

The Intellectual Property Regulation Board's Regulatory Standards report 2015/16

May 2016

Background

Who we are and what we do

1. The Legal Services Board (LSB) is responsible for overseeing legal services regulators in England and Wales. We are independent of Government and of the legal profession. We hold to account regulators for the different branches of the legal profession. We drive change in pursuit of a modern and effective legal services market: one that better meets the needs of consumers, citizens and practitioners.

Regulatory standards

2. We have a process in place to hold the regulators to account for their performance. We consider the legal services regulators' performance against five regulatory standards: outcomes-focused regulation, risk assessment, supervision, enforcement and capability and capacity.
3. Effective delivery of the regulatory standards should lead to higher standards of professional conduct and competence amongst lawyers. It should help to create a legal services market with increased consumer choice and consumer confidence. It should encourage innovative practitioners who, if posing fewer risks, are not subject to intrusive or inflexible regulation. It will introduce a level of consistency in the approach to the regulation of legal services.
4. This is our second full assessment of the Intellectual Property Regulation Board's (IPReg) performance against the regulatory standards. To undertake this assessment we asked IPReg to complete a self-assessment against the five regulatory standards. We also considered other evidence such as the results of a questionnaire aimed at understanding the experiences of individual users of IPReg, the outcomes of in-depth interviews with, and written responses from, key stakeholder organisations and information gained in other areas of our work, such as statutory decisions and thematic reviews.
5. This report sets out our view on the performance of IPReg against each regulatory standard as well as the grades we allocated to it. It should be read in conjunction with our thematic report on the performance of all of the regulators against the regulatory standards.¹ At Annex A we have provided some facts and figures about IPReg.
6. Individual reports have been produced for each of the eight regulators. Care should be taken, if reading the other reports, to ensure misleading comparisons are not made, particularly in relation to the grades given. There are differences in: the size of the regulators, in terms of staff numbers, budget, and the regulated communities; the risk profiles; who they regulate (individuals, entities and

¹ The thematic report can be found here: http://www.legalservicesboard.org.uk/Projects/developing_regulatory_standards/index.htm

alternative business structures (ABS)); and the types of consumers their regulated communities engage with. We have taken the context of IPReg into account when considering its performance against the regulatory standards. The grades available are listed below.

- Good – all indicators embedded appropriately in the organisation and inform day to day working practices.
- Satisfactory – significant progress is being made to embed indicators and use them in day to day working practices.
- Undertaking improvement and work is well underway – indicators have been introduced but are not yet embedded appropriately in the organisation and do not yet inform day to day working practices.
- Needs improvement and work has started recently.
- Recognise this needs to be done but work has not yet started.

The next steps

7. The report indicates the areas where we think that there is scope for improvement. We will agree with IPReg a specific action plan as the basis for our future monitoring of performance. We aim to publish the action plan by the end of June 2016.
8. We would like to thank all those who contributed time, energy and insights to this regulatory standards review.

Overall assessment


9. Overall, we consider that IPReg has made significant progress in its performance against the LSB's regulatory standards since our 2012/13 Regulatory Standards report and 2015 Update report.² Its work to achieve designation as a licensing authority has led to it undertaking a significant programme of work. This has moved IPReg towards being an outcomes-focused regulator with a clear assurance policy to inform its risk assessment and supervisory functions. It also has enforcement policies and processes in place, which follow best practice.
10. Much of IPReg's work during 2015 has been to transition registered bodies with external ownership to licensed ABS status. It has performed well in this area. This work has provided it with a good opportunity to test its risk model, the principles of its assurance policy and to develop an assurance protocol for internal use that will sit under its recently published assurance policy. The work has also provided IPReg with valuable information that will greatly assist it in its work to widen its assurance and supervision function activities beyond the firms it has transitioned to ABS status. IPReg should build on its work to date and fully embed its assurance approach.
11. IPReg has rated itself as 'satisfactory' in all areas, with the exception of supervision, which it graded itself as 'undertaking improvement and work is well underway'. IPReg's programme of work since 2012 has been significant, and we agree with its assessment, although we note that, given the low number of cases, IPReg's enforcement arrangements are relatively untested.

² This is a reference to the following reports: *Developing Regulatory Standards: an assessment of the legal services regulators* report (December 2012) and our *Regulatory Standards 2014/15: an update report on the performance of the legal services regulators* (February 2015). Hereafter referred to as 2012/13 Regulatory Standards report and the 2015 Update Report. These reports can be found here: http://www.legalservicesboard.org.uk/Projects/developing_regulatory_standards/index.htm

Grades

12. Below we have set out the grades that IPReg awarded itself and those that the LSB awarded to IPReg in the 2012/13 and 2015/16 self-assessment exercises. These illustrate that IPReg has progressed against each of the regulatory standards.

Grade Standard	Recognise this needs to be done but work has not yet started	Needs improvement and work has recently started	Undertaking improvement and work is well underway	Satisfactory	Good
Outcomes-focused regulation	LSB 2015/16				
	IPReg 2015/16				
	LSB 2012/13				
	IPReg 2012/13				
Risk assessment	LSB 2015/16				
	IPReg 2015/16				
	LSB 2012/13				
	IPReg 2012/13				
Supervision	LSB 2015/16				
	IPReg 2015/16				
	LSB 2012/13				
	IPReg 2012/13				
Enforcement	LSB 2015/16				
	IPReg 2015/16				
	LSB 2012/13				
	IPReg 2012/13				
Capability and capacity	LSB 2015/16				
	IPReg 2015/16				
	LSB 2012/13				
	IPReg 2012/13				

 A shaded progress bar indicates where the LSB considers that the regulator's arrangements are fit for purpose but as they are yet to be tested or have only been tested to a limited extent we cannot be certain as to their effectiveness.

Assessment against the regulatory standards

Outcomes-focused regulation

To deliver this regulatory standard, we consider that regulators must:

- have high quality, up-to-date and reliable evidence on what legal services consumers need and how they use the services
- have effective engagement with consumers
- demonstrate that outcomes are being achieved
- review and update their arrangements based on the evidence they gather.

13. In our 2012/13 Regulatory Standards report, we welcomed IPReg's delivery of a principles-based regulatory framework. We were however concerned by the lack of information IPReg held about consumers and the lack of evidence it held about the services provided by those it regulates. In our 2015 Update report, we noted IPReg's progress in developing an evidence base on the market it regulates and its plans to work with others to fill information gaps. Its 2012/13 survey of its regulated community provided IPReg with a wealth of information that it has been able to use to develop key regulatory policies, such as an assurance policy (also see the sections of this report about risk assessment and supervision) and a consumer engagement strategy. IPReg has continued to collect evidence about its market during 2015, mainly through its work on transitioning firms to the ABS regime.
14. IPReg became a licensing authority for ABS in early 2015. During that year, IPReg undertook an extensive programme of work to transition certain entities it regulates to the ABS regime. Feedback from stakeholders was that this process was well managed. The work has provided it with information to feed into its assurance policy, which includes its approach to risk profiling and supervisory activities (see paragraph 22). In response to addressing a specific priority area for IPReg from our 2015 Update report, IPReg has been transparent in reporting the progress it has made transitioning bodies to ABS status, providing its Board and us with detailed updates and publishing these on its website. We welcome this transparency and have been satisfied with IPReg's performance in this area.
15. In our 2015 Update report, a priority area which we identified for all regulators was the collection of high quality, up-to-date evidence about how all groups of consumers need and use the legal services they regulate. IPReg had already made progress in this area, having undertaken a profession-wide survey in 2012/13, which asked those it regulated about the type of clients that they offered services to. It also had in place a consumer engagement strategy, published in 2013, which is available on its website and had developed a consumer-focused section of the website. Building on this, IPReg has more recently been working with other legal services regulators, as a member of the joint regulators' forum, to seek to improve its consumer activities, in particular around client care letters. We note that IPReg has plans to obtain and publish consumer feedback. This

could be an effective way for IPReg to understand whether its work is having the desired impact. We would therefore encourage IPReg to take this work forward at the earliest opportunity.

16. IPReg's 2012/13 survey of those it regulates found that the majority provide services to other businesses, rather than private, individual clients. Research published by the LSB into the legal needs of small businesses, shows that small businesses still have specific needs for regulators to address and that regulators need to understand the different segments of consumers and target their regulatory approach accordingly.³ We note that IPReg's consumer engagement strategy states that advisors should be encouraged to adopt consumer engagement policies aimed at smaller business users of their services. However, it is not clear from the evidence we have seen, the extent to which this suggestion has been implemented. IPReg may wish to consider ways to assure itself that its regulatory approach meets the needs of small business consumers.
17. In our assessment of IPReg's licencing authority application, we were satisfied that IPReg's code was principles-based, not overly detailed and that it provided a clear regulatory framework for IPReg's regulated community. For example, firms have discretion to determine an appropriate level of indemnity insurance. Our assessment was reflected in the feedback we received from some stakeholders who stated that they considered IPReg to be a proportionate regulator which does not unnecessarily impose regulatory burdens and that those it regulates are confident in the regulatory model.
18. A priority area for all regulators in our 2015 Update report was the collection of an evidence base so that regulators understand the impact of the rules they impose and whether those rules are delivering the outcomes consumers expect. We are pleased to see that IPReg has made progress in this area. For example, it has amended its code to include reference to fees needing to be justifiable (following an assessment of complaints data), and it categorises all enquiries it receives, which it intends to use to inform its work. IPReg also states that constructive engagement with its regulated community enables it to identify trends or activities which may require intervention. It will be important for IPReg to build on this good work to ensure that it monitors and understands the impact of its rules and whether those rules are delivering the outcomes consumers need.

³*The legal needs of small businesses, An analysis of small businesses' experience of legal problems, capacity and attitudes*, Robert Blackburn, John Kitching and George Saridakis, Small Business Research Centre, Kingston University (October 2015): <https://research.legalservicesboard.org.uk/wp-content/media/PUBLISH-The-legal-needs-of-small-businesses-19-October-2015.pdf>

Risk assessment

To deliver this regulatory standard, we consider the legal services regulator must:

- have formal, structured, transparent, evidence-based approaches to the collection, identification and mitigation of current and future risks which inform all regulatory processes
- focus their risk analysis on vulnerable consumers and consumer detriment
- have processes in place which are understood by the Board and staff
- demonstrate that outcomes are being achieved.

19. In 2012/13, we considered that IPReg's risk assessment work had only recently started and that it was just beginning to take appropriate steps to build its evidence base on risk. Our 2015 Update report recognised IPReg's progress in this area. By then, IPReg had developed a risk assessment framework, which took account of information it had collected about those it regulated. IPReg had also responded to some of the specific risks this work had identified. For example, it had developed a dedicated area on its website for consumers. Our 2015 Update report considered that the risk assessment framework would be strengthened from the use of information gathered during the authorisation process and by a greater understanding of the supply and demand of legal services.
20. To this end, we welcome IPReg's involvement in LSB research, which aims to identify the characteristics of certain 'unregulated' for-profit providers of legal services, including those offering intellectual property advice. We also welcome the risk assessment approach it has taken to authorising firms transitioning to ABS status. This has provided IPReg with valuable information to feed into the embedding of its broader risk management approach.
21. During 2015, IPReg developed and published an assurance policy which formalises and sets out IPReg's approach to assurance and supervision, its risk model and how it identifies, prioritises and mitigates the different types of risk to the regulatory objectives. This development was informed by its 2012/13 survey of regulated firms and their activities. This is welcome given that the building of an evidence base to identify the risks faced by consumers that use regulated legal services was a priority area for all regulators from our 2015 Update report. We welcome the inclusion in the assurance policy of a factor that assesses the, "potential harm to the service user or the wider public", which demonstrates that risk analysis is focused on consumer detriment.
22. IPReg's work during 2015 to transition registered bodies with external ownership to ABS status, and license five new bodies, has subjected its risk management policies and processes to significant testing. This has in turn assisted IPReg with the development of an assurance protocol for internal use, which will describe

how the processes set out in the assurance policy will operate in practice. We also note and welcome the IPReg Board's involvement in the development of the assurance protocol. IPReg has plans to begin work on implementation of a wider assurance programme of registered firms, supported by an authorisation officer and an assurance officer. We consider that its work to date puts IPReg in a position to fully embed its assurance policy across all of its activity during 2016.

23. Formal information sharing processes between staff and IT systems are important in order to manage risk effectively. To this end, we note that IPReg has processes and systems in place which appear to be proportionate to its size. IPReg has a small and mainly part-time team who work in an open plan office and who have access to one shared server which means it can be agile in its approach to information sharing. Specifically in terms of risk, it has in place a risk matrix guide with which staff assess and score risk. This ensures consistency in approach. In our 2015 Update report, one priority area for all regulators was the development of learning programmes and tools to ensure that a consistent evidence-based assessment of risk informs all regulatory processes. We therefore welcome IPReg's work in this area.
24. IPReg had planned to do some supply and demand side analysis, in particular it had identified a need for a more detailed analysis of the risk relating to direct applications to the Intellectual Property Office /Office for Harmonisation in the Internal Market and litigants in person. We understand the reasons for deferring the work, given the difficulties of collecting the necessary data and resources being dedicated elsewhere. We therefore welcome IPReg's involvement in the LSB's recent research into the unregulated legal services market. The research includes consideration of the characteristics of those offering unregulated intellectual property advice. We expect that the results of this research will help IPReg to further strengthen its risk assessment framework.
25. We expect regulators to continuously seek to refine their approach to risk management based on the evidence that they collect. IPReg states that its risk model will not be static and that it will be reviewed over time to reflect developments, experience and new risks. We also note that IPReg plans to introduce targeted assurance research and visits to help strengthen its risk assessment framework. We welcome IPReg's plans.

Supervision

To deliver this regulatory standard, we consider the legal services regulator must:

- have a supervision policy that is carried out with reference to identified risks, all available information and is underpinned by an evidence-based understanding of the different market segments
- have access to a range of supervisory tools and willingness and capacity to use them
- have processes in place to enable learning to be shared and performance to be monitored.

26. IPReg has significantly advanced its approach to supervision since 2012/13. At that time it did not have any formal supervisory policy or process in place, making it unclear how IPReg undertook supervision in practice. We noted in our 2015 Update report that the assurance policy had been introduced, but was untested.

27. The assurance policy has now undergone some testing as part of work to license new bodies and transition some of the existing bodies IPReg regulates to ABS status. IPReg is now starting to use the assurance policy on non-ABS firms. We therefore agree with IPReg's assessment that it is 'undertaking improvement and work is well underway'. As its work to transition firms to ABS status reaches a conclusion, we expect IPReg to continue to roll out its assurance programme and further develop its approach to thematic reviews.

28. A priority area for all regulators in our 2015 Update report was the publication of proactive supervision policies informed by evidence and risk. We therefore welcome the publication of IPReg's assurance policy (published in October 2015), which includes its approach to supervision. The supervision policy was developed as part of IPReg's programme of work to support its licensing authority application and implementation of the supervisory approach is still at an early stage. We expect IPReg to use the information it gathers, as its assurance programme gathers pace to help inform where it should target its supervisory activity. We also expect it to consider how it can address an identified priority area for all regulators from our 2015 Update report which was to monitor the effectiveness, proportionality and value for money of its supervisory approach.

29. While IPReg's assurance programme will be based on thematic reviews, there is limited evidence of this to date (although we note that IPReg has issued guidance in high-risk areas, such as holding client money). The 2016 business plan and the assurance policy state that IPReg intends to develop its thematic activity. We welcome this and expect thematic reviews based on risks IPReg has identified to become a more integrated part of IPReg's activity during 2016.

30. IPReg has collaborated and worked with other legal services regulators to help inform its supervisory approach. This included meeting members of the Solicitors Regulation Authority (SRA) authorisations team to identify any lessons they had learned from licensing transitioning firms for a longer period. It has also reviewed data from the Legal Ombudsman; this is welcome.

Enforcement

To deliver this regulatory standard, we consider the legal services regulator must:

- have a range of effective and proportionate enforcement tools
- have published policies and guidance that enables others to understand the regulator's criteria for deciding to take action
- operate the enforcement function in a timely, evidence-based, fair and proportionate manner
- have appeal processes that are independent from the body or persons who made the original decision
- have processes in place to ensure that learning is shared and performance is monitored.

31. In our 2012/13 Regulatory Standards report, we noted that IPReg's approach was largely untested for enforcement. This made our assessment of its performance against the enforcement standard difficult. We concluded, however, that given changes to IPReg's enforcement powers were at that stage underway, a rating of 'needs improvement and work has started recently' was appropriate. Our 2015 Update report noted that the enforcement arrangements which IPReg had put in place in preparation for becoming a licensing authority were consistent with indicators of good performance for this standard. IPReg's enforcement function remains largely untested due to a very low number of cases.
32. We are pleased to see that IPReg has clear procedures and guidance for 'when things go wrong' on its website, targeted at different audiences (client/other stakeholder and attorneys). We consider that the process for notifying IPReg of potential misconduct is accessible and user-friendly (a priority area for all regulators in our 2015 Update report). IPReg's 'consumer' web pages, which include comprehensive information about what happens "when things go wrong" are a good example of it seeking to assist understanding of the criteria for deciding to take action and being transparent about its processes (another priority area for all regulators from our 2015 Update report). IPReg may wish to consider how it measures the success, use and understanding of the information available on its website.
33. In our [*Regulatory sanctions and appeals processes report – an assessment of the current arrangements \(March 2014\)*](#) we identified four features of best practice in regulatory sanctions and appeals regimes.⁴ These are transparency, consistent use of the civil standard of proof, consistency of powers and sanctions and fair and effective appeal arrangements. We are satisfied that IPReg's appeals processes follow regulatory best practice in this area and are fit for purpose. We also note that IPReg states that it has worked with Institute of

⁴ LSB report on Regulatory sanctions and appeals processes - an assessment of the current arrangements. (March 2014)
http://www.legalservicesboard.org.uk/projects/thematic_review/pdf/20140306_LSB_Assessment_Of_Current_Arrangements_For_Sanctions_And_Appeals.pdf

Chartered Accountants in England and Wales (ICAEW) to give effect to a 90% saving on the costs initially mooted by the First-tier Tribunal appeals mechanism.

34. The number of disciplinary cases IPReg considers is low. There were none in 2014 and at the time of the self-assessment, there were two cases which were ongoing. This makes it difficult to reasonably assess the timeliness of IPReg's enforcement function. Disciplinary cases that have been formally considered are often identified through client complaints. We would expect evidence collected via IPReg's assurance work and other reliable sources (for instance, other regulators and the Legal Ombudsman) to also inform enforcement action. We anticipate that IPReg's evidence base for its enforcement activity will develop as its assurance policy becomes embedded. This will in turn provide the Board with greater assurance that IPReg's enforcement activity is appropriate to the risks in the market.

Capability and capacity

To deliver this regulatory standard, we consider the legal services regulator must:

- have clear and consistent leadership that ensures the whole organisation has a strong consumer focus
- have regulatory budgets and staffing set at appropriate levels for the risks associated with the market
- have a culture of transparency and improvement
- have management and governance processes in place which are capable of scrutinising the performance of the regulator.

35. In our 2012/13 Regulatory Standards report, we suggested that IPReg's assessment of 'satisfactory' in this area was overly optimistic. We considered that IPReg lacked evidence about consumers and how those it regulated deliver services. We also considered that it needed to address issues of contingency and succession. Since 2012/13, IPReg has taken steps to address the gaps in the evidence it holds about both consumers and those it regulates, mainly with its 2012/13 survey. In addition, IPReg has developed the skills and capacity of its team, by appointing a director of policy, and assurance and authorisations officers. It has also introduced contingency arrangements for the Chief Executive and developed disaster recovery systems.

36. There is evidence that the leadership of IPReg has a consumer focus demonstrated by:

- the development and ongoing implementation of IPReg's consumer engagement strategy
- the involvement of IPReg executives in joint regulator initiatives such as the Legal Choices editorial panel and the joint regulators' forum, which both have a focus on consumer engagement.

37. A priority area for all regulators from our 2015 Update report was about improving the transparency of all activities. IPReg was already performing well in this area and it continues to publish its business plans, annual reports and budget information, as well as minutes of its Board meetings. In response to comments in our 2012/13 Regulatory Standards report, IPReg now publishes some of the information considered by the Board as part of the minutes of the meeting. We consider that the publication of board papers represents good regulatory practice.

38. In terms of leadership, IPReg has had the same Chairman and Chief Executive in post since its inception in 2010 and has managed its rotation of Board members carefully. For example, when in 2014 three of the original membership had been due to retire, two stayed on for a short time to ensure a smooth transition and continuity. There is also evidence in Board minutes of IPReg's committee structure functioning well and advising the Board on matters of detail related to the committees relevant specialisms. IPReg is due to appoint a new Chair in 2016 and this is may present a challenge for IPReg after such a long period of

relative stability. We think however, that it is in a good position to manage this process. We also note that IPReg is proposing benchmarking exercises, which have the potential to drive improvements in the Board's capability and capacity.

39. The evidence provided by IPReg about how the Board assures itself that it is receiving sufficient information of an adequate quality to effectively oversee performance (a priority area for all regulators from our 2015 Update report) was mainly focused on publication of governance documents, including its annual reports. IPReg does not currently have any formal key performance indicators (KPIs) in place for its supervision and enforcement activity, although we note its plans to introduce timeliness measures for its authorisation activities. We would expect IPReg to consider the development of proportionate KPIs once it has more experience of working under its assurance policy. IPReg may also wish to consider developing a KPI with a particular focus on timeliness and quality for its enforcement proceedings. This will help it to manage the expectations of consumers and those involved in its processes.
40. IPReg receives around 200 enquiries per year and has reported to the Board on the themes it has identified from these enquiries. While there was some suggestion from the feedback that we received that responses to enquiries could be slow, we are satisfied that IPReg is managing this process effectively.
41. We also received feedback that IPReg was not appropriately resourced to carry out work it needed to do now and in the future; it was suggested that it appeared to focus on short term resources rather than planning for the long term. We have however been satisfied that IPReg manages its resource appropriately and the comments we received about long-term planning were not borne out by the other evidence we have, in particular from IPReg's licensing authority application to us. IPReg utilises a small group of external specialists whose expertise it draws on as and when necessary. It recently appointed a new director of policy whose responsibilities include education and qualification. This approach, along with Board members who have appropriate and relevant expertise, appears to be a proportionate way in which to manage a smaller regulator.

Annex A

What is the Intellectual Property Regulation Board?

Key facts

- As at 31 March 2015, IPReg authorised 1,769 patent attorneys and 581 trade mark attorneys (these figures include 291 dual registered attorneys).
 - On 1 January 2015, IPReg became a licensing authority.
 - As at November 2015, IPReg regulated 222 firms, including 20 licensed bodies.
 - For 2016, IPReg has set a total budget of £718,570. This represents an increase of £31,050 (4.5%) on 2015 due to recruitment of an additional member of staff.
 - As at 31 March 2015, IPReg employed five part-time equivalent staff.⁵
1. IPReg is the independent regulatory body for Trade Mark and Patent Attorneys. It is a joint Regulation Board set up by the Chartered Institute of Patent Attorneys (CIPA) and the Institute of Trade Mark Attorneys (ITMA), which are approved regulators under the Legal Services Act 2007.
 2. IPReg's regulatory responsibilities include:
 - setting the education and training requirements for qualification as a patent attorney and a trade mark attorney
 - setting the requirements for continuous professional development in order that the knowledge, skills and expertise of patent attorneys and trade mark attorneys are maintained at a high level
 - setting and maintaining a code of conduct for the professions
 - handling complaints of professional misconduct against patent attorneys and trade mark attorneys and, where appropriate, taking disciplinary or other action.⁶
 3. The IPReg Board is the decision-making body in relation to the matters for which it is responsible and which affect both the patent attorney and trade mark attorney professions. The Board is made up of 11 members: a chairman, four lay members, three patent attorneys and three trade mark attorneys. Where the subject is one which affects only one or other of the professions it will be the appropriate Regulation Board, Patent Attorney Regulation Board or Trade Mark Regulation Board, which makes the decision. Two advisory Committees report to the Board.⁷

⁵ Information provided by IPReg in response to a data request from the LSB.

⁶ Information obtained from IPReg's website: <http://ipreg.org.uk/public/about-us/>

⁷ Information obtained from IPReg's website: <http://ipreg.org.uk/public/about-us/the-ipreg-board/>