

Dawn Reid
Regulatory Project Manager
Legal Services Board
7th Floor, Victoria House
Southampton Row
London WC1B 4AD



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Dear Dawn

Application from the Chartered Institute of Patent Attorneys and the Institute of Trade Mark Attorneys for a recommendation for designation as a licensing authority

Thank you for your letter of 6 June inviting the Panel to provide advice on the above application. Under the Legal Services Act, the Panel is a mandatory consultee on applications from bodies to become licensing authorities. In deciding what advice to give, the Panel must, in particular, have regard to the likely impact on consumers of the Lord Chancellor making an order for designation as set out in the application.

Making an assessment of likely consumer impact does not lend itself to a precise formula. The Panel applies well established consumer principles – such as access, choice and redress – as reference points by which to analyse the issues. In addition, we identify the risks to consumers and the type and degree of possible harm, and then make a judgement as to whether the proposed arrangements are likely to promote access and offer sufficient protection. Finally, the regulatory objectives in the Legal Services Act underpin our assessment.

The Panel has previously responded to an IPReg consultation on its draft licensing authority application, accessible through our website. We have also discussed emerging plans with the applicants at Chair level during the last twelve months. We have examined the final application to assess whether the issues we previously raised have been properly dealt with.

The Panel does not have any major policy concerns with the application, although we make some points of detail below. This reflects a series of factors that make this application different from other licensing authority applications that we have been consulted on:

- IPReg already regulates ABS-type firms but it needs to apply to become a licensing authority in order to continue to regulate such

firms, since transitional provisions enabling IPReg to carry on its existing regime in its status as an approved regulator are due to end soon. As a result, IPReg is not overhauling its existing regime as other bodies making licensing authority applications have done, although it is modernising aspects of its arrangements to bring them in line with LSB expectations on good regulatory practice

- IPReg proposes to restrict the types of work that authorised firms will be able to conduct to the intellectual property arena; as above, there is a high level of continuity with the existing regime
- IPReg's data suggest that by far the majority of clients are commercial organisations and only a limited number are private clients or charities. We agree that IP work is consequently of potentially lower risk to consumers than other areas of legal work. The Panel's view, as reflected in our own work priorities, is that commercial organisations are better able to protect their own interests. That said, we would also expect a risk-based regulator to focus its resources on safeguarding consumers who are of greater risk rather than to match resources to market shares.

Points of detail

These are addressed in order of appearance in the application document.

We are pleased to see that research (including consumer engagement) is highlighted within the proposed new organisation model (see page 38 of the application). We note from the business plan that the proposed budget in 2013-14 for all research and education activities is only £25,000. The planned research activities, while worthwhile, do not involve direct dialogue with consumers. Given the client base, we would encourage IPReg to reach out to organisations representing small businesses – there is no evidence of this in the consultation on the draft application. We are not in a position to assess the capacity and capability of potential licensing authorities, but consumer engagement is an area where smaller bodies lack the critical mass to carry out this activity. This activity is not a luxury, but instead a vital part of evidence and risk-based regulation.

Rule 10 of the Code of Conduct states that '*regulated persons' fees must be justifiable*'. This should be expanded to include transparency of fees given concerns in this area highlighted by the Legal Ombudsman and the Panel's tracker survey research. We acknowledge that transparency of costs is included within the guidance on client care and service, but this should have the status of a rule and be included within the section on fees.

Requirements with respect to continuing professional development seem underdeveloped. Rule 16 of the Code of Conduct states that '*Registered patent attorneys and registered trade mark attorneys shall undertake appropriate continuing professional development and, on request, provide details thereof to the appropriate Regulation Board*'. IPReg's current Education Plan indicates that it will issue a CPD questionnaire to identify areas for development and amend guidelines and rules if appropriate. IPReg's website states that it will review the impact of the Legal Education and Training Review report on the profession. Given the emphasis in the

LETR research report on ensuring ongoing competence and the failings of existing CPD regimes, we expect IPReg to develop this aspect of its regulation in order to properly safeguard quality standards for consumers.

Rule 20 refers to cooperation with regulators. This should be expanded to cooperation with the Legal Ombudsman, even though a small number of complaints will reach this body. We note the SRA's risk outlook document highlights non-cooperation as a problem among its regulated community and its code of conduct includes an explicit requirement to this effect.

Part 4 of the IPReg Registered Bodies Regulations deals with HoLPs and HoFAs. IPReg has erroneously suggested that the Panel misunderstood the transitional period applied to existing registrants only. We disagreed with the proposal in the consultation that existing registrants should be automatically passported into these roles and that this should be deferred until "July 2015 at the earliest". These are important roles in any law business and the delay creates a potentially lengthy accountability gap.

Annex B of the IPReg Registered Bodies Regulations proposes a cap of £25,000 per claimant on grants issued under the compensation arrangements. We note this was proposed at £50,000 in the consultation exercise, nevertheless IPReg has provided a satisfactory justification for setting the cap at this new level. However, less positively, the application states that time limits for making a claim will be prescribed by IPReg. This lacks transparency and it is unclear why IPReg has not determined its policy before making its licensing authority application. Finally, we hope the Board will consider IPReg's proposals in this area in light of our report on financial protection arrangements. Our report puts emphasis on the need for greater transparency, especially where grants are made at the discretion of the regulator.

Rule 8 of the Disciplinary Procedure Rules relates to time limits within which consumers can make misconduct complaints. The basic rule is that the complaint must have been received by one of the regulatory bodies or the Legal Ombudsman within 12 months of the matter giving rise to the complaint or when the complainant first became aware that they had grounds for the complaint. The Legal Ombudsman has moved to a "6+3" timeframe and it would be confusing for consumers if the ombudsman and the regulator operated different time limits. A complaint involving both service and conduct issues could be eligible for consideration by the ombudsman but not by IPReg. The Panel highlighted this issue in our response to the draft application consultation and it is disappointing that IPReg has not changed this proposal.

Rule 16 states the standard policy will be to publish the names of the Respondent and Complainant in cases before the Disciplinary Board, save in exceptional cases. We are concerned that the public or other whistleblowers may be discouraged by knowing that their identity will be disclosed. Again, the Panel highlighted this issue in our response to the draft application consultation and it is disappointing that IPReg has not changed this proposal.

Please contact Steve Brooker, Consumer Panel Manager, for enquiries in relation to this submission.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Elisabeth Davies', with a long horizontal flourish extending to the right.

Elisabeth Davies
Chair