

## **Representations to the Legal Services Board in response to the comments of the Legal Services Consumer Panel on the Licensing Authority Application submitted by the Intellectual Property Regulation Board on behalf of the Chartered Institute of Patent Attorneys and the Institute of Trade Mark Attorneys**

The Intellectual Property Regulation Board (IPReg) has reviewed the advice from the Legal Services Consumer Panel (LSCP) concerning the Licensing Authority Application made on behalf of the Chartered Institute of Patent Attorneys (CIPA) and the Institute of Trade Mark Attorneys (ITMA) and we set out below our response.

Firstly, IPReg is pleased to note that the LSCP has no major policy concerns with its Licensing Authority Application.

The LSCP does, however, make some points of detail, to which we have responded. These concern:

- a) Consumer research and education;
- b) Transparency of fees;
- c) Continuing professional development;
- d) The Legal Education and Training Review (LETR);
- e) Co-operation with the regulator;
- f) HOLP and HOFA provisions;
- g) Compensation arrangements;
- h) Timetable for complaints;
- i) Publication of respondents' and complainants' names in disciplinary cases.

### **a) Consumer research and education**

Since submission of our Licensing Authority Application, IPReg has finalised its Consumer Strategy which is now published on our website at:

<http://ipreg.org.uk/public/about-us/our-business-plan/consumer-engagement-2/>

It says:

*“Before adopting any measures designed to empower consumers it is apposite for IPReg to consider who the actual or potential consumers of IP services are and their likely levels of IP awareness, so that any suggested next steps are relevant and coherent. A fundamental point of difference here is that, by definition, the “consumers” who consult patent and trade mark advisors are in business, whether as sole traders, SMEs or large corporations often with multinational interests. They are not the man in the street seeking legal advice for his divorce or a personal injury claim. IP advisors operate in a highly specialist milieu and deal with a clientele who are not comparable with those seeking personal legal advice from a high street solicitor, for example.....”*

IPReg surveyed the regulated members of the IP profession in 2012 and, in relation to client types, the survey looked at their geographical locations and the relative breakdown of client types as between IP attorneys who practice as sole traders and those grouped in small, medium or large professional firms. It is of note that the survey showed that corporate clients constitute at least 50% of all types of client for IP services, even when the attorney is in a sole trader category. Moreover, small private clients represent the lowest proportion of the overall client type, whatever the size of IP attorney firm, since the second largest category of the overall clientele (excluding corporate clients) consists of UK solicitors, overseas attorneys or other professional intermediaries.

The market for IP services is sophisticated and increasingly global in scope; both external survey data and IPReg's own survey results show that IP advisors tend to be consulted by "IP aware" clients who are not just "the man in the street" and may be presumed to have some prior knowledge of IP topics.

The IPReg Consumer Engagement Policy is being framed to respond to this market.

In terms of "reaching out" (the LSCP's phrase) we would refer the LSB to IPReg's new website and particularly "Got an Idea?" – The page has been developed particularly with the client in mind.

We would disagree with the contention that "consumer engagement is an area where smaller bodies lack the critical mass to carry out this activity", at least as far as it relates to IPReg, since all of the above demonstrates how, in a very real and practical way, IPReg has taken account of consumers' interests and will continue to do so.

## **b) Transparency of fees**

The LSCP's comment is noted concerning the need for firms to be transparent in terms of their fees, but our view is that the Code in both Rule 6 (see also the Guidance in 6.1) and Rule 10 deals properly with this issue. We strongly believe that the greater the level of detail in rules, the less the practitioner will think through the implications of broader principles and how those principles apply in their context.

## **c) Continuing professional development**

We believe that there has been a misunderstanding on the part of the LSCP, both of IPReg's CPD requirements and also its comment at point 6 of IPReg's Education Plan (Annex 9 to the Licensing Authority Application).

We have previously written to the Legal Services Consumer Panel to explain this (see **Annex A** to these representations). Dealing with the point about IPReg's Education Plan, the action, "Issue a CPD questionnaire to identify areas for development" related to a questionnaire that IPReg intended to issue to see how its CPD arrangements could be improved upon, hence the subsequent action, "Amend Guidelines and Rules as and if appropriate." This questionnaire was issued and the project was completed in 2012.

In actual fact, IPReg already has had since 1<sup>st</sup> January 2010 a detailed programme of continuing education, full details of which are set out on our website (see <http://ipreg.org.uk/pro/manage-your-professional-development/>). This consists of IPReg's Continuing Professional Development Regulations and detailed guidance. There are also particular CPD requirements for litigators. For ease of reference the Regulations and guidance are attached to these representations as **Annex B**.

The CPD requirements relate, as would be expected, to people who hold the protected title of patent/trade mark attorney. IPReg does not set CPD requirements for non-attorneys but such persons are nevertheless, as employees of regulated firms, subject to IPReg's Code of Conduct regarding the standard of their work, etc.

IPReg did not include the Continuing Professional Development Regulations and associated guidance in its Licensing Authority Application, having taken the view that these Regulations were not relevant in relation to the licensing of ABS as entities. However, in view of the misunderstanding on the part of the LSCP, we propose that our Regulations and guidance on CPD be formally included in our Licensing Authority Application as **Annex 14**.

CPD returns are collected from all registrants (individual patent and trade mark attorneys). Any non-compliant returns are reviewed and necessary action taken. In the years that returns have been submitted to IPReg (2010-2012) we have annually had significantly in excess of 95% that are compliant.

**d) The Legal Education and Training Review (LETR)**

The LETR report has been reviewed and a report has already been circulated to our Education Committee.

**e) Co-operation with the regulator**

The LCSP rightly points out that regulatory regimes should reflect risk. IPReg has not experienced significant issues with co-operation. This is demonstrated, for example, in high levels of compliance year on year for CPD returns. Should IPReg encounter significant issues with co-operation, we would of course consider the inclusion of an explicit requirement to co-operate with regulators and ombudsmen. With regard to the Legal Ombudsman (LeO), we have never had a concern raised with us that an attorney is not co-operating fully with LeO.

**f) Head of Legal Practice (HoLP) and Head of Finance and Administration (HoFA) provisions**

We are unclear as to which provision the LSCP is referring when it speaks of a "proposal in consultation that existing registrants should be passported into" the roles of HoLP and HoFA. It is true that Regulation 24.1 states that, "a body which was Registered by IPReg before the Commencement Date will be deemed to be Registered under these regulations" but that simply means that bodies that are already registered (with the exception of ABSs) will not need to reapply for registration merely because the Regulations have been amended.

IPReg's Registered Bodies Regulations also state that patent and trade mark attorneys will be deemed approved as managers (see Regulation 11.2), but that is not the case with the HoLP and HoFA. With regard to the approval to hold such roles, IPReg will adopt a risk-based approach concerning the level of investigation, taking into account the extent to which the individual is known/regulated by IPReg, their prior regulatory history, etc.

Having said that, with regard to patent and trade mark attorney firms, we consider that a transitional period is appropriate for the approval of HoLPs and HoFAs for non-ABS firms because of the regulatory track record of such firms. Had we considered there were significant issues with the way in which firms

were being run, based on the available evidence, we would have required all firms, whether ABS or not, to have approved HoLPs and HoFAs at the same time<sup>1</sup>.

Ultimately the non-ABS firms have duties to IPReg in relation to the matters for which the HoLP and HoFA are responsible, whether there is a formally appointed “Head of” or these responsibilities are borne collectively by the managers.

**g) Compensation arrangements**

IPReg’s Compensation Arrangements Rules will detail the time limits for making claims.

**h) Disciplinary Time Limits, etc.**

Our rules permit complaints to be brought within one year of the complaint arising or within one year of the complainant becoming aware of the ground for complaint.

Moreover cases outside these time limits are “to be treated as received in time” when sufficient reason is given for the delay. This creates far wider scope for admission of a complaint than the (now extended) time limits for the Legal Ombudsman.

In addition, complaints to IPReg are not reviewed by case workers but three members of the IPReg Board (lay majority) who do not need the clarity of strict time rules. We have had one complaint rejected as “out of time” by the Legal Ombudsman, despite a failure of the attorney to signpost to the Ombudsman.

In the context annually of an average of 12 cases with the Legal Ombudsman we do not consider that the change suggested by the LSCP to the time limit for submission of complaints is merited.

**i) Publication of respondents’ and complainants’ names in disciplinary cases**

The Complainant under Rule 16 is IPReg, but we accept the LSCP’s concern and will clarify this. IPReg adheres to and supports the statutory protections for whistle-blowers and would, e.g., redact papers used in disciplinary cases should that be necessary to protect a whistle-blower.

Michael Heap  
Chairman  
30 October 2013

---

<sup>1</sup> There is, of course, no facility for transitional provisions for ABSs as regards the appointment of a HoLP and HoFA.