from partnership to consultancy.

Gender and Gender reassignment

- 57. In terms of the Review as a whole, the re-drafting of the regulatory arrangements to ensure that they are gender neutral, should have a positive impact on the basis of gender and gender reassignment.

Race and disability

- 58. The removal of barriers to entry should encourage diversity in the types of firm available. IPReg’s intention is to future-proof its regulatory arrangements which should facilitate the use of RegTech¹⁵ and LawTech¹⁶. New technologies can support

¹³ *Consultation Response Regulatory transparency measures: SRA, BSB, C LC, CILEX, IPReg, MoF, paragraph 5.*

¹⁴ IP Inclusive’s full response to the Call for Evidence is published [here](#).

¹⁵ RegTech (Regulatory Technology) utilises various forms of new technology as a means of managing regulatory risk.

¹⁶ LawTech is a term used to describe technologies that aim to assist, improve or replace traditional methods for providing and delivering legal services.

individuals in the delivery of legal services and may positively benefit disabled persons and those for whom English is not their first language¹⁷.

59. In addition, greater clarity in the drafting of the regulatory arrangements should assist those for whom English is not their first language.

All protected characteristics

60. The emphasis on principles should have a positive impact on the manner in which people within firms treat each other and their clients. This may, in turn, encourage inclusion for all protected characteristics.

¹⁷ There is some evidence to suggest that new technologies assist those working in an environment in which they are using a second language. See Tenzer, H., Pudelko, M. Media choice in multilingual virtual teams. *J Int Bus Stud* **47**, 427–452 (2016). <https://doi.org/10.1057/jibs.2016.13>

3 Detailed analysis – impact of specific proposals

61. This section assesses the impact of each area of change.

3.1 Client money

3.1.1 *Background*

62. IPReg is planning to increase the evidence it currently has about the amount of client money that firms hold. However, discussions with firms and responses to the Call for Evidence suggests that levels of client money held by trade mark and patent attorneys tend to be low (in the thousands), the majority of client money held is in relation to fees paid in advance and client money tends to be in client account for a relatively short period of time, compared to firms of solicitors. This is one of the reasons why Intellectual Property firms could be considered to be at a lower risk than other types of law firms of being a target for money laundering.
63. Respondents to IPReg's Call for Evidence cited client money as a key area for consideration in relation to the regulatory burden on firms. Respondents felt that IPReg's client money requirements were disproportionate to the risk and increased the risk that money was paid into the wrong account due to the complexity of operating a client and office account.
64. IPReg has only once in the last eleven years received a complaint concerning the loss of client money. This is not to say that such an event has only once occurred, but rather that it has never been brought to IPReg's attention or identified through IPReg's regulatory activity. This in itself suggests that the risk to clients relating to client money are significantly lower than with other forms of law firm.
65. In addition, as stated previously, regulated firms tend to provide services to business rather than individuals because of the nature of the services. What this means is that the risk profile of these firms as a whole is lower than SRA-regulated firms, where loss of client money is a major risk.

3.1.2 *Proposed change*

66. Section 3 of the consultation paper sets out the proposed approach to revising the definition of client money such that it is only money that rightfully belongs to the client. Payments on account (including monies in respect of disbursements) would not be considered client money where terms had been agreed with the client.
67. As an alternative to a client account, firms will be permitted to place money in a third party managed account.
68. In addition, attorneys/firms will be required to:
- keep client money safe so that it is identifiable and is kept separate from money belonging to the firm; and return it promptly to the client;
 - notify IPReg if they are holding client money, i.e., the current requirement will be retained;

- inform the client of the arrangements which are in place for holding their money and what the regulatory protections are.
- notify IPReg in circumstances where client money cannot be returned to the client and donate to a charity of the registered person's choice any residual balances relating to that client which exceed an amount to be prescribed.

3.1.3 Impact on the regulatory objectives

69. RO1 - Protecting and promoting the public interest – there is a risk that changes to the definition of client money might undermine public confidence if the changes resulted in losses to clients.
70. However, such a risk seems low, given the average level of client money held by firms, the nature of the money held and the fact that client money tends to be in client account for a short period of time. In addition, although the definition is changing, money which belongs to the client (e.g., settlement monies and payments on account where terms had not been agreed with the client), will still be treated as client money, which should maintain public confidence in regulated attorneys. Also, the use of third party managed accounts, if they were to be adopted by IP attorneys, should strengthen public confidence, since the accounts would have to be FCA-regulated.
71. RO4 – Protecting and promoting the interests of consumers – money which belongs to the client (e.g., settlement monies) will continue to be protected. However, some money that is currently considered to belong to the client will in future be considered as the firm's money (because there is a contract between the firm and the client setting out the work which will be carried out and the client has paid for that work (and any associated disbursements which the firm must pay)). Risks to the client may therefore be that:
- work for which the client has paid in advance will not be undertaken. If this were the case, the client would have the right to seek redress via the Legal Ombudsman and to raise the matter of the firm/attorney's conduct with IPReg; or
 - disbursements payable in connection with that work will not be paid by the firm. In this case, the client may be able to make a claim on the compensation fund (if fraud or failure to account were involved), the client could seek redress via the Legal Ombudsman, or, in a case of negligence, the firm's PII policy might cover the loss.
72. RO5 – Promoting competition in the provision of services - alleviating the burden on firms in relation to client money and enabling firms to use an alternative to a client account, may help to promote competition and encourage attorneys to set up their own firms. Anecdotal evidence related to applications suggests that setting up a client account is one of the more burdensome and time-consuming aspects of starting a new firm. The option of using a third party managed account, coupled with the narrower definition of client money, should help to address this.

3.1.4 Costs and Benefits

- 73. As explained in the consultation paper, the changes to the client money requirements should alleviate some of the current administrative burden on firms associated with the operation of a client account. This is because some firms will no longer need to operate a client account, whereas others may choose to use a third party managed account. As IPReg is considering the introduction of additional requirements regarding notifications to client of the arrangements in place to protect client money, in order to mitigate the risks of the proposed changes. However, the alleviation of the burden may not be significant.
- 74. IPReg's assessment is that the costs associated with complying with the new requirements, both in terms of initial outlay and on an ongoing basis, are not likely to be significant.
- 75. Another benefit to firms of using a third party managed account relates to cyber risk. One of the key areas of cyber risk to firms relates to the client account. Using a third party managed account reduces the exposure of the firm to these losses.

3.1.5 Equality and diversity

Disability

- 76. We have some evidence that people with disabilities are more likely to be in smaller firms, since IPReg's Diversity Survey for 2021 showed that smaller businesses have a higher proportion of people with disabilities. If this is the case, then the proposed changes may indirectly benefit them as with all owners/employees of small firms.
- 77. We do not have any evidence which suggests this proposal will have either an adverse or a positive impact on the other protected characteristics.

3.2 Continuing Professional Development (CPD)

3.2.1 Background

- 78. Currently IPReg sets a minimum number of CPD hours that must be completed by attorneys on an annual basis. Acceptable CPD activities range from personal study through to attending or presenting at seminars and conferences.
- 79. Until 5 June 2019, IPReg's CPD policy imposed a restriction on the number of hours of personal study that could be counted towards an attorney's CPD record in each given year. This was removed as it was considered that the 25% (that is, a limit of 4 hours per year of personal study) had the potential to create a perverse incentive to undertake CPD in areas that were not relevant to an attorney's practice, simply because they were the right type of activities and could be 'counted'. The cap on personal study also had an adverse impact on attorneys who lived outside of major cities or who had disabilities or caring responsibilities which made travel to attend in-person events more difficult.
- 80. Only events hosted by particular bodies (such as those provided by the statutory legal representative and regulatory bodies) are normally automatically accepted as CPD and attorneys are entitled to the number of CPD hours assigned by the organising or accrediting body. The rationale for this is IPReg considers that we may rely on the relevance and quality of event delivered by those partner bodies.

81. For other training (or in-house training), IPReg operates a process of self-certification (i.e., self-certification by the individual attorney and not the event provider). Individual attorneys must determine, bearing in mind their existing skills and the nature of their practice, the most appropriate subjects in which to undertake CPD, taking account of their responsibilities and the expectations placed upon them, using the general rule of thumb: "*What is the value to me in providing legal services to my clients?*". In such circumstances, the individual attorney determines whether the activity is one which would normally qualify as CPD as per the indicative activities list.
82. Attorneys must make an annual declaration of compliance with the CPD requirement when they renew their registration.
83. IPReg has the power to waive the CPD requirements for specific individuals.

3.2.2 Proposed change

84. The new proposals for CPD are set out in the consultation paper. In summary, the new requirements will be:
 - led by the individual attorney;
 - based on reflection - How can I do things better in the future?
 - focused on outputs not inputs;
 - relevant to the practice of the attorney;
 - flexible; and
 - a mix of formal and informal.
85. IPReg considers that these requirements better support the real purpose of ongoing competence in an attorney's career, where the focus is less on complying with a regulatory requirement and more on reflective practice and sustained development.
86. IPReg is also considering conducting checks on CPD by requiring a random sample of attorneys to provide evidence of the CPD which they have undertaken.

3.2.3 Regulatory objectives

87. RO4 – Protecting and promoting the interests of consumers- the ongoing competence of attorneys is one of the key requirements for protecting consumers. There is a risk that in giving attorneys greater freedom to determine their CPD, attorneys will either underestimate the amount of CPD which they need to undertake or will undertake activities not appropriate for their needs. However, requiring attorneys to determine their own CPD needs in light of their own practice, will help bring about a shift in thinking about CPD and its value; no longer a regulatory box that needs to be ticked but a framework within which to think critically about their practice to the benefit of themselves and their clients.

- 88. Random compliance checking should assist IPReg to mitigate the risks identified and will also allow IPReg to monitor how the changes are having an impact and share best practice or learning points with the rest of the regulated community.
- 89. RO6 – Encouraging an independent, strong, diverse and effective legal profession - by ensuring attorneys maintain their professional knowledge and skills throughout their career. The new system will also provide flexibility which is likely to have a positive impact in relation to diversity.
- 90. RO8 - Promoting and maintaining adherence to the professional principles – the proposed changes to CPD may also serve to promote and maintain adherence to the professional principles defined in section 1 of the LSA, notably “that authorised persons should maintain proper standards of work,” and that, “authorised persons should act in the best interests of their clients.” Maintaining competence self-evidently achieves the first of those principles and more widely helps attorneys to judge what those best interests are.

3.2.4 Costs and benefits

- 91. In our discussions with attorneys, we have not identified any significant costs associated with the proposed changes to CPD. In fact, we believe that the changes to CPD may enable attorneys to maintain their competence in a more cost-effective manner. This is because seminars and courses held on specific dates may cause interruptions to work which other forms of CPD or recorded webinars, for example, would not. In addition, certain forms of professional development may facilitate targeted learning in a specialist area of law/technical area which could prove more cost effective than generalised courses which might “tick the box” whilst not achieving the end objective of improving the quality of the legal services delivered by the attorney.
- 92. As these would be provided online, we do not anticipate significant costs for the attorneys providing the evidence. So far as IPReg is concerned, the costs associated with reviewing evidence of compliance would depend on the sample size.
- 93. The benefits to the changes to both attorneys and to the clients they serve, are addressed above. A continuing competence framework that an attorney (or their employer) can tailor to their own individual needs should result in better engagement with ongoing learning and improved outcomes for clients.
- 94. In terms of the supervision of attorneys, conducting random samples should provide assurance to IPReg that attorneys are complying with their regulatory obligations for CPD or identify potential weaknesses in the approach.

3.2.5 Equality and diversity

- 95. IP Inclusive has previously stated that restricting non-interactive CPD activities can unintentionally disadvantage patent and trade mark attorneys who – for medical reasons, or in order to care for children or other dependents – work part-time, as well as those who have difficulty accessing training which involves significant travel.

Gender and disability

96. We believe that the proposed changes may have a positive impact on the protected characteristics of gender and disability. This is because attorneys with caring responsibilities or who work part-time or have disabilities will be enabled to determine for themselves the most suitable ways of maintaining their competence given their practice needs and their personal situation. Statistics demonstrate that carers and those who work part-time are more likely to be female than male¹⁸.

Disability

97. The changes to the CPD requirements will also enable individuals to learn in the way that is most effective for them, whatever their socio-economic or educational background. This may also assist people with mobility impairments, progressive conditions or neurodiverse attorneys.

Belief

98. It is also possible that the proposals may assist those whose beliefs involve prayers at set times of the day or celebrating religious festivals which may interfere with set training dates.

Race

99. The proposals may also benefit those for whom English is not their first language since some forms of training may be more helpful in this regard than others.
100. We do not have any evidence which suggests this proposal will have either an adverse or a positive impact on the other protected characteristics.

3.3 Litigation skills

3.3.1 Background

101. The background to the proposed changes to litigation skills for patent attorneys is set out in the consultation paper [insert link].
102. Trade mark attorneys undertake a litigation module as part of the Nottingham Trent Trade Mark Practice Professional Certificate course, pre-qualification, and therefore upon entry on to the register they are granted the corresponding certificate. This is not the case with patent attorneys, who have to obtain the litigation certificate within 3 years of entry on to the register.
103. Unless IPReg has given the individual an extension/waiver to the 3 years requirement the individual failing to obtain the certificate within 3 years may be subject to disciplinary action.

3.3.2 Proposed change

104. The proposal is to require patent attorneys to undertake basic litigation skills training before they are admitted, as with trade mark attorneys.

¹⁸ In the IPReg/Focal Point survey published in February 2021, 43 per cent of female respondents had caring responsibilities for children and 9 per cent had caring responsibilities for adults. For male respondents the figures were 29 per cent and 7 per cent respectively.

3.3.3 Regulatory objectives

- 105. RO1 - protecting and promoting the public interest – it is in the public interest that patent attorneys are appropriately trained. Understanding the conduct of litigation often assists attorneys to conduct non-contentious work, since they are able to understand how IP rights might be challenged.
- 106. RO4 - protecting and promoting the interests of consumers – it is in the interests of consumers that patent attorneys have the necessary skills at the point of admission to the register.
- 107. RO6 - encouraging an independent, strong, diverse and effective legal profession – as the consultation paper states, ensuring that attorneys have the necessary skills at the point of admission strengthens the legal profession and may also assist attorneys in their own career progression. We have also received anecdotal evidence that for some attorneys, the current timing of the Basic Litigation Skills course is not ideal as it often coincides with new childcare responsibilities.
- 108. RO8 - promoting and maintaining adherence to the professional principles – the fourth professional principle is “that persons who exercise before any court a right of audience or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice.” Whilst patent attorneys do receive training in litigation skills post-qualification, incorporating this training pre-admission embeds the concept of independence at the earliest stage in the attorney’s career.

3.3.4 Costs and benefits

- 109. IPReg has yet to determine the costs implications of incorporating litigation skills training into the pre-admission course. At this stage we are consulting on the principle of the change not the detail for how it would be implemented. It may be that the costs may be reduced for attorneys compared to undertaking a separate course post-admission.¹⁹
- 110. IPReg’s costs may be reduced by moving the litigation skills course into the pre-admission phase, since it will no longer be necessary to ensure that patent attorneys pass the course within the required 3 years. IPReg’s work in this area largely consists of contacting those within the final year of the three year period²⁰ and making them aware of their obligations, rather than pursuing those who have not obtained the certificate, of whom the numbers are minimal²¹.
- 111. Based on our discussions, we think it unlikely that the costs of moving the course into the pre-admission phase would be passed on to consumers through increased fees. The costs of training for patent attorneys in this area is already an overhead of firms or individual attorneys and since the costs are unlikely to rise significantly through the proposed change, the risk of increased fees is considered to be low.

¹⁹ Responses are sought on this point in the consultation paper [insert link to CP].

²⁰ Note that the three year period does not include any period in which a patent attorney is not in active practice. IPReg also checks those coming back into active practice to make sure they are aware of their obligations regarding the litigation certificate.

²¹ Over the last 8 years, there have been only three cases of patent attorneys not completing the litigation certificate or disputing the need to complete it due to their particular circumstances.

112. The benefits to patent attorneys have already been addressed above. In particular, at the outset they will be ably equipped to conduct work by already having received training in litigation skills. This in turn should benefit consumers as the recipient of their services.

3.3.5 Equality and diversity

113. There is a risk that requiring trainee patent attorneys to undertake litigation skills training pre-admission would constitute an additional barrier to admission. Some respondents to our Call for Evidence pointed to the fact that many patent attorneys do not conduct litigation.
114. IPReg does not collect data on the number of individual attorneys who conduct litigation and does not have hard data on the number of firms conducting litigation, since firms may be authorised to conduct litigation but may not do so in practice. It would be helpful to receive feedback in the consultation period on the extent to which the proposed change would constitute a barrier to entry.

Gender

115. Alternatively, it may be the case that for part-time attorneys, taking the litigation skills course post-admission places greater pressure upon them, particularly given the risk of regulatory action if they fail to obtain the certificate, which may have a negative impact on the protected characteristic of gender.

Disability

116. The current three-year deadline may prove stressful for those who struggle to meet time-based requests. Alternatively, it may be that incorporating litigation skills into the pre-admission requirements would, in itself, create additional stress.
117. We do not have any evidence which suggests this proposal will have either an adverse or a positive impact on the other protected characteristics.

3.4. Transparency requirements

3.4.1 Background

118. The consultation paper sets out the background to the proposed change.
119. In 2016, the Competition and Markets Authority made a series of recommendations following a review of legal services. Included in their recommendations were that legal services regulators should:
- “*Act to improve the quality, utility and prominence of disclosures on providers’ websites in relation to price, service, redress and regulatory status.*”
 - *Develop and consult on an enhanced regulatory minimum level of transparency for legal services providers, supported with guidance on implementation.*
 - *Introduce guidance or regulatory requirements as necessary to improve information provided on engagement such as through the client care letter.”*
120. The Legal Services Board monitored the responses to the CMA report and its follow-up report on progress in 2016. On 23rd May 2019, IPReg introduced guidance on “Improving Information for Consumers and Small Businesses” in response to the CMA report and proposals of the LSB.

3.4.2 *Proposed change*

121. IPReg now proposes that this guidance becomes mandatory, whilst maintaining its principles-based approach.

3.4.3 *Regulatory objectives*

122. RO1 - protecting and promoting the public interest – it is in the public interest that the legal services market works as efficiently as possible. A necessary part of that is that consumers and small business are able to make informed choices when buying legal services. (Consumers and small businesses differ from larger corporate clients, because there is a far greater risk of information asymmetry between the legal services provider and the client; larger corporate clients often have their own in-house lawyers and have greater buyer power.)
123. Moreover, complaints by clients of legal services firms often relate to costs and in particular the lack of transparency²². Actions which lead to such complaints can undermine confidence in the legal profession.
124. RO3 - improving access to justice – the CMA identified in its work that a barrier to consumers obtaining legal advice is a lack of understanding of legal services. The greater the level of transparency in relation to the services of attorneys and the cost of those services, the more accessible those legal services are to consumers and small businesses. Whilst IPReg's transparency guidance has been in place for some time, it may be that in making these requirements mandatory, behaviours will change at a greater pace than would otherwise be the case.
125. RO4 - protecting and promoting the interests of consumers – one of the objectives in making the transparency guidance mandatory is that consumers and small businesses will be better able to make informed choices regarding the legal services which they purchase.
126. RO5 - promoting competition in the provision of services – the major objective behind the CMA's recommendations was to improve competition between legal services providers. The CMA noted that principles-based requirements, as opposed to "bright-line rules" meant that it was harder to compare the services of firms. This would tend to suggest that requiring all firms and attorneys to, for example, specify their costs in the same manner, would improve competition.
127. Whilst this may be true in one sense, IPReg is seeking to encourage innovation in, for example, the pricing of legal services, which may in itself stimulate competition amongst firms. Therefore, making the requirements mandatory whilst expressing the requirements in a principles-based manner, should achieve the objective of greater comparability (through greater transparency) without stifling price innovation.

²² The Legal Services Ombudsman, in its *Consultation Response Regulatory transparency measures: SRA, BSB, CLC, CILEX, IPReg, MoF* stated, "We have found that complaints about costs consistently rank within our top five areas of complaint every year. This includes 'cost information deficient' and 'costs excessive', of which the former is particularly pertinent to these measures. While the percentage of complaints about costs have decreased somewhat over the past four years, they still account for around 20% of complaints to the Legal Ombudsman (LeO)."

- 128. Finally, since the Guidance is already in place, the risk that making the requirements mandatory will act as a barrier to entry into the market seems low.
- 129. RO8 - promoting and maintaining adherence to the professional principles – professional principle (a) is that “that authorised persons should act with independence and integrity;” making the transparency guidance mandatory, supports the principle of integrity, since openness about costs is a key means by which integrity is demonstrated.

3.4.4 Costs and benefits

- 130. IPReg's guidance on transparency has been published since May 2019 and the attention of those enquiring about registration is drawn to the guidance. Although, of course, the guidance is not mandatory, IPReg already expects that the guidance is taken account of by firms in their dealings with consumers and small businesses, therefore the costs to firms that are already following the guidance should be minimal.
- 131. One benefit to firms from greater transparency is that there is a substantial amount of research which shows that providing better information about price and services is likely to have commercial advantages for law firms.
- 132. Consumers and small businesses should also benefit from the increased transparency that the proposed change is expected to bring. For example, greater clarity in terms of the explanation of pricing structures may assist those from a variety of educational backgrounds.

3.4.5 Impact on equality and diversity

Disability

- 133. Given the fact that IPReg already has guidance on transparency, we have not been able to identify any significant impacts (positive or negative) on diversity caused by the proposed change. However, the imposition of mandatory transparency requirements should encourage firms and attorneys to explain with greater clarity their charges, etc. This may assist those who have dyslexia or difficulties in concentrating, for whom complex client care letters and terms and conditions may be difficult to read.

3.5 Practising categories including sole traders

3.5.1 Background

- 134. The background to the proposed change is set out in the consultation paper. IPReg has seen significant shifts in the ways in which individuals practise, which is a trend across not just patent and trade mark attorney firms but also in SRA-regulated firms, in which IPReg-regulated attorneys practise.
- 135. These changes include the increased use of self-employed consultants in addition to, or as an alternative to, employees. We also have a small number of sole practitioner unincorporated firms which employ others.

136. In addition, other regulators have changed their approach to practising categories and the requirements relating to them²³.

3.5.2 *Proposed changes*

137. The proposed changes are set out in detail in the consultation paper. The changes are intended to ensure that the categories reflect both new ways of working and the risks associated with them. The PII requirements for the new practising categories, reflect the risks associated with them.
138. In addition, IPReg's regulatory requirements, in turn, are drafted to reflect the risks posed by the different practising categories.
139. The financial impact of the new practising categories has yet to be determined, i.e., IPReg is not consulting on the fees associated with the practising categories at this time. Subject to the outcome of the consultation, any changes are not anticipated to take effect until the 2024 practising fee renewal exercise at the earliest.

3.5.3 *Regulatory objectives*

140. RO1 - Protecting and promoting the public interest – it is in the public interest that IPReg's practising categories reflect new ways of working and are, so far as possible, future-proofed. Regulators need to ensure that their regulatory arrangements reflect the realities of the market.
141. It is also in the public interest that IPReg's register clearly explains to those who search the register – consumers, other regulators, etc., - the manner in which an individual is practising.
142. RO4 – Protecting and promoting the interests of consumers by providing greater clarity as to the capacity in which an attorney is practising. The CMA's study made clear the information asymmetry between consumers and small businesses, and legal services providers. Consumers are better protected when they are in a position to make informed decisions.
143. Those falling within Fee Risk Rating 3 [insert link to explanation] (attorneys not providing services to the public) are:
- In-house attorneys – whose clients are their employer or companies within the same group. These companies are protected against the risks of negligence by their in-house solicitors by their own errors and omissions insurance;
 - Attorneys not in active practice – these attorneys should not be offering legal services to consumers/small businesses. If an attorney were to offer legal services to the clients whilst in this category, they may be subject to disciplinary action and the

²³ For example, in January 2019, the SRA changed its approach to sole traders by treating the practice of a sole practitioner in the same manner as any other form of firm. Subsequently, in 2019, the SRA introduced a new category of practice for freelance solicitors. As a result of these changes, the SRA also reviewed its requirements in relation to professional indemnity insurance. A key element of the SRA's requirements related to whether a solicitor was providing services to the public or a section of the public, since this would be a significant indicator of risk.

- clients may, depending on the circumstances, be protected by IPReg's compensation arrangements;
- Attorneys consulting to one or more third party commercial enterprises (i.e., not the public) – IPReg's expectation is that such attorneys would be covered by the professional indemnity insurance of the firms for whom they are consulting and would be named on the policy schedule. Clients would therefore not be exposed by the fact that the consultant did not have their own PII (where a consultant also had their own clients, they would fall outside this category);
 - Attorneys based overseas and providing services to non-UK clients or in relation to non-UK patent/TM services – we would expect these attorneys would be subject to any PII (or its equivalent) requirements of overseas regulators.
144. On the basis of the above, the assessment is that any additional risk to consumers caused by the fact that they will not be required to have PII is not significant.
145. RO5 – Promoting competition in the provision of services – IPReg considers that, by removing the requirement to have PII for attorneys consulting to one or more third parties, and not providing services to the public, competition will be stimulated. Also, the new practising categories and the associated PII requirements may have the effect of removing perceived barriers to entry.
146. RO6 – Encouraging an independent, strong, diverse and effective legal profession – the new ways of working reflect the diversity of legal services providers. The new practising categories will encourage these new ways of working whilst ensuring that the primary risk (the provision of services to the public) is mitigated.
- 3.5.4 Costs and benefits**
147. At this stage, it is not possible to quantify the direct costs to attorneys of the changes to the practising categories. IPReg's expectation is that some individuals/ (sole practitioner) firms may benefit from the changes to practising categories, whereas others may experience a slightly higher level of fees. These will be explored in depth when IPReg consults on the new fees for the practising categories, which is not expected to be before the consultation on the 2024 fees.
148. The other direct cost relates to PII. For those attorneys/firms which are no longer required to have PII, the cost of practising will be (significantly) reduced.
149. The benefits to attorneys and firms are set out above.
150. Consumers – our assessment is that there may be some impact to consumers caused by the changes to the practising categories, if any increased costs are passed on to consumers. At this stage, we do not have sufficient information to be able to assess the likelihood of this happening.
151. Consumers will benefit, as explained above, from greater clarity concerning the manner in which attorneys are practising.
152. Regulators will also benefit from the greater clarity in the practising categories and the information provided on IPReg's register, for example, where they are asked to approve individuals as managers or owners of other regulated firms.

3.5.5 Impact on equality and diversity

Age and gender

153. The removal of potential barriers to entry caused by unnecessary PII requirements may facilitate more flexible or less conventional working practices or business structures. This may have a positive impact on age and gender, those working part-time, those who might want to practise as a consultant in the later stages of their career and those who have experienced barriers to more conventional forms of practice.
154. We do not have any evidence which suggests this proposal will have an adverse or a positive impact on the other protected characteristics.

3.6 Disciplinary policy and process

3.6.1 Background

155. Disciplinary action against attorneys and their firms is relatively rare, as is the level of complaints received by firms. Details of disciplinary action are published on IPReg's website and figures are detailed in the Annual Report.
156. Where it appears that IPReg's regulatory arrangements have been breached, the matter can be referred to the Complaint Review Committee, which then considers whether there is a *prima facie* case to be answered. The CRC may then:
 - close the case;
 - deal with it summarily; or
 - refer it to a full disciplinary hearing before the Disciplinary Board.
157. On average, IPReg brings three disciplinary cases a year. In 2020, IPReg received or initiated complaints against 10 regulated persons²⁴, all of whom were registered attorneys or firms. Two cases were determined by the Disciplinary Board and one by the CRC. As at publication, the CRC has determined two cases. The other seven were closed because the evidence did not demonstrate a breach of any of IPReg's regulatory arrangements.
158. In the last two years, only one case related to client money, and this matter concerned a failure to account to a client for client monies.
159. Reports on IPReg's disciplinary action are published on the website.
160. There have been no appeals from IPReg's decisions to the First Tier Tribunal in the past eleven years.
161. From the above it will be clear that, IPReg's disciplinary policy and process affects a relatively small number of attorneys/firms. Nevertheless, given the potential consequences for attorneys and firms, it is essential that these are dealt with in a manner which adheres to the principles of natural justice, complies with the legislation governing IPReg, follows best practice and is efficient.

²⁴ See IPReg's Annual Report for 2020, pages 10-11.

3.6.2 *Proposed changes*

162. The proposed changes are set out in the consultation paper. In summary:
- Disciplinary proceedings will follow a four-stage process – Internal Assessment, Case Examiner Consideration, Disciplinary Hearing, Appeal;
 - Decision makers will be independent from IPReg policy-makers;
 - IPReg is consulting on whether it needs the power to impose interim orders and case examiners, and have a wider range of consensual disposal options;
 - Appeals of licensing and registration decisions remain unchanged, i.e., they will continue to be reviewed by the respective regulatory Board, with an appeal to an Independent Adjudicator and final appeal right to the First Tier Tribunal;
 - IPReg will be publishing guidance on its decision making, indicative sanctions, and publications policy

3.6.3 *Regulatory objectives*

163. RO1 - Protecting and promoting the public interest – one of the ways in which public confidence in regulation is maintained is through an efficient and effective disciplinary process. The public interest is also served by disciplinary proceedings which are demonstrably fair, since this helps to maintain confidence in regulators.
164. RO4 – Protecting and promoting the interests of consumers – the proposals will demonstrate to consumers that misconduct will be identified swiftly and addressed efficiently.
165. RO6 – Encouraging an independent, strong, diverse and effective legal profession – IPReg's proposals to widen its options in the manner in which it addresses disciplinary matters should encourage a strong and effective legal profession by increasing IPReg's enforcement options from removal and disqualification at one end of the spectrum, through to more remediation-focussed outcomes at the other.
166. IPReg's experience of investigating complaints and taking disciplinary action has shown that the current arrangements can, at times, be disproportionate and lack the flexibility an agile regulator needs to be able to target action in a consistent way. Our proposals for more options to resolve cases by mutual consent address this and allow for a more efficient and proportionate outcome focussing on remediation.
167. RO8 - promoting and maintaining adherence to the professional principles – one of the wider objectives of disciplinary proceedings is that those whom IPReg regulates are encouraged to adhere to the professional principles of independence and integrity, conducting work to a proper standard, maintaining client confidentiality, etc.

3.6.4 *Costs and benefits*

168. In its discussions on its proposals, IPReg has not identified any additional costs to those subject to disciplinary proceedings. In fact, having a greater number of options for disposing of matters, may mean that some matters are settled before the matter goes to a disciplinary hearing, undoubtedly providing a more cost-effective enforcement outcome.

- 169. IPReg's attorneys and firms as a whole may experience a small rise in costs associated with the use of appropriately trained independent external examiners but this would be dependent on the cost implications of using independent examiners and the number of disciplinary cases; as stated above, the number of cases each year is low. Such a cost would also be offset by the removal of the Complaint Review Committee model comprising three IPReg Board members who are paid for their time (and in some cases, travel) outside of their core Board duties, and an independent legal adviser, therefore there may not be any overall increase in costs.
- 170. There may also be additional costs to IPReg associated with the introduction of interim orders (including the costs of training decision-makers). If such a power were never to be exercised, this could be a wasted cost. However, if the need were to arise, this power may benefit consumers by enabling IPReg to act swiftly to protect clients and their interests. At this stage, it is not clear that any benefit from interim orders would outweigh the costs.
- 171. In general terms, however, IPReg will benefit from the ability to respond more flexibly to disciplinary proceedings. Increased efficiency in disciplinary matters should also help IPReg to use its resources more effectively. The wider range of options may also assist IPReg in dealing with cases involving other regulators, such as the SRA.
- 172. Finally, there is always the risk that any increase in IPReg's practice fees associated with disciplinary action will be passed on to clients of firms.
- 173. The benefits to those subject to disciplinary action are independence of decision-making, separating the role of IPReg Board members as policy makers from the role of enforcement decision-makers in line with best regulatory practice, increased efficiency as a result of the wider range of options available to IPReg at an earlier stage, and increased guidance to aid understanding of the disciplinary proceedings.
- 174. The benefit to consumers of a better enforcement process is that it is likely to be quicker overall and their concerns can be addressed at a much earlier stage in the process. More nuanced resolution powers should also be more effective at remediating poor practice than disproportionate disciplinary measures which may focus more on punishing past misconduct.

3.6.5 Impact on equality and diversity

- 175. The changes to disciplinary proceedings are likely to have a positive impact on equality and diversity. For example, using external decision-makers may help to prevent unconscious bias in the disciplinary process.

Gender, gender transition, age and disability

- 176. In addition, having a wider range of options for dealing with matters, including consensual disposal options should assist IPReg to respond fairly to attorneys whose personal circumstances may have contributed to a particular situation. This may have a positive impact on the protected characteristics of gender, gender transition, age and disability.
- 177. Further, additional guidance should assist those with particular vulnerabilities to go through the proceedings.

178. We do not have any evidence which suggests this proposal will have an adverse or a positive impact on the other protected characteristics.

3.7 Multidisciplinary practices

3.7.1 Background

179. The Legal Services Act 2007 (LSA) permitted firms to have external (non-lawyer) ownership and/or management. The ability to establish Multidisciplinary Practices (MDPs) offering a variety of services, including regulated (e.g., legal, accounting, financial services) and unregulated activities, was one of the major drivers for the LSA, as it represented a significant liberalisation in the delivery of professional services in the England and Wales²⁵.
180. IPReg currently restricts the non-legal services of the firms which it regulates in the following ways²⁶:
- (i) the non-legal services offered by the firm/sole practitioner must be ancillary to the legal services; and
 - (ii) no firm/sole practitioner may conduct certain types of legal service such as criminal law; family or matrimonial law; conveyancing other than conveyancing of intellectual property rights; personal injury litigation.
181. These restrictions were intended to limit the types of services provided by the entity to those which IPReg had the expertise to regulate, which is permitted under the LSA, and also reflected the professional indemnity insurance available at the time.
182. While not a complete prohibition on other non-legal services, this creates a barrier to both potential and existing entities seeking to offer an innovative multi-disciplinary service to consumers, providing a mixture of legal and non-legal services.

3.7.2 Proposed change

183. IPReg proposes to remove the limitation on non-legal services, i.e., the rule that they be limited to those ancillary to the legal services. However, IPReg intends to retain the current restriction which means that it will not register a body which conducts certain activities including criminal law, family or matrimonial law, conveyancing other than conveyancing of intellectual property rights and personal injury litigation.²⁷

3.7.3 Regulatory objectives

184. Allowing MDPs is likely to have the following impacts on the regulatory objectives.
185. RO4 - protecting and promoting the interests of consumers – it is very much in the interests of consumers that they have the ability to engage firms which offer their clients a variety of services (e.g., legal and accounting). This may be particularly true of smaller to mid-range clients who may benefit from cost efficiencies involved in purchasing multiple services. In addition, MDPs would be able to leverage knowledge about their client gained from one form of service, to assist in the delivery of another service (within the constraints of confidentiality obligations) and the overall quality of services to clients may improve due to the level of

²⁵ The SRA currently authorises a number of entities which would be considered to be MDPs.

²⁶ See Annex A of the IPReg Registered Bodies Regulations 2015 (RBRs).

²⁷ See Regulation 3.1 of the RBRs for the full list of restricted activities.

understanding about the client which an MDP would have from offering different services.

186. In the consultation paper IPReg highlights a number of potential regulatory challenges for MDPs, i.e., conflicts, confidentiality and PII. This is because, for example, attorneys are required to maintain client confidentiality which may conflict with the nature of an MDP which intends to offer a “one-stop shop” to its clients in relation to various activities (e.g., legal and accounting). In addition, MDPs may have to comply with different and potentially conflicting regulatory requirements, meaning that the entity would have to determine whose rules applied to which activities. This can, to some extent, be overcome by working with other regulators to understand and address regulatory overlaps and conflicts.
187. MDPs may also face challenges in relation to the maintenance of legal professional privilege and contagion risk, i.e., the quality of its legal services may suffer due to financial issues associated with its non-legal services. These risks, however, can be assessed at the authorisation process and through supervision.
188. In relation to the legal services, as with any other firm, consumers would be protected by IPReg’s compensation arrangements and one of the reasons for the introduction of the regulatory sandbox [insert link to CP] is to address the possibility that MDPs might not be able to obtain PII from the current participating insurers.
189. RO5 - promoting competition in the provision of services – permitting MDPs would open up significant opportunities for firms, which could offer a variety of services to businesses including the protection and exploitation of intellectual property, but also, for example, accounting or financial services. In our discussions with firms, it is evident that they are looking at new ways of working and new client offerings.

3.7.4 Costs and benefits

190. The costs for MDPs would include the need for additional policies, systems and controls related to managing the specific risks of being an MDP. These costs would only be borne by the MDP itself, rather than all firms.
191. IPReg currently assess the costs associated with regulating different types of firms and this would be considered as part of IPReg’s annual consideration of its fees, if there were evidence to suggest that there was a significant cost differential associated with this type of firm, for example:
 - a need for additional resources required for authorising new MDPs; or
 - specific risks associated with a particular MDP necessitating a greater level of supervision of that firm.
192. Unlike firms authorised by the SRA or the ICAEW, MDPs authorised by IPReg intending to conduct financial services would not qualify to be exempt professional firms under Part XX of the Financial Services and Markets Act. Part XX permits firms authorised by specified regulators to conduct certain limited financial services without the need to be authorised by the Financial Conduct Authority (FCA). Therefore, such an MDP would face additional costs (i.e., the costs of being authorised by the FCA) if it were to be authorised by IPReg, that it would not have to pay if it were authorised by the SRA. If interest were shown in firms offering financial

services, IPReg could consider the merits of being designated as a professional body under section 326 of the Financial Services and Markets Act 2000.

193. The benefits for firms relating to MDPs would be significant as they would encourage innovation, facilitate the offering of new services and remove a barrier to entry to the legal services market in terms of firms regulated by IPReg.
194. Individual attorneys may also benefit from being part of an MDP, since working as part of an MDP may enable them to learn new skills, giving them a broader career path.
195. Consumers would also benefit from the ability to engage a firm which offered a variety of services, potentially at a reduced cost compared to purchasing each of those services separately.

3.7.5 Impact on equality and diversity

196. We do not have any evidence which suggests this proposal will have either an adverse or a positive impact on the protected characteristics.

3.8 Professional indemnity insurance

3.8.1 Background

197. The background to this is set out in the consultation paper and includes: the hardening of the PII market and the limited options for PII for firms seeking authorisation by IPReg.

3.8.2 Proposed change

198. The proposed changes are discussed in the consultation paper. In summary, these are:
 - PII is only required for all those providing services to the public;
 - consultants will no longer be required to have PII if they are not providing services directly to the public;
 - for those ineligible for PAMIA (including those with more than 50% non-attorney ownership or are providing a broader range of services than PAMIA permit) and who are unable to get PII with a qualifying insurer – IPReg is proposing to develop a regulatory sandbox.

3.8.3 Regulatory objectives

199. RO1 and RO5 – protecting and promoting the public interest and promoting competition in the provision of services – the regulatory sandbox will assist firms who are ineligible to obtain PII from PAMIA whilst at the same time ensuring the protection of the public. The regulatory sandbox may also act as a stimulant to competition by removing a potential barrier to entry and supporting new forms of business, for example, MDPs.
200. RO3 – improving access to justice – the regulatory sandbox should remove a barrier to entry for firms which would be unable to obtain PII from PAMIA. This ultimately benefits clients by giving them a wider choice of firms from whom to receive legal

services. In the case of MDPs, such firms can offer packages of services which may previously not have been available in the market.

201. RO4 - protecting and promoting the interests of consumers – where an attorney or firm provides services to the public, they will be required to have professional indemnity insurance.
202. Section 4.5.3 addresses the risks to consumers and the coverage of the new proposals.
203. RO6 - encouraging an independent, strong, diverse and effective legal profession – the changes will arguably strengthen the legal profession by not imposing upon them unnecessary burdens in relation to professional indemnity insurance.

3.8.4 Costs and benefits

204. For the majority of attorneys and firms the PII requirements, and therefore the associated costs, will not change. There is a possibility that any reduction in premium income for PAMIA as a result of consultants not needing MTC-compliant PII might indirectly impact other firms if PAMIA were to increase their premia for other firms. However, since any reduction in impact is likely to be small, we do not consider this to be likely.
205. As stated above, for those attorneys/firms which are no longer required to have PII, the cost of practising will be (significantly) reduced.
206. The costs of being in the regulatory sandbox are not yet known and will need to be monitored if IPReg adopts this proposal. In general terms, the anticipated costs to the firm or attorney are:
 - the cost to IPReg of obtaining expert advice, which would be passed on to the application;
 - brokers or advisory fees to assist applicants to find PII on the open market and assess whether the coverage was appropriate.
207. IPReg intends the charges for being in the regulatory sandbox to be cost-reflective.
208. The benefits to those affected by the proposals are set out at section 3.5.4 above. The key benefit of the sandbox is that firms or attorneys who may previously have been unable to obtain insurance, and therefore have been prevented from being authorised, will be able to do so. This, in turn, will benefit consumers, giving them a wider choice of firms and practice models from whom to choose.
209. Firms may also benefit from the regulatory sandbox in the sense that it may be easier to switch regulator to IPReg.
210. IPReg's operating costs may rise depending on the number of firms or attorneys in the regulatory sandbox and the level of support required. At this stage, IPReg's assessment is that the demands on its resources due to the sandbox are unlikely to be significant, given the potentially small number of firms or attorneys to whom this would apply. In addition, if there were no interest or uptake, this would, in itself provide valuable data to IPReg about the state of the market and the appetite for new types of firm.

3.8.5 Impact on equality and diversity

Age and gender

211. As stated above, changes which facilitate new ways of working may have a positive impact on those working part-time, those who might want to practise as a consultant in the later stages of their career and those who have experienced barriers to more conventional forms of practice. See section 3.5.5 above.
212. We do not have any evidence which suggests this proposal will have an adverse or a positive impact on the other protected characteristics.

4 Post-impact assessment

213. IPReg intends to review its policy in relation to the proposed changes to the regulatory arrangements. The exact timeframes will be dependent on the changes that are implemented and will need to reflect both priority (in terms of consumer protection risks) and the lead time for any changes to take effect.

5 Human rights and competition law

214. The drafts for consultation of the proposed regulatory arrangements have been reviewed to ensure that they comply with human rights and competition law and do not unlawfully discriminate.

6 Preliminary conclusion

215. IPReg has determined to continue with the proposals set out in the consultation paper on the basis that any impacts can be explored in the consultation process, including the means of mitigating those impacts. No evidence of unlawful discrimination has been identified and the impacts are considered to be justified.
216. This is because the positives of the Review mean that it should continue. We have identified the impact that the implementation of Review may have on different groups and have taken steps to mitigate where necessary.