

THE CHARTERED INSTITUTE OF PATENT ATTORNEYS

LSB Consultation on Internal Governance and Practising Fees Rules

CIPA has considered the consultation document and the LSB response to the earlier consultation, the latter document setting out the changes now proposed for the Internal Governance Rules in the light of responses to the earlier consultation.

We support the new “house style” for Regulations, this being to set out broad principles, with associated Rules and Guidance for ARs on how to meet the requirements. Adopting this style of regulation allows the LSB to be proportionate in its dealings with individual regulators and to take a risk-based approach to regulation.

While we support adding a definition of “lay person” we do not agree that using the definition in the LSA is appropriate, and we have reservations about the application of the definition in the Rules. The reasons are set out below at the end of this response.

We note the reasons why the IGR will apply to all Approved Regulators. Of course, as an AAR, the IGR will automatically apply to us.

We are pleased to see that the provisions relating to appointments to regulatory boards is being relaxed, so that the representative side of the Approved Regulators can have a part in the selection process.

We are also pleased to see that the LSB accepts that it will generally be cost-effective and proportionate for the regulatory arm to share common services with the representative arm, subject to appropriate safeguards to ensure that the resources provided allow the regulatory arm to meet its obligations under the Act.

We remain of the view that education of the public about their rights is properly a function for the government and note that in our sector the Intellectual Property Office plays a major role in such educational activities.

Turning to the draft Internal Governance Rules, we have no comments on the rules in the first part of the document and have only a few comments regarding the principles, rules and guidance set out in the Schedule:

The four principles set out in the Schedule would seem to be appropriate, as are the specific Rules, except for Rule C under Schedule 1.

In respect of the second guidance note on Principle 1, Rule A, we would observe that CIPA and ITMA have jointly issued guidance to members on best practice in the practicalities of running a practice and believe that we should continue to do so. We believe that we are best placed to give that guidance from the experience of members in running a practice and we are content that following the guidance in the IGR will ensure that the guidance provided by the Institutes is in line with the policies of and is approved by the regulatory boards.

Our concern with Rule C under Principle 1 lies in the application of the same definition of “lay persons” with respect to membership of the regulatory boards as is required in the Act for membership of the LSB. Clearly, it is inappropriate for a lay person serving on the LSB to have been a lawyer. However, in all walks of life there are many people who have initially qualified as lawyers but who have left that qualification behind in moving to other areas. In many regulatory areas, such persons play a very valuable role. Our own sector of the legal services market is extremely specialised and a former solicitor or barrister from outside our sector can bring just as great and valuable an expertise in regulatory matters

and other matters as, for example, an accountant. An accountant would satisfy the criterion for a lay member, but the solicitor or barrister, who on Nolan principles may be a better appointee, would not. We think that it is appropriate for the definition of lay persons in the IGRs to exclude someone who has ever been authorised person in the sector regulated by the particular regulatory board, but that it should not exclude a person who has been an authorised person under another regulatory board. While we think that there should be no requirement for such a person not to be an authorised person at the time of appointment, we would be prepared to accept a limitation that the person should not have been so regulated during (say) the previous 3 years.

We believe that co-operation and trust between the representative body and the regulatory body with the power to refer issues to the LSB if the regulatory body believes that its regulatory independence is being jeopardised will enable the shared services model to operate cost-effectively and efficiently.

Likewise, proper mechanisms for discussing budgets while they are being developed will ensure that the regulatory arms will have access to the necessary resources to enable them to perform their functions in accordance with the Act.

We have no comments on the Practising Fees Rules, which we believe to be appropriate.