



## **Approval of 2020 Practising Certificate Fee (PCF) application made by Intellectual Property Regulation Board (IPReg) to the Legal Services Board (LSB) under section 51 of the Legal Services Act 2007 (the Act)**

1. The LSB has approved an application made by IPReg to the LSB under section 51 of the Act. Section 51 of the Act relates to the control of PCF charged by approved regulators.
2. A PCF is a fee payable by a person under an approved regulator's regulatory arrangements, in circumstances where the payment of the fee is a condition which must be satisfied for that person to be authorised by the approved regulator to carry on one or more activities which are reserved legal activities. An approved regulator may only apply amounts raised by PCF for one or more of the permitted purposes which are set out in section 51(4) of the Act.
3. A PCF is payable under the regulatory arrangements of an approved regulator only if the LSB has approved the level of the fee required by section 51 of the Act. The Chartered Institute of Patent Attorneys and Chartered Institute of Trade Mark Attorneys as the joint approved regulators have delegated their regulatory function to IPReg.
4. In making an application, an approved regulator must comply with the provisions of the Practising Fee Rules 2016 (Rules)<sup>1</sup>. The Rules<sup>2</sup> set out the criteria against which the LSB will assess PCF applications, as well as the evidence required for the LSB to be satisfied the criteria is met. The LSB's [Guidance to Approved Regulators on PCF applications](#) (Guidance) provides approved regulators with the detailed criteria and evidence it requires to consider such an application<sup>3</sup>.
5. This notice sets out the decision taken, including an assessment of the PCF application.

### **Overview of PCF application and decision**

6. The PCF application of IPReg submitted to the LSB, proposes that the practising certificate fee to be charged to the different categories of registrants and registered bodies will increase by 2.3% for 2020. This figure is presented as the Retail Price Index (RPI) figure for March 2019. IPReg expects this to result in a total of £959,536

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<sup>1</sup> [https://www.legalservicesboard.org.uk/Projects/statutory\\_decision\\_making/pdf/2016/20160601\\_Practising\\_Fee\\_Rules\\_2016.PDF](https://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/2016/20160601_Practising_Fee_Rules_2016.PDF)

<sup>2</sup> Ibid, Rules 10 and 11.

<sup>3</sup> [https://www.legalservicesboard.org.uk/Projects/statutory\\_decision\\_making/pdf/2016/20160601\\_PCF\\_Rules\\_Guidance\\_June\\_2016.PDF](https://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/2016/20160601_PCF_Rules_Guidance_June_2016.PDF)

being collected in 2020. This is an increase of £55,027 being collected compared to the practice fees collected in the previous year.

7. The proposed fees for 2020 are:

<b>Attorneys/Individuals</b>	<b>Single Register Fee</b>	<b>Both Registers Fee</b>
Attorney solely undertaking corporate work	£177 (2019: £173)	£283 (2019: £277)
Attorney in private practice	£215 (2019: £210)	£353 (2019: £345)
Attorney not in active practice	£161 (2019: £157)	£258 (2019: £252)
Sole trader attorney not employing other attorneys or professionals	£353 (2019: £345)	£504 (2019: £493)
Sole trader attorney	£353 (2019: £345)	£504 (2019: £493)
employing other attorneys – add fee per attorney	£71 (2019: £69)	£71 (2019: £69)
employing other professionals – add fee per professional	£283 (2019: £277)	£283 (2019: £277)

<b>Registered Bodies</b>	<b>Fee</b>
Registered Body through which a single attorney and no other attorneys or other professionals provide services	£138 (2019: £135)
Any other registered body: Base Fee	£353 (2019: £345)
add fee per attorney	£71 (2019: £69)
add fee per other professional practising via the registered body	£283 (2019: £277)

8. The LSB's decision is to approve in full the levels of the 2020 practising certificate fees as set out in the above table.

## **LSB assessment**

### Development of the overall budget and application

#### *Evidence that the regulatory arm has led the development of the application*

9. It is apparent from the application that IPReg developed its own budget. In March 2019, the IPReg Board met to discuss its strategic priorities for 2019/20. The 2020 budget was developed against this background. The proposed budget and PCF were discussed with CIPA and CITMA at IPReg's quarterly Regulatory Forum on 6 June 2019.

#### *Clarity and transparency of overall budget setting*

10. The LSB is satisfied with the budget setting process outlined in the application. The application clearly sets out the income and expenditure levels for IPReg. The IPReg budget is based on:

- Income from:
  - annual practice fees paid by attorneys and entities
  - admission fees paid by attorneys
  - bank interest
- Expenditure on:
  - operational costs (Board and staff costs, IT support etc.)
  - levies for the LSB & OLC
  - Legal Choices website

11. As part of the application, IPReg provided indicative budgets for 2020, 2021 and 2022. IPReg's current projections are for the same 2.3% fee increase in each year and small operational surpluses in each of those years.

*Evidence that immediate and medium term needs have been taken into account*

12. IPReg's priorities for 2019/20 are:

- to implement a new customer relationship management (CRM) system in time for the 2020 annual renewal process
- to move offices before expiry of the existing lease in February 2020
- to conduct a full review of its regulatory arrangements with a view to being more externally focused to ensure its regulatory framework encourages and supports innovation.

13. IPReg's application explains that its board plans over a rolling 3-year horizon and its business plan sets out the work it proposes to do up to 2021. Its budgets for the next three years take into account the fact it will complete the implementation of a new CRM system and the fact that it intends to recruit a paralegal to assist with the upcoming review of its regulatory arrangements.

*Contingency fund arrangements*

14. The application confirms that IPReg makes an assessment of the level of reserves it requires in order to respond to unexpected events. Its reserves policy, provided at Annex 3a to the application, confirms that IPReg holds reserves to:

- cushion against unexpected or exceptional increases in costs
- finance specific projects
- alleviate short-term pressure on the level of practising fees
- ensure sufficient funds to support regulatory and disciplinary actions
- cover costs for a 3 month period should IPReg be unable to collect practising fees

15. The reserves policy also notes that IPReg uses its risk register and the results of the yearly external audit of its accounts to help inform the level of financial risk IPReg faces. It adjusts allocations within its reserves accordingly.
16. As at 1 January 2019 IPReg held total reserves of £570,233. The allocation of this reserve is set out in full at Annex 3b to the application. Currently IPReg is making use of reserves in relation to its ongoing project to implement a new CRM system and also plans to use reserves to fund part of its planned office move. This is projected to result in the reduction of the reserves to approximately £412,000. This leaves IPReg slightly above what it considers to be its core reserve of £370,000 (consisting of a general reserves to cover up to 3 months operating costs and a litigation reserve).

### Consultation on PCF

#### *Summary*

17. IPReg published its consultation on its proposals for its PCF on 29 May 2019. The consultation was open for 37 days until 4 July 2019, an increase on the 26 day consultation period for the PCF in 2018.
18. The consultation received 5 responses, a significant decrease from the 46 responses received in 2018. Of these, 3 were from individual attorneys or firms; CIPA and CITMA also responded.
19. IPReg has confirmed that the consultation was publicised through an email to all registrants. Copies were also provided directly to CIPA and CITMA prior to publication.
20. During our engagement with IPReg prior to its application we noted the significant decrease in consultation responses and asked IPReg to provide an explanation in its final application. IPReg's application explained its view that the decrease in the number of responses was, in part, due to the fact that CIPA actively encouraged members to respond to the 2019 consultation. The number of responses to the 2020 consultation is more typical of the number received in other years.
21. The current low level of response may indicate that the profession is not properly engaged and could represent a missed opportunity to communicate with the profession on the benefits and purpose of regulation. For future PCF applications, we will expect IPReg to continue to build on its efforts to promote awareness of the consultation and to consider other possible avenues for engaging with the profession on the fee proposals in the interest of receiving a greater amount of feedback.

#### *Consultation responses*

22. The application sets out a summary of the points made in response to consultation and IPReg's consideration of these.

23. IPReg's use of RPI as a measure of inflation resulted in responses from CIPA, CITMA and individual responders. All were of the view that IPReg should consider using CPI or CPIH as measures of inflation rather than RPI in the future.
24. IPReg's application notes that the Office for National Statistics (ONS) no longer considers RPI to be a good measure of inflation and discourages its use. It also notes that the CPI figure for March 2019 was 1.9%, meaning a difference of 0.4%. It has opted for the RPI figure because it will result in additional revenue and states that this increase is seen to be targeted and proportionate.
25. We do not support the use of a measure of inflation that is discouraged by ONS. For the purposes of our assessment of this application, we have assessed the proposal as being for a 2.3% increase against CPI inflation of 1.9% for March 2019. In the interests of transparency, if IPReg refers to inflation in future PCF consultations and applications, we expect it to use measures accepted by ONS. However, we recognise that ultimately this is likely to be a matter of presentation. The underlying principle is that IPReg must generate the funds it requires to discharge its regulatory responsibilities credibly and effectively and take suitable steps to set out its rationale.

### Permitted purposes

#### *Allocation to permitted purposes*

26. The application explains that all IPReg income from PCF is used to undertake permitted purposes covered within the scope of section 51(4)(a) of the Act other than the levies payable to LSB and the OLC (Office for Legal Complaints) which fall under section 51(4)(b).
27. IPReg has provided a breakdown of the activities it undertakes and the percentage of its costs that apply to different activities.
28. In terms of the LSB/OLC levy under section 51(4)(b), in 2019 the levy amounted to 5.9% of IPReg's budget. For 2020 it is expected to amount to 7.9%. The balance of 92.1% falls under section 51(4)(a).
29. In future PCF applications, the LSB expects IPReg to provide estimates on the allocation of PCF to specific areas of work under section 51(4)(a). The information in the current application sets out costs but does not indicate what costs are allocated to different regulatory activities.

#### *LSB targeted review*

30. In our 2019/20 Business Plan<sup>4</sup> we set out an intention to conduct a review of the PCF approval process, including a targeted review of the regulators' approach to non-regulatory permitted purposes as set out in section 51 of the Act.

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<sup>4</sup> [https://www.legalservicesboard.org.uk/news\\_publications/publications/pdf/2019/Final\\_business\\_plan\\_2019-20.pdf](https://www.legalservicesboard.org.uk/news_publications/publications/pdf/2019/Final_business_plan_2019-20.pdf)

31. The targeted review is due to begin in late 2019. We look forward to working with IPReg to enhance our understanding of its current approach.

### Transparency of PCF information to fee paying members

#### *Clarity of information provided*

32. During the course of the application IPReg confirmed its intention to amend its communication to fee paying members to include additional detail on the regulatory activities it undertakes and the proportion of PCF allocated to its activities.
33. We consider it important that regulators promote discussion of the costs and benefits of regulation as a means of accountability. Regulators communication of the PCF to fee paying members is a good opportunity to promote such discussion. We intend to return to this point in our forthcoming review of the PCF framework.

### Regulatory and Equality Impact assessment

34. IPReg's application recognises that increases are likely to have a greater impact on sole practitioners since their fees are high to start with. However, IPReg considers that such impact is justified because its experience is that these attorneys take more of IPReg's resources.
35. We had asked IPReg to monitor the impact of last years increased PCF and it has noted that it received 36 applications to be removed from its registers. It noted that no applications cited fee levels as the reason for removal.
36. IPReg's application also provides comments on the applicability of the regulatory objectives and the ways in which it has taken into account the better regulation principles.
37. It is noted that the IPReg has not completed a full regulatory and/or equality impact assessment on the basis it does not consider it to be necessary or proportionate. The LSB's rules for Practising Fee applications set out that regard should be given to regulatory and equality & diversity impact assessments. While our guidance confirms that such assessments are not needed in every case, this application has not explained in detail why they have not been provided. We place particular importance on equality and diversity impact assessments as a means of driving consideration of relevant issues by the regulators we oversee and expect IPReg to undertake a more meaningful assessment to support its application next year, or to provide further explanation as to why such assessment is not deemed necessary.

### **Decision**

38. The LSB has approved the PCF application submitted by IPReg for 2020 under section 51 of the Act.

### **Summary of expectations for next application**

1 October 2019

- IPReg to continue to build on its efforts to promote awareness of the consultation and to consider other possible avenues for engaging with the profession on the fee proposals in the interest of receiving a greater amount of feedback (Paragraph 21)
- If IPReg refers to inflation in future PCF consultations and applications, we expect it to use measures accepted by ONS (Paragraph 25)
- IPReg to provide estimates on the allocation of PCF to specific areas of work under section 51(4)(a) (Paragraph 29)
- IPReg to provide either full impact assessments or an explanation of why such assessments were not considered appropriate (Paragraph 37)

**Matthew Hill, Chief Executive**

**Acting under delegated authority granted by the Board of the Legal Services Board**

**1 October 2019**