IPReg

Application by the Patent Regulation Board and the Trade Mark Regulation Board to the Legal Services Board under the Legal Services Act 2007 (section 51) for approval of practising fees for 2022

I. Summary and overview

This section asks for background information relating to the proposed PCF.

- Briefly summarise the proposed fee structure and levels and state whether the proposal is for an increase, decrease or no change to the PCF relative to the previous year. Include an explanation of why the fee level has changed (if applicable).

1. IPReg is not proposing to increase the practising fees for 2022 for individual attorneys and for regulated firms. This will be the second year that the fees have not changed.

2. The proposed level of practising fees, the revision to the Practice Fee Rules and related consultation can found in Annex 1 and Annex 2 respectively.

3. Additionally, in recognition of the individual hardship that some attorneys may have suffered either directly or indirectly as a result of the Covid-19 pandemic; the Board is proposing to extend and broaden the waiver of practice fees process that was put in place for 2021 to 2022.

An application by the approved regulator must satisfy the LSB of all the matters in Rule 29 for the LSB to approve the PCF. Rule 30 provides that if the approved regulator fails to satisfy the LSB of any of the matters in Rule 29, the LSB may refuse to approve the entire or part of the practising fee and/or require the approved regulator to resubmit the application addressing the matter(s) set out in Rule 30.

- Explain the arrangements in place for the continued operation of the approved regulator in the event that the practising fee is not approved and as a consequence, collection of practising fees is not authorised within the intended timeframe.

4. In the event that the application is not approved within the intended time frame, IPReg would use its uncommitted reserves, in particular the General Contingency Reserve to cover ongoing costs. Our current Reserves Policy (see Annex 3) and the Revised Reserves Policy (Annex 3a - the consequence of the setting up of a Compensation Fund) specifically addresses this point. More detail on the Compensation Fund can be found in the third bullet point in paragraph 13 of this document.

- Please state how this application addresses concerns raised by the LSB in the previous year's PCF application, or under the regulatory performance assessment framework (if applicable).

5. There were two issues raised in the 2021 PCF decision letter:

   - *IPReg to take additional steps to improve its consultation response rate in future in accordance with the final PCF Rules (paragraph 24)*

   The proposed budget and fees were discussed with CIPA and CITMA at the Regulatory Forum meeting on 2 September. This was set up under the IGRs and is attended by the IPReg Chair and CEO, the CIPA President, Vice-President and CEO and the CITMA President, Vice-President and CEO.

   IPReg sent an advance copy of the consultation document to the CIPA and CITMA on 6 September 2021. Later the same day, the consultation document was published on our website and at the same time, all our registrants and regulated firms were notified of the consultation by email. The Legal Services Consumer Panel and IP Inclusive were also notified by email on 6 September 2021.

- *IPReg to provide impact assessments in accordance with the final PCF Rules (paragraph 38).*

A draft equality impact assessment (EIA) was circulated as part of the consultation document is included Annex 4 which uses data from IPReg's 2021 diversity survey. A final EIA is included at Annex 11 which shows the changes as a result of the consultation responses.

- If any potential issues were identified in informal engagement with the LSB prior to the submission of an application, please state these, and how they are addressed, in the application

II. Allocation of practising fee to permitted purposes (rules 8, 14 16)

Section 51(2) of the Act makes clear that an approved regulator may only apply amounts raised by practising fees for one or more of the *permitted purposes.* Further, as a regulatory function the level of the PCF must be set and applied for by the approved regulator in accordance with section 28 of the Act.

- Provide an outline and explanation of the programme of activity[1] to be funded by the PCF during the practising fee year and which permitted purpose(s) each activity within the programme of activity is relevant to.
- For approved regulators with both representative and regulatory functions, set out the amount of the practising fee which will be allocated to the regulatory body and the amount to be retained. Where there are shared services between the approved regulator and the regulatory body, it should be made clear the costs that are shared services and the basis of the apportionment of cost.
- A template for setting out this information is provided below, which is optional to use.

Description of activity	**% of total practising fee (and actual figure) allocated to activity**	**Permitted purpose**	**Strategic objective it is relevant to/ or expected benefit**	**Representative or Regulatory activity**
e.g.				

- Pursuant to Rule 16, if any amounts raised by the PCF will fund an activity for multiple purposes, one or more of which is not a permitted purpose, please explain the basis on which the approved regulator is satisfied that the funding of that activity is nonetheless in compliance with section 51(2) of the Act.

[1] 'Programme of Activity' is defined in the Rule 1 (Definitions) as the activities which the approved regulator intends to carry out during the practising fee year and will be funded, in whole or in part, by the practising fee.

- Description of how the activities that the fee will be applied to which are regulatory functions are consistent with the regulatory objectives (as far as reasonably practicable).

6. The 2022 budget and the Business Plan for 2022/2023 are attached in Annex 5 and Annex 6 respectively.

7. In relation to the points noted:

- IPReg is a regulatory body and all the income we receive is therefore only used for permitted purposes.
- The income is allocated to carry out IPReg's regulatory functions which are all permitted purposes.
- IPReg does not remit any portion of the fees to either CIPA or CITMA nor does it rely on either CIPA or CITMA to provide any shared resources or services. IPReg is self-funding.
- The Board has determined that it would not be appropriate to increase the level of practising fees this year. The 2022 Budget includes some budget lines for which ring-fenced reserves have been set aside and for which a reserve offset can be made e.g. the completion of the Regulatory Review exercise and the recruitment and training of a disciplinary panel. As such, the budgeted level of practising fee income is at a level that will not fully cover expenditure without the anticipated reserve offsets.
- It is important to note that because IPReg is a small team, it is more efficient for staff to work on a variety of different matters. This ensures continuity across different projects and also provides opportunities for staff to work in different areas of policy. However it does mean that it is not possible to allocate the budget to specific areas of work on a more granular level in a way that larger regulators may be able to do.
- A table showing how the 2022 budgeted expenditure including those that may be covered from ring-fenced reserves, has been included.
  - The letters used for the permitted purposes in the table below (a) - (f) correspond to those in s51(4) of the Legal Services Act which forms Rule 8 of the LSB's Practising Rules.
  - The numbers used for the regulatory objectives (R01 etc) correspond to the LSB's paper on Regulatory Objectives taken from the Legal Services Act's Regulatory Objectives . Please see Annex 7 for a list of the regulatory objectives.
  - The 2022 budgeted expenditure including the amounts that may be financed through reserve offsets (shown separately) total £1,051,870.
  - All our operational costs are required in the performance of the regulatory objectives.

Description of activity	% of total practising fee (and actual figure) allocated to activity		Permitted purpose	Strategic objective it is relevant to/ or expected benefit	Representative or Regulatory activity
Resources incl. Chair, Board and Staff Costs	61.13%	£643,000	(a)	Core operational activity	Enables all ROs
Operational Costs incl. Corporation Tax, Financial Expenses, General administrative Expenses, IT Expenses, CRM Expenses & Legal and Professional	15.56%	£163,630	(a)	Core operational activity	Enables all ROs
Policy & Governance incl. transfer to Compensation Fund, Conduct & Disciplinary, Education & Review of Regulatory Arrangements	8.94%	£94,000	(a)	Core regulatory activity	All ROs
Legal Services Board and Legal Ombudsman Levy	7.08%	£74,440	(b)	Core regulatory activity	RO1, RO3, RO4

PR/Communications	0.29%	£3,000	(a)	Core regulatory activity	RO4, RO6, RO7
Expenditure that could be met through Reserve offsets:					
Operational Costs: CRM enhancements	1.90%	£20,000	(a)	Core regulatory activity	Enables all ROs
Policy & Governance - Recruitment/training of panel members, Diversity Initiatives, Review of Regulatory Arrangements & Legal Choices	5.11%	£53,800	(a)	Core regulatory activity	All ROs

8. Our Business Plan (Annex 6) details the following objectives for 2022 and Annex 7 includes all the Regulatory Objectives for reference:

- <u>Reviewing our Regulatory Framework</u>

  The approach to regulation will remain risk-based, keeping prescriptive rules to a minimum. A review of the regulatory arrangements in their entirety is being undertaken. This will make them more streamlined and consistent. The review process has started in and will continue into 2022. The new arrangements will be operational no earlier than Spring 2023.

  The Board has allocated £50,000 to a ring-fenced reserve to support this work.

  This supports all of the regulatory objectives.

- <u>Education Work</u>

  IPReg will continue to work with accredited providers to ensure that the courses are fit for purpose and to work with stakeholders and potential providers to encourage new routes to qualification. Additionally, the Call for Evidence identified additional work on litigation skills as well as considering the impact of training and qualification on the diversity of the profession.

  This supports the regulatory objective: RO6 and RO8.

- <u>Disciplinary Panel Recruitment</u>

  IPReg has established a pool of independent lay and professional people to sit on our disciplinary panel. The plan to recruit more people is to ensure that there are always sufficient people available to hear cases. The recruitment was postponed due to the pandemic.

  The Board has allocated £15,000 into a ring-fenced reserve in respect of this.

  This supports the regulatory objectives: RO1, RO4 and RO8.

- <u>Diversity Funding</u>

  The Board remains committed to funding suitable diversity initiatives.

  The Board has allocated £20,000 into a ring-fenced reserve in respect of this.

  This supports the regulatory objective: RO6.

9. The Board has also scheduled a strategy meeting in November 2021 and any further strategic objectives arising from that, will be published subsequently.

III. Financial information (rule 17) This information must be prepared on the basis of accruals rather than cash, if reasonably practicable.

• **Income and expenditure forecasts**, including practising fee income, for the year in which the PCF will be levied. Where the approved regulator expects a material change in circumstances the income and expenditure forecast will need to cover three years from and including the year in which the PCF will be levied. The income and expenditure forecast should incorporate:
  ○ total income from all sources (PCF income and other sources), including any commercial income arising from PCF funded permitted purposes.
  ○ anticipated expenditure, including the payment of levies imposed on the approved regulator and expenditure on non-permitted purpose activities.
  ○ summary of how the budget was arrived at, including any consultation between the regulatory and representative arms.
• **Financial information for the previous year and actual expenditure**, including a comparison of actual and budgeted income and expenditure. Financial information provided for the previous year should include:
  ○ forecasted budget and actual expenditure and income
  ○ PCF income collected and a breakdown of how it was allocated or spent by activity.
  ○ an explanation of any variation in total PCF spending.

2022 Budget

10. The 2022 Budget showing income & expenditure is included in Annex 5. This also includes comparative 2021 Budget figures.

- The Board does not expect any material change in income and expenditure. We have relied on paragraph 61 of the Practising Fees Guidance and not provided any forecasts for 2023 and 2024.
- The budget is prepared using the accruals basis as is our normal practice. All figures are inclusive of VAT as IPReg is not registered for VAT as all our income is either exempt from VAT or is non-business & non-taxable (paragraph 62 of the Practising Fees Guidance).
- The budgeted income shown is from practising fees. Although IPReg does have other sources of income (all from permitted purposes), the budget, as per our usual practice, does not show an estimate for this (see point 12. below). All expenditure is on permitted purpose activities.

11. Practice Fee Income:

- The 2021 budgeted practising income was calculated by taking the fee income as at 7 August 2020 and projecting a 5% reduction to simulate a potential reduction in regulated attorneys as a result of either Covid-19 and/or Brexit.
- The reduction did not materialise in 2021 and there is no current expectation that numbers will be significantly reduced in 2022.
- The budgeted 2022 practice fee income is based on the projected fee income for 2021 plus a conservative estimate of the number of attorney admissions. This has been reduced by an estimate of

the number of removals. No estimate has been made for practice fees from new firms being registered as this is not possible to quantify because decisions whether and when to enter the market are not within IPReg's control.
- The discretion to waive of practice fees for attorneys suffering financial hardship as a result of the Covid-19 pandemic is being carried forward and expanded in 2022. In 2021, we received 4 applications of which 3 were granted.

12. Other Income – we have made no estimate of other income from bank interest since this is negligible. Additionally, as per our usual practice, no estimate has been made from role holder/ licensed body applications and costs awards/ fines from disciplinary cases as these are outside our control.

13. All expenditure is on permitted purposes. In particular:

- LSB Levy: the charge in the budget is made up of levy figures from two different levy periods as the LSB financial year is 31 March. The indicative levy for the year ended 31 March 2022 is £67,426 which is 3.98% higher than the levy charged for the year ended 31 March 2021. We have estimated a similar increase for the levy to 31 March 2023 and have then taken prorated figures for both levy years to represent our financial year and arrived at a levy charge of £69,440.
- LeO/OLC levy remains at £5,000. This is the lowest possible amount and reflects the fact the LeO/OLC receive very few complaints about IPReg-regulated attorneys and firms.
- Compensation arrangements: these were previously provided by a bespoke insurance policy underwritten by Royal Sun Alliance (RSA) which notified IPReg in May 2021 that the policy would not be renewed. No further insurance provider would provide such bespoke cover. IPReg has managed to obtain an extension of the cover to 30 October, but in the meantime sought actuarial advice and has set up a Compensation Fund to meet our obligations under the Legal Services Act section 21(2). A consultation on the changes required to the Regulations was conducted and an application has now been submitted to the LSB. The budget makes provision of transfer of £30k to the Compensation Fund.
- The increase in the level of funding to Legal Choices has arisen from the decision to continue the funding gap left by the BSB's withdrawal.
- CRM CAPEX development – the budget includes this as an additional expenditure for 2022 for enhancements/changes arising from the Review of regulatory arrangements. This will be met from the ring-fenced reserve of £30k.
- Legal & Professional – the increase is due to a provision for an annual actuarial report on the compensation fund and any further costs that may be incurred in relation to the compensation arrangements.
- The regulatory officer's staff costs include the provision for a replacement authorisation officer for 9 months in 2022. The 2021 budget projected a start date of June 2021 for a new regulatory officer.

14. Development of the budget:

- The budget was developed following consideration of the business objectives that had been prioritised for 2022.
- Against this, the Board had also to consider the implications of the RSA decision not to renew the policy that provided IPReg's compensation arrangements and how this would impact the level of fees (see the 3rd bullet point in paragraph 13). As a result, IPReg has had to spend ~£40k (as of 30 September 2021) in actuarial and legal fees that was not budgeted for.
- The Board did consider whether it would be possible to reduce fees but felt that with the additional resultant expenditure and future expenditure arising from the RSA decision, which was neither budgeted or anticipated, it would not be appropriate to do so.
- Similarly, an exercise to consider whether it would be appropriate to raise fees was undertaken. The Board was cognisant that IPReg has various objectives for the coming years and also considered the approach of financing activities/operating deficits from reserves. They concluded that in the exceptional circumstances of the Covid-19 pandemic, it would not be appropriate to increase the fees this year.

Financial information for the previous year and actual expenditure

15. The financial information provided is for the 2021. We have included an Actual v Budget comparison for the year ended 30 September 2021 and a projection to the end of the year (Annex 8).

16. The following points should be noted in relation to the financial position for 2021:

- The projection is an estimate of the income and expenditure to the end of the year.
- The practising fee income for the 9 months ended 30 September has been used for the projected annual fee income. IPReg waives fees for applications for admission to the Register(s) from 1 November and based on previous years, the number of any applicants and the related practising fees received in October is not material.

IV. Reserves (rules 18 22)

An approved regulator must hold any reserves generated from surpluses of the practising fee separately from any other funds.

- Explain the reserves policy. In particular, this should address:
  - how the target for the level of reserves is set and managed
  - the different types of reserves held, which must clearly distinguish practising fee reserves from other reserves
  - the target level for committed and uncommitted reserves
  - how the approved regulator will manage any accumulated reserves to date.

If there was any variance at the end of the previous year between the target level of reserves and accumulated reserves, please provide an explanation of how this has been taken into account as part of this application.

17. The decision made by RSA about the compensation insurance policy, which has led to unexpected and unbudgeted costs of ~£40k (as of 30 September 2021) in respect of actuarial and legal advice, underlies the importance of having sufficient reserves to be able to adapt to unforeseen changes in the regulatory landscape without compromising the financial position of the organisation.

18. The compensation fund will be funded in part by the unspent 2021 budget for the insurance policy/premium and the rest will come from a re-allocation of some of our ring-fenced reserves. We are proposing to transfer ~£30k from the 2022 operating activities which will release a similar amount back to the ring-fenced reserves. This arrangement is expected to be in place until the end of 2023. More detail regarding the Compensation Fund is noted in the Revised Reserves Policy (Annex 3a) and as part of the rule change application to the LSB.

19. The re-allocation of the Reserves and the revised Reserves Policy (Annex 9 and Annex 3a respectively) were included with the consultation on the practising fees and budget. The amount of the fund being met through the re-allocation of funds is £77 lower than previously advised in the Consultation document and the rule change application, as a result of a recalculation following the receipt of the final premium invoice for the Compensation Fund Insurance Policy.

20. The Compensation Fund has been set up as a Committed Reserve.

21. The General Contingency Reserve is intended to represent up to 3 months of operational expenditure. However, in the Board's judgement, IPReg has sufficient other Reserves in addition to the Contingency Reserves which can be utilised if the need arises.

22. The previous Reserves Policy and the revised Reserves Policy (Annex 3 and Annex 3a respectively) both address the need to maintain reserves for unexpected costs to ensure that IPReg can meet its regulatory objectives and also the re-allocation of project-related reserves if required.

V. Consultation and engagement on PCF (rules 23 24)

This section requires information in respect of Rules 23 and 24 which requires approved regulators to consult with relevant authorised persons about the programme of activity to which the practising fee will be applied and the level of the practising fee, and engage effectively with as many relevant authorised persons as reasonably practicable.

- Description of the consultation process conducted with relevant authorised persons on the programme of activity and the level of PCF[2]. To include:
    - length of time the published consultation was open
    - the level of engagement and responses from relevant authorised persons
    - summary of consultation responses
    - summary of how consultation responses have been taken into account, including changes to the PCF proposals as a result of consultation responses
    - details of consultation with non-commercial bodies (e.g. Law centres federation, Citizens Advice etc.) or an explanation of why their views had not been sought.

23. We consulted on the 2022 Business Plan, Budget and Practising Fees between 6 September 2021 and 4 October 2021. The consultation document can be found on the website.

24. We received 6 responses from the consultation. The responses were from:

- An attorney who is on the Patent Register and works through his own company which is regulated by IPReg (Attorney A).
- 2 responses were from regulated bodies, both of which are on the trade mark and patent register. Both firms employ between 30 and 40 attorneys.[3] (Firm A and Firm B).
- IP Inclusive [4] responded as did CITMA[5] and CIPA[6] (see Annex 10)

25. The following questions from the consultation and the responses are noted below:

- *Question1: What are your views on the proposal to keep practising fees at the 2021 level?*

[2] Approved regulators should consult annually on their programme of activity irrespective of whether if they are proposing a fee increase, if the fee has been static or has fallen.

[3] Exact numbers have not been provided so that the firms cannot be identified.

[4] IP Inclusive objectives are to promote and improve equality, diversity, inclusion and wellbeing throughout the UK's intellectual property (IP) professions

[5] CITMA represents the interests of over 1,600 trade mark and design professionals

[6] CIPA represent the interests of the UK's 2,400 practising patent attorneys and others working in IP

- Attorney A responded that the freeze on fees is helpful.
- Firm A supported the proposal and Firm B agreed the level.
- IP Inclusive supported the proposal to keep fees at the 2021 level, subject to its suggestions about the availability of a waiver (see Question 2).
- CIPA welcomed the Board's consideration of whether it would be possible to reduce fees and hoped that it would consider this again for 2023 practising fees. It acknowledged that the changes that IPReg had to make to its compensation arrangements as a result of the RSA not renewing the compensation policy meant that IPReg was facing "unanticipated financial consideration".
- CITMA supported the decision to keep the fees at the same level and considered the reasons for not reducing them to be reasonable and appropriate at this time. They hoped that fees "may be reduced if there was a greater degree of certainty".

- *Question 2: What are your views to continue the process for waiving fees for individual attorneys who are facing hardship as a direct result of the pandemic?*

  - Firm A supported continuing the process.
  - Firm B was in agreement subject to the same vetting process.
  - IP Inclusive supported the proposal to keep the fee waiver for a further twelve months but noted that the pandemic has had a disproportionate impact on some disabled people and carers. It suggested that the waiver should be extended to include not just those out of work but those who may be affected as carers or from attorneys who have a disability who have suffered hardship as a result of the pandemic. IP Inclusive also questioned whether it was appropriate to limit the waiver to matters that result <u>directly</u> from the pandemic and suggested that "secondary effects" such as working reduced hours, financial stress and cost of living increases should also be considered. It urged IPReg to consider the establishment of a general hardship fund to support the extension of the waiver to a wider group of registrants who may have suffered hardship, in particular those with a disability, caring and parenting responsibilities. This may assist the regulated profession to embrace and nurture a more diverse range of people.
  - Both CIPA and CITMA welcomed the decision of the Board to extend the waiver to 2022. CITMA asked IPReg to consider signposting any attorneys facing hardship to their Benevolent Fund.

- *Question 3. Do you have any evidence of the impact that each of these proposals will have on different categories of individuals or firms? In particular, do you have any evidence of the potential impact on the diversity of the profession? Do you have any comments on the EIA at Annex A? Do you agree that we should not conduct a diversity survey in 2022?*

  - Firm A had no evidence regarding the impact that the proposals would have on different categories of individuals or firms. It did not support conducting a diversity survey in 2022.
  - Firm B noted that if the diversity subject matter is included in part of the regulatory arrangements review, then there is no need to conduct a 2022 Diversity Survey. If not, it would be important to conduct a diversity survey in 2022 as it may reveal data as to the ongoing effects of the Covid-19 pandemic and the diversity of the profession.
  - IP Inclusive welcomed the inclusion of an EIA when considering the 2022 practising fees and felt this was a positive development and encouraged IPReg to conduct similar assessments before making substantive changes to its regulatory arrangements. It made some suggestions of how they felt the EIA could be improved to include a wider catchment e.g.
    - Disability - recognition of the effects of the pandemic on disabled people
    - Caring responsibilities – being a carer is not a protected characteristic but IP Inclusive considers that inclusivity should also have regard to any disproportionate impact on people with caring responsibilities
    - Parenting/Career Breaks – suggested that IPReg considers that parental leave may be taken by people of all genders and is not necessarily linked to pregnancy; that there should be pro-rated fee reimbursement if parental leave starts during the year and that IPReg also consider the impact on registrants if they decrease their working hours as a result of becoming a parent.

IP Inclusive urged IPReg to re-run the diversity survey in 2022 (and annually thereafter) for a variety of reasons and to ensure that the most up to data is used each year when IPReg undertakes its review of the practising fees and business plan.
    - CIPA was unable to comment on the impact of IPReg's budget and practising fees proposals on different categories of individuals and firms. It urged IPReg to revisit the decision to not conduct a diversity survey next year, saying it is important to encourage the profession to engage with the gathering and analysis of data.
    - CITMA does not have any particular evidence of the impact of each of the proposals on different categories and would look to IP Inclusive for comments on the EIA. On balance CITMA would support the proposal to not conduct a diversity survey in 2022. It would welcome the opportunity to discuss with the profession and IPReg how more robust data could be collected as it is not sure that the IPReg survey in isolation is the best approach.

- *Question 4: Do you have any comments on the proposed Business Plan*

    - Firm A had no specific comments on the proposed Business Plan.
    - Firm B questioned the ongoing financial commitment to the profession's inclusion in the Legal Choices website, as it had "seen no evidence of the benefit of this to IP firms and practitioners".
    - IP Inclusive welcomed the initiatives to improve access to and diversity within the trade mark and patent professions. It was supportive of the intention to review the accredited education providers on a more regular basis and urged IPReg to include EDI impact assessments in that process. It also applauded IPReg's engagement with external experts to assist with diversity and inclusion related aspects of the regulatory arrangements review and offered assistance if required.
    - CIPA welcomed the business plan which seek to balance the IPReg's usual regulatory activities with the need to review and where necessary reform the regulatory framework and looked forward to working with IPReg to the conclusion of this exercise.
    - CITMA had no substantive comments on the proposed business plan. They looked forward to working closely with IPReg to the conclusion of the regulatory arrangements review. They were also pleased to see the inclusion of the education work in the plan.

- *Question 5: Do you have any comments on the draft Practising Fees Regulations at Annex B*

    - Firm A and B had no comments.
    - IP Inclusive comments on these were to extend the scope of the Covid-19 fee waiver in Regulation 6.
    - CITMA and CIPA had no comments on the draft Regulations.

26. Changes made to the documents included in the consultation document are as follows:

- <u>Waiver policy</u> - IPReg welcomes IP Inclusive's suggestion that the Chief Executive's discretion to waive fees should be widened to include those who are suffering hardship as a result (direct or indirect) of the pandemic but are still in work. There is now a considerable volume of evidence about the impact of the pandemic on specific groups. We have therefore amended the Guidance and Rules. We will monitor closely the impact of this change in approach to waivers on our income.
- <u>Reserves Policy</u> – this was updated after the PCF consultation document was published. The update include further detail provided from our actuarial advisor (included as Annex 3a).
- <u>2022 Budget</u> – this has been updated since the consultation as follows:
    - Regulatory Officers has been recalculated to take into account the unsuccessful recruitment of a new authorisations officer in 2021 and to take into account the revised timetable for this exercise. Also included is a provision for cover for the role.
    - The Employers National Insurance figures have also been recalculated to take into account the increase of 1.25% from April next year.
    - Pension costs have been recalculated on the basis of the revised timetable for recruitment of the authorisations officer.

- The transfer to the Compensation Fund from operating activities has been amended to £30k to correspond to the figure noted in the Revised Reserves Policy (Annex 3a).

- EIA - has been amended to take into account IP Inclusive's suggestions and these are shown in tracked changes Annex 11 . IPReg currently allows attorneys who are on parental or adoption leave to move into the "not in active practice" category but this has been made clear on the EIA. With regards to the pro rata reimbursement of fees, this will be considered as part of the regulatory arrangements review.
- Practice Fee Regulations - IPReg has amended the Regulations and associated guidance to take into account the extension of the waiver policy (Consultation Question 2) Annex 12.
- Adjusted Reserves – as noted in paragraph 19, the amount re-allocated from IPReg's ring-fenced reserves is £77 lower than the consultation document and the rule change application to the LSB, as a result of a recalculation following the receipt of the final premium invoice for the Compensation Fund Insurance Policy.
- For the avoidance of doubt, IPReg has made no change to the Business Plan or the 2022 Budget in respect of funding Legal Choices. IPReg considers that this work supports the Legal Services Act's regulatory objectives of: protecting and promoting the public interest; and increasing public understanding of the citizen's legal rights and duties.

VI. Impact assessments (rules 25 28) This section requires information in respect of Rules 25 28 which collectively, stipulate that initial equality assessments must be carried out and set out in the circumstances in which full impact assessment must be conducted. These provisions also require that approved regulators consider the impact of the level of the fee on the conduct of legal services.
• Summarise the initial and (where applicable), full equality impact assessment carried out and the findings. In particular, this summary should cover how the proposed PCF may potentially impact on various groups, especially those with protected characteristics under the Equality Act 2010 within the approved regulator's membership. • Summarise the consideration – proportionate to the harm as determined by the approved regulator - given to the impact of the level of the fee on the provision of legal services by authorised persons, and any significant circumstance or event impacting on that. • Provide details of any action taken as a result of findings, or an explanation as to why this was not necessary or practicable.

27. The EIA that was provided as part of the 2022 Business Plan, Budget and Practising Fees consultation is included as Annex 4.

28. As noted in Section V, respondents were asked if they had any evidence of the impact of the proposals on different categories of individuals or firms.? They were also asked if they had any evidence of the potential impact on the diversity of the profession? With regards to the EIA that was provided with the consultation, respondents were asked if they had any comments. The responses indicated that there was no evidence of how the proposals may affect different categories although IP Inclusive suggested widening the scope of the EIA to include further categories.

29. The consultation also asked respondents if they agreed that IPReg should not conduct a diversity survey in 2022. The responses were mixed with some considering that it should be undertaken in 2022 or annually. CITMA put forward a proposal to work together with the profession and IPReg to explore how it would be possible to obtain more comprehensive and robust data to use.

VII. Transparency of PCF information to relevant authorised persons
• Description or a copy of the information that will be provided to those who will pay the fee. This should be clear and accessible and include the following: o the level of the PCF o how the PCF has been set o a breakdown of how the PCF income will be allocated to non-regulatory/regulatory and shared services o an explanation of why commercial income arising from PCF funded permitted purposes is to be used for non-permitted purposes. o an accurate presentation and representation of the LSB and Office for Legal Complaints (OLC) levies so the regulated community is clear about the proportion of PCF attributable to the levies

30. The full consultation document on the website has the following details:

- The level of PCF Fees
- The reasoning behind the budget and PCF levels
- The budget shows how the PCF will be utilised and the reserves that are available for offset against specific budget lines.
- The LSB Levy and LeO/OLC Levy are shown as separately and an explanation of the figures is also included.
- The resultant changes to the Practice Fee Rules were also included as part of the document.

31. When we email registrants about the 2022 Annual Renewal process, we will draw attention to our final budget and business plan. We expect the email will be: [7]

Dear [Name]

I'm writing to let you know that the Legal Services Board (LSB) has agreed to IPReg's proposal that its practising fees should not be increased in 2022. It has also agreed to our proposal that we should be able to waive fees for attorneys who have suffered financial hardship as a result of the pandemic. Please see the 2022 Budget (link), Business Plan (link) and Practice Fees Regulations (link) for further details.

Your practising fee includes a levy to pay for the LSB and the Legal Ombudsman. IPReg does not have any control over the amount of these levies. IPReg's contribution to the LSB levy for its financial year 2021/22, is estimated to be £67,426. Our contribution to the Legal Ombudsman's costs is set at the minimum amount of £5,000 because it receives so few complaints about IPReg registrants. The LSB and Ombudsman levies together comprise around 7.1% of our total expenditure.

All the income we collect from practising fees funds our regulatory activities; if you are a member of CIPA and/or CITMA, they will collect your membership fee separately and use it to fund their own activities. You do not have to be a member of CIPA or CITMA to be on IPReg's register(s).

Fees are due for payment on 1 January 2022 and all fees should be paid by 31 January 2022. Attorneys and

[7] Note that this draft may change.

firms that have outstanding fees on 1 March 2022 will be suspended from the register and attorneys may have to pay a late payment fee payment of 50% of the practising fee (up to a maximum of £200) in addition to the practising fee in order to renew their registration after this date.

VIII. Checklist Enclosures

Income and expenditure forecasts, including practising fee income, for three years from and including the year for which the practising fee is to be levied.	x Enclosed
Financial information for the previous year, including a comparison of actual and budgeted income and expenditure.	x Enclosed
Copy of the information that will be provided to fee paying members (if description is not provided in section VII).	☐Enclosed

Details of any other supporting documents provided with the PCF application (optional):

Annex 1 Proposed 2022 Practising Fees

Annex 2 Draft Revision to Practice Fees Regulations – Consultation

Annex 3 Reserves Policy

Annex 3a Revised Reserves Policy

Annex 4 Draft Equality Impact Assessment – Consultation

Annex 5 Proposed 2022 Budget – Final

Annex 6 Business Plan 2022/2023

Annex 7 Regulatory Objectives – Legal Services Act 2007

Annex 8 Actual v Budget 9 me 30-9-2021 and Year End Projection

Annex 9 Revised Reserves October 2021

Annex 10 CITMA, CIPA and IP Inclusive response to 2022 Business Plan, Budget and Practising Fees Consultation.

Annex 11 Final Equality Impact Assessment – Post Consultation

Annex 12 Final – Practice Fee Regulations – Post Consultation

IX. Compliance Statement

Applications must include the following compliance statement and be dated and signed by a representative of the approved regulator:

- ✓ I certify that the information provided in this application is accurate and complete to the best of my/our knowledge and I/we have taken reasonable steps to ensure that the application complies with the Rules.

Please include contact name(s) for the application.

Karen Duxbury
Finance Officer

Fran Gillon
CEO

12 October 2021

Annex 1

IPReg

Proposed 2022 Practising Fees

The level of fees remains unchanged from 2021.

Attorney solely undertaking corporate work	£177	£283
Attorney in private practice	£215	£353
Attorney not in active practice	£161	£258
Sole trader attorney not employing other attorneys or professionals	£353	£504
Sole trader attorney:	£353	£504
employing other attorneys - add fee per attorney	£71	£71
employing other professionals - add fee per professional	£283	£283

Registered Bodies *(this includes ABS and non-ABS firms)*	Single or both registers
Registered Body through which a single attorney and no other attorneys or other professionals provide services	£138
Any other registered body	
Base Fee	£353
add fee per attorney	£71
add fee per other professional practising via the registered body	£283

IPREG PRACTICE FEE REGULATIONS 2021

The Patent Regulation Board of the Chartered Institute of Patent Attorneys and the Trade Mark Regulation Board of the Chartered Institute of Trade Mark Attorneys working jointly together as the Intellectual Property Regulation Board (IPReg) now make the following provisions under section 275A of the Copyright Designs and Patents Act 1988 and section 83A of the Trade Marks Act 1994, respectively (pursuant to sections 185 and 184 of the Legal Services Act 2007) and section 21 of the Legal Services Act 2007.

Regulation 1 - Interpretation

In these regulations, unless context otherwise requires:

"2007 Act" means the Legal Services Act 2007;

"ABS" means a licensable body as defined in section 72 of the 2007 Act;

"Patent Attorney Register" means (together) in respect of Registered persons other than ABS, the Register kept under section 275 of the Copyright Designs and Patents Act 1988 as amended and in respect of ABS, is part of IPReg's Register of licensed bodies for the purpose of section 87 of the 2007 Act;

"Trade Mark Attorney Register" means (together) in respect of Registered persons other than ABS, means the register kept under section 83 of the Trade Marks Act 1994 as amended and in respect of ABS, is part of IPReg's Register of licensed bodies for the purpose of section 87 of the 2007 Act;

"attorney" means registered patent attorney or registered trade mark attorney;

"practising via a body" means providing services to clients via the body or being employed by or being a manager of the body;

"manager", in relation to a body, has the same meaning as in section 207 of the 2007 Act;

"patent and/or trade mark work" means work undertaken in the course of business as an attorney;

"corporate work" means patent and/or trade mark work undertaken by an employed attorney acting solely as an agent on behalf of —

a) their employer;
b) a company or organisation controlled by their employer or in which their employer has a substantial measure of control;
c) a company in the same group as their employer;
d) a company which controls their employer;
e) an employee (including a director or a company secretary) of a company or organisation under (a) – (d) above, where the matter relates or arises out of the work of that company or organisation; or
f) another person with whom a person under (a) to (e) above has a common interest;

"in private practice" means undertaking patent and/or trade mark work which is not solely corporate work;

"inactive attorney" means an attorney who is not available to conduct any patent and/or trade mark work for a client or employer

"registered body" means a body (corporate or unincorporated) entered (or where clear in the context, applying to be entered) in the Patent Attorney Register or the Trade Mark Attorney Register, and:

(a) a body which is an ABS and is entered in the Register, becomes upon entry a licensed body under the 2007 Act;
(b) "Registration" and "Registered" shall be construed accordingly and shall mean, in respect of ABS, "licensing" and "being licensed" for the purpose of the 2007 Act; and
(c) for the avoidance of doubt references to "Registration" and "Register" in these regulations are to initial registration and any renewal of registration;

"sole trader attorney" means an attorney in private practice based in the UK who is practising other than via a registered body or a body regulated by another legal services regulator;

"other professional" means an individual who is:

(a) not a registered patent attorney or a registered trademark attorney;
(b) based in the UK; and
(c) qualified as a:
    i) European patent attorney;
    ii) European trademark attorney;
    iii) barrister;
    iv) solicitor; or

v) is qualified to be a registered patent attorney or a registered trademark attorney but is not registered as such.

Regulation 2 – Individual fees

The fees provided for under regulation 12.2 of the Patent Attorney and Trade Mark Attorney Qualification and Registration Regulations 2009, for individuals to be entered onto or to remain on the patent attorney register and/or the trade mark attorney register from 1st January 2022, shall be as follows:

	For entry on or to remain on a single register	For entry on or to remain on both registers
i) Attorney solely undertaking corporate work	£177	£283
ii) Attorney in private practice	£215	£353
iii) Attorney not in active practice	£161	£258
v) Sole trader attorney not employing other attorneys or other professionals	£353	£504
v) Sole trader attorney employing other attorneys or other professionals	£353 + £71 for each attorney employed by the sole trader attorney + £283 for each other professional employed by the sole trader attorney	£504 + £71 for each attorney employed by the sole trader attorney + £283 for each other professional employed by the sole trader attorney

Regulation 3 – Late payment fees

The late payment fees provided for under regulation 7.5 of the Patent Attorney and Trade Mark Attorney Qualification and Registration Regulations 2009 shall be equal to 50% of the corresponding fee to be entered into or to remain on the patent attorney register or the trade mark attorney register which is being paid late up to a maximum late payment fee of £250.

Regulation 4 – Registered body fees

The fees provided for under regulations 2 and 7 of the IPReg Registered Bodies Regulations 2015 for corporate or unincorporated bodies to be registered* or to remain on the Patent Attorney Register or the Trade Mark Attorney Register shall be as follows:

	For entry on or to remain on a single register or both registers
i) Registered body through which only a single attorney and no other attorneys or other professionals provide services	£138
ii) Any other registered body	£353 + £71 for each attorney practising via the registered body + £283 for each other professional practising via the registered body

* Please note that this excludes the fee for the first approval of licensed bodies which shall be equal to the practice fee payable upon approval for licensing.

Regulation 5 – Commencement

The fees set out in these regulations shall apply from 1st January ~~2021~~ 2022 until further amended or substituted by further regulation.

Regulation 6 – waivers – Covid-19

This Regulation 6 shall apply from the date these regulations come in to force until 31 December ~~2021~~2022.

The IPReg Chief Executive may, at her discretion and subject to appropriate evidence being provided, waive all or part of the individual fees set out in Regulation 2. Such waiver will only apply to cases of individual hardship resulting directly from the Covid-19 pandemic.

A registrant whose fee is waived under this regulation will remain on the register(s) and will be subject to the regulatory requirements that apply to attorneys who are not in active practice. In addition, sole trader individuals or firms who have suspended their practice must maintain PII in accordance with Rule 17 of the Rules of Conduct.

Attorneys who have had their fee waived under this Regulation 6 must notify IPReg within 14 days of becoming employed or resuming trading. If an attorney whose fee is waived under this regulation is subsequently employed or resumes trading during ~~2020~~ 2021 or ~~2021~~2022, the full fee(s) for their new category will become payable within 28 days of notification to IPReg of becoming employed or resuming trading. No late payment fee will be payable in these circumstances.

Guidance to Regulation 6 – waivers – Covid-19

Attorneys will need to provide evidence of hardship. Acceptable documents include:

- a letter of redundancy from their former employer; and
- proof of payment to them of Universal Credit or other means-tested benefits;
- in the case of a sole trader or a sole practitioner firm:
    - evidence that they have either suspended trading or closed their business as a result of the pandemic;
    - if they have suspended trading, they have maintained appropriate PII ;
    - if they have ceased trading, they have put run-off cover in place or transferred all their clients to another firm which has included them in its own PII; and
    - if not in receipt of any benefits, their savings are below the threshold for any State benefits.

The Chief Executive may require additional information from the attorney or their former employer.

Fee waivers are not appropriate for attorneys who are working/employed. They must continue to comply with all the relevant regulatory arrangements including having compliant PII.

Reserves Policy

1. There is no statutory requirement to hold reserves or to ring-fence reserves for specific purposes. We consider that it is financially prudent to hold reserves for the following purposes:

    a. to cushion against unexpected or exceptional increases in costs;
    b. financing specific project commitments including capital and systems expenditure to promote the regulatory objectives and fulfil our regulatory functions;
    c. alleviating any short-term pressure on the level of practising fee or fluctuations in the level of fees year on year;
    d. ensuring sufficient funds to support regulatory and disciplinary actions;
    e. covering costs of up to 3 months if we were unable to collect practising fees, for example as a result of an IT system failure.

2. Reserves are considered by the Board annually when the operating balance for the preceding financial year is identified. Decisions about the transfer of part or all of specific reserve(s) to or from the income and expenditure account will be considered and made by the Board at this meeting.

3. Additionally, the Board will review the level of financial risk that IPReg faces, using information available on its risk register and the results of the audit of its accounts for the preceding year. As a result of this review, project-related or allocated costs reserves may be adjusted or reallocated to other or new reserves.

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Compensation Fund Reserve

4. In 2021, IPReg had to establish a Compensation Fund Reserve to comply with its statutory requirement to have appropriate compensation arrangements in place. This was previously met through a bespoke insurance policy which was withdrawn by the provider and no replacement policy can be found.

5. The Legal Services Board requires all regulators to identify "committed reserves" and IPReg considers that the Compensation Fund Reserve falls into this category. As such, points 2 and 3 do not apply to the Compensation Fund Reserve.

6. Basis of Claims: The compensation fund is a 'claims made' fund (replicating the terms of the previous insurance policy), i.e. it covers claims notified in the 'contribution year', irrespective of when the dishonesty occurred (because dishonesty may not be discovered until several years after the dishonest event occurred).

7. Funding Basis: The actuarial assessment is a (prudent) expected claims cost of £30k pa. Thus each year's P&L (opex budget) will be charged £30k. In addition, for additional prudence, the fund will be fully funded on Day 1 for a maximum pay-out in Year 1 (£100k). This means an additional transfer from Reserves of c£70k in Year 1. If no claims are notified in Year 1, and the maximum pay-out in Year 2 remains £100k. This £30k opex cost in Year 2 will enable £30k of the additional transfer to be returned to Reserves. An actuarial review is planned by the end of Year 2 to determine if the claims experience warrants continuing to hold the maximum annual pay-out of £100k.

8. Funding Principles/third party oversight: Initial funding principles for the first 2 years for the new fund will be to ring-fence funds no less than the actuary's assessment of the risk of claims emerging from incidents at each future actuarial review assessment date, bearing in mind, as above, that dishonesty may not be discovered until several years later.

9. Fund Management/third party oversight: the Compensation Fund Reserve will be held in a separate bank account. No withdrawals will be made without actuarial and legal approval (e.g. to pay claims).

10. Fund Investment/third party oversight: IPReg's Compensation Arrangements Rules 2021 give it the power to invest and borrow against the Compensation Fund. However, initially (i.e. for Year 1 and Year 2) the Fund will be invested in cash until next actuarial review and no borrowing/investing will take place without actuarial and legal advice on the impact on claimant security.

September 2021

Protected Characteristic Group	**Is there a potential for positive or negative impact**	**Please explain and give examples of any evidence/consultation/data used**	**Action to address negative impact (e.g. adjustment to the policy)**
Disability	No	Our diversity survey indicates that there are very few attorneys who consider that they have a disability. In the survey, 4.43% of attorneys considered that they had a disability and 2.26% were not sure.	N/A However, the level of reporting of disability was below the benchmark that the LSB has identified (15%) so there may be under-reporting (in common with other sectors of the legal services market).
Gender reassignment	Unknown	Data for this characteristic is very limited and so we are unable to draw any conclusions from it.	N/A
Marriage or civil partnership	Unknown	IPReg has taken a targeted and proportionate approach to its initial diversity data gathering and does not yet collect data on this characteristic.	N/A
Pregnancy and maternity	No	Anyone on maternity leave can apply to IPReg to be put in the “not in active practice” category with an associated reduction on practising fees (although the fees are not reimbursed if the change occurs mid-year)	This policy will remain in place
Race	No	Supplementary analysis of our diversity survey shows that there are proportionately more (8%) Asian attorneys compared to the LSB benchmark (5%). Black attorneys appear to be under-represented	N/A

Protected Characteristic Group	Is there a potential for positive or negative impact	Please explain and give examples of any evidence/consultation/data used	Action to address negative impact (e.g. adjustment to the policy)
		(1%) compared to the LSB benchmark (3%). However, for Black registrants, there is significant divergence between the patent (0%) and trade mark (5%) professions.	
Religion or belief	No	Our diversity survey showed that 42% of attorneys said that they did not have a religion; this is higher than the LSB benchmark (38%). In addition, 14% said that they are an atheist (no LSB benchmark data available). Attorneys who are Christians make up a smaller percentage (34%) than the benchmark (52%). Other religions are under-represented compared to the LSB benchmarks.	N/A
Sexual orientation	Unknown	Data for this characteristic is very limited and so we are unable to draw any conclusions from it.	N/A
Sex (gender)	No	There is a significant difference between the number of women trade mark attorneys (68%) compared to patent attorneys (38%); LSB benchmark: 47%. The professions' senior ranks reflect a higher (59%/40%) male/female ratio than the average for the professions as a whole (48%/42%).	Middle and junior level attorneys show proportionately higher numbers of women than men. No targeted action is required.
Age	No	The age profile of attorneys who are aged 55-64 and 65+ and are on both	The number of attorneys on both registers is low: 7.8% and mainly

Annex 4

Protected Characteristic Group	Is there a potential for positive or negative impact	Please explain and give examples of any evidence/consultation/data used	Action to address negative impact (e.g. adjustment to the policy)
		registers is slightly higher (34% and 22%) than those who are only on one register (patent attorneys:10% and 2%; trade mark attorneys: 12% and 4%). However the sample size for both registers is small (~8.5%)	represents an historic grandfathering policy. Numbers are decreasing over time as it is no longer common practice to be dual-qualified.

Question	Explanation / justification	
Is it possible that the proposed level of PCF could discriminate or unfairly disadvantage members of the regulated community?	Prior to consultation, we have not identified any evidence that the level of the fee or the proposal not to increase it could discriminate against or unfairly disadvantage attorneys with protected characteristics. As part of the consultation on the level of 2022 practising fees as are asking respondents if they have any comments on this equality impact assessment.	
Final Decision	**Tick the relevant box**	**Include any explanation / justification required**
No barriers identified		
Bias towards one or more groups		
Adapted PCF to eliminate bias		
Barriers or impact identified but having considered all options carefully, there appear to be no other proportionate ways to achieve the policy aims in the programme of activity but by charging this level of PCF.		

IPReg

PROPOSED 2022 BUDGET

	Proposed 2022 Budget			Note	2021 Budget comparative		
	£	£	£		£	£	£
PROJECTED INCOME				a.			
Budgeted Practice Fees - Attorneys & Entities			1,013,213				906,936
Other Income			0				0
			1,013,213				**906,936**
PROJECTED EXPENDITURE							
LEGAL SERVICES BOARD AND LEGAL OMBUDSMAN							
LSB Levy		69,440		b.		69,310	
LeO/OLC Levy		5,000				5,000	
		74,440				74,310	
OPERATIONAL EXPENDITURE							
Board Costs							
Replacement of Board Members		5,000				8,000	
Compensation Scheme Insurance Policy		0		c.		35,000	
Conduct & Disciplinary incl. Assurance & Litigation							
External Legal costs and hearing costs	35,000				35,000		
Recruitment/training of panel members - supported by Reserve	15,000			d.	15,000		
		50,000				50,000	
Corporation Tax		150				150	
Diversity Initiatives - supported by Reserve		7,000				7,000	
Education & Projects		5,000				5,000	
Financial Expenses		7,000				7,000	
General Administration Expenses							
Licence & Services	78,480			e.	78,480		
Other Office Costs	20,000				20,000		
		98,480				98,480	
IT Support (office and website)							
Support	10,000				10,000		
CRM - OPEX	13,000				13,000		
CRM CAPEX - supported by Reserve	20,000			f.	0		
		43,000				23,000	
Legal & Professional				g.			
Legal & Professional Costs	35,000				20,000		
Review of Regulatory Arrangements - supported by Reserve	50,000				40,000		
		85,000				60,000	
Legal Choices - supported by Reserve		5,800		h.		4,850	
PR/Communications - supported by Reserve		3,000				3,000	
Staff Costs				i.			
CEO	82,250				80,100		
Regulatory Officers	322,300				285,640		
Administrative Staff	74,100				72,000		
Directors' Remuneration	69,100				71,100		
Employer's NI - staff	57,650				51,060		
Employer's NI - directors	3,900				3,800		
Pension Costs	12,700				12,100		
Staff Benefits	8,000				7,400		
Staff development and training	3,000				3,000		
Staff Recruitment	5,000				8,400		
		638,000				594,600	
TOTAL PROJECTED EXPENDITURE			1,021,870				970,390
PROJECTED OPERATING BALANCE BEFORE RESERVE MOVEMENTS			**-8,657**				**-63,454**
Transfer to Compensation Fund Reserve			-30,000	d.			0
			-38,657				**-63,454**
Reserves offsets:				j.			
CMA Market Funding - Legal Reserves		5,800				4,850	
Conduct & Disciplinary - Recruitment & training of disciplinary panel		15,000				15,000	
Diversity Initiatives		7,000				7,000	
Communication Reserve - PR/ Communication		0				3,000	
Review of Regulatory Arrangements		26,000				24,000	
Website - CRM CAPEX		20,000				0	
			73,800				53,850
			35,143				**-9,604**

Notes:

a. Projected Income:

Budgeted Practice Fee Income for 2022 - no change to the level of fees. Budgeted Practice Fee Income for 2022 is based on an estimate of practice fee income for 2021 with a provision for attorney admissions reduced by an estimate for voluntary removals/removals in 2022.

Budgeted Practice Fee Income for 2021 was calculated by taking our Practice Fee Income as at 7-8-20 and projecting a 5% reduction to simulate a potential fall in the regulated community through either COVID-19 and/or Brexit.

Other Income - no estimate has been made for other income from bank interest and as per our usual practice, from role holder/licensed body applications and costs awards/fines from disciplinary cases as these are outside our control.

b. The LSB year end is 31 March, therefore the budget is made up of 2 levy years. The levy for 2022 has been calculated by prorating the indicative levy advised by the LSB for 2021/2022 and taking a prorated proportion of an estimated levy for 2022/2023 (based on a 3.98% increase). The 2021 levy figure estimated a larger increase for 2021/2022 levy year than has actually been advised by the LSB.

c. The Board has prepared the budget to enable £30k to be transferred to the Compensation Fund Reserve. The 2021 Budget was in respect of the premium for a Compensation Scheme insurance policy and related fees.

d. Conduct & Disciplinary - Recruitment & Training of Disciplinary Panel members (2021 budget line) deferred to 2022 and shown as 2022 budget expense.

e. Licence & Services - the existing licence and service agreement will be expiring in March 2022 and we have used the 2021 budget figures as our anticipated costs.

f. CRM CAPEX - estimated expenditure in respect of enhancements arising from regulatory arrangements review.

g. Legal and Professional costs includes a provision for an annual actuarial report and any further costs in relation to the compensation scheme arrangements.

Review of regulatory arrangements covers anticipated expenditure in respect of advice on diversity, advice on Professional Indemnity insurance, costs for modelling fee structures and other ancillary costs.

h. Legal Choices - provided for at the same level of funding as in 2021.

i. Staff costs - the 2022 budget has a projected CPI increase of 2.5% for IPReg staff salaries and costs - see "CPI June 2021" link below. Directors fees remain at the same level as 2020.

CPI June 2021

j. These are the potential ring-fenced reserve offsets that can be utilised if required.

Business Plan 2022/23

Introduction

1. IPReg is undertaking a significant project to review our regulatory arrangements. In addition, although the regulated IP sector appears to have weathered the pandemic relatively well, the overall impact of the pandemic in the coming 1-2 years remains unknown. This continues to create uncertainty for us in terms of the amount of practising fees that we will be able to collect. We therefore consider that it is appropriate to continue to focus on improving the way we conduct core activities and to limit the number of new initiatives that we start.

IPReg's strategic priorities

2. In March 2019, the IPReg Board met to discuss its strategic priorities for the period from 2019 – 2021. The Board has achieved two of its priorities - to implement a new CRM system and move to offices that have more suitable facilities and better accessibility. In setting its strategic priorities (as part of that review and more widely) the Board wants to be more externally focused to ensure that its regulatory framework encourages and supports innovation:

    a. In the provision of services that providers are able to offer consumers and the ways in which those services are provided, including the use of law tech. We will do this by ensuring that our review of regulatory arrangements focuses on setting reasonable standards but does not 'gold plate' them;

    b. By encouraging the entry of new providers of education courses (at both the foundation and advanced levels). We want people who want to become trade mark attorneys and patent attorneys to have a variety of routes into the profession (including apprenticeships). We want these to be provided using different delivery methods and to introduce new subjects (e.g. law tech). We consider that, over time, this will help to increase diversity, improve quality and lower costs. We also want to review on a more regular basis the quality and performance of existing accredited education providers;

    c. By ensuring that its requirements for continuing competence, in addition to protecting consumers, are relevant to the changing way in which legal services are provided and the commercial requirements of regulated individuals and entities.

3. A further strategy day in planned for November 2021. Any revised strategic objectives will be published after that.

Our day to day activities

4. The IPReg team carries out a wide range of "business as usual" activities. These include:

- considering applications from individuals and entities for registration on, and removal from, the registers;
- providing advice on our regulatory arrangements;

- investigating complaints and taking disciplinary action where necessary;
- dealing with enquires to our CRM system and our "Info" email box;
- a rolling accreditation process of examination agencies and considering applications from new entrant agencies;
- responding to LSB consultations and requests for information;
- developing policies following recommendations from external bodies (e.g. the CMA).

These activities occupy most of the team's time over the course of a typical year. The activities support a number of regulatory objectives including: protecting and promoting the interests of consumers; promoting competition; encouraging an independent, strong, diverse and effective legal profession; promoting and maintaining adherence to the professional principles.

Reviewing our regulatory arrangements

5. As we said when we consulted on the 2021 Business Plan, our regulatory arrangements (our rules and regulations) have built up over time and, inevitably, there are areas where they could be improved. We do not plan to change our overall approach to regulation – risk-based, keeping prescriptive rules to a minimum and providing guidance to help understand the outcomes we are seeking. However, we are reviewing our regulatory arrangements in their entirety based on the feedback we have received from the Call for Evidence as well as our own experience of applying the current rules. In doing so, we will make them more streamlined and consistent and will look to provide more flexibility for those we regulate where it is safe to do so.

6. This is a significant piece of work, both for IPReg and those we regulate and we have therefore established a new post to drive the work forward. We have also engaged external experts in the areas of diversity and inclusion, economic regulation, design and reform of regulatory frameworks (including impact assessment) and professional indemnity insurance, to support and challenge our thinking as the review progresses.

7. We will be providing more information about the Review over the coming months including a consultation on the proposed changes. Further details of the review can be found on our website.

8. This work supports the regulatory objectives of: protecting and promoting the interests of consumers; promoting competition; encouraging an independent, strong, diverse and effective legal profession; promoting and maintaining adherence to the professional principles.

Education work

9. We will continue to work on important issues concerning accredited attorney qualification providers:

    a. Working with providers to ensure that accreditation recommendations are taken forward and quality assurance mechanisms are fit for purpose, including responding to student and client feedback. Where there are concerns, IPReg will raise these with the provider to ensure that action is taken. This work will continue as necessary in 2022;

b. Working with providers to ensure that online delivery of courses meets the required standards (a change in the method of delivery as had been triggered a result of the pandemic);

c. Working with stakeholders and potential providers to encourage new qualification pathway options;

d. We will continue to undertake reaccreditation assessments (typically every 5 years) of qualification providers. We will consider the outcomes of the European Qualifying Examinations Modernisation Discussions and Proposals and the Mercer Review.

10. The Call for Evidence at the outset of the review of regulatory arrangements identified the following education areas for review:

    a. we will continue to encourage more pathway providers to offer new qualification pathway options;
    b. consider whether the Basic Litigation Skills Certificate requirement should be pre-qualification for patent attorneys;
    c. review of the current arrangements regarding the Higher Courts (both Litigation and Advocacy) Certificates;
    d. consider the impact of education and training requirements on diversity in the profession, to include apprenticeships.

11. This work supports in particular the regulatory objective of encouraging an independent, strong, diverse and effective legal profession.

Disciplinary panel recruitment

12. IPReg has established a pool of independent lay and professional people to sit on our disciplinary panel. There are currently 3 lay members and 6 professional members in this pool. From time to time we need to recruit more members of this pool to replace people who have stood down. We plan to conduct this recruitment exercise in 2022 to ensure that enough people are available to hear cases; this was delayed from 2021 due to the pandemic.

13. We have allocated £15,000 from our reserves for the recruitment of panel members and for the training of Board members (who currently sit as Complaint Review Committee members) and panel members.

14. This work supports the regulatory objectives of: protecting and promoting the public interest; protecting and promoting the interests of consumers; promoting and maintaining adherence to the professional principles.

Diversity funding

15. For the avoidance of doubt, we remain committed to keeping a ring-fenced reserve to fund suitable diversity initiatives. The reserve is currently set at £20,000.

16. This work supports in particular the regulatory objective of encouraging an independent, strong, diverse and effective legal profession.

Regulatory Objectives – Legal Services Act 2007

RO1	Protecting and promoting the public interest
RO2	Supporting the constitutional principles of the rule of law
RO3	Improving access to Justice
RO4	Protecting and promoting the interests of consumers
RO5	Promoting competition in the provision of services
RO6	Encouraging an independent, strong, diverse and effective legal profession
RO7	Increasing public understanding of the citizen's legal rights and duties
RO8	Promoting and maintaining adherence (by authorised persons) to the professional principles

IPReg

ACTUAL v BUDGET FOR 9 MONTHS ENDED 30 SEPTEMBER 2021 AND PROJECTION TO 31 DECEMBER 2021

THESE FIGURES HAVE BEEN PREPARED FOR MANAGEMENT INFORMATION PURPOSES AND ARE UNAUDITED

	Actual 9me 30-9-21			Budget 9me 30-9-21			Projected YE 31-12-21			Budget YE 31-12-21		
	£	£	£	£	£	£	£	£	£	£	£	£
INCOME												
Practice Fees - Attorneys & Entities			993,202			906,936			993,202			906,936
Other Income			14,368			0			14,391			0
			1,007,570			906,936			1,007,593			906,936
EXPENDITURE												
LEGAL SERVICES BOARD AND LEGAL OMBUDSMAN												
LSB Levy		49,923			51,983			66,780			69,310	
LeO/ OLC Levy		3,750			3,750			5,000			5,000	
		53,673			55,733			71,780			74,310	
OPERATIONAL EXPENDITURE												
Board Costs												
Replacement of Board Members - supported by Reserve		10,392			6,000			10,392			8,000	
Compensation Policy Insurance Premium		20,981			26,250			23,282			35,000	
Conduct & Disciplinary incl. Assurance & Litigation												
External legal Costs and hearing costs	14,544			26,250			44,544			35,000		
Recruitment/training of panel members - supported by Reserve	0			11,250			0			15,000		
		14,544			37,500			44,544			50,000	
Corporation Tax		15			113			25			150	
Diversity Initiatives - supported by Reserve		2,000			5,250			7,000			7,000	
Education & Projects		17,222			3,750			27,398			5,000	
Financial Expenses		4,507			5,250			6,203			7,000	
General Administration Expenses												
Licence & Services - Little Britain	52,146			58,860			72,666			78,480		
Other Office Costs	8,297			15,000			13,046			20,000		
Write Back of Provision against the recoverability of costs awards	-8,900			0			-8,900			0		
		51,543			73,860			76,812			98,480	
IT Support (office and website)												
Support	5,510			7,500			8,732			10,000		
CRM development - supported by Reserve	899			0			1,899			0		
CRM - OPEX	8,860			9,750			12,118			13,000		
		15,269			17,250			22,749			23,000	

continued:	Actual 9me 30-9-21			Budget 9me 30-9-21			Projected YE 31-12-21			Budget YE 31-12-21		
	£	£	£	£	£	£	£	£	£	£	£	£
Legal & Professional												
Legal & Professional Costs	16,318			15,000			22,469			20,000		
Actuarial Fees re Compensation arrangements	39,645			0			41,645			0		
Review of Regulatory Arrangements - supported by Reserve	6,265			30,000			35,150			40,000		
		62,228			45,000			99,264			60,000	
Legal Choices - supported by Reserve		4,350			3,638			5,800			4,850	
PR/Communications		0			5,500			3,000			3,000	
Staff Costs												
CEO	60,160			60,075			80,213			80,100		
Regulatory Officers (incl. new Regulatory Officer)	244,624			214,230			320,429			285,640		
Administrative Staff	54,155			54,000			71,679			72,000		
Directors' Remuneration	47,837			53,325			67,480			71,100		
Employer's NI - staff	33,805			38,295			45,646			51,060		
Employer's NI - directors	2,479			2,850			3,738			3,800		
Pension Costs	8,502			9,075			11,382			12,100		
Staff Benefits	4,408			5,550			6,900			7,400		
Staff Recruitment	8,400			6,300			8,400			8,400		
Staff Development & Training	0			2,250			3,000			3,000		
		464,370			445,950			618,867			594,600	
TOTAL EXPENDITURE			721,094			731,044			1,017,116			970,390
OPERATING BALANCE			286,476			175,892			-9,523			-63,454
Transfer to Compensation Fund Reserve									-11,718			
									-21,241			

RESERVES

The Financial Statements for the year ended 31 December 2020 showed reserves of £667,763. In 2021, IPReg had to establish a reserve in respect of a Compensation Fund to comply with their statutory requirements to have appropriate compensation arrangements in place. This was previously met through a bespoke insurance policy which was withdrawn by the provider and no replacement policy can be found. The figures shown below reflect the adjustments made to the amounts held in ring fenced reserves in the Financial Statements as at 31 December 2020, to set up the Compensation Fund Reserve.

	£
Compensation Fund Reserve	**88,282**
Board & Chairman Appointments/Communications Reserve	**10,000**
IT/Website Reserve	**30,000**
General Contingency Reserve	**200,000**
Assurance Disciplinary & Litigation Reserve	**210,000**
Projects Reserve	**10,000**
Funding Diversity Initiatives Reserve	**20,000**
Legal Choices Funding Reserve	**16,000**
Communication Reserve	**0**
Regulatory Review Reserve	**50,000**
Research Reserve	**15,000**
Disciplinary Panel Recruitment & Training Reserve	**15,000**
Income & Expenditure Account	**3,481**
	£667,763

The Chartered Institute of Trade Mark Attorneys

IPReg: 2022 Business Plan, Budget and Practising Fees consultation

1. The Chartered Institute of Trade Mark Attorneys (CITMA) is responding to the consultation by IPReg on their 2022 Business Plan, Budget and Practising Fees in its capacity as an Approved Regulator, as defined in the Legal Services Act 2007 (the Act) and as the representative body for Chartered Trade Mark Attorneys and the wider trade mark and design profession. We are grateful to IPReg for the opportunity to comment.

2. Our response answers the specific questions asked in the consultation.

Question 1. What are your views on the proposal to keep practising fees at the 2021 level?

3. We support the proposal to keep practising fees at the 2021 level. We welcome the sensible approach outlined by IPReg in the consultation. The reasons provided for not uplifting fees as well as the reasons provided for not decreasing fees would appear reasonable and appropriate at this time.

4. In previous responses to practising fee consultations we made it clear that we hoped for a reduction in practising fees, all things being equal, in future years. This was something the Legal Services Board supported through an expectation that the cost of regulation would reduce over time. This remains our overall position, but we appreciate the current uncertain times and accept fees remaining at 2021 rates. We would hope that for 2023 fees may be reduced if there is a greater degree of certainty.

Question 2. What are your views to continue the process for waiving fees for individual attorneys who are facing hardship as a direct result of the pandemic?

5. We would support the proposal to continue the process for waiving fees. There is still uncertainty across the profession and stability is unlikely to be in place by the end of 2021, therefore the option to support those who may be impacted by this unfortunate situation is welcomed.

6. As noted last year we would like to take the opportunity to remind IPReg that as most Registered Trade Mark Attorneys are likely to be members of CITMA, and that should IPReg come into contact with someone who may be experiencing financial hardship, it might be helpful to signpost them to the '<u>support</u>' services CITMA has available, for example, the CITMA Benevolent Fund.

Question 3. Do you have any evidence of the impact that each of these proposals will have on different categories of individuals or firms? In particular, do you have any evidence of the potential impact on the diversity of the profession? Do you have any comments on the EIA at Annex A? Do you agree that we should not conduct a diversity survey in 2022?

7. We do not have any particular evidence of the impact that each of the proposals will have on different categories and would look to comments made by IP Inclusive in this regard and comments made by IP Inclusive in relation to the EIA.

8. On balance, we would support the proposal for IPReg not to conduct a diversity survey in 2022. We would welcome the opportunity to discuss further with IPReg and the wider IP community any possible collaboration in seeking to obtain more robust data on diversity across and within the IP profession. We are not sure that IPReg collecting data in isolation is the most appropriate approach.

CITMA The Chartered Institute of Trade Mark Attorneys

Question 4. Do you have any comments on the proposed Business Plan?

9. We have no substantive comments to make on the proposed Business Plan. We were pleased to see the review of regulatory arrangements project commence in 2021 and fully understand the significance of this project and the resources it will need. We therefore support the proposal that this project is the primary focus in 2022.

10. We look forward to working closely with IPReg as the project develops to ensure that regulation of Registered Trade Mark Attorneys is fit-for-purpose, delivers against the regulatory objectives and is not overly complicated or burdensome for those regulated.

11. We are also pleased to see the inclusion of education work in the plan. We have engaged with IPReg on various aspects around education and will continue to do so.

Question 5. Do you have any comments on the draft Practising Fee Regulations at Annex B?

12. We have no comments on the draft regulations.

General comments

13. We are pleased to see, once again, a ring-fence of reserves for diversity initiatives. It is important for IPReg to support and align with the broader work of the IP Profession in this area.

14. We would welcome further information to explain the difference in expenditure for the 'Regulatory Officers' between the 2021 budget and the proposed 2022 budget. A difference of £36,110 is not insignificant, therefore it would be beneficial to understand the rationale behind the increase.

14. We would be happy to discuss any of these points further with representatives from IPReg if it would be of assistance.

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

K. Bader

Keven Bader
Chief Executive

4th October 2021

THE CHARTERED INSTITUTE OF PATENT ATTORNEYS

Fran Gillon
Chief Executive
Intellectual Property Regulation Board
By email only

4 October, 2021

IPReg consultation: practising fees and budget

Dear Fran

Thank you for the opportunity to respond the consultation on practising fees and IPReg's budget for 2022. The Chartered Institute of Patent Attorneys (CIPA) is responding 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.

CIPA was pleased to see that the IPReg board considered whether it would be possible to reduce practising fees for 2022. CIPA recognises that the decision by RSA not to renew the insurance policy underpinning IPReg's compensation arrangements means that the board is faced with an unanticipated financial consideration. CIPA understands why the board arrived at the conclusion that it would not be appropriate to reduce fees in 2022. CIPA hopes that, when considering the budget and practising fees for 2023, the board will have the opportunity once more to consider reducing practising fees.

CIPA welcomes the thought given by the IPReg board to the financial climate brought about by the pandemic and the decision not to increase practising fees for 2022. The pandemic has caused all regulated entities, small and large, to revisit their business models and it is clear to see that many will operate differently going forward. The financial impact on the profession may take some time to become clear. Having certainty and consistency in the area of practising fees is important at this time. CIPA also welcomes the decision by the IPReg board to extend the financial hardship arrangements in place through to 2022.

At this stage, it is not possible to comment on the impact that IPReg's budget and practising fees proposals will have on different categories of individuals or firms. Responding to the challenge of ensuring that the profession is diverse and inclusive is important and CIPA is considering how it might make better use of all available data. Encouraging the profession to engage with the gathering and analysis of data is important and, for this reason, CIPA would urge IPReg to think again about its decision not to conduct a diversity survey in 2022.

CIPA welcomes the business plan, which seeks to balance the day-to-day regulatory activities of IPReg with the need to review and, where necessary, improve the regulatory framework. CIPA recognises that the pandemic has prevented as much progress being made with the review of the regulatory arrangements as was intended and looks forward to working with IPReg to complete this important piece of work. In conclusion, CIPA supports the proposal to maintain practising fees at the 2021 level and IPReg's 2022 budget.

Yours sincerely

Lee Davies
Chief Executive

The Chartered Institute of Patent Attorneys
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Tel: 020 7405 9450
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IPReg's 2022 business plan & budget: IP Inclusive consultation response

IPINCLUSIVE
Working for diversity and inclusion in IP

1 Introduction

These submissions are made by the IP Inclusive initiative, in response to IPReg's September 2021 consultation on its 2022 business plan, budget and practising fees.

They are made on behalf of the UK-based IP professionals – including many registered patent and trade mark attorneys – who support IP Inclusive in its efforts to improve equality, diversity, inclusion and wellbeing across the UK's IP sector.

2 General comments

We welcome the inclusion of support for diversity initiatives in IPReg's proposed 2022 budget. As discussed in our 1 February 2021 submissions regarding IPReg's review of its regulatory arrangements[1], we believe that in addition to being one of the regulatory objectives under the Legal Services Act 2007, increasing diversity is good for the patent and trade mark professions and also for their clients.

We are, moreover, delighted to see the use of an equality impact assessment in considering the 2022 practising fees. This is in our view a positive development and we encourage IPReg, as in our February 2021 submissions, to conduct similar assessments before making any substantive changes to its regulatory arrangements.

IPReg's 2021 diversity survey provides a good evidential base for the impact assessment, although we believe that certain wider sources should also be taken into account in this context (see 6 below).

The proposed 2022 business plan includes a number of measures likely to improve diversity in, and access to, the patent and trade mark professions. These we welcome as an appropriate use of IPReg's resources, and one which is likely to have a significant positive impact on the strength and sustainability of the regulated community.

[1] See https://ipinclusive.org.uk/wp-content/uploads/2021/02/210201-ipreg-regulatory-review-ip-inclusive-response.pdf

3 The proposed 2022 budget

We approve the inclusion, in the proposed 2022 budget, of a £7,000 allowance for supporting diversity initiatives in the regulated community, underpinned by the continuing £20,000 diversity initiatives reserve. This we believe represents a concrete commitment to diversity in the sector.

We have been grateful to IPReg for using some of its previous diversity budget to sponsor IP Inclusive's operating costs as well as specific projects such as our 2018-2019 website upgrade. This has allowed us to continue our work to promote equality, diversity, inclusion and wellbeing in the UK's IP sector – a sector which embraces not only IPReg's regulated community but also the other IP professionals who work alongside them for the benefit of their clients. We hope that this funding can continue during 2022.

We have also been grateful for IPReg's support in promoting and participating in IP Inclusive's work, in sharing relevant information and experiences, and in collaborating on projects where appropriate. We believe this benefits the UK's IP system and its users.

IP Inclusive, in particular through its regional networks[2], communities[3] and Careers in Ideas outreach campaign[4], would welcome the opportunity to work with IPReg to ensure that the 2022 diversity budget is appropriately spent, on projects that will have a positive impact on diversity and inclusion in the patent and trade mark professions. In particular:

- The Careers in Ideas campaign helps a wider range of recruits to become aware of, and access, the patent and trade mark professions, and has contacts in relevant social mobility and outreach charities; as such it has the potential to improve diversity within the professions and could represent a sensible investment.
- The IP Inclusive communities work to improve access and fairness for specific under-represented groups such as BAME people, disabled people, carers, LGBT+ people, and (in particular in STEM-based careers) women: these too could benefit from additional funding, for example to allow them to introduce mentoring and other support schemes for IP professionals.

Finally, we note with approval IPReg's proposal to hold some of its 2022 Board meetings online. This should not only reduce operating costs but also improve accessibility for many participants; longer-term we hope it will help IPReg to recruit and retain a more diverse Board membership.

4 The proposed 2022 practising fees

We support IPReg's proposal to keep practising fees at the 2021 level, subject to our comments at 5 below regarding the availability of a waiver.

[2] See https://ipinclusive.org.uk/our-regional-edi-charter-networks/
[3] See https://ipinclusive.org.uk/community/
[4] See https://ipinclusive.org.uk/careers-in-ideas/

5 The fee waiver

We welcome the proposal to extend the fee waiver provision for a further twelve months. We agree with IPReg's view that the effects of the Covid-19 pandemic will continue to be felt by some registrants during 2022.

However, we would question whether the waiver is appropriately scoped. It is currently limited to professionals who are not in work. We believe the pandemic has had a disproportionately adverse effect on some disabled people and carers, with NHS backlogs and staff shortages making it harder to access care and support. Covid-19-related changes to working arrangements may have introduced additional complications and costs. These people may still be able to – and want to – continue working, to at least some extent, but might nevertheless suffer financial hardship and find even the existing practising fee levels problematic.

We have listed in the annex some sources of evidence regarding the impact of the pandemic on disabled people and carers.

We therefore urge IPReg to extend the waiver scheme, and the exercise of the Chief Executive's discretion, to all disabled people and carers who suffer hardship resulting from the Covid-19 pandemic, whether or not they are working. This would help ensure that the 2022 practising fees did not impact unfairly on certain registrants.

We also question whether it is appropriate to limit the waiver to hardship "resulting directly from the Covid-19 pandemic". We now know that the pandemic is having many secondary effects, not just the immediately visible ones such as furlough and redundancy (see the annexed evidence, for example). Those effects may or may not be judged to have arisen *directly* from the pandemic – and that might in any case be difficult to prove – but they are no less real to the people who suffer them. Again, we believe it would be appropriate to widen the waiver in this respect, and for the Chief Executive to have full discretion to grant a waiver if the evidence demonstrates a genuine need.

We suggest that IPReg give thought to the establishment of a "hardship fund" or similar scheme, to support the extension of the waiver to a wider group of registrants in need, particularly the groups we refer to at 6 below. We believe this would help the regulated professions to embrace and nurture a more diverse range of people.

6 The equality impact assessment

We broadly agree with IPReg's assessment of the impact of its proposed 2022 practising fees on equality ("the EIA"). There are however areas in which we think the assessment could be improved, as follows.

6.1 Disability

We believe the EIA should recognise the potential effects of the Covid-19 pandemic on disabled people, who may therefore be differently affected by the proposed 2022 fee structure than registrants who are not disabled. See our comments at 5 above and the annexed list of supporting evidence. We believe it is appropriate for an impact assessment of this type to take account of wider contextual evidence such as that referenced in the annex.

The EIA acknowledges that there may be more disabled people in the regulated community than were reported in IPReg's 2021 diversity survey. We believe, however, that the *number* of disabled people is not relevant to the question of whether those people could be disadvantaged.

For the avoidance of doubt, we use the term "disabled people" to include neurodiverse people.

6.2 Caring responsibilities

Being a carer is not a protected characteristic under the Equality Act 2010. Nevertheless our comments in 6.1 above can also apply to carers, in particular those who care for disabled people. Diversity is underpinned by inclusivity, and we believe that an inclusive community should also have regard to any disproportionate impact of its actions on people with caring responsibilities.

6.3 Parenting

We note the comment that registrants on maternity leave can apply to be put in the "not in active practice" category in order to obtain a reduction in their practising fees. We are not convinced that this alone suffices to address the impact of the fees on parents relative to other registrants. We would urge IPReg, whilst reviewing the effects of its 2022 fees for different groups, to consider the following improvements to the Practising Fee Regulations and their implementation:

- A recognition that parental leave may be taken by people of all genders, not just women, and may not necessarily be linked to a pregnancy.
- Allowance of a pro rata fee reimbursement if a registrant begins a period of parental leave mid-year, so as not to disadvantage the large number of parents whose children are born at times other than the end of the calendar year.
- The treatment of adoption leave in the same way as parental leave.

We also recommend that IPReg give more detailed consideration to the impact of the practising fees on registrants who, as a result of becoming parents, reduce their working hours without leaving active practice. The effects of the fees for these people – many of whom are currently women – are likely to be more negative than for other registrants. We believe this may be a particular issue for self-employed attorneys, or attorneys in smaller practices, for whom a period of full parental or adoption leave might not be viable.

Similarly, we believe that the EIA – and the proposals based on it – should recognise that the cost of childcare has increased as a result of the Covid-19 pandemic[5], and might in some cases lead to financial hardship for both working and non-working parents in the regulated community.

6.4 Disability and caring (ii)

To help ensure that the 2022 practising fees do not disadvantage disabled people or carers, we would also urge IPReg to consider introducing a reduction or waiver for registrants who need to stop work, or reduce their hours, temporarily due to a disability or caring responsibility.

7 IPReg's diversity survey

IPReg is not proposing to conduct a diversity survey in 2022. In some respects this appears a sensible and proportionate approach. However, we would offer the following cautions.

- These are rapidly changing times. Things are happening that have a significant impact on registrants and their businesses: the pandemic and Brexit for example. At the same time, registrants are becoming more engaged with the diversity agenda and steps are being taken to diversify the pipeline. These factors may well cause diversity statistics to vary significantly even over a year; it would be useful to have quantitative evidence of those trends.
- IPReg reviews, and potentially changes, its practising fees annually. The data used to assess the impact of those changes on equality, diversity and inclusion are also, therefore, more appropriately gathered once a year.
- As discussed in our February 2021 submissions regarding IPReg's review of its regulatory arrangements[1], it is important to gather diversity data on an ongoing basis in order to track career progression opportunities for different groups and the variation of diversity levels with seniority. If the professions' efforts to improve diversity and inclusion are working, these too should be changing rapidly at the present time: if they are not, we need to know that and redouble our efforts to improve equality in career progression.
- Many registrants' businesses now gather their own diversity data. Regular updates of the IPReg survey will be valuable to these organisations in benchmarking their progress towards a more diverse profession.
- In the longer term, participation may be improved by making the regulator's survey an annual event that is a standard part of the registration renewal process.
- IPReg says it "does not expect the overall results to have changed significantly in the intervening period". We are concerned that this introduces an element of confirmation bias. The gathering of evidence, on which to base future policy, should not be constrained by prior expectations of the results.

[5] See, for example, https://www.familyandchildcaretrust.org/childcare-2021-press-release and https://ifs.org.uk/publications/14990

On balance, therefore, we believe it would be more appropriate for IPReg to re-run its 2021 diversity survey in 2022 and annually thereafter. We would be happy to help promote future surveys and to optimise participation levels.

8 The proposed 2022 business plan

We are delighted to see mention, in IPReg's proposed 2022 business plan, of various initiatives to improve access to, and diversity within, the patent and trade mark professions. For example we fully support IPReg's strategic priorities to encourage the entry of new providers and delivery methods for education courses; and to provide a variety of routes into the profession, including potentially through apprenticeships. We agree that these measures are likely to increase diversity in the regulated community.

We also support IPReg's intention to review, on a more regular basis, the performance of accredited education providers. We would urge the inclusion of independent EDI (Equality, Diversity and Inclusion) impact assessments within the review process, in particular for accessibility and for assessment methods.

We applaud IPReg's engagement of external experts to assist with diversity- and inclusion-related aspects of its regulatory arrangements review. IP Inclusive stands ready to work with them to support and inform the review process. We are also pleased that the review includes important issues such as the impact on diversity of education and training requirements (including the litigation skills qualifications), and the encouragement of new qualification pathways. These are issues addressed in our February 2021 submissions[1].

9 The draft Practising Fee Regulations

Our comments on the draft Regulations relate to the scope of the Covid-19 waiver in Regulation 6, for which see 5 above.

See also our comments in 6.3 and 6.4 regarding the provisions for maternity and other types of career break. This is relevant to the reduced fees for attorneys "not in active practice" (which we presume is intended to align with the definition of "inactive attorney" in Regulation 1).

10 About IP Inclusive

IP Inclusive is an association of individuals and organisations who share a commitment to improving equality, diversity, inclusion and wellbeing throughout the IP professions. Its founding organisations were the Chartered Institute of Patent Attorneys (CIPA), the Chartered Institute of Trade Mark Attorneys (CITMA, formerly ITMA), the IP Federation and The UK Association of the International Federation of Intellectual Property Attorneys (FICPI-UK), with active support and involvement from the UK Intellectual Property Office. Our supporters now span the IP-related professions, and include patent and trade mark attorneys, IP solicitors and barristers, and many other professionals who work in or with intellectual property. Many CIPA and CITMA members are actively involved in the initiative.

Our work, which is overseen by the governing body IP Inclusive Management, includes:

- A voluntary best practice Equality, Diversity and Inclusion Charter[6], which now has over 150 signatories from across the IP professions, and an associated "Senior Leaders' Pledge"[7].
- The "Careers in Ideas" initiative[4], which raises awareness of IP-related careers in order to diversify the pool from which the professions recruit.
- Networking and support "communities" for under-represented groups and their allies[3], currently including our Women in IP community; IP & ME for BAME professionals; IP Ability for disabled (including neurodiverse) people and carers; IP Futures for early-career IP professionals; the IP Non-traditional Family Network for professionals in non-traditional families (including solo parents and "blended" family members); and IP Out for LGBT+ professionals.
- Diversity-related resources[8], training, news[9] and information, which we disseminate through our website, events[10] and regular updates to our supporters.

Our Lead Executive Officer Andrea Brewster is a Chartered Patent Attorney, European Patent Attorney, and former CIPA Council member and President. In the past she has served on the Institute's Education and Business Practice Committees. She is regulated by IPReg.

For more information about IP Inclusive, please visit our website at www.ipinclusive.org.uk, or email contactipinclusive@gmail.com.

30 September 2021

[6] See https://ipinclusive.org.uk/about/our-charter/
[7] See https://ipinclusive.org.uk/the-ip-inclusive-senior-leaders-pledge/
[8] See https://ipinclusive.org.uk/resources/
[9] See https://ipinclusive.org.uk/newsandfeatures/
[10] See https://ipinclusive.org.uk/events/

Annex:
Evidence of the impact of the Covid-19 pandemic on disabled people and carers

- https://www.jrf.org.uk/report/financial-impact-covid-19-disabled-people-and-carers (the financial impact of Covid-19 on disabled people and carers)
- https://www.understandingsociety.ac.uk/research/publications/526525 (the impact of disability on employment and financial security following the Covid-19 outbreak)
- https://www.scope.org.uk/campaigns/extra-costs/disability-price-tag/ (the extra costs faced by disabled people and parents with disabled children)
- https://wbg.org.uk/analysis/uk-policy-briefings/spring-budget-2021-covid-19-and-economic-challenges-for-disabled-women/ (problems specifically for disabled women, who have two protected characteristics)
- https://www.adass.org.uk/adass-spring-survey-21 (access to care and support for disabled people, older people and carers)
- A post on the IP Inclusive website "News and Features" page, written by IP Ability committee member Victoria Barker and summarising the effects of the pandemic on disabled and neurodiverse people, citing a number of sources of relevant data: https://ipinclusive.org.uk/newsandfeatures/covid-19-and-disability/
- Also relevant to the financial burden on disabled people and carers:
  - https://www.disabilityrightsuk.org/news/2021/february/pandemic-poverty-new-dbc-research-report-shows-why-%C2%A320-week-uc-uplift-must-be
  - https://disabilitybenefitsconsortium.com/campaign-news/

Annex 11

FINAL IPReg EIA – 2022 practising fees

Protected Characteristic Group	Is there a potential for positive or negative impact	Please explain and give examples of any evidence/consultation/data used	Action to address negative impact (e.g. adjustment to the policy)
Disability	No	Our diversity survey indicates that there are very few attorneys who consider that they have a disability. In the survey, 4.43% of attorneys considered that they had a disability and 2.26% were not sure.	N/A However, the level of reporting of disability was below the benchmark that the LSB has identified (15%) so there may be under-reporting (in common with other sectors of the legal services market). IPReg recognises that there is evidence that the pandemic has had a disproportionate impact on people with disabilities. We have therefore extended the waiver provisions to include hardship which has arisen indirectly as a result of the pandemic.
Gender reassignment	Unknown	Data for this characteristic is very limited and so we are unable to draw any conclusions from it.	N/A
Marriage or civil partnership	Unknown	IPReg has taken a targeted and proportionate approach to its initial diversity data gathering and does not yet collect data on this characteristic.	N/A
Pregnancy and maternity	No	Anyone on maternity leave can apply to IPReg to be put in the "not in active practice" category with an associated reduction on practising fees (although the fees are not	This policy will remain in place. IPReg currently considers applications from attorneys who are on parental or adoption leave and will continue to do so. -

Protected Characteristic Group	Is there a potential for positive or negative impact	Please explain and give examples of any evidence/consultation/data used	Action to address negative impact (e.g. adjustment to the policy)
		reimbursed if the change occurs mid-year)	
Race	No	Supplementary analysis of our diversity survey shows that there are proportionately more (8%) Asian attorneys compared to the LSB benchmark (5%). Black attorneys appear to be under-represented (1%) compared to the LSB benchmark (3%). However, for Black registrants, there is significant divergence between the patent (0%) and trade mark (5%) professions.	N/A
Religion or belief	No	Our diversity survey showed that 42% of attorneys said that they did not have a religion; this is higher than the LSB benchmark (38%). In addition, 14% said that they are an atheist (no LSB benchmark data available). Attorneys who are Christians make up a smaller percentage (34%) than the benchmark (52%). Other religions are under-represented compared to the LSB benchmarks.	N/A
Sexual orientation	Unknown	Data for this characteristic is very limited and so we are unable to draw any conclusions from it.	N/A
Sex (gender)	No	There is a significant difference between the number of women trade mark attorneys (68%)	Middle and junior level attorneys show proportionately higher numbers of women than men. No

Protected Characteristic Group	Is there a potential for positive or negative impact	Please explain and give examples of any evidence/consultation/data used	Action to address negative impact (e.g. adjustment to the policy)
		compared to patent attorneys (38%); LSB benchmark: 47%. The professions' senior ranks reflect a higher (59%/40%) male/female ratio than the average for the professions as a whole (48%/42%).	targeted action is required.
Age	No	The age profile of attorneys who are aged 55-64 and 65+ and are on both registers is slightly higher (34% and 22%) than those who are only on one register (patent attorneys:10% and 2%; trade mark attorneys: 12% and 4%). However the sample size for both registers is small (~8.5%)	The number of attorneys on both registers is low: 7.8% and mainly represents an historic grandfathering policy. Numbers are decreasing over time as it is no longer common practice to be dual-qualified.

Question	Explanation / justification	
Is it possible that the proposed level of PCF could discriminate or unfairly disadvantage members of the regulated community?	~~Prior to~~After consultation, we have not identified any evidence that the level of the fee or the proposal not to increase it could discriminate against or unfairly disadvantage attorneys with protected characteristics. As part of the consultation on the level of 2022 practising fees ~~as are~~we ~~asking~~ asked respondents if they have any comments on this equality impact assessment. Where appropriate, these have been incorporated into this document.	
Final Decision	**Tick the relevant box**	**Include any explanation / justification required**
No barriers identified	✓	No
Bias towards one or more groups	✓	No
Adapted PCF to eliminate bias	✓	Not required

Barriers or impact identified but having considered all options carefully, there appear to be no other proportionate ways to achieve the policy aims in the programme of activity but by charging this level of PCF.		

IPREG PRACTICE FEE REGULATIONS 2021

The Patent Regulation Board of the Chartered Institute of Patent Attorneys and the Trade Mark Regulation Board of the Chartered Institute of Trade Mark Attorneys working jointly together as the Intellectual Property Regulation Board (IPReg) now make the following provisions under section 275A of the Copyright Designs and Patents Act 1988 and section 83A of the Trade Marks Act 1994, respectively (pursuant to sections 185 and 184 of the Legal Services Act 2007) and section 21 of the Legal Services Act 2007.

Regulation 1 - Interpretation

In these regulations, unless context otherwise requires:

"2007 Act" means the Legal Services Act 2007;

"ABS" means a licensable body as defined in section 72 of the 2007 Act;

"Patent Attorney Register" means (together) in respect of Registered persons other than ABS, the Register kept under section 275 of the Copyright Designs and Patents Act 1988 as amended and in respect of ABS, is part of IPReg's Register of licensed bodies for the purpose of section 87 of the 2007 Act;

"Trade Mark Attorney Register" means (together) in respect of Registered persons other than ABS, means the register kept under section 83 of the Trade Marks Act 1994 as amended and in respect of ABS, is part of IPReg's Register of licensed bodies for the purpose of section 87 of the 2007 Act;

"attorney" means registered patent attorney or registered trade mark attorney;

"practising via a body" means providing services to clients via the body or being employed by or being a manager of the body;

"manager", in relation to a body, has the same meaning as in section 207 of the 2007 Act;

"patent and/or trade mark work" means work undertaken in the course of business as an attorney;

"corporate work" means patent and/or trade mark work undertaken by an employed attorney acting solely as an agent on behalf of —

a) their employer;
b) a company or organisation controlled by their employer or in which their employer has a substantial measure of control;
c) a company in the same group as their employer;
d) a company which controls their employer;
e) an employee (including a director or a company secretary) of a company or organisation under (a) – (d) above, where the matter relates or arises out of the work of that company or organisation; or
f) another person with whom a person under (a) to (e) above has a common interest;

"in private practice" means undertaking patent and/or trade mark work which is not solely corporate work;

"inactive attorney" means an attorney who is not available to conduct any patent and/or trade mark work for a client or employer

"registered body" means a body (corporate or unincorporated) entered (or where clear in the context, applying to be entered) in the Patent Attorney Register or the Trade Mark Attorney Register, and:

(a) a body which is an ABS and is entered in the Register, becomes upon entry a licensed body under the 2007 Act;
(b) "Registration" and "Registered" shall be construed accordingly and shall mean, in respect of ABS, "licensing" and "being licensed" for the purpose of the 2007 Act; and
(c) for the avoidance of doubt references to "Registration" and "Register" in these regulations are to initial registration and any renewal of registration;

"sole trader attorney" means an attorney in private practice based in the UK who is practising other than via a registered body or a body regulated by another legal services regulator;

"other professional" means an individual who is:

(a) not a registered patent attorney or a registered trademark attorney;
(b) based in the UK; and
(c) qualified as a:
    i) European patent attorney;
    ii) European trademark attorney;
    iii) barrister;
    iv) solicitor; or

v) is qualified to be a registered patent attorney or a registered trademark attorney but is not registered as such.

Regulation 2 – Individual fees

The fees provided for under regulation 12.2 of the Patent Attorney and Trade Mark Attorney Qualification and Registration Regulations 2009, for individuals to be entered onto or to remain on the patent attorney register and/or the trade mark attorney register from 1st January 2022, shall be as follows:

	For entry on or to remain on a single register	For entry on or to remain on both registers
i) Attorney solely undertaking corporate work	£177	£283
ii) Attorney in private practice	£215	£353
iii) Attorney not in active practice	£161	£258
v) Sole trader attorney not employing other attorneys or other professionals	£353	£504
v) Sole trader attorney employing other attorneys or other professionals	£353 + £71 for each attorney employed by the sole trader attorney + £283 for each other professional employed by the sole trader attorney	£504 + £71 for each attorney employed by the sole trader attorney + £283 for each other professional employed by the sole trader attorney

Regulation 3 – Late payment fees

The late payment fees provided for under regulation 7.5 of the Patent Attorney and Trade Mark Attorney Qualification and Registration Regulations 2009 shall be equal to 50% of the corresponding fee to be entered into or to remain on the patent attorney register or the trade mark attorney register which is being paid late up to a maximum late payment fee of £250.

Annex 12

Regulation 4 – Registered body fees

The fees provided for under regulations 2 and 7 of the IPReg Registered Bodies Regulations 2015 for corporate or unincorporated bodies to be registered* or to remain on the Patent Attorney Register or the Trade Mark Attorney Register shall be as follows:

	For entry on or to remain on a single register or both registers
i) Registered body through which only a single attorney and no other attorneys or other professionals provide services	£138
ii) Any other registered body	£353 + £71 for each attorney practising via the registered body + £283 for each other professional practising via the registered body

* Please note that this excludes the fee for the first approval of licensed bodies which shall be equal to the practice fee payable upon approval for licensing.

Regulation 5 – Commencement

The fees set out in these regulations shall apply from 1st January ~~2021~~ 2022 until further amended or substituted by further regulation.

Regulation 6 – waivers – Covid-19

This Regulation 6 shall apply from the date these regulations come in to force until 31 December ~~2021~~2022.

The IPReg Chief Executive may, at her discretion and subject to appropriate evidence being provided, waive all or part of the individual fees set out in Regulation 2. Such waiver will only apply to cases of individual hardship resulting directly or indirectly from the Covid-19 pandemic.

A registrant whose fee is waived under this regulation will remain on the register(s) and will be subject to the regulatory requirements that apply to ~~attorneys who are not in active~~their practice category. In addition, sole trader individuals or firms who have suspended their practice must maintain PII in accordance with Rule 17 of the Rules of Conduct.

Attorneys who have had their fee waived under this Regulation 6 must notify IPReg within 14 days of a change in their circumstances such as an increase in income, becoming employed or resuming trading. If an attorney whose fee is waived under this regulation is subsequently employed or resumes trading during ~~2020~~ 2021 or ~~2021~~2022, the full fee(s) for their new category ~~will~~ may become payable within 28 days of notification to IPReg of becoming employed or resuming trading. If the income of an attorney whose fee is waived under this regulation increases, IPReg will consider whether the full fee should be paid. No late payment fee will be payable in these circumstances.

Guidance to Regulation 6 – waivers – Covid-19

Attorneys will need to provide evidence of hardship. Acceptable documents include:

- a letter of redundancy from their former employer; ~~and~~
- proof of payment to them of Universal Credit or other means-tested benefits;
- evidence of hardship;
- in the case of a sole trader or a sole practitioner firm:
  - evidence that they have either suspended trading or closed their business or a significant drop in income as a result of the pandemic;
  - if they have suspended trading, they have maintained appropriate PII ;
  - if they have ceased trading, they have put run-off cover in place or transferred all their clients to another firm which has included them in its own PII; and
  - if not in receipt of any benefits, their savings are below the threshold for any State benefits.

The Chief Executive may require additional information from the attorney or their former employer.

~~Fee waivers are not appropriate for attorneys who are working/employed. They must continue to comply with all the relevant regulatory arrangements including having compliant PII.~~