IPReg

Review of Regulatory Arrangements: proposals for change

Response to consultation

July 2022

IPReg Review of Regulatory Arrangements – response to consultation

Purpose

1. IPReg recently consulted on proposals for changes to our regulatory arrangements. This document provides a summary of responses to the consultation and our revised policy position having considered all of the views provided in consultation.

2. We are keen to be transparent about the way forward ahead of making an application to the Legal Services Board (LSB) for approval of our regulatory arrangements. We are therefore setting out our direction of travel for each of the areas we consulted upon together with any changes we plan to make in response to the issues raised.

3. Please be aware that the final regulatory arrangements are subject to approval from the LSB and are therefore subject to change. We welcome continued engagement with stakeholders throughout the process so please get in touch via info@ipreg.org.uk if you would like to speak to us.

Our consultation and responses

4. The consultation closed on 17 March 2022 and we received a total of 36 written responses from individual attorneys, firms, and representative bodies such as CIPA, CITMA, IP Federation, and the Legal Services Consumer Panel. We also received responses from specialist organisations such as IP Federation and Jonathan's Voice, a mental health charity focused on the IP sector. A summary of the range of respondents is provided below.

Type of respondent	Number of responses
Sole traders	1
In-house attorneys	5
Other individual attorneys	5
Firms	15*
Representative Bodies	3
Education providers	2
Consumer organisations	2
Other	3
* the number of attorneys at the 15 firms represent 27.4% of total attorneys on the register	

5. During the consultation we met with a selection of organisations, firms and individuals and held a joint webinar with CIPA and CITMA which was attended by 121 delegates. To ensure a broad a range of views as possible this summary includes the views expressed in these discussions as well as the formal written responses received.

6. We are grateful for the thoughtful responses to the consultation which have highlighted a number of issues for consideration. We received support for a number of key policy proposals including the definition of client money and arrangements for handling client money (including Third Party Managed Accounts) and our PII sandbox proposal. Our proposals for a more flexible approach to CPD received support in principle, particularly as the proposals allow attorneys to do training which is targeted to them. As anticipated several respondents were keen to see further information as to what some of the proposals will mean in practice.

7. In summary the general themes from the responses were:

    - IPReg's regulatory arrangements should reflect the specific risks of the IP legal services market which is largely business to business. A number of firms shared information on the make-up of their client base on a confidential basis which backed up the evidence we have gathered so far on the market composition, i.e. it is predominantly business to business.

    - The importance of impact assessment in relation to equality, diversity and inclusion and other factors such as mental health. A number of responses recognised the importance of diversity data monitoring but emphasised the need to be proportionate in our requirements.

    - A need for further guidance and information to support attorneys and registered firms in understanding what the requirements will mean in practice. It is our intention that this document together with the package of guidance we are developing will provide the clarity sought by respondents. This was highlighted as particularly important in those areas that will have the most impact on attorneys such as CPD and understanding obligations around the handling of conflicts of interest.

    - Some significant concern around how the Overarching Principles ("the Principles")[1] will be applied in practice and their role in the principles based approach that IPReg is adopting, including the intersection with other legal duties such as those provided by the Human Rights Act. We have explained our approach in more detail in this document, responding to the specific points made in the responses.

8. We also received some very helpful feedback on more technical aspects of the proposed regulatory arrangements, much of which is being fed into the development of our supporting guidance or in some cases resulting in amendments to the draft regulations. Any changes will be compiled in a "tracked change" version of the regulatory arrangements which we will publish when we make an application to the LSB to demonstrate the changes we have made.

[1] 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

9. In this document we set out the detailed feedback on each of our proposals together with how we intend to respond. We have also included at **Annex A**, a summary table containing the technical issues raised by respondents (not covered in the main response) and that we think it is important to explain how we have considered along with our minded to position.

Summary of changes following consultation

10. Following consultation we have decided to make the following changes to the draft regulatory arrangements in response to the feedback we received and other minor amendments to correct drafting errors:

    - Amendment to Principle 6 regarding equality, diversity and inclusion and revisions to the introductory statement to the Principles to clarify the circumstances in which they might apply outside of professional practice.
    - Amendments to the transparency requirements to clarify that we do not expect detailed financial accounts of any financial benefits to be provided to clients.
    - Amendments to the client money requirements to make clearer how they will apply in practice.
    - Amended the definition of client to include former and prospective clients where the context permits, this was raised by respondents specifically in relation to conflicts of interest.
    - Amended the introduction to the Code of Conduct to make clear that not all provisions will apply and are dependent on the context in which you are working (in response to feedback from in-house attorneys).
    - Introduction of a transitional period for the new CPD requirements to allow attorneys and regulated firms time to adapt to the new requirements.
    - Altered the requirement for all material risks to be identified, monitored and managed so that is refers to “material risks” rather than “all material risks”
    - Drafting amendments to the complaints requirements in the Code of Conduct to simplify and remove unnecessary references to an ADR scheme.

11. We have decided to conduct further consultation before introducing any new diversity monitoring requirements so that we can consider carefully the practicalities of how such an exercise is completed. IPReg remains committed to improving equality, diversity and inclusion and recognises the importance of data collection. We will be discussing with stakeholders the best way to gather data in the regulated sector.

12. Having considered the feedback received in relation to litigation skills, we have decided not to propose an immediate change to the current rule. Therefore someone qualifying as a patent attorney should within three years of the end of their first year of

registration, successfully undertake a course in basic litigation skills. We may return to this issue at a later date as part of our broader work on education and qualification.

13. Due to the discrete nature of these issues we are confident the decision to address them on a longer timeframe does not have a negative impact on the overall project.

Next steps

14. Some respondents, including CIPA and CITMA indicated a desire to see a further three month consultation on the final form of the regulatory arrangements. We have considered this suggestion and given the nature of the issues that have arisen in consultation and the changes we have made in response, do not consider that re-consultation is necessary. .

15. We intend to discuss the contents of this document with stakeholders ahead of the Board making a final decision on our application to the LSB in September 2022.

Summary of responses and our response

Overarching Principles and application outside of practice

Our consultation position

16. In the consultation we proposed the introduction of eight Principles which set out the ethical behaviours that IPReg expects all regulated persons to uphold.

Consultation views

17. Many respondents agreed with the content of the proposed Principles with one firm commenting that they cover "everything the profession should stand for." However a significant number of respondents expressed concern about the proposed application of the eight Principles to the private life of regulated attorneys. Reasons given by those opposing their application beyond professional practice included:

- the legal basis for IPReg's policy position – whether the sector-specific legislation gives us the vires to do this, particularly after the High Court decision on Beckwith;
- potential conflicts with the wider legal framework and Equality and Human Rights such as the right to a private life (particularly with regards to Principle 6 : the requirement for regulated persons to "act in a way that encourages equality, diversity and inclusion" – and in particular the use of "encourages", which is consistent with our obligation under the Legal Services Act regulatory objective));
- the proportionality of IPReg applying its resources to what are considered to be private matters;
- the extended scope for IPReg to bring disciplinary action and the increased risk of vexatious complaints being made by those outside of the attorney's professional sphere (for example those involved in a private dispute such as divorce or custody proceedings); and
- concern from IP Inclusive that the extension of the current approach could alienate people to diversity and inclusion initiatives and therefore set back some of the progress that has been made.

18. There was more agreement as to the application of Principle 1: the requirement to "act in a way that upholds public confidence in the regulated profession" to the private life of attorneys. Several respondents noted that this should be the test by which the other Principles are applied, i.e. if the behaviour concerned is likely to impact on public confidence then that is a valid concern for IPReg as the regulatory body.

19. Specific concerns were raised in relation to Principle 6 : the requirement for regulated persons to "act in a way that encourages equality, diversity and inclusion." Several individuals highlighted the potential conflict between this duty and freedom of thought/belief in the context of the right to a private life. One respondent suggested that a more appropriate approach might be to include a requirement in the Code of

Conduct akin to that of the Solicitors Regulation Authority (SRA) for solicitors - *You do not unfairly discriminate by allowing your personal views to affect your professional relationships and the way in which you provide your services.*

20. IP Inclusive recommended that IPReg consider removing the words "in all aspects of their life, be this within professional practice or private life" from the Overarching Principles, and instead adopt a model similar to that used by the SRA where a separate enforcement strategy is in place which makes clear that any action is context-dependent. IP Inclusive also suggested amending Principle 6 to make clear it applies to the *encouragement* of equality, diversity and inclusion within the regulated professions, as this is more aligned with IPReg's remit.

21. A small number of respondents queried the application of Principle 4: the requirement to "be honest" to the private life of regulated attorneys citing examples such as infidelity as irrelevant to an individual's professional standing.

22. CIPA called on IPReg to explain why the Principles are necessary and why in particular they are appropriate to patent and trade mark attorneys. CIPA also suggested that IPReg should amend the preamble to reflect the position provided in our joint webinar, i.e. we would only investigate in relation to private life where there is publicly available evidence that would call into question the suitability of the individual to be on the register. If this was made clear then CIPA indicated it could agree to the Principles.

23. CITMA highlighted that the proposed approach "raises some interesting questions about the scope of regulation and how far-reaching provisions should be." Its response considered there to be some merit in the provision, particularly where the behaviour clearly risks undermining the trust in the individual or profession as a whole but would welcome some examples in guidance of where and how this might occur.

24. PAMIA warned in its response that PII may not cover defence costs in relation to cases concerning private life.

25. Nottingham Law School noted that the Principles were consistent with the Regulatory Objectives and the approach taken by the SRA, Bar Standards Board (BSB) and Charter of Core Principles of the European Legal Profession and Code of Conduct for European Lawyers (2018). The Principles were also considered to make supervision of IP professionals within an organisation regulated by another legal regulator viable and potentially support competition between the different branches of the legal profession as well as making it more accessible to members of the public and those who instruct attorneys.

26. The Legal Services Consumer Panel (the Consumer Panel) response noted that many of the Principles reference the statutory objectives for regulation in the Legal Services Act. The Consumer Panel also considered that there should be a broad principle in relation to legal consumers being treated fairly which would give context to the proposed mandatory transparency requirements.

IPReg response

27. The Principles flow from the regulatory objectives (which include the professional principles) in the Legal Services Act 2007[2]. The Principles are drafted broadly to set out the framework of behavioural standards that are expected of all regulated persons.

28. The issue of how this relates to private life is clearly complex and has the potential to affect all attorneys. Concerns as to how IPReg might enforce the Principles in an attorney's private life have been made very clear to us through the consultation. This is particularly the case in terms of the perceived conflict with an individual's rights under the Human Rights Act (1998).

29. Having considered the responses, we remain of the view that it is important for IPReg to have the ability to act in circumstances where an attorney's behaviour outside of practice is sufficiently egregious that it impacts on public trust and confidence in regulated attorneys or where conduct in a private setting has clear ramifications for an individual's suitability to practise in a regulated profession, such as dishonesty, racist behaviour or criminal activity.

30. It is important to note that in enforcing our regulatory arrangements we must at all times act in a way that is lawful. Following the consultation we re-checked the legal position and considered our approach in line with the following principles which have been taken from the case law[3] and which we would have to have regard to in deciding whether to pursue a complaint about an attorney's behaviour:

    - The Core Regulatory Framework in itself would be not be unlawful simply because it extended beyond professional practice. In the case of IPReg the power under each Act is to make regulations that include provisions "regulating the practice, conduct and discipline of registered persons or regulated persons." There is no express limitation on the scope of that power. "Conduct" has a well- established meaning that extends into non-professional activity as is exemplified by the relevant case law and the regulatory arrangements of almost all regulators. As the Courts observed in Pitts and Tyas: *"In my view, the new Standards do not purport to extend the definition of "misconduct" as it has been understood by all concerned on the basis of well-established authority, nor do they have that effect."*

    - However, that does not mean that provisions in the Core Regulatory Framework can be interpreted and enforced in a manner that is a breach the ECHR and in particular Articles 8 and 10 (right to a private life and freedom of expression). As the Courts observed in Pitt and Tyas each case will turn on its own facts. The conduct should be "qualitatively and demonstrably relevant" (see Beckwith) to the individual's professional life.

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[3] R (Pitt and Tyas) v General Pharmaceutical Council [2017]
Ngole v University of Sheffield (Health and Care Professions Council intervening) [2017]

31. To ensure that it is clear that we will take into account relevant caselaw in deciding whether to investigate a complaint, we have therefore amended the introduction to the Principles to make clear that our interest in matters outside work will be context specific and based on the facts, i.e. there has to be a meaningful impact on the professional practice of the individual.

32. We are developing guidance that will provide examples of what this might look like in practice including the enforcement and interpretation of the Principles.

33. We are also amending the wording of Principle 6 to take into account the very real concerns that IP Inclusive has about the potential negative impact on diversity and inclusion initiatives in the sector without reducing our own activities to encourage equality, diversity and inclusion (including the introduction of a diversity monitoring requirement in due course). Where a complaint is received that suggests a regulated person may have breached the requirement, there would have to be a link to their practice as a regulated person and/or impact on the profession.

Code of Conduct

Our consultation position

34. We also consulted on a new Code of Conduct. This supports the Principles by setting out specific provisions targeted at the risks to the Regulatory Objectives (while remaining principles based in approach). Our proposed approach to the Code of Conduct was to 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 where the context applies - employees[4]. We also proposed that regulated persons should be responsible for the work of those they employ or sub-contract with.

35. We stated our expectation to develop supporting guidance to help attorneys make decisions as to how these obligations apply in practice based scenarios and sought feedback on where guidance would be useful.

Consultation views

36. We received a range of feedback on the draft Code of Conduct both in general terms and on specific provisions. A small number of firms were concerned about the additional administrative burden imposed by some of the new requirements and the potential advantage this gives to competitors, including unregulated firms or those under other

[4] Section 176, LSA 2007 provides that employees are regulated persons if they are employed by an authorised person

regulatory regimes where the requirements are considered to be less onerous (for example German firms).

37. CIPA considered that too much has been added to the Code of Conduct which makes it overly burdensome, including: the requirements in relation to sub-contractors, reporting breaches of other regulatory regimes, publication requirements and complaints being dealt with free of charge. CIPA noted that the rule on confidentiality ought to apply to all clients including past and future. They also highlighted that the position on liens needs clarification.

38. CITMA considered that the Code of Conduct as written should provide overall greater flexibility to those regulated by IPReg. CITMA welcomed the proposed reduction in prescriptive rules although observed the possibility that some of the provisions could become 'grey areas' where further guidance is needed once the rules bed in. Its response provided feedback on a number of specific points including the feasibility of the requirement to manage "all material risks" and the proportionality of the requirement for IPReg to be notified in all circumstances where client money cannot be returned to the client including how it will work in practice.

39. The IP Federation representing in-house attorneys raised concerns about the applicability of the proposed requirements to in-house attorneys more broadly. It made specific points in relation to the removal of the definition of "corporate work", the absence of a definition of "practice" and what the definition of "client" means in an in-house context (for example in relation to complaint handling). The IP Federation also queried why attorneys would not be able to conveyance other physical property in relation to IP if their employer requires them to.

40. One firm welcomed the proposed changes which it considered will improve the overall regulatory structure without any major negative impact on the profession. The response emphasised the fact that many IPReg regulated firms employ solicitors and are therefore choosing between IPReg and SRA regulation. It is therefore important to ensure that IPReg regulated firms are not at a disadvantage compared to those regulated by the SRA. An example given was in relation to litigation insurance, an Financial Conduct Authority (FCA) regulated activity which SRA regulated firms are allowed to provide to their clients in certain circumstances.

41. Nottingham Law School considered that the proposed Code is clear and corrects inconsistencies in the current regulatory arrangements. It considers that a principles based approach allows professionals to concentrate on general themes common to modern Codes of Conduct for other professionals. However it said that at points the Code is too skeletal and may confuse both attorney and client.

42. IP Inclusive was "encouraged by the use of clear and inclusive – in particular gender neutral – language throughout the consultation paper and proposed regulatory arrangements." The response noted the impact of this on the "accessibility and inclusivity of the patent and trade mark professions." IP Inclusive made a number of comments on the Code including the proposed requirement for diversity data

monitoring. It warned that publication of firm level data could be generally problematic due to the size of many businesses, suggesting that evidence gathered centrally through IPReg is likely to be more useful. Monitoring and reporting on data is one of the six commitments entered into by IP Inclusive Charter signatories - but qualified "using measures and at intervals that are appropriate to their size and nature".

43. Respondents to the consultation indicated a number of areas where further guidance would be useful. Those most commonly suggested included:

- Application of the Overarching Principles to private life – particularly with regard to equality, diversity and inclusion. Several respondents commented that real world examples would be needed. Nottingham Law School noted that it is difficult to be definitive in respect of the borderline between the professional and the personal and therefore additional guidance and case studies are needed to assist interpretation and underpin the rationale.
- Diversity data monitoring – several respondents suggested that guidance and support will be necessary when we formulate prescriptive requirements. IP Inclusive make some helpful suggestions for what needs to be included, e.g. type of data and format of publication including templates.
- One firm suggested we develop an online Q&A resource developed over time and based for example on actual queries received by IPReg or as an alternative a Q&A section in the guidance.
- Conflicts of interest
- CPD requirements
- Scenarios in relation to the new client money requirements

IPReg response

44. We are grateful to consultation respondents for taking the time to provide such useful feedback on the draft Code of Conduct. As a result we are minded to make a number of amendments which are summarised in the table at Annex A. Much of the feedback is also going into the development of a suite of guidance which will cover a number of areas including CPD requirements, conflicts of interest, client money and application of the Principles. We have set out in this document some of the information that will be covered in the guidance.

45. Due to the feedback received in relation to the diversity monitoring requirement and the need to consider carefully the practicalities of how such an exercise is completed, we have decided to conduct further consultation before introducing any new diversity monitoring requirements. IPReg remains committed to improving equality, diversity and inclusion and recognises the importance of data collection. We will be discussing with stakeholders the best way to gather data in the regulated sector.

Client Money

Consultation position

46. In the consultation we proposed a definition of client money which means "money held or received in connection with work undertaken for a client, excluding any advance payments received where the terms have been agreed."

47. In effect this would mean that money paid in advance for services (including disbursements paid on the client's behalf) would not have to be paid into client account thereby reducing the administrative burden on firms.

48. Where firms continue to hold client money, they would be required to keep it separate from money belonging to the attorney or firm and return it promptly to the client when no longer required. The underlying principle in our approach is that it should always be clear who the money belongs to. Clients must also be made aware of where their money is being held and the regulatory protections afforded to them.

49. Under our proposals, attorneys and firms would also have the option to use a Third Party Managed Account (TPMA) which provides the additional safeguard of being held by a third party. We said that any TPMA that was used must be regulated by the FCA and reasonable steps must be taken to ensure the client is informed and aware of the contractual arrangements in place. This includes an obligation to ensure clients understand whether any fees are payable for the account, who is responsible for paying them and their right to terminate the arrangement.

50. We also introduced a new provision to deal with the event of there being an unclaimed balance in client account with the option for attorneys to donate the money to charity where it is below a certain amount and the client cannot be located.

51. Finally, we proposed a new requirement for attorneys to inform IPReg when they were holding client money. This is to help us to build a risk profile of our regulated community and therefore inform our wider work such as that relating to the compensation fund.[5]

Consultation views

52. Almost all of the attorneys and firms that responded to the consultation welcomed the proposed change to the definition of client money. PAMIA was also supportive of the proposal. The new definition was considered by those respondents to provide clarity, more accurately reflect the realities of practice and therefore reduce the administrative burden. A number of respondents called for clarity on the status of certain types of money such official fee refunds.

53. CITMA considered the proposals to be "sensible and proportionate", noting the complexities of the current arrangements as problematic for attorneys. CIPA supported

[5] The LSB approved alterations to IPReg's compensation arrangements in October 2021. For more information see LSB decision notice here

the change in principle but suggested the proposed definition is potentially unclear and provided alternative drafting for us to consider. CIPA also highlighted a technical point in relation to the term “disbursements” which has a specific definition in relation to VAT in the UK, suggesting that it may be better to use the term “expenses” in relation to the costs that attorneys incur in the course of acting for their clients. CIPA suggested that this could also assist with negative experiences in relation to foreign exchange uplifts.

54. The Consumer Panel welcomed the option of TPMA which it considers to offer the "greatest amount of protection for consumers money". A small number of firms also expressed interest in finding out more about the costs of TPMA.

55. In terms of risks to consumers, the Consumer Panel noted that there is some evidence that claims of negligence or wrongdoing in this area of law are rare however there is a need to balance the risks, i.e. there is a difference between paying money in advance and paying once the work is done. In the event the work does not get done the option to bring a claim or complain to the Legal Ombudsman are much more difficult and potentially time consuming. The Panel also highlighted the potential risk to client money if a firms becomes insolvent. Should IPReg proceed, the Consumer Panel suggested strict reporting requirements would be necessary for disbursements to ensure that consumers are notified when a payment is made.

IPReg response

56. We were pleased that most respondents were supportive of our proposals and in particular that they welcomed the proposed new glossary definition of client money and the flexibility that this new approach offers. In light of the comments received, we propose to slightly amend the definition of client money to clarify that the exception to the requirement to hold such money in a separate account applies to money received in advance for ‘costs’.

57. Client money will therefore be defined as money ‘heId or received in connection with work undertaken for a client, excluding any advance payments for *costs* received where the terms have been agreed’. We have already proposed in the glossary a definition of ‘costs’ which includes both ‘fees’ and ‘disbursements’ – both of which are in turn also defined. Any payments in advance for costs can therefore be held in the firm’s own account. We understand the comments made by the Consumer Panel about the risks to clients if money is held in this way – ranging from the risk of the firm becoming insolvent to delays in paying for disbursements promptly. Although we consider that these risks are, in practice, small, our supporting guidance will make it clear that under our rules, clients must be informed of the regulatory protections available to them and when requesting payment in advance of costs, attorneys must always act in the clients’ best interests and to provide a proper standard of service. Our guidance will also explain our expectations about what agreeing terms with your client means. It will set out briefly our expectations on how client money should be dealt with and how transactions recorded.

58. We have noted CIPA's comments on the specific VAT treatment of the term disbursements and their suggestion that we use 'expenses' instead. We consider, however, that the term is well understood by both attorneys and clients and will therefore proceed with the current glossary terms. As now, we expect that attorneys will continue to deal with their VAT and tax responsibilities in the appropriate manner.

59. We are pleased to note the support for our proposals to permit the use of TPMAs. We are developing guidance on our requirements which we will update as our knowledge develops. For that reason we intend to ask for a short confirmation in our annual return when our firms are using them.

60. We will no longer set any maximum amount of client money that can be held at any one time. We will ask you to confirm whether you have held client money during the preceding 12 months at the annual renewal of your registration so we can monitor the risks involved.

61. We have also clarified in our rules that client money must be held in a client account in the UK, aligning the requirements to our statutory framework.

62. In relation to our requirements on unclaimed balances we have reconsidered our proposed rule as we think our drafting could have been clearer. We have also refined our overall approach to the thresholds in light of the comments received. We are talking here about client money that cannot be returned to the client despite reasonable efforts to do so. In that situation, for an amount of less than £500, the unclaimed balance can paid to a charity of the firm's choice. We will not require the firm to notify us of any such payment although we will expect adequate records to be kept. For any such unclaimed balance of over £500, we will require firms to notify IPReg. Our supporting guidance will explain what steps are likely to be considered reasonable in light of the relevant circumstances of the matter.

Continuing Professional Development

Consultation position

63. In the consultation we proposed removing the current "hours-based" requirement and move to a more reflective model of CPD, targeted to the individual.

64. We sought views on this approach in principle and what might be helpful in terms of guidance and resources.

Consultation views

65. We received general support for a more flexible approach that allows attorneys to do the training which is necessary for them. Respondents asked for more guidance and clarification on the expected number of hours, what activities would 'count' and how CPD activity should be recorded. Several of the responses queried what monitoring and

compliance arrangements would be in place with some respondents (including CIPA) suggesting that a trial period could be useful to help identify and address problems with the new approach. It was also suggested that attorneys would benefit from a period of time where they could transition to the new approach without fear that they will be disciplined if they got things wrong. IPReg could then draw on real examples to provide guidance on our expectations.

66. The most commonly raised concern was the risk of placing additional burdens on attorneys, particularly in terms of recording CPD activities. Some respondents raised concerns that the removal of an hours-based requirement could lead employers to deprioritise or under invest in training for attorneys. A small number queried whether there was any evidence of problems with the current system and expressed concerns about the potential burdens of the new approach – particularly in terms of reflecting on what is required and recording CPD activity. Several respondents, including CITMA, suggested a hybrid approach could be helpful (where a minimum number of hours is given) – potentially for a transitional period.

67. Nottingham Law School provided some helpful feedback on our approach and the need to define the terminology and apply it consistently. It also suggested that CPD activities should include business management and supervision, noting that as attorneys become more senior and specialise, the breadth of their activity is likely to narrow.

68. The Consumer Panel suggested that CPD should move away from complete self-assessment to objective criteria, including a requirement to get feedback from third parties (such as clients and opposing attorneys where relevant).

69. IP Inclusive was supportive of the approach and the inclusion of “non-core” activities as part of CPD, including mental health and wellbeing, equality diversity and inclusion and unconscious bias training. The call to focus on mental health impacts was echoed by Jonathan’s Voice who suggested that mental health and wellbeing activities should be considered as “acceptable” CPD.

IPReg response

70. We acknowledge that an hours based system has some benefits not least that it provides a clear and easily understandable requirement. Nevertheless, we remain of the view that a move away from an hours-based requirement is appropriate and brings us more in line with regulatory best practice, both within the legal sector and more widely. The LSB has recently consulted on a Statement of Policy on continuing competence. We will consider carefully whether any further changes are required as a result of the LSB’s requirements once its final Statement has been published.

71. We have considered whether we should give an indication about any hours based requirements in the guidance that we will draft to accompany the new approach. The intention behind moving away from an hours-based approach is to ensure that attorneys maintain their competence by undertaking learning and activities in a way that is

relevant to them. The change reflects best practice and puts the responsibility for development on the attorney, each one of whom will have different development needs. As a regulator, we are not necessarily well-placed to indicate how many hours may be appropriate – particularly because the number of hours undertaken may change significantly from year to year based on the stage of an attorney's career, their practice sector and specialism or external influences such as legislation and case law changes. Also retaining an hours-based model, even as a guide, may discourage attorneys from thinking about their genuine development needs and particular areas of focus. We have therefore decided to proceed with the removal of any hours based expectations altogether.

72. In relation to terminology, we welcome the thoughtful response from Nottingham Law School and acknowledge that consistency is key in relation to how the new requirements are expressed. We understand the view in some of the responses that an "outcomes focused" approach is not quite the right emphasis. We are committed to providing support to attorneys and regulated firms and are therefore developing guidance on our requirements. This will include examples of good practice, although we are mindful of the need to find the right balance and avoid prescription. We also intend to host a webinar once the regulatory arrangements are approved by the LSB.

73. In response to the feedback received, we have decided that a transitional period of around 18 to 24 months will be appropriate. The precise period will be an operational decision once we have clarity on the timing of implementation following LSB approval. This would mean that where an attorney can demonstrate they have actively sought to engage in the new process, we would not expect to take enforcement action during the transitional period although we would not fetter our discretion to do so should the circumstances require it. Beyond the transitional period we intend to review and refine the new approach with the benefit of experience and feedback from the profession.

74. There is no reason why recording information about CPD will be unduly burdensome. In deciding what CPD activities are relevant to their career, it seems reasonable to expect attorneys to have a record of the CPD they have undertaken and the reason why they considered it was appropriate. We do not want to be prescriptive about the way such information should be recorded but the attorney can demonstrate compliance with the rules should IPReg ever seek confirmation.

Litigation Skills

Consultation position

75. In the consultation we sought 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). In practice these changes impact patent attorneys

because basic litigation skills training is already incorporated into the qualification pathway for trade mark attorneys.

76. We also sought views on whether any changes are needed in respect of advanced litigation skills.

Consultation views

77. Responses to this question were notably mixed with no clear consensus. There was a general recognition of the importance of all attorneys understanding the basics of litigation and the consequences for their clients of litigation. Respondents presented good arguments both for and against moving the training for patent attorneys to the pre-admission stage with others questioning the need for mandatory training at all. It was pointed out that some elements of the foundation patent exams include aspects of litigation. Some respondents also pointed out that imposing an additional qualification requirement around the time of the final Patent Examination Board (PEB) exams could place a significant level of pressure and stress on candidates. Others made the point that undertaking the training after a period of post-qualification was actually useful in terms of a "refresher" course.

78. Reasons given in support of moving basic litigation skills training to the pre-registration period included the fact that attorneys are authorised to conduct litigation upon registration and therefore should have received appropriate training before this point. Some respondents, including IP Inclusive, felt that moving the training would help to spread the burden in terms of cost and time. Nottingham Law School considered that on balance pre-registration would be preferable as in its experience students tend to do better on the course within the qualification process (while also noting that post-qualification training can be made to work). The Consumer Panel supported the proposal to make the requirement pre-registration on the basis that IPReg should ensure competence from day one and basic litigation skills are necessary for all attorneys. They also noted that enforcement would be easier with a pre-registration requirement. Those that commented on specific timing suggested it should be later in the training pathway and as close to qualification as possible.

79. In contrast, the PEB response was against the proposal to make litigation skills a pre-registration requirement. Its response set out that not all patent attorneys want to do litigation and it is very specialised so it should only be offered post-registration and only to those who want to do it. The PEB also noted that its foundation courses already cover the UK court system and litigation. Some other respondents, including regulated firms, suggested that it was not necessary at all. In terms of timing, some respondents pointed out that moving the course only moved the problem in terms of pressure and burden on individuals and the potential EDI impacts.

80. Few respondents saw a need for changes to the advanced litigation skills requirements. CITMA commented that the courses which deliver advanced litigation skills are of good

standing and cover the range of skills currently needed. It did however comment that this should be kept under review, especially in lights of the potential direct impacts of other developments such as the SQE[6].

81. CIPA and one firm suggested that the Higher Courts Advocacy Certificate and Higher Courts Litigation Certificate should be made independent of one another and should be able to be completed in any order. CIPA also noted the need to keep up to date with developments including the United Patents Court.

IPReg response

82. Having considered the feedback received, we have decided not to propose an immediate change to the current rule. Therefore someone qualifying as a patent attorney should within three years of the end of their first year of registration, successfully undertake a course in basic litigation skills.

83. The responses reflect the complexity of the issues at hand, and in particular the need to consider the broader matter of what is required at "day one" of registration as a registered patent or trade mark attorney. In terms of the regulatory risks identified, we have not received any complaints of attorneys acting beyond their competence in providing litigation services without sufficient training.

84. We may return to this issue at a later date as part of our broader work on education and qualification.

85. Nevertheless we wish to be very clear that no one should undertake litigation unless they have successfully completed a litigation skills course and that doing so would very likely be a breach of the requirement for attorneys to act within their competence and in their clients' best interests.

Transparency requirements

Our consultation position

86. In the consultation we proposed making the existing guidance on price and service transparency mandatory through the following requirements in the 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.

[6] The Solicitors Qualifying Examination, or SQE, is the assessment for all aspiring solicitors in England and Wales

- 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.

87. Our aim is for consumers 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.

88. In the consultation we asked for views on how the proposed transparency requirements might work in practice for both regulated attorneys and consumers of IP legal services. We also asked whether there are any particular elements of it that might be costly or difficult to implement.

Consultation views

89. Many of the firms that responded to the consultation claimed that clients do not want or need to know specific details, they just want the overall price. A number of responses reinforced the significance of IP legal services being mostly business to business, noting that sophisticated clients are well able to shop around and compare prices. The effort to provide the information required was not considered by these respondents to be proportionate to the client need. Concerns were also raised about commercial sensitivities of providing such information. Several respondents commented that the cost of administration would potentially be passed onto clients. Others queried the practicalities of the proposed requirements, for instance separating out bulk discounts across different clients over a different time period, with some respondents stating that this would be impossible.

90. CIPA considered the requirement to provide sufficient and clear information about costs may be difficult to achieve in some circumstances, for instance the costs may not be easily foreseeable. CIPA also commented that the client only needs to know the costs to them, they have no interest in knowing about referral or fee-sharing arrangements or how a firm makes money. CITMA raised a concern that the measures may not lead to a more accurately informed consumer as prices might appear high compared to the unregulated sector. IPReg should therefore do more to promote the benefits of regulation.

91. The Consumer Panel acknowledged in its response that IP consumers are generally sophisticated and repeat customers. Available evidence also shows that individual consumers of IP services are more likely to shop around for legal services compared to those shopping for solicitor services. Transparency is therefore important to support informed choice. The Consumer Panel also suggested that more work needed to be done on providing information about quality and not just price. A small number of attorneys and firms were supportive of a principles based approach whereby IPReg does not mandate precisely how transparency should be achieved. They considered that firms ought to be able to justify their prices and that consumers should be given this information to make proper choices. This view was echoed by the IP Federation,

particularly in respect of foreign fee uplifts. One firm noted that such an approach can be helpful at a later stage to minimise the number of bills that are queried.

IPReg response

92. The evidence we have received in relation to client type supports the view that the majority of clients of IP legal services are business clients and therefore very likely to be more sophisticated consumers than, say, those using solicitor services. However this does not include all clients and we consider that all clients are likely to benefit from increased transparency.

93. We have considered the broader proportionality point made by a number of respondents and the potential administrative burden of imposing new requirements on all firms. As stated in the consultation, we do not intend to prescribe how this is done. Nor are we prescribing the publication of price information on firms' websites. Based on the evidence we have seen, the more significant risk to consumers in the IP legal market is around the potential hidden costs.

94. In response to the points raised in the consultation we propose to clarify through an amendment to the relevant rule that the requirement for clients to receive an account of financial benefits (including but not limited to any commission, foreign exchange uplifts, discount or rebate received as a result of their instructions) does not require a detailed financial breakdown to be provided to clients. We therefore expect clients to be provided with meaningful information that helps them to make an informed choice about which firm to instruct. We also agree with those respondents that suggested the requirement would be clearer if it we move it from the client money section to the client care section of the Code. We agree that this will emphasise the importance of acting with integrity and in the client's best interests, which includes that firms must be able to explain any such financial benefits in a transparent way. In addition we will remove the reference in the rule to "disguised disbursements" which on further consideration did not provide sufficient clarity.

95. In practice this means that clients must be made aware of the firm's approach. For instance, on the point of separating out bulk discounts across different clients over a different time period, we agree that this would not be a targeted or proportionate regulatory requirement. Rather we would expect the client to be told that the firm does (or does not) get bulk discounts for certain types of work and that these are (or are not) passed on to clients. On this basis we do not expect the administrative costs to firms to be significant. Further, findings from the CMA review have shown that transparency can have positive impacts for businesses.

96. We do not agree that clients do not want or need to know specifics beyond the overall price. However, we accept that the level of information required is likely to vary from client to client. Larger commercial clients are likely to be in a strong position to request further transparency or negotiate their own pricing structure from potential providers but that may not necessarily be the case for smaller or less experienced users of IP legal services. Our rules will therefore require that clients are given the best available

information about the work you will do for them and its costs both at the time of engagement and, where the context applies, as work progresses. Our guidance will continue to recommend that firms make price information available on their websites where possible though this will not be a mandatory requirement.

97. We would like to achieve an outcome that the client has enough information to ask appropriate questions and make their own judgement as to what is or is not acceptable. To help achieve this outcome and minimise the burden, we plan to develop an IPReg 'guide' for buying IP services which includes tips on some of the key questions to ask on transparency issues. The provision of this guide to potential clients would not be mandatory but would be one way a firm could demonstrate compliance with the new requirements and may be particularly helpful to our regulated small firms and sole traders. We would make the guide available on the IPReg website.

Disciplinary process

Our consultation position

98. We consulted on a new disciplinary process consisting of four stages: Internal Assessment, Case Examiner Consideration, Disciplinary Hearing and Appeal. 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.
    - Introduces broader powers for cases to be resolved earlier without the need for a full disciplinary hearing.

99. We 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.

100. Finally, we consulted on new powers to apply for an interim order as part of the disciplinary process. An interim order, if obtained, will temporarily 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, pending the outcome of a full investigation or hearing. 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. The decision as to whether an interim order should be imposed will be a matter for an Interim Orders Tribunal who would in most cases, convene remotely to consider any evidence or submissions submitted by IPReg and, where provided, the regulated person .

Consultation views

101. Responses related to the proposed new disciplinary process included a range of views. We received support for the introduction of Case Examiners so long as safeguards are in place to ensure they understand the IP profession. We also received general support for the widening of consensual disposal options. Support for having non-attorney members on the Disciplinary Panel was mixed, with many professional respondents concerned about adequate training and advice on the realities of working in IP practice. We also received general support for the introduction of Interim Orders, with many respondents requesting further information.

102. Notably, the CIPA response considered that the entire system needs to be re-thought due to the low numbers of complaints received by IPReg and potential to reduce costs. CIPA proposed that the whole process could be simplified further with the disciplinary function taken away from IPReg. In terms of our overall approach, several respondents commented that the new arrangements were clear and an improvement on the current arrangements. A small number of respondents queried the need for the changes and felt that we should have more clearly articulated in detail how the proposed arrangements differ from existing arrangements.

103. In discussion with stakeholders we received positive feedback on our proposed separation of IPReg procedure into the separate Standard Operating Procedure (SOP) document in order to remove the detail of our internal processes from our rules and make them more user-friendly.

IPReg response

104. We are grateful to those respondents that took the time to review our proposed changes to the disciplinary process including the Standard Operating Procedure (SOP). This is a fairly technical area which will affect very few attorneys.

105. We have considered all the responses and concluded that the proposals we put forward will improve significantly the overall effectiveness of IPReg's disciplinary process and bring it in line with best practice..

106. Case Examiners dealing with any individual case will comprise one lay examiner and one professional examiner (where necessary, of the same profession as the respondent) so we are satisfied that the Case Examiners as a unit will be capable of understanding matters of a technical nature and also more generally any unique pressures faced by regulated attorneys.

107. Where a non-attorney sits on a disciplinary tribunal representing the relevant profession, we will take steps to ensure that a technical adviser is available to assist the panel where the case calls for it. Views of the respondent on this matter will be taken into account. In our experience however, the majority of disciplinary cases deal with

matters of a more general nature which any regulated legal professional can grasp and deal with.

108. Our experience of working within the current disciplinary framework, and the views received from attorneys and their representatives who have been involved in it, tell us that the framework does need streamlining, clarity and more opportunities for early intervention and disposal. Given the size of the professions and the number of complaints received by IPReg, we are not persuaded that this function needs to sit outside of IPReg. A significant amount of work would be required to transfer this work to another non-specialist regulator and this work would be disproportionate given the small number of complaints that IPReg receives.

Multidisciplinary Practices

Our consultation position

109. IPReg currently restricts the non-legal services of the firms which it regulates in the following ways[7]:

- 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. In the consultation we proposed 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.

111. We sought views on the potential practical implications of an IPReg regulated business broadening its range of services.

Consultation views

112. We received a range of views on this issue. Some respondents such as IP Inclusive felt the proposed change could encourage diversity and innovation and should therefore be encouraged. Nottingham Law School noted the potential for innovation especially in the SME sector. The response also considered that any risks around client confidentiality and legal professional privilege would require careful consideration around the authorisation stage. A firm expressed support for the

[7] See Annex A of the IPReg Registered Bodies Regulations 2015.

change on the basis that IP, as one of the more modern areas of law, needs to be able to keep pace with new developments in technology.

113. Others queried the demand and therefore need for the change, with some concerned about the potential damage to the IP profession if a wholly different business were to be conducted within an IP firm. One firm suggested that IP related activities should be "the main" and not "one of the main" legal services provided.

114. CIPA commented that there is no evidence that the current requirement is a barrier to entry for entities. It also expressed concerns that the change would make IPReg the regulator for non-legal services which, in its view, IPReg has no competence to do. CITMA also commented that it was not aware of any demand for such a change.

115. Several respondents, including some of those that supported the change, considered that PII may be a problem for the other areas of business. Some saw this as a reason not to proceed with removal of the current restriction. PAMIA was clear in its response that it does not intend to extend PII cover beyond that which is already covered so if a firm extends its business model to provide other services, it would need to get separate cover.

116. A small number of respondents commented that the current prohibition on criminal law is unhelpful as it could prevent private prosecutions for counterfeiting or piracy.

IPReg response

117. Having considered the responses we reaffirm our approach that we want to remove barriers to innovation and competition. We consider that allowing an increased range of services to be provided may help to do this by allowing the market to identify demand. We acknowledge the point raised by PAMIA regarding coverage beyond existing areas. We consider this is an area where the PII Sandbox could provide an appropriate solution or it may be that PII is not required for the firm's non-IP activities.

118. We remain clear that it would not be appropriate for IPReg to regulate the conduct of criminal law and as such are minded to maintain this restriction. Attorneys are permitted to provide legal advice as to criminal matters to the extent that they relate to intellectual property, such as advice on copyright infringement, and this will remain the case.

119. With regards our ability to regulate a wider range of non-legal services, we propose to take a proportionate approach, bearing in mind our specialist regulatory remit. It would not be appropriate for example, for IPReg to become involved in a complaint about a failure to provide adequate service in a non-IP related area. However, should that complaint include an element of dishonest conduct, then

IPReg may consider that it is appropriate to investigate the matter as the honesty and integrity of an attorney is fundamental to their role as a regulated legal professional and may suggest their suitability to remain registered, is in question.

PII Sandbox

Our consultation position

120. In the consultation we set out our proposal to create a regulatory sandbox through which attorneys and firms could apply to IPReg for approval of alternative insurance arrangements to our Minimum Terms and Conditions (MTCs) which we would then monitor closely. 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 onerous.

121. Our working assumption in the consultation was 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 alternative PII arrangements were appropriate. We anticipate that the sandbox may appeal to those ineligible for PAMIA membership due, for example due to firm structure. This could include existing regulated firms that are eligible for MTC insurance but that may wish to change their business structure in a way that would mean they would be unable to continue to obtain MTC insurance.

Consultation views

122. Fewer than half of respondents provided views in relation to our PII sandbox proposals and of those that did, the majority were supportive. Several respondents, including Nottingham Law School and IP Inclusive welcomed the potential positive impact on innovation. Of those firms that commented, the majority felt that the costs should be borne by users of the sandbox. One firm commented that the sandbox could be useful for those firms wishing to provide a broader range of services.

123. The Consumer Panel welcomed what it considers to be an innovative approach to the tricky problem of a limited number of PII providers. The Panel encouraged IPReg to publish the results more widely as it could be an important resource for the sector, as all legal professionals are being challenged by the hardening PII market. The Consumer Panel also noted the importance of there being a risk assessment and decision by IPReg as to the efficacy of the alternative arrangements.

124. CITMA suggested that IPReg develop guidance to make clear whether the sandbox would be time limited in nature and whether the services provided by applicants would have to show a degree of novelty in order to be eligible. CITMA also queried the potential costs of the sandbox and whether they are likely to be prohibitive to potential applicants. CIPA did not raise any objections to the concept but would want to see that IPReg is competent to oversee its operation and that there are no risks to clients. CIPA also queried whether there may be some liability which falls to IPReg should the PII arrangements prove inadequate in the event of a claim.

125. PAMIA commented that access to the sandbox should be restricted only to those unable to obtain PII on the MTCs.

IPReg response

126. We have considered all of the views put forward and concluded that that in order to maximise the potential for innovation and to build our evidence base about issues with the current requirements, there should no restrictions on access to the PII sandbox. This means that eligibility will not be restricted to those with novel business models or that are unable to obtain PII on the MTCs. We have noted the general hardening of the PII market over the last 5 years and the impact of this being felt in all parts of the legal sector. As IPReg has a small register, and therefore limited influence on the market, we consider it is important that all regulated (and would-be regulated) entities have the opportunity to trial innovative solutions which could mitigate the further hardening of the market and its impact on viable alternatives to the monopoly provider in the sector. Such a development has the potential to benefit all IPReg regulated firms.

127. We anticipate that applicants to the sandbox will be required to provide IPReg with the following information:

- An explanation of why it would be advantageous to obtain PII from an alternative insurer. This could include information about the cost to the firm, better protection for clients or enhanced services being made available to clients;
- The nature of their client base (e.g. whether they tend to be individual consumers; micro-businesses; SMEs; FTSE 100 or FTSE 250 companies) and the range of services provided to them;
- an assessment that sets out the major/common risks that are involved in the services provided to their clients and a demonstration of how these are adequately covered by the PII obtained (or offered) or how the applicant firm has mitigated a risk without the need for PII (e.g. by not holding client money). We will expect the PII policy to have an option for run-off cover in the event that the firm closes without finding another firm (a “successor practice”) to take over the client’s files;

- The level of cover that the policy will provide and why it is deemed appropriate;
- The information that will be provided to clients about PII to ensure any risks of consumer confusion are mitigated.

128. IPReg is likely to consider a number of factors when assessing applications including:

- The thoroughness of the risk assessment;
- The benefit to consumers and impact on competition – e.g. particularly if firm proposes to provide competitively priced services to individual consumers and micro-enterprises who may not otherwise be able to afford to get advice – or to provide innovative delivery of services;
- Whether the firm has previously been subject to disciplinary action or has been investigated for not having compliant PII (by IPReg or another regulator);
- Advice from our external expert who we may ask to consider the application.

129. We have considered carefully whether we pass through to applicants the cost of any external expert advice that we obtain. As we set out in the consultation, we will expect applicants to demonstrate to us how they have satisfied themselves that the PII arrangements they propose to put in place are appropriate. We expect this risk assessment to be thorough and comprehensive. Given that we will have expected applicants to have done a lot of work in advance of submitting an application, we therefore consider that any additional regulatory charges are likely to be a deterrent and that given the potential wider benefits of the sandbox to all regulated firms such an approach is undesirable.

130. IPReg has a statutory duty to promote competition in the provision of legal services and we consider that the sandbox will help to support this requirement. The outcomes of the sandbox can ultimately benefit all regulated firms. The cost of IPReg obtaining expert insurance advice on what it expects to be a small number of applications is likely to be insignificant compared to IPReg's annual budget and therefore we do not consider that there would be a disproportionate cross-subsidy which could itself have an adverse impact on competition.

131. We have also sought legal advice on the risk of liability to IPReg where alternative PII arrangements are in place and concluded that the provision of information to consumers will provide important mitigation to this risk. We will therefore ask applicants what information they will provide to clients and may decide to impose conditions where necessary, for instance to require such information is provided.

132. IPReg will monitor carefully the impact of the PII sandbox and will ensure that our approach to monitoring is targeted and proportionate (bearing in mind the

predominantly B2B nature of the IP sector) in order to attract applicants. We are likely to require entrants to provide regular reports on any claims or anticipated claims. We do not expect to cap the time allowed in the sandbox as we are mindful to provide as much certainty as possible so that participants can plan their commercial activities. We do however expect to make clear on the register where regulated firms are participating in the sandbox. We consider this is an important consumer information measure.

133. We intend to publish our analysis including the lessons we learn from the process. We will discuss with PII sandbox participants how we can do this to ensure commercial confidentiality.

Practising categories

Our consultation position

134. In the consultation we proposed a new model for practising fee categories based on whether or not an attorney is providing services to the public or not. Our view, having reviewed the ways attorneys practise, was that the regulatory risks are very different in each scenario. As there is no statutory definition of "the public", we also sought views on how we should define this as this would have an impact on the requirement to have PII.

Consultation views

135. The majority of respondents considered that the risk ratings were not correct in relation to attorneys based overseas providing services to UK clients other than through an IPReg regulated firm. Most felt that these attorneys should be placed in a higher risk category than attorneys employed in firms regulated by IPReg.

136. Several respondents were concerned about the cost implications of our proposals, particularly for sole traders and single attorney firms providing services to the public (who were placed in the highest risk category). A small number of respondents felt that a more "granular" approach was needed, with more categories than the three we had proposed.

137. A small number of respondents gave their support to our proposals regarding consultant attorneys, i.e. those that do not provide services to the public. One respondent noted that the change would make it easier for virtual firms to operate more easily and therefore open the market to more types of service provider.

138. The Consumer Panel considered that more evidence is needed of the potential consumer detriment of removing PII requirements for those that do not serve the public, noting that how the public is defined "will have huge consequences".

IPReg position

139. We appreciate the views given in response to this question which we will consider carefully before developing our proposals for further consultation. Having considered the significant amount of work involved and the fact that it will require further consultation and changes to our CRM system, the earliest we now expect any changes to fee categories to be introduced is 2025.

140. In response to the Consumer Panel's comments regarding PII, we would like to clarify that as is now PII will continue to be a requirement for all attorneys providing services to anyone other than their employer. In practice the drafting of the new rule will allow consultants in client facing roles to operate under the PII of the firm they are contracting with if the specific policy terms allow. Where consultants are acting in purely an advisory capacity to the firm, i.e. not client facing, it will be a commercial decision between the consultants and the contracting firm.

Our updated Impact Assessment

141. In the consultation we sought views on our draft Impact Assessment and specifically the impact of our proposals in relation to equality, diversity and inclusion.

142. Just under half of respondents commented specifically on the Impact Assessment. Other respondents did not respond to this question but did provide helpful feedback on the impact of the various proposals.

143. Of those that did provide feedback, the comments were generally positive in terms of the consideration of the impact on various stakeholders, the regulatory objectives and the protected characteristics. IP inclusive, for example, agreed (subject to some caveats) with the conclusion that the proposed changes were not likely to have a negative impact on equality, diversity and inclusion in the regulated community – and felt that in most cases they would have potential benefits.

144. In terms of the comments on the specific proposals, these have been taken into consideration in the redrafting of the Impact Assessment and in this response to consultation. IPReg is grateful for the helpful feedback on the drafting of the Impact Assessment, including identifying some omissions. For instance, one respondent suggested that the Impact Assessment should also cover the recognition of overseas qualifications. We agree with this proposal and have inserted a new section to cover this.

145. The main comments on the Impact Assessment were as follows:

- Assessment of costs – four respondents (including CIPA and CITMA) felt that there should have been a quantification of the costs associated with the changes.

Two respondents also emphasised that there should be no cross-subsidisation of any regulated person using the regulatory sandbox by other regulated persons;

- Administrative burden – similarly, one respondent stated that the Impact Assessment did not go far enough in setting out the additional administrative burden on firms both in implementing the proposed changes and in complying with the new requirements. One example was the burden regarding the allocation of "mixed monies" (both client monies and business monies).

- Protected characteristics – one respondent felt that the impact on equality, diversity, inclusion and belonging should have been considered more broadly, rather than only in relation to the protected characteristics. Another respondent believed that mental health impacts should have been addressed separately, rather than as part of the impact on persons with a disability. CIPA expressed the view that the overall approach in relation to equality, diversity, inclusion should have been to, "….start by identifying and quantifying the "problem" of approaches to EDI in the IP professions and ask itself if there is anything - from a regulatory perspective or a wider view - that IPReg can do to encourage and support individuals and organisations to improve EDI";

- Application of the Principles to "all aspects of [a regulated person's] life" – of the specific proposals, by far the most significant impact raised by respondents related to this proposal. Respondents believed that the Impact Assessment should have addressed the human rights implications of this proposal, particularly in relation to Articles 8 (privacy), 9 (conscience and religion) and 10 (expression) of the European Convention on Human Rights. One respondent expressed the view that the application of the Principles to regulated persons' private lives might be discriminatory in its own right and others felt that it may actually have a negative impact on equality and diversity in the profession, by deterring those who held, for example, orthodox religious beliefs from entering the profession.

IPReg position - Costs

146. In developing the proposals and undertaking the impact assessment we took into account all of the information we had available in relation to costs and benefits. We consider that, based on the proposals, the information we had was proportionate to draw the conclusion that none of the proposals appear to impose an unjustifiable cost on those affected. Further, whilst we are grateful for the feedback from respondents on those items which may have cost implications, none of the respondents identified any particular proposals as necessitating significant costs either in terms of implementation or on an ongoing basis.

147. In addition, IPReg believes that any implementation costs to firms will be mitigated by the extended timeline for the introduction of the new arrangements. For example:

- In relation to CPD, we are planning a transitional period which will allow individuals and firms time to adapt to the new approach;

- Fee changes are unlikely to come into effect until 2025 at the earliest.

148. We have also deferred any changes to the basic litigation skills requirement and the introduction of diversity monitoring requirements until we have conducted further consultation due to the specific impacts of these proposals identified in the responses.

IPReg position - Administrative burden

149. IPReg recognises that any change in its regulatory arrangements inevitably involves some degree of administration, to ensure that policies and procedures reflect the new arrangements. However, the overall intention in changing the arrangements is to provide firms and regulated individuals with greater flexibility in how they comply with our regulatory arrangements and, on client money, many have reported that the proposed change will reduce the administrative burden. Where an administrative burden has been highlighted, this has been taken into account in the redrafting of the Impact Assessment.

IPReg position - Protected characteristics

150. Whilst it was appropriate to consider the impact on the protected characteristics, as these are enshrined in law, IPReg accepts that EDI is broader than the protection of these specific characteristics. In fact, it was for this reason that the Impact Assessment also covered the regulatory objectives. Having said that, where impacts have been highlighted by respondents as affecting specific groups, such as those with mental health issues, these have been considered both in terms of the post-consultation decisions on the proposals and in the drafting of the impact assessment. We will also be mindful of these impacts in any post implementation review activity.

IPReg position - Application of the Principles to the whole of regulated persons' lives

151. We accept the fact that the impact of applying the Principles to the whole of regulated persons' lives should have been included in the Impact Assessment, including consideration of the impact on human rights. We have addressed this in the updated version which draws on the legal advice we have received. With regard to the suggested negative impact on EDI, we believe that the drafting amendments proposed and clear guidance on IPReg's approach to enforcement of the Principles should ensure that any risk is mitigated.

This table sets out other, more technical issues that respondents raised and which we consider it is important to explain how we have considered them and our minded to position. An amended and tracked version of the revised regulatory arrangements will be published when we submit our application to the LSB.

Issue raised	**Reference in Core Regulatory Framework**	**Minded to position**
Client care: definition of client needs to include former and prospective clients in certain circumstances such as confidentiality.	Client as defined means the principal on whose behalf a *regulated person* acts as agent and includes any *person* for whom the *regulated person* 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 *patent* or *trade mark attorney*, to whom the *regulated person* will also owe a duty of professional care. Where a *regulated person* 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	Amend drafting of definition.
In-house attorneys: unclear whether employer is covered by the definition of client (which would create problems, e.g. with complaints provisions) and need to reinstate definition of "corporate work"	See definition of client above	In response to feedback from in-house attorneys we will amend the introduction to the Code of Conduct to make clear that not all provisions will apply and are dependent on the context in which you are working. On the specific points raised:

		• We do not consider the definition of *client* includes the employer of in-house attorneys. • We do not consider that a definition of corporate work is necessary as the current approach often causes issues in practice. To clarify, we are not seeking to prevent in-house attorneys acting on their employers instructions. Nevertheless, attorneys are under a duty to act within their competence. We will be discussing the application of the new arrangements with IP Federation. If in-house attorneys are unclear how the new arrangements apply to them in practice we propose to develop some guidance to address those concerns as needed.
Liens: IPReg needs to clarify whether it is available in law	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.	We are satisfied that there are circumstances where patent and trade mark attorneys can exercise liens where it is an express term of business to which the client has agreed. There may however be occasions when a firm is not entitled to do so. It is for regulated persons to take appropriate legal advice before seeking to

		exercise a lien to ensure it is appropriate to do so.
Sub-contractors: scope is too broad, as currently drafted could be applied to work sub-contracted to attorneys in other jurisdictions.	You are accountable for your work and the work delivered by those you supervise or sub-contract with	Amend drafting to clarify requirements relates to accountability for the selection of sub-contractors.
Risk management: current provision is too broad	All material risks to the practice are identified, monitored and managed	Amend drafting, remove "All" and make clear in guidance what we expect. For instance, we expect attorneys to do some reasonable assessment of risks on a regular basis including how those risks will affect their ability to serve their clients.
The requirement to report breaches of other regulators regulatory arrangements is too broad.	Any information which suggests a breach any of *IPReg's* or another *approved regulator's regulatory arrangements* is reported promptly to *IPRe*g or another *approved regulator*, as appropriate.	We think this requirement is appropriate given s.52 of LSA 2007 regarding regulatory conflicts and the fact that many of our regulated firms employ individuals regulated by another approved regulator (such as the Solicitors Regulation Authority). We take a proportionate view in terms of what is expected from regulated attorneys in respect of their knowledge of other regulatory regimes. It is likely to be more serious issues that come to your attention (and are more than likely to be a breach) which we would expect to be reported.
Admissions criteria (including assessment of character and suitability) need to be clear and consistent.	Chapter 3 – Admission and authorisation requirements which provide that to qualify for admission to the register individuals	All admissions criteria will be set out in the decision making guidance that we are developing. This guidance will be published.

	must meet *IPReg's* character and suitability requirements.	
Waiver decisions need to be taken by more than one person due to the impact on an individual's ability to practise.	Chapter 6, rule 2.	IPReg CEO will act on advice from the IPReg team and we will publish a summary of our decisions. Guidance will be published on how we make decisions.
Concerns raised regarding the recognition of overseas qualified attorneys: • It should not be easier for attorneys to be regulated in the UK – CIPA stated that the UK is currently seen as the most difficult country to be registered in and therefore widely considered that the UK has the highest standards • Need for checks and safeguards to protect high standing of qualification and training pathway in UK and therefore reputation of the profession.	Admissions SOP	We agree that checks and safeguards should be in place. All applicants will be rigorously assessed against our competency frameworks. There are in both professions significant points of difference in law and procedure in the UK as against European and other international frameworks and applicants would not be granted access to the register unless they can demonstrate they have the skills and knowledge required to know the law and work within the UK legal framework. Our experience over the last 10 years of working with the EU regulations and assessing applications for recognition of non-UK qualifications shows that a very small proportion were allowed access onto the register without compensation measures. These were exceptional cases.
Suggestion that IPReg operates a scheme, similar to the SRA, whereby regulated firms		In order to do this IPReg would need to become a Designated Professional Body under FSMA. We will consider the case and

can carry out FCA regulated activities (such as litigation funding).		process for doing so as part of our future strategic planning.
Conflicts rule – expansion to include future conflict is too broad and uncertain.	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.	We are developing guidance to support attorneys and help them understand what this means in practice.
Complaints provisions – respondents queried the reference to an ADR scheme, the requirement to deal with complaints free of charge and within 8 weeks	Chapter 5 – Complaints handling	We will remove from the rules what on reflection we consider unnecessary references to an ADR scheme. The requirement to respond to complaints within 8 weeks and free of charge will be retained in our rules as they reflect the requirements of LSB First-tier complaints handling guidance[8]

[8] LSB guidance on First-tier complaints handling: section 112 requirements and section 162 guidance for approved regulators Version 2: 22 July 2016