

# Consultation response

## IPReg: Review of regulatory arrangements and approach to regulating licensed bodies

### Overview

1. **The Panel welcomes the thrust of the proposals and comments on the details. However, we hope that the full licensing authority application will take a step back to set out the intended benefits for lay clients, SMEs and small charities. We would also like to see detail on IPReg's proposed approach to measuring quality and consumer engagement. There also areas where more detail is needed to enable a proper assessment of the proposed consumer protections, such as the fitness to own arrangements and how compliance with the financial protection regime will be monitored.**
2. **Small charities should be included within the definition of a lay client.**
3. **We are concerned that the proposed arrangements for claiming on the insurance scheme in cases of dishonesty policy are unduly restrictive, in particular the cap of £50,000 and the lack of information on time limits.**
4. **Interest on client money should always be returned to clients, or if impractical, pooled and used for a public good.**
5. **Currently authorised persons should not be automatically passported into HoLP**
6. **We are pleased that the Register will be published; this should be in accessible form so it can be reused, for example by comparison websites.**
7. **Time limits in relation to complaints about misconduct should be aligned with the Legal Ombudsman's new rules on time limits (when implemented) as service complaints may contain misconduct elements.**
8. **We are concerned that the standard policy to name complainants in misconduct cases could inadvertently deter whistleblowers.**
9. **The Intellectual Property Regulation Board (IPReg) has decided to apply to the Legal Services Board (LSB) for designation as a licensing authority. At the same time, it has been reviewing its regulatory arrangements and is proposing enhancements that will apply to all firms it regulates.**
10. **The consultation sets out:**

### The proposals

- Amendments to the regulatory regime for bodies registered under the Copyright Designs and Patent Act 1988 or Trade Marks Act 1994;
- Amendments to IPReg's regulatory regime which are required in order to accommodate ABS and the statutory requirements of the Legal Services Act; and
- The planned development of IPReg's approach to authorising, supervising and disciplining licensed bodies.

### The Panel's response

11. The Panel will assume the status of a mandatory consultee under the Legal Services Act at the stage when the Legal Services Board receives the final licensing authority application. However, we are pleased to comment at this stage of the process when there is perhaps greater scope for IPReg to amend its proposals.
12. We appreciate that the current consultation addresses only certain elements of IPReg's proposed regulatory approach. In the full application, we hope you will set out in overall terms the intended benefits for consumers of the licensing authority proposals, particularly for lay clients, SMEs and small charities. These are the types of consumer that the Panel primarily represents, recognising that larger clients are better able to individually and collectively represent their own interests. This is necessary not only to assess the potential benefits for consumers, but also to help identify the risks and whether the proposed measures will mitigate these.

13. In addition, we hope that your application will contain information on the following matters, which were not included in the consultation:
  - How IPReg intends to monitor the technical quality of work, addressing points made in the Panel's work in this area and the LSB's consultation on quality assurance; and
  - IPReg's consumer engagement plans. While we appreciate resource constraints, it remains vital for IPReg to understand the consumer experience of accessing intellectual property legal services if it is to be able to identify risks to consumers and respond effectively. The importance of consumer engagement has been recognised in the LSB's regulatory effectiveness work.
14. These wider points aside, the Panel welcomes the overall thrust of the proposals. In particular, the proposal to restrict licences to entities carrying out intellectual property work and ancillary services is supported as a sensible strategy in the early days, ensuring that IPReg only licences those entities which it has the expertise and resources to regulate.
15. Below we make a series of comments on the detail of the proposed measures following the order they appear in the consultation document.

### Scope of regulation

16. The consultation discusses lay clients and SMEs as being at higher risk and therefore in need of specific protections such as access to funds of last resort in case of

dishonesty. This is welcome, but we urge IPReg to consider small charities (the Small Charities Coalition defines this as an income of under £1million, which also fits the Legal Ombudsman's thresholds) as also fitting within this category.

17. Independent research commissioned by the Panel indicates that 15% of small charities identify they have intellectual property to protect. The vast majority of the c162,000 charities in England and Wales can be categorised as small based on these thresholds; therefore, this is a potentially significant market in need of protection.

### **Fitness to own arrangements**

18. The right to have up to 100% external ownership is supported, but given this unrestricted level we would like to see further detail on how the fitness to own test will operate in practice. We hope there will be more detail in the full application as it is important that the LSB satisfies itself that adequate controls are in place.

### **Financial protection**

19. We note that firms will be subject to new rules requiring them to hold client money in separate accounts. The Panel considers this to be very positive. However, it would be helpful to see details on how compliance with this provision (and those below on professional indemnity insurance) will be checked and monitored.
20. The consultation states that the terms of business should set out what will happen to interest earned on money held on behalf of a client. However, it is the Panel's view that

interest should always be returned to the client. Should this not be feasible, the interest could be pooled and given to causes benefiting all consumers, such as public legal education initiatives.

21. We understand that while IPReg does not intend to establish a compensation fund, there will instead be an insurance policy held by IPReg which will cover dishonesty and failure of firms to account. In practice this is likely to provide the same safeguards as a compensation fund to consumers. However, we are concerned that the proposed arrangements for claiming on the policy are unduly restrictive. There is no explanation, for example, of why a cap of £50,000 per claimant has been decided upon. The consultation proposes time limits, but it is not stated what these will be.
22. We also hope to see greater transparency around this area in future, for example: publishing the number and amount of grants made each year; publishing the policy and guidance used for making decisions on grants; and publicising the fund so that those affected are able to find information about it and apply to it.

### **HoLP and HoFA**

23. We disagree with the proposal that persons currently authorised by IPReg should be automatically passported into Head of Legal Practice (HoLP) and Head of Finance and Administration (HoFA) roles, as these are roles requiring specific expertise as well as integrity. There is no certainty that current practitioners will have this expertise. Moreover, given the important responsibilities these roles confer this

should not be deferred until “July 2015 at the earliest” as this creates a potentially lengthy accountability gap.

## The Register

24. We welcome the proposal that the Register will be kept in electronic form and made available on IPReg’s website. We encourage IPReg to consider the Panel’s report on comparison websites, in particular the benefits of making registers accessible in a reusable form. The LSB has endorsed the Panel’s recommendations and written to the approved regulators to encourage them to engage with these issues.

## Misconduct complaints

25. With respect to the Disciplinary Procedure Rules, we note the Legal Ombudsman’s proposal to extend the time limits for consumers to make complaints (at the time of writing the decision document is not yet published). Since complaints made to the Legal Ombudsman may contain allegations of misconduct, it is important that IPReg’s time limits are aligned with those of the Legal Ombudsman. However, whereas the IPReg time limits are 12 months from the date on which either the matter occurred or the complainant became aware of the issue, the Legal Ombudsman is proposing to move to a “6+3” timeframe.
26. We note the standard policy will be to publish the names of the Respondent and Complainant in cases before the Disciplinary Board, save in exceptional cases. We are concerned that the public or other whistleblowers may be discouraged

from bringing misconduct complaints if complainant names are routinely disclosed.

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