

The Patent Regulation Board and the Trade Mark Regulation Board

Minutes

Thursday 7 September 2023 at 1.00 p.m.

Gatehouse Chambers, 1 Lady Hale Gate, Gray's Inn, London WC1X 8BS

Attending:

Rt Hon Lord Smith of Finsbury (IPReg Chair)
Justin Bukspan
Alan Clamp
Sam Funnell (Data Working Group Chair)
Victor Olowe (Risk Working Group Chair)
Samantha Peters (Governance Working Group Chair, attending remotely)
Henrietta Rooney
Caroline Seddon (Education Working Group Chair)

In attendance: Fran Gillon (CEO), Shelley Edwards (Head of Registration, attending remotely), Karen Duxbury (Finance Officer)

1. Apologies had been received from Emma Reeve.
2. All Board members acknowledged a conflict of interest relating to Board members' fees.

Items for decision/discussion

3. Minutes of July meeting and matters arising

- 3.1. The Board approved the minutes subject to the minor amendments.

4. Board members' fees

- 4.1. The CEO introduced the paper, which proposed reverting to the previous approach whereby Board members' fees were automatically increased at each January Board meeting. However, instead of RPI as before, fees would be indexed against CPI.

- 4.2. The Board discussed the following matters:

- 4.2.1. Regarding the impact of the proposal on the business plan, the CEO stated that the fees were relatively low compared to the overall budget and so the impact would be minimal. The updated figures would be included in the documents sent to the LSB as part of the 2024 practising fees application.

- 4.2.2. On the possible unintended consequence of Board members' fees increasing rapidly in subsequent years and whether regular reviews were needed to address this, the CEO stated that IPReg now participated in the QCG annual survey of all regulators, so

fees could be tracked in comparison to other regulatory bodies. QCG's results for the 2023 survey would be provided to participants in March 2024, so this could be checked at the January 2025 IPReg Board meeting. IPReg's fees were likely to remain at the lower end of the scale as other organisations increased their fees. The Chair noted that the fees could be reviewed at any point if there was a concern that they were not in alignment with other regulators.

4.3. The Board decided:

4.3.1. To adopt the policy whereby Board members' fees were increased automatically in January each year by the equivalent of the most recently published CPI figure, starting in January 2024.

5. 2024 business plan and practising fees

5.1. The CEO introduced the paper, which proposed proceeding with the 8% increase in practising fees. Stakeholder responses to the proposal had been mixed, with no obvious patterns in terms of support or opposition to the proposed increase. CIPA had focused on the desirability of reducing the cost of regulation and had indicated that the summer holiday period was not the ideal time to consult. CITMA had stated that the approach was reasonable in the current economic climate. The paper included a proposal not to increase fees for those not in active practice in order to support the diversity of the profession; this would have a minimal impact on the budget.

5.2. There was overall support from respondents for the business plan, although some concerns had been expressed about the work on barriers to the patent profession, mostly relating to the potential cost and the need to uphold the quality of the profession. In response to feedback from IP Inclusive, a further £10,000 had been added to the budget for a diversity survey to provide more up-to-date diversity data. Another workstream had been added to the business plan on artificial intelligence. In the application to the LSB, the explanation about how the website linked to the CRM would be expanded as this was the main driver of the cost of the website upgrade. There was broad support for the abolition of the waiver period for registrants after 1 November and the introduction of application fees for registered bodies. The paper proposed making a draft application to the LSB so that additional information could be provided if required before making the final application.

5.3. The Board discussed the following matters:

5.3.1. The Chair noted that the LSB's levy increase had been higher than anticipated. The Finance Officer stated that the increase would be included in the figures submitted to the LSB and was affordable in the context of the business plan.

5.3.2. The Chair asked about the compensation fund review. The CEO stated that work had already begun on it. Various options were being considered, including modelling of different eligibility criteria. The SRA had undertaken some research with Frontier Economics on PII claims which might provide useful data when it was published.

5.3.3. What role AI could play in IPReg's work. The CEO explained there could be a role for AI in reviewing CPD records or consultation responses, but more work was needed to understand how to train AI to perform those functions. The Board suggested including AI in IPReg's work on education and training.

5.3.4. The need for greater clarity on the benefits to consumers of planned activities. Research into firms' client base could help to inform the thematic reviews of the new arrangements, especially in the context of diversity. While it was unlikely that we would be able to reduce the cost of regulation given the volume of work that needed to be undertaken, growing the regulatory community could lead to a reduction in the unit cost.

5.4. The Board decided:

5.4.1. To proceed with the application to the LSB to increase fees by 8% to finance the activities set out in the business plan;

5.4.2. To submit a draft application to the LSB;

5.4.3. To delegate authority for finalising the formal application to the Chair and CEO.

Action: CEO to submit draft application to the LSB and take forward any required changes prior to a formal application.

6. PII Sandbox

6.1. The Head of Registration introduced the paper, which set out the formal application from a licensed body to waive IPReg's PII requirements for insurance that was compliant with its Minimum Terms and Conditions (MTCs) and enter the PII sandbox. The firm's current MTC-compliant policy with a participating insurer cost a very significant amount of money for its primary layer of insurance and so the firm wanted to use a group policy from its current second layer insurer instead. That insurer is on the SRA's participating insurers list. While the terms of the policy differed in some areas from the MTC policy, the differences would not directly impact the firm's consumers or clients, as any issues arising would require the firm to meet the costs. The applicant firm was especially keen to join the sandbox, as the renewal of the primary layer policy was due later this year.

6.2. The Board discussed the following matters:

6.2.1. Although it appeared reasonable to grant the application and it would help the applicant firm to save money, it was unclear how this would benefit the consumer or drive innovation. This could set a precedent that would lead to the sandbox being used to help firms rather than consumers. The CEO explained that the second layer policy with was already in place and provided a significant additional amount of cover. The process of comparing the policy with the MTCs had helped inform the evidence base in terms of the issues that the MTCs raised for insurers. Consumers were more likely to benefit in the medium to long term when we had acquired more evidence about the areas of the MTCs that could be barriers to insurers entering the regulated IP sector. This could lead to changes in IPReg's requirements for PII and encourage other insurers to enter the sector. Increased competition between insurers would ultimately benefit consumers. The CEO explained that the PII sandbox differed from a fintech sandbox in that the former was focused on finding innovative ways to provide consumer protection through PII. Consumers would benefit in the long term if there was a different approach to PII that no longer acted as a potential barrier to entry.

6.2.2. That the activity could become quite intensive for the IPReg staff and whether it would be preferable to use external expertise to conduct the comparisons of insurance policies with the MTCs, passing the cost on to the applicant firms. The CEO explained that the approach so far had been to ask firms to conduct the initial work before IPReg reviewed it. The IPReg staff were becoming more familiar with the MTCs and that comparisons were likely to become quicker over time. The Board had previously decided not to charge firms to enter the sandbox and this was reflected in the published guidance.

6.2.3. That we should ask the applicant firm (and any subsequent entrants to the sandbox) to report annually on any matters regarding claims.

6.2.4. How this decision would be communicated to other firms. The CEO explained that the decision would be recorded in the minutes of the Board meeting and the fact that a waiver had been granted would be on the register. Disseminating the decision more widely at upcoming webinars could be considered.

6.3. The Board decided:

6.3.1. To approve the application to waive the standard PII requirements in relation to the applicant firm and permit entry to the PII sandbox with no expiry date, with the reporting conditions set out in the paper.

Action: Head of Registration to notify the applicant and update information on the IPReg website.

7. IT upgrade

- 7.1. The CEO explained that the law firm William Sturges had reviewed the three contracts sent by IE Digital and we had negotiated changes to them as a result. Discussions had also taken place between ClearCourse and IE Digital, facilitated by Equantiis. ClearCourse had indicated that the cost of transferring the data to IE Digital would not be significant. The CEO reminded the Board of the total cost of the project. On the advice of the external lawyers, IPReg had requested six months of data storage, the cost of which was to be confirmed by IE Digital.
- 7.2. The CEO stated that the contracts should be signed next week, with a potential go live date of early November. The plan was for a two-stage process, with the transfer taking place prior to the start of the 2024 practice fee collection period. The upgrade to Drupal 10 would take place once the bulk of the fee collection period was over, ensuring that there should be no interruption to the fee collection process.
- 7.3. The Board noted the update and confirmed that the contracts could be signed by the CEO.

8. Complaints update

- 8.1. The Head of Registration introduced the paper. There were currently five open cases, two had been closed in the previous week. In the case of Mr Hardwick, the disciplinary panel met on 31 August under the new rules and the allegations were found to be proved. The panel had directed that Mr Hardwick should be removed from the register and awarded costs of £8,372.95 to be paid to IPReg. Payment of the costs might have to be enforced through the courts in accordance with IPReg's normal practice. Mr Hardwick had until 29 September to appeal the decision.
- 8.2. The Head of Registration and the Compliance and Authorisations Officer were due to meet with the chair of the Disciplinary and Interim Orders Tribunal to hear feedback on the new rules from the disciplinary panel in Mr Hardwick's case. The legal adviser dealing with the case had stated that the rules worked well and were broad enough to enable cases to be handled without being too prescriptive.
- 8.3. The case of Mr Burrows had been due to be heard in court on 4 August. Unfortunately, there had been no judge available on 4 August to hear the case, so it had been adjourned until 25 September.
- 8.4. The Board noted the report.

9. Governance Action Plan implementation

9.1. The CEO introduced the paper. The documents that would form the governance handbook had been drafted, including policies on the recruitment and reappointment of Board members. While many of the documents were already accessible on the website, they would be compiled into a single handbook. The paper proposed leaving the CIPA and CITMA Delegation Agreements as separate documents because IPReg could not alter those unilaterally. The Information Sharing Protocols with CIPA and CITMA would also be published. Feedback from the Regulatory Forum earlier was that all parties agreed that the Delegation Agreements and Information Sharing Protocols were working well and required no changes. Completion of the overall governance action plan was still on track for the January 2024 target date.

9.2. The Board discussed the following matters:

9.2.1. Whether the governance handbook should be formally signed off by the Board to ensure that each policy had been properly reviewed. The CEO stated that most of the policies had already been reviewed by the Board in May. The handbook would be considered by the Board in November or December and published as soon as possible thereafter.

9.2.2. The timeline of the first independent evaluation of the Board. A 2024 date would be appropriate, prior to the current Chair stepping down in 2025.

9.2.3. That the next Governance Working Group (28 September) should discuss progress made and future improvements relating to Board transparency.

9.2.4. Feedback from the first meeting of the Risk Working Group, which had taken place virtually on 1 September. Draft terms of reference had been tabled for approval by the Board. The group had also decided on its approach to developing a risk policy. The plan was for the group to meet regularly until March 2024, with a view to then bringing a comprehensive risk policy to the Board. The Chair noted that the terms of reference of the Education Working Group should also be reviewed once a new chair of that group was in place.

9.2.4.1. The Board approved the Risk Working Group's terms of reference.

9.2.5. The Chair proposed that some Board members arrange a date to meet to discuss the benchmarking exercise on staff salaries, bringing a proposal to the November Board meeting.

10. Implementation of new regulatory arrangements – progress update

10.1. The CEO stated that 300 people had already signed up for the webinar on 21 September on continuing competence. The transparency webinar would take place in November. The Head of Registration stated that there had been no queries relating to difficulties complying with the new rules. The Chair noted that more inquiries might be made in response to the CPD requirements. There might be more queries in response to the annual returns, as people might be prompted to read the code of conduct and would notice that it had been updated.

11. CEO's report

Meetings held – CIPA and CITMA

11.1. The CEO introduced the paper. The quarterly Regulatory Forum meeting had taken place with CIPA and CITMA on 7 September. CIPA and CITMA had been updated on the regulatory performance framework and IPReg's submission to the LSB. There had been a discussion of the implementation of the new regulatory arrangements and the query about the Litigators' Code. The meeting had also discussed the PEB accreditation action plan implementation. Both CIPA and CITMA had agreed with IPReg that the Delegation Agreements and Information Sharing Protocols were still fit for purpose and that no changes were required. The meeting had also reviewed IPReg's Articles of Association and Memorandum and agreed that they were too broad. CIPA and CITMA would consider their own positions in relation to being guarantors of IPReg Limited (a company limited by guarantee) and the 3 CEOs would discuss the matter at one of their scheduled meetings.

11.2. The Board discussed the following matters:

11.2.1. Whether it would be desirable to incorporate the LSA's regulatory objectives into IPReg Limited's Articles.

11.2.2. That the SRA had recently been established as a charity and that its charitable aims could be a useful starting point when considering how IPReg's Articles might be redrafted.

11.2.3. That it would be desirable to have the key points for the new Articles to be agreed in advance of instructing solicitors in order to keep legal costs down

11.2.4. Whether the changes would be considered by the LSB to be changes to regulatory arrangements and therefore require its approval. The CEO stated that she would raise the issue at the relationship management meeting on 13 September.

LSB engagement – Regulatory Information Service

11.3. The Board noted the letter from the LSB Chair about the LSB's work on the Regulatory Information Service (formerly the single digital register). The CEO explained that PA Consulting had produced a report for the LSB looking at various options for a single digital register. IPReg was concerned that no costings had been provided by PA Consulting for the various options that it had considered. Another regulator had raised concerns about data protection, which the LSB has sought to answer by way of a letter. There was a broad consensus between regulators that Legal Choices was a useful platform because many consumers were already using it, but there were outstanding issues about how to make it work more efficiently for consumers.

LSB engagement – consultation on innovation and technology

11.4. IPReg was drafting a response to the LSB's consultation on technology and innovation. The response would suggest taking the government's five principles for regulation of AI and expanding them to address legal technology rather than introducing an additional regulatory framework for legal regulators. The Board agreed this approach and delegated sign off of the response to the Chair and CEO.

Horizon scanning and research

11.5. The Board discussed the report. It asked that, where appropriate, future reports include the risks and opportunities presented by the matters identified as well as a sense of overall trends.

12. Action Log

12.1. The Action Log was noted.

12.2. The Board asked the CEO to review the older matters on the Action Log.

Action: CEO to review Action Log contents**13. Red Risks**

13.1. The red risk was noted.

14. Regulatory Statement

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

15. Any Other Business

15.1. The Chair thanked the Education Working Group Chair for her services to the Board over the years.

15.2. There being no other business, the meeting closed at 15.12.