

LSB call for evidence: Ongoing competence

The Chartered Institute of Trade Mark Attorneys (CITMA) is responding to the call for evidence by the Legal Services Board (LSB) in its capacity as an Approved Regulator, as defined in the Legal Services Act 2007 (the Act) and as the representative body for Registered Trade Mark Attorneys and the wider trade mark and design profession. The review of the call for evidence and preparation of this response has been conducted on behalf of the CITMA Council.

Given the remit of the LSB we have confined our remarks largely to ongoing competence in respect of Registered Trade Mark Attorneys (RTMA) and Chartered Trade Mark Attorneys (CTMA) rather than the wider profession e.g. CITMA Paralegals and support staff.

The Registered Trade Mark Attorney role

RTMAs provide advice on the protection and enforcement of trade mark rights. RTMAs represent clients directly before the UK Intellectual Property Office and the EU Intellectual Property Office. Most RTMAs will routinely be involved in the protection of trade marks beyond the UK; instructing IP professionals around the world. Knowledge of trade mark systems around the world, particular those of the world's larger economies, is an important part of the role.

RTMAs are qualified to provide advice in relation to registered designs, and for some designs comprise a significant part of their practice. However, some RTMAs do not carry out any design work; typically where such work is handled by others in the firm.

All RTMAs have litigation rights and rights of audience in relation to trade mark and design matters, in particular the right to conduct appeals from the UKIPO/Appointed Person to the High Court, and a right to litigate in and appear before the Intellectual Property Enterprise Court (IPEC). Some RTMAs hold a Higher Courts Litigation Certificate or Higher Courts Advocacy Certificate, providing additional rights. Whilst some RTMAs are actively involved in litigation and/or advocacy, many do little or no litigation work.

Qualification

There is a robust qualification process to become a RTMA which ensures a high level of competence on entry to the Register of Trade Mark Attorneys. Qualification requires the completion of a 'learning the law' course and the completion of a practical course. Courses for both elements are provided by academic institutions. In addition, an individual must be able to certify that they have substantial experience of trade mark attorney work, acquired through full time practice in intellectual property; either two years under supervision or four years unsupervised. Entry onto the Register is overseen by IPReg to whom we delegate our regulatory responsibilities.

The Higher Courts Litigation Certificate and Higher Courts Advocacy Certificate qualifications are provided by an academic institution and overseen by IPReg.

CPD

It is a requirement, on qualification as a RTMA, to undertake Continuing Professional Development (CPD) by the completion of a certain number of hours each year (currently 16 hours). Requirements are set by and compliance is carried out by IPReg, however CITMA is one of the main sources of content for CPD and this continues to be an important benefit of membership of CITMA.

RTMAs are required to undertake CPD relevant to their practice. There is not a requirement to undertake CPD in specific subject areas (with the exception of those holding a Higher Courts Advocacy Certificate); attorneys are expected to undertake CPD which is most relevant to their role and their responsibilities.

CPD can be achieved through several different activities, e.g. attending or speaking at educational events, personal reading or study, participating or leading internal team discussions. It is the responsibility of the individual to assess whether an activity constitutes CPD and how much time they should allocate towards their annual CPD portfolio. The CPD regime is self-accredited, and largely based on trust. Compliance is monitored by random sampling; each year IPReg can require a sample of RTMAs to provide further detail to substantiate their annual CPD record.

CPD is a mechanism understood by the profession both for its benefits and how it operates in practice.

Competency frameworks

IPReg have developed and published a [competency framework for trainee trade mark attorneys](#) which can be used by a trainee trade mark attorney to benchmark and assess any gaps in their skills and knowledge.

CITMA has recently developed an [Advanced Competency Framework \(ACF\)](#) which is intended to provide an overview of the standards and knowledge expected of experienced CTMAs.

The ACF is intended to complement IPReg's competency framework for trainee trade mark attorneys and focuses on those CTMAs with five years' post-qualification experience. It is also intended to help CTMAs identify gaps in their knowledge and experience and to use as a tool to demonstrate progression and ongoing competence.

It is important to note that not all CTMAs will necessarily undertake all the areas set out in this framework. For example, some CTMAs may not undertake any registered design work. Accordingly, the framework is not overly prescriptive, but is intended to help show a career pathway.

The ACF includes technical skills, related to understanding of legislation and management of trade marks and designs, and general skills such as communication, conduct and ethics, self-awareness and development.

It is worth considering that ongoing competence and development may not just be in activities covered by the reserved legal activities. The more general and soft skills are areas we encourage our members to develop. These 'non-core' skills are often skills which can assist CTMAs in business development and broader business support to clients.

The ACF is being used to develop new courses developed and delivered by CITMA to support ongoing development and this will support our objective to ensure we are supporting the development of the profession.

As a side note, CITMA has also developed a [competency framework for CITMA Paralegals](#) which is also intended to help develop a clear competency-based career pathway. We have also introduced a CPD scheme for CITMA Paralegal members, which mirrors much of the IPReg CPD scheme for RTMAs.

Recognising that CTMAs will sometimes specialise in certain areas within intellectual property, we have been working on our 'Find a Chartered Trade mark Attorney' search tool to allow for filtering by specialisms. This is intended to help consumers find the right person where they have a specific need. The specialisms can be seen in the search tool which can be found on the CITMA website here: <https://www.citma.org.uk/find-a-chartered-trade-mark-attorney.html>

Monitoring ongoing competence, assurance mechanisms and associated risks

A robust system of regulation is one of the strengths of the [UK trade mark protection sector]. However, RTMAs and CTMAs face competition from trade mark practitioners outside the UK, as well as a growing number of unregulated service providers. It is important that any new regulatory requirements maintain or increase the competitiveness of RTMAs/CTMAs and do not introduce additional burdens which are disproportionate to any benefits to the sector.

An increase in the burden of regulation, particularly in the absence of measures to tackle unregulated providers, risk professionals and firms questioning the value of continuing to be regulated.

Virtually all activities undertaken by a RTMA or CTMA will be on a business to business level; the 'consumer' will in most cases be a commercial undertaking or a legal professional acting for such an undertaking. This is in contrast to many other areas of the legal services profession.

There would be some benefit in firms engaging in using client feedback to help ensure ongoing competence. We do not have any quantitative evidence, but we suspect that the vast majority will use client feedback to inform processes and procedures and it is possible that a number of firms will use information from clients to help maintain standards of individuals.

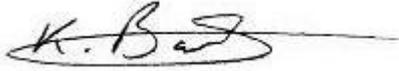
Some form of random revalidation exercise would be interesting to explore further. If adopted proportionately it could be an appropriate vehicle to encourage ongoing competence, but for the CTMA sector, this should be light touch and needs careful consideration. For example, a more in-depth analysis of an individual's CPD activities, selected at random could be sufficient, rather than a requirement for an RTMA to have to go through a re-qualification exercise after [x] number of years. An overly prescriptive regime risks creating a burden on the profession which is disproportionate to the benefit.

We think it would be difficult and possibly unhelpful to try and provide some form of framework that tried to cover what ongoing competence might look like for the whole legal services sector. The nuances of the different professions within the sector need to be understood and appreciated. However, an outline of the regulatory risks around this subject and resulting 'areas to consider' for Approved Regulators and regulators could be helpful.

We are supportive of the importance of professionals maintaining and demonstrating ongoing competence, but this must be balanced with any additional burdens which may be imposed through any new regulatory requirements.

We are grateful to the LSB for the opportunity to provide information and would be happy to expand on any of the points raised.

For and on behalf of the Chartered Institute of Trade Mark Attorneys

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

Keven Bader
Chief Executive

3rd July 2020