

1st February 2021

Matthew Hill  
Chief Executive  
Legal Services Board  
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## LSB consultation on its draft strategy and business plan

Dear Matthew,

Thank you for the opportunity to contribute to the LSB's consultation on its draft strategy and business plan. The Chartered Institute of Patent Attorneys (CIPA) is responding to the consultation in its capacity as the Approved Regulator for patent attorneys, as defined in the Legal Services Act 2007, and as the representative professional body for Chartered Patent Attorneys in the UK.

- 1. Do you have any comments on the three strategic themes that we have identified?**
- 2. Do you have any comments on the nine challenges that we have identified for the sector? Are there any important sector challenges that we have not addressed?**

Whilst CIPA is generally supportive of the strategic themes and consider that these are in line with the regulatory objectives as set out in the Legal Services Act 2007, the legal services sector includes diverse and distinct professions. The LSB should recognise this in its approach to regulation, which should not be one-size-fits-all. Patent attorneys operate almost exclusively in a business-to-business environment and this needs to be recognised in the application of the Act.

CIPA was disappointed that little mention was made of the intellectual property legal professions in the LSB's report on the State of Legal Services 2020. Given the unique challenges faced by patent attorneys now the UK has left the EU and the future challenges likely to be faced in negotiating trade agreements, we would welcome the opportunity to explore these with the LSB.

The nine challenges identified by the LSB appear to be reasonable, but no emphasis or weighting is given to each challenge. Some challenges will relate more so to the work of patent attorneys than others. It is not clear how much flexibility will be granted to the regulatory bodies to be responsive to the needs of their regulated communities.

Given the need for legal services providers to be able to operate in a rapidly changing landscape, as a result of the coronavirus pandemic and the consequences of the UK leaving the EU, it is surprising that the agility of the sector does not feature in the LSB's challenges. It will be important for the regulatory framework not to create unnecessary barriers that prevent legal services providers from being creative and adaptive.

# CIPA

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**3. How can you/ your organisation contribute to overcoming the sector-wide challenges we have identified?**

We are confident that the Regulatory Forum comprising CIPA, CITMA and IPReg provides the vehicle for ensuring that we work together to meet both the challenges the LSB has identified and those that are specific to the intellectual property sector. We hope that the LSB recognises that there will be areas outside of the scope of its strategic themes which will need to be addressed. The Regulatory Forum enables CIPA and CITMA to observe how IPReg's strategy and business plan meshes with the challenges identified by the LSB.

In its representative activities, CIPA is involved in many areas of work which support the challenges identified by the LSB. An obvious example is in the creation of IP Inclusive, with other key partners across the intellectual property professions. This has provided a focus for promoting diversity and inclusion and we would be happy to share our experiences with the LSB at an appropriate time.

**4. Do you have any comments on the suggested areas of priority for the sector 2021-24?**

Operating in an environment where the majority of the work of patent attorneys falls outside of the reserved legal activities, the risk posed to the public and the profession by the use of unregulated providers remains constant. We would be happy to work with the LSB to identify how this risk might be mitigated.

Now the UK has left the EU, the market is changing rapidly and significantly for patent attorneys, who work predominantly through the European Patent Office (EPO). Whilst there is no direct impact on rights, as the EPO is not an EU institution, complexities brought about by Brexit such as the loss of visa-free travel and the ability to establish trading entities in EU members states are a priority. These clearly fall outside of the scope of the Act, but there will be a read-across to regulation in the UK.

**5. Do you agree with our proposal to pursue these workstreams? Is there anything missing that you think we should focus on in 2021-22?**

We would ask the LSB to reflect on prioritising the six new workstreams and ask itself if these all need to be delivered at this time. Legal services providers will be under extensive financial pressures as the pandemic continues. We believe that the LSB should seek to reduce its budget commitments for 2021-22 by delaying less critical work until 2022 or beyond. Given the real risk that the regulated community may contract as a result of the severity of the pandemic and the consequences of the UK leaving the EU, we believe that there is a duty on the LSB to demonstrate financial prudence at this time.

**6. Do you see any areas of joint working between the LSB and you/your organisation?**

We would be delighted to work with the LSB and our other partners in intellectual property regulation, CITMA and IPReg, to increase the LSB's awareness and understanding of the unique challenges faced by patent and trade mark attorneys at this time. In particular, we would welcome working collaboratively to promote the benefits of regulation to the profession and users of intellectual property services.

**7. Do you agree with our proposals that we should not undertake a statutory review of reserved legal activities in 2021-22?**

Given that there is unlikely to be much enthusiasm or support for significant changes to legal services regulation in the near future, a detailed statutory review of reserved legal activities would be a potential drain on resources at this time. That said, the current list of reserved legal activities do not reflect the core work of patent attorneys and we would welcome the chance to collaborate with the LSB on how these might change in the future, should the opportunity arise. This need not be an expensive activity.

**8. Do you have any comments on our proposed market intelligence work? Is there anything missing that you think we should focus on?**

We have no comments to make on the LSB's proposed market intelligence work.

**9. Do you have any comments on our proposed budget for 2021/22?**

We are concerned about the proposed increase in budget. Regulatory and representative bodies are not increasing registration or membership subscriptions at this time of increased financial pressures for legal services firms and professionals. There is a real risk that the dual effects of the pandemic and the UK leaving the EU will lead to a contraction of the legal services sector. We believe that it is incumbent on the LSB to recognise this and carry out a review of its proposed income and expenditure before committing to its business plan and budget.

The proposed 4.4% increase is not in line with the steps being taken to limit costs right across the financial landscape. There is significant risk in the LSB increasing its budget and expecting the legal services sector to carry this increase through raising the levy. The LSB is in a position to review its proposed activities before committing to this increase and we strongly urge it to do so.

**10. Do you have any comments regarding equality issues which, in your view/experience, may arise from our proposed business plan for 2021/22? Are there any wider equality issues and interventions that you want to make us aware of?**

We can see no clear or obvious equality issues arising out of the LSB's proposed business plan. We would be pleased to work with the LSB to increase its awareness of equality issues in the intellectual property professions.

Thank you once again for the opportunity to contribute to the LSB's consultation on its draft strategy and business plan. If you require any clarification or amplification of the points raised in this response, please do not hesitate to contact me.

Yours sincerely



Lee Davies, Chief Executive