

## March 2022

REGULATORY APPROACH					AUTHORISATION					SUPERVISION				ENFORCEMENT						WELL-LED						
1	2	3	4	5	1	2	3	4	5	1	2	3	4	1	2	3	4	5	6	1	2	3	4	5	6	7

## Overall

We assessed IPReg's performance on outcomes RA3, WL1 and WL3 in March 2022, following the receipt of information we requested in our November 2021 assessment. We concluded that all three outcomes should be rated as not met – action being taken. This notes an improvement in the assessment for RA3 and WL3, and a new unmet outcome for WL1.

For outcomes RA3 and WL3, the updated assessment reflects the positive steps that IPReg is taking to address our concerns in these areas, including concerns that IPReg does not provide the necessary transparency of its decision-making and that it does not have a sufficiently robust evidence base on which to make decisions.

The steps IPReg is taking include the establishment of a Governance and Transparency Working Group (GTWG), which will consider how IPReg can be more transparent in its decision-making. The GTWG will report to the IPReg board in March and May, then present an action plan to the board in July 2022.

IPReg also provided its Data Working Group's (DWG) forward work plan, which sets out activities that IPReg will take to improve its evidence base. This is a more comprehensive plan than IPReg has previously provided and offers some assurance that IPReg is doing what is necessary to meet RA3 in the future. Many activities should be completed, or the next steps determined, within the first half of 2022.

For outcome WL1, the updated assessment reflects that we do not currently have assurance that the IPReg board holds the executive to account for its performance to ensure it operates efficiently, effectively and in pursuit of the regulatory objectives.

IPReg's response outlined that board members have asked the executive to reflect alternative policy options considered and more discussion about the regulatory objectives in board papers, which is positive. It is also positive that the GTWG will consider IPReg's governance arrangements, arrangements for the ongoing review of board effectiveness and good practice developments that it could adopt. We note that the LSB expectations of well led regulators are clearly set out in the findings from the well led reviews of the Bar Standards Board (BSB) and Faculty Office (FO), which IPReg and other regulators are expected to take account of.

We expect IPReg to provide information to us by 31 July 2022 that sets out its progress against the DWG forward work plan, including activities it has completed and any additional activities it has identified are necessary. We expect IPReg to set out any improvements to its governance and transparency arrangements it has or will implement following the GTWG report to the IPReg board. We also expect to see evidence of consideration of the regulatory objectives and alternative policy options considered in IPReg's board papers and minutes.

Following the submission of the progress report in July, we will reassess IPReg's performance.

## Not met: action being taken

<b>Outcome</b>	<b>RA3: The regulator has a robust evidence base from a range of sources on: (a) consumers' needs and use of legal services (b) new and emerging policy developments (c) the</b>
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		<b>regulated community and (d) the market(s) regulated by it which informs its regulatory arrangements and approach.</b>
<b>Assessment (March 2022)</b>	<b>LSB assessment</b>	<p>In November 2021, we assessed that IPReg did not meet outcome RA3 because of outstanding concerns about the robustness of its evidence base, which had been identified in the previous year's assessment.</p> <p>We noted that IPReg had made some positive progress in building its evidence base during the year, but that we did not have assurance that IPReg will take forward other activities necessary to improve its wider evidence base. This was because of a lack of transparency of activities IPReg had committed to, as well as of the timing and funding of those activities. We said this was of particular concern because IPReg will need to draw on a robust evidence base to support any proposals to change its regulatory arrangements as part of its review of regulatory arrangements. We asked IPReg to provide a detailed plan by 31 January 2022.</p> <p>IPReg responded with the forward work plan from its DWG, which sets out what data is required, data sources, what the data will support (e.g. regulatory objectives) and the timescale for data collection. This is a positive step and we welcome the work IPReg has commissioned on trade mark filings, discussions with stakeholders on diversity data collection and requests for different types of information via the review of regulatory arrangements consultation.</p> <p>We note that IPReg is relying on data coming from stakeholders that may not be forthcoming, so it will be important that it has alternative means for collecting data, where necessary, which IPReg has acknowledged in the work plan. IPReg should also be clear how it will use the data it now has to inform its regulatory approach, including any proposed changes to its regulatory arrangements following the review that is underway.</p>
	<b>Action needed</b>	We expect IPReg to provide an update on its progress against the forward work plan, including any activities it has completed or new activities it has identified. We also expect IPReg to set out how the data it collects will ensure it has a robust evidence base to inform its regulatory arrangements and approach.
	<b>Timing</b>	We expect IPReg to provide an update no later than 31 July 2022.

**Not met – action being taken**

<b>Outcome</b>	<b>WL1: The Board/Council holds the executive to account for the regulator's performance to ensure that it operates effectively and efficiently and in a way which is compatible with the regulatory objectives.</b>
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<b>Assessment (March 2022)</b>	<b>LSB assessment</b>	<p>In November 2021, we assessed that IPReg met WL1, but said this was at risk due to the lack of assurance we could take from the information available. We raised concerns that IPReg's board said the information it was provided to take decisions was 'entirely reasonable', when from what was publicly available it would be difficult to draw such a conclusion. We asked IPReg to provide evidence that its board takes accountability for the organisation's performance by 31 January 2022.</p> <p>In response, IPReg provided examples of how the board holds the executive to account, including through board working groups and scrutiny of board papers. IPReg also noted that its board members have a range of experience and in-depth knowledge.</p> <p>The information provided by IPReg did not give us assurance that it meets WL1. Our concerns about the information available to the board remain, and from a review of public board papers and minutes, it is apparent there is limited exploration of risks and opportunities to promote the regulatory objectives. We expect IPReg to ensure that its focus on the regulatory objectives and of its making decisions clearly in the public interest is evidenced in its board papers. We note that the LSB expectations of well led regulators are clearly set out in the findings from the well led reviews of the BSB and FO, including the information available to the board to inform decisions, which IPReg and other regulators are expected to take account of.</p> <p>We note that the use of board working groups can be a valuable source of board challenge and advice, but should not be a substitute for an effective executive acting in its own capacity with the board holding it to account for its performance. On a similar vein, well qualified board members will be effective on boards where there are the necessary factors to support high-quality collective decision-making.</p> <p>In its response, IPReg said it was establishing the GTWG to consider IPReg's governance and transparency arrangements, arrangements for the ongoing review of board effectiveness and good practice developments that it could adopt. We welcome the work of the GTWG and look forward to its recommendations to the IPReg board.</p>
	<b>Action needed</b>	We expect IPReg to provide an update on any changes to its governance arrangements it has or will implement following the GTWG's review. We also expect to see evidence of discussion of the regulatory objectives and alternative policy options considered (where relevant) in future IPReg board papers, as well as any other information that should be available to the board's of well led regulators.
	<b>Timing</b>	We expect IPReg to provide an update no later than 31 July 2022.

Not met: action being taken

Outcome		<b>WL3: The regulator is transparent about its own:</b> <ul style="list-style-type: none"> <li>• <b>decision-making</b></li> <li>• <b>regulatory approach</b></li> <li>• <b>the risks it and its regulated community faces and how these are being mitigated</b></li> <li>• <b>performance</b></li> <li>• <b>regulated community and related markets</b></li> <li>• <b>financial costs.</b></li> </ul>
<b>Assessment (March 2022)</b>	<b>LSB assessment</b>	<p>In November 2021, we assessed that IPReg did not meet WL3 because of concerns about the transparency of its decision-making. We set out two examples of this, including IPReg's proposals to establish a new compensation fund and its setting of the level of PCF for 2022, in which it was not clear to the regulated community and the consumers of IP services, to whom IPReg is accountable, what the impact of the changes would be. We asked IPReg to provide a response setting out how it would provide greater transparency to its stakeholders by 31 January 2022.</p> <p>In response, IPReg said it would discuss with CIPA and CITMA how it could make the overall position of its reserves easier to understand and so more accessible, and ask its external auditors if they have any concerns about IPReg's management of its reserves.</p> <p>More broadly, IPReg said it was establishing the GTWG to consider IPReg's governance and transparency arrangements, arrangements for the ongoing review of board effectiveness and good practice developments that it could adopt. We welcome the work of the GTWG and look forward to its recommendations to the IPReg board.</p> <p>We note IPReg also said it would continue to publish a range of documents, including board papers and minutes, performance management datasets and annual reports. We encourage IPReg to do this, as well as explore opportunities to further enhance what information it publishes and when.</p>
	<b>Action needed</b>	We expect IPReg to provide an update on any changes to its governance arrangements it has or will implement following the GTWG's review. We also expect to see improved transparency from IPReg in the future, as evidenced, for example, in IPReg's published documents and applications for changes to regulatory arrangements.
	<b>Timing</b>	We expect IPReg to provide an update no later than 31 July 2022.