

**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 the approval of practising fees for 2019**

## Introduction

1. The Chartered Institute of Trade Mark Attorneys (**CITMA**) and the Chartered Institute of Patent Attorneys (**CIPA**) are Approved Regulators under the Legal Services Act 2007 (**LSA**). They have delegated their respective regulatory functions to the Trade Mark Regulation Board and the Patent Regulation Board which meet together as the Intellectual Property Regulation Board (**IPReg**). IPReg sets its strategy, annual business plans and budget independently, following a public consultation.
2. Throughout the latter part of 2017 and 2018, IPReg has been reviewing the way it conducts its core regulatory functions. This review was conducted, in part, in response to concerns expressed by CIPA and CITMA about the way in which IPReg was operating its registers of patent and trade mark attorneys and entities. As a result of the review, IPReg came to the view that it needed to focus on three key issues in addition to its day to day regulatory functions. Those three issues are: development and implementation of a new IT system (CRM) to support the operation of the statutory registers of trade mark and patent attorneys and firms; a possible office move during 2019; and revising our regulatory arrangements to ensure that they reflect best regulatory practice and minimise regulatory burdens.
3. As a result of the additional resources needed to conduct these activities whilst maintaining its ability to deliver its regulatory functions, IPReg consulted on increasing the 2019 practising fees (**fees**) that individuals and entities must pay to be admitted to, and remain on, the statutory registers.
4. IPReg published its consultation on the proposed level of the 2019 fees and business plan on 6 August 2018; the consultation closed on 7 September 2018. The consultation asked for views on: increasing fees by RPI; and increasing fees by RPI + (up to) 10%.<sup>1</sup>
5. During and following the consultation, IPReg considered different options for its budget and its business plan with a view to keeping any increase in fees to a minimum.
6. IPReg wants to ensure that it is as effective and efficient as possible in the way it discharges its regulatory functions. It therefore plans to put measures in place over the next two to three years to improve its approach to regulation. In particular, it wants to provide a better service to registrants, improved information for consumers and good quality data on the market(s) it regulates in order to ensure that its approach to regulation is targeted and proportionate.

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<sup>1</sup> IPReg has not increased fees since 2016. IPReg has only increased practising fees twice since 2011: in 2015 and 2016. In both cases, this was due to the need for additional staffing levels to support ABS regulation. The increase in 2015 represented the aggregated year-on-year cost of living increase from 2011 of 10% (with the exception of the Not in Active Practice fee category). The increase in 2016 was 3% across all fee categories. The increase in RPI from June 2015 (when the 2016 fees were set) to May 2018 is approximately 8.4%.

7. At its meeting on 27 September 2018, IPReg considered the responses to the consultation and the discussions held with CIPA and CITMA. Taking those responses and discussions into account, together with updated budget information, IPReg decided that, in its judgement, in order to discharge its regulatory functions in a way that is compatible with the regulatory objectives and the principles of better regulation it should:

- Adopt a 2-3 year Business Plan, recognising that development of a new CRM and a possible office move would require significant resources in 2019;
- Delay the full review of its regulatory arrangements until 2020, but take the opportunity during 2019 to discuss its approach to the review as widely as possible;
- Use a significant amount of its reserves (£154.5k) to finance, amongst other things, the development and implementation of a new CRM; and
- Ask the LSB to agree an increase in fees for 2019 of  $RPI (3.8\%)^2 + 5\%$  to cover the additional expenditure required to discharge IPReg's regulatory functions.

The Board also agreed to postpone further consideration of charging fees for applications made in November and December until a wider review of fees charged for various activities could be undertaken.

8. This application therefore sets out the fees that IPReg proposes to charge for the year 1 January to 31 December 2019 and asks the Legal Services Board (**LSB**) to approve the level of those fees.

### Summary of proposed 2019 fees

9. If agreed by the LSB, this means that the 2019 fees will be:

#### Individual fees

	For entry on or to remain on a single register	For entry on or to remain on both registers
Attorney solely undertaking corporate work	£173	£277
Attorney in private practice	£210	£345

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<sup>2</sup> <https://www.ons.gov.uk/economy/inflationandpriceindices/timeseries/dogd/mm23> Frequency: Year Percentage change over 12 months (June 2018 figure).

Attorney not in active practice	£157	£252
Sole trader attorney not employing other attorneys or other professionals	£345	£493
Sole trader attorney employing other attorneys or other professionals	£345 + £69 for each attorney employed by the sole trader attorney + £277 for each other professional employed by the sole trader attorney	£493 + £69 for each attorney employed by the sole trader attorney + £277 for each other professional employed by the sole trader attorney

#### Registered body fees

	For entry on or to remain on a single register or both registers
Registered body through which only a single attorney and no other attorneys or other professionals provide services	£135
Any other registered body	£345 + £69 for each attorney practising via the registered body + £277 for each other professional practising via the registered body

10. Annex 1 compares the proposed 2019 fees with the 2018 fees.

#### Developing the application/setting the budget

##### The 2019/20 Business Plan

11. IPReg has taken into account a number of factors in reaching its decision about the budget required to ensure that the work that needs to be done over the next 2-3 years can be financed properly. Taking into account the overall risks to the organisation and the resources required to provide its “business as usual” regulatory activities, IPReg has decided to prioritise three workstreams in 2019/20: the development and testing of a new CRM, deciding whether to move offices (and making such a move) and reviewing its regulatory arrangements.

*A new CRM*

12. Our current database was developed as a bespoke system and was first used in 2013; it supports the operation of the statutory registers of patent attorneys and trademark attorneys. Our review and independent external IT advice has led us to the conclusion that the cost of the improvements that we need to make to the database would not be good value for money. We have therefore decided that we need to replace it with a new CRM system.
13. Development of a new CRM will provide improved functionality for registrants, improve efficiency in the management of the statutory registers (for example by providing an on-line application process and a more automated renewal and fee collection process) and provide better information for consumers. Current indications are that this work should be completed by the third quarter of 2019 in time for the 2020 re-registration process.
14. Capital expenditure on the project and external project management support can be funded from our reserves. However, we have been advised that the development, testing and implementation phases will require additional staff time beyond their normal day to day activities. IPReg therefore considered whether it would be possible to re-allocate staff resources to work on our re-prioritised areas. However, while a larger organisation (or one without specific statutory responsibilities) might be able to move staff around or stop doing certain activities, our analysis shows that around 90% of the team's time is already taken up carrying out our day to day regulatory functions. There is therefore very little ability to flex our existing resources within the current budget. IPReg considered whether it would be consistent with its Reserves Policy to finance the additional staff activity from its reserves but, given the level of reserves already allocated to activities in 2019 and the likelihood of also having to finance an overall deficit, decided that it would be inappropriate to do so. IPReg's judgement is therefore that it is necessary to increase its income to cover the additional staff time and an additional £50k has therefore been allocated to fund this activity.
15. Longer term, a new system should lead to improved efficiency and a reduction in the costs associated with the current application and annual renewal processes. Likely benefits include: significant reductions in the manual/duplicative processes currently associated with fee collection, chasing non-compliant CPD registrants and chasing non-provision of PII information; no longer employing a temporary member of staff during the fee collection process to help with invoicing; reducing the additional staff time required during the fee collection process especially in dealing with queries about how to complete the process.

*Office move*

16. The lease on our current premises (which we sub-let from CITMA) expires in February 2020. The offices, whilst sufficient for our staffing levels, require us to hire rooms externally for Board meetings, disciplinary hearings, training, etc. which in turn has added to our overall costs. Rent levels are also quite high because of the location on the Strand. The office is also inaccessible for people with limited mobility – an issue that was highlighted recently when

the only lift (which in any event only goes up to the floor below our office) was out of order for nearly two months.

17. During 2019, we therefore need to assess the advantages and disadvantages of moving and will work closely with CITMA (and consult with CIPA) in coming to a decision. We would want new premises to provide better value for money overall. If we do decide to move, this would need to occur in the summer/early autumn of 2019 so that we are in our new office well before the 2020 re-registration process begins. This may result in the need to pay rent to the end of the current lease after we have moved out and consequently we consider it prudent to allocate some of our reserves as a contingency to support this scenario as well as to obtain external advice on finding appropriate new office space.

#### *Review of regulatory arrangements*

18. Our regulatory arrangements have developed over the last 8 years and we have identified a number of opportunities for revising them to ensure that they reflect best regulatory practice and minimise regulatory burdens. 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 need to review our regulatory arrangements in their entirety. In doing so, we will make them more streamlined and consistent. We will also consider possibilities for de-regulation in some areas such as regulatory arrangements that apply to in-house attorneys and overseas attorneys, taking into account the risk posed to consumers. We will work closely with CIPA, CITMA and other stakeholders to inform the development of new regulatory arrangements. Having considered the consultation responses to this proposal and the overall level of resources required for a new CRM, we do not anticipate starting detailed work on this until 2020.

#### Budget figures (including reserves)

19. The 2019 budget is set out at Annex 2. Since we are proposing to increase fees, we are required by the LSB to provide budget estimates for the next three years and Annex 2 therefore covers the period 2019 – 2021. We have worked on the basis that fees and some expenditure will increase by RPI (estimated as 3.5%)<sup>3</sup> each year. However, there are a number of caveats concerning the figures for 2020 and 2021 and they should not be interpreted as binding IPReg to any future approach to fees. There are significant uncertainties concerning budget projections beyond 2019 such as:

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<sup>3</sup> See Table 5.4 in <https://www.bankofengland.co.uk/inflation-report/2018/may-2018/prospects-for-inflation> for Q4 CPI inflation of around 2.1%; we add 1.4% for RPI – see [http://obr.uk/docs/dlm\\_uploads/Working-paper-No2-The-long-run-difference-between-RPI-and-CPI-inflation.pdf](http://obr.uk/docs/dlm_uploads/Working-paper-No2-The-long-run-difference-between-RPI-and-CPI-inflation.pdf) paragraph 3.10

- The impact of Brexit, particularly if significant numbers of attorneys leave the profession;
- Any restructuring of fees as a result of the review of our regulatory arrangements;
- A further increase in the overall percentage contribution to the LSB/OLC levy if the number of regulated professionals decreases; and
- The impact of any unforeseen events (such as lengthy litigation) on the remaining reserves.

20. It should be noted that the layout of the 2019 budget has been changed from previous years to provide more transparency about our expenditure, in particular ensuring the budget more closely resembled the actual level of costs. Annex 3 shows the 2019 budget, which now includes all projected expenditure including that which will be met from reserves and the 2018 comparative figures. The 2018 budget figures represent the figures submitted to the LSB last year as part of the 2018 PCF application and these have been adjusted to fit with the new layout.
21. IPReg has been financially independent since 2010 - no fees are remitted back to CIPA or CITMA and although they are both guarantors of IPReg Limited, the extent of the guarantee is £1 each. This approach has significant benefits in terms of IPReg's independence, but it means that our main source of funding is from practising fees charged to registered attorneys and regulated entities, with some very limited other income from (for example) application fees from ABS.<sup>4</sup> However, this other income cannot be relied upon for budget-setting purposes because there is no reliable means of estimating the number of new ABS applications. We therefore work out our budget on the basis that budgeted expenditure must be covered entirely by practising fees, supplemented by reserves where it is consistent with our Reserves Policy to do so.
22. Given the outcome of our review and following the completion of the audit for the year ended 31 December 2017, IPReg reassessed and revised its Reserves Policy and also adjusted the reserves of £611k (Annex 4).
23. In order to reduce the impact on practising fees of its planned activities, IPReg considers that it is consistent with its Reserves Policy to use a significant amount of its reserves for the development of a new CRM. We anticipate that we will use most of the IT/Website reserve (£122k) for the project. In addition, consistent with our Reserves Policy, we have allocated a reserve of £25k for any increased one-off costs of an office move such as continuing rent liability on the current office after any move and external advice on likely rental costs of new premises. We anticipate that we will continue to receive requests to fund diversity initiatives

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<sup>4</sup> We plan to review our approach to application fees in order to identify other potential sources of income. However, any change would involve a full consultation exercise and a rule change application to the LSB; this is not, therefore, likely to produce additional income in the short term.

and have allocated £2.5k of our reserves to respond to those requests each year. We also consider it appropriate to provide our funding (£5k) for the development of the Legal Choices website from reserves.

24. The release of these reserves (£154.5k) and offsetting any budget deficit for 2018 and 2019 from reserves will reduce our overall reserves by approximately one third by the end of 2019. IPReg will continue to keep the level of reserves under review and may increase them again in future if it considers it prudent to do so.
25. This approach means that the remaining budgeted expenditure for 2019 is £921,700 compared to £771,800 in 2018 - an increase of £149,900 (19.4%). The increase is largely due to the increase in staff costs. Throughout 2018, we have been reviewing how we perform our core regulatory activities and identifying opportunities to improve as an organisation. As a small regulator (we have 7 part-time staff), it is essential that we are able to recruit and retain high calibre staff (our experience shows that competition for them is fierce in terms of salary and benefits). IPReg therefore decided that it was appropriate to introduce a modest range of benefits and this has inevitably resulted in an increase in employment costs. However, we consider that it is a cost effective measure when compared to the cost of recruitment. The increased staff costs also include anticipated expenditure of up to £50k for additional days to be worked testing and implementing the new CRM during 2019. The budget also takes into account an increase in the indicative LSB levy of 9.1% from the 2018 level.<sup>5</sup>
26. Our review of the way we conduct our core regulatory arrangements showed that a significant amount of experienced staff time is taken up with routine business as usual activities such as responding to queries to the 'Info' email box. Looking beyond 2019, the Board's current view is that it needs to free up that time to work on the review of its regulatory arrangements. The Board therefore considers it prudent to make provision for recruitment of a paralegal in 2020 to carry out routine day to day work and the Board has therefore included £30k in the 2020 and 2021 projected budgets for that post.

#### *Further budget information*

27. A comparison of the 2018 budget against actual expenditure as at 30 September 2018 is at Annex 5 and the balance sheet at the same date is at Annex 6.
28. The total income figure for 2017 was £797,329 and can be verified by reference to the IPReg [Financial Statements for the year ended 31 December 2017](#).
29. In response to a suggestion from CIPA we have set out a breakdown of total estimated income by practice fee category (Annex 7). However, it is important to note that these figures

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<sup>5</sup> £58,546 rounded to £58,600 in the budget



are only estimates and that actual numbers of attorneys and entities cannot be accurately predicted.

### The consultation process

30. On 3 August, in accordance with our usual practice, the CEOs of both CIPA and CITMA were given 24 hours' notice of the consultation. The [consultation documents](#) were published on our website on 6 August and the consultation closed on 7 September. Emails were sent to all individual attorney registrants and regulated entities drawing their attention to the consultation.

31. The consultation document made reference to all background and consideration that has been covered in this application. The consultation explained that IPReg was considering two options:

- An increase of RPI: 3.8%.<sup>6</sup> This would provide an anticipated practice fee income for 2019 of £862k.<sup>7</sup> This is an increase of £32k over a “standstill” practice fee,<sup>8</sup> but would still result in a budget shortfall of around £11k which would have to be funded from reserves; or
- An increase of RPI + (up to) 10%. The maximum increase (of RPI + 10%) would provide an anticipated practice fee income for 2019 of £945k.<sup>9</sup> Although this would be a significant increase, it would enable us to make progress on our priority workstreams more quickly than would otherwise be the case. We stated that we anticipated that any increase above RPI would be for 2019 only and that we would aim to reduce practising fees in subsequent years. We explained that the increased income of £83k would be used to: (i) fund a paralegal who could take over many of the more routine tasks that the regulatory officers currently undertake, freeing them up to focus on our priorities; and (ii) funding additional working days (on a temporary basis) for those regulatory officers.

32. The consultation included tables detailing the impact on both individual and entity fees for both options.

33. During the consultation process, IPReg has maintained an open a dialogue with CITMA and CIPA and had the following discussions:

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<sup>6</sup> <https://www.ons.gov.uk/economy/inflationandpriceindices/timeseries/dogd/mm23> Frequency: Year Percentage change over 12 months (June 2018 figure).

<sup>7</sup> Based on the projected 2018 practice fee income of £806k (including all expected admissions to the end of 2018) + RPI and a provision of £24k + RPI for admissions during 2019.

<sup>8</sup> Standstill practice fee = £806k + £24k for admissions during 2019.

<sup>9</sup> Based on the projected 2018 practice fee income + (RPI + 10%) and a provision of £24k + (RPI + 10%) for admissions during 2019.

- 10 August: IPReg CEO and CIPA President;
- 29 August: IPReg, CIPA and CITMA CEOs;
- 19 September: IPReg Chair, two Board members and the Head of Registration met the CIPA and CITMA Presidents and CEOs.

34. IPReg received 46 responses (including those from CIPA and CITMA) to the consultation. A summary of the issues raised and IPReg's consideration of them is at Annex 8.

## Permitted purposes and regulatory functions

35. In 2018 all income has been applied (and in 2019 all income will be applied) solely for the permitted purposes. Although we sub-let offices from CITMA, we do not have any shared services with them or CIPA.

36. The 2019 budget and 2018 budget comparison (see Annex 3) show that the expenditure principally comprises:

Activity	2019 Budget		2018 Budget	
	£	%	£	%
Resources including Chair and Board, staff costs and additional £50k budget for staff for CRM development and implementation	£643,500	59.8%	£519,100	67.3%
Operational costs including Corporation Tax, financial expenses, general administrative expenses, IT expenses including CRM development and legal and professional fees	£271,200	25.2%	£109,000	14.1%
Policy and governance including compensation policy insurance premium, Legal Choices (CMA), conduct and disciplinary, diversity initiatives and education	£92,500	8.6%	£70,000	9.1%
Legal Services Board and Legal Ombudsman levy	£63,600	5.9%	£58,700	7.6%
PR/communications	£5,400	0.5%	£15,000	1.9%
<b>TOTAL</b>	<b>£1,076,200</b>	<b>100.0%</b>	<b>£771,800</b>	<b>100.0%</b>

37. As explained above (see, for example, paragraph 20), IPReg has provided more transparency about its expenditure, in particular ensuring the budget more closely resembles the actual level of costs that are likely to occur. This has resulted in a reallocation of expenditure which accounts for some of the increase in staff costs shown above. For example, the full cost of the temporary staff used at fee collection time is now shown as a staff cost rather than being split between different budget lines.

38. Staff costs have increased for other reasons such as:

- The introduction of a modest range of staff benefits including (for example) life insurance and increased pension contributions after our review highlighted the fact that IPReg had a very poor level of staff benefits compared to other regulators. This obviously had a potential impact on our ability to attract and retain staff as well as having implications for our approach to diversity, given that all staff work part-time and all but one are women;
- Following a full appraisal after 12 months in post, the Board decided that it was appropriate to increase the CEO's salary to that of her predecessor, bearing in mind that, prior to her appointment, the recruitment agency advised that IPReg's proposed salary was at the bottom end of the lower quartile (compared to other similar positions in the legal and regulatory field); and
- The Chair's costs now include VAT, as do most of our other external advisers (e.g. on IT or education).

#### *Sources of Income*

39. IPReg obtains limited income from sources other than practising fees. The amounts for 2017 and to 30 September 2018 are set out in the following Table. However, as can be seen from the wide variation between years, none of this income is predictable and we therefore do not rely on it for budgeting purposes.

Other Income	9 months ending 30-Sep-18	2017
Licensed Body application fees	£11,558	£4,165
IPReg approval admin fees (litigation/officers)	£800	£4,300

Late payment fees	£402	£441
Bank interest	£1,619	£761
<b>TOTAL OTHER INCOME</b>	<b>£14,379</b>	<b>£9,667</b>

### Clarity and Transparency

40. In the consultation, IPReg has provided greater clarity and transparency for its regulated community than previously – for example:

- The descriptions of the budget lines better reflect the areas of expenditure;
- The 2017 Annual Report (published at the same time as the consultation on practising fees) gave more information about IPReg’s activities than before; and
- There is more detail in the consultation document about the proposed workstreams and practising fees.

41. We will provide details of the 2019 practising fees to all registered individuals and entities by sending emails to them once the LSB has made its decision. We will also publish the 2019 budget and 2019/20 business plan on our website. In addition, we will publish a summary of the main issues raised by respondents to the consultation and our consideration of them.

### Regulatory and Diversity Impact Assessments

42. We recognise that any increase in fees may have an impact on attorneys and entities. However, because IPReg has historically had relatively low levels of fees compared to many of the other legal regulators, the actual monetary value of the increase is relatively small. We recognise that any percentage increase will have a greater impact on sole practitioners since their fees are higher to start with. However, our experience is that those types of practice do take more of IPReg’s resources, particularly dealing with issues such as professional indemnity insurance and run-off cover. IPReg considered at its meeting in June 2018 whether it would be possible to reduce the fees charged to dual-qualified attorneys and whether fees for individuals could be apportioned *pro rata* on a quarterly basis. However, given the extent of the activities that need to be funded in 2019, it did not propose these options in its consultation. A restructuring of attorney/entity categories (and therefore fees) will be considered as part of the review of our regulatory arrangements and will also include consideration to these.

43. As in previous years, the practising fees have been structured to ensure that UK registered attorneys and attorneys who are solely European registered attorneys (but are operating in the UK) and other professionals (lawyers) regulated by us, are paying substantially the same practising fees to IPReg. For example,

- UK RPA/RTA – individual fee of £210 plus the entity pays £69 for each UK attorney in its employ – total £279;
- EPA/ETA – entity pays fees of £277 for each other lawyer it employs. (subject to a rounding difference of £2)<sup>10</sup>.

44. The final 2019/2020 Business Plan (Annex 9) is compatible with the regulatory objectives and better regulation principles – for example:

- The new CRM will allow us to perform our core regulatory functions in a way that is more consistent and targeted, ensuring that we have sufficient management information to assess where the greatest risks are to consumers;
- The new CRM will enable us to provide better information to consumers who need legal advice, consistent with the recommendations of the CMA. This may help to improve access to justice;
- Improved diversity reporting in the new CRM should enable us to monitor more effectively changes in the diversity of the profession;
- The review of the regulatory arrangements will provide a more proportionate, targeted and “fit for the future” set of rules and regulations and will consider what regulation can safely be removed or reduced in order to reduce barriers to entry and encourage competition whilst ensuring appropriate levels of consumer protection.

45. We note that producing a regulatory and/or equality impact assessment is optional and do not consider it necessary or proportionate to produce either type of assessment.

### Special bodies and the Consumer Panel

46. IPReg does not regulate any special bodies and has not, therefore, needed to consider any departure from the general practising fees rules for any one special body or groups of special bodies. We have not specifically discussed our proposals with the Consumer Panel and it did not respond to our consultation.

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<sup>10</sup> Previous rounding differences have gradually increased the overall rounding effect.

## Rule change

47. IPReg's fees are set out in its Practice Fee Regulations. New Practice Fee Regulations made by IPReg at its meeting on 27 September 2018 are attached at Annex 10. We understand that the LSB will not require IPReg to submit a separate application to alter these regulatory arrangements because the primary approval route for the level of fees is LSA s51 and any consequential alterations to regulatory arrangements would be considered an exempt alteration.

**List of Annexes**

Annex 1	Comparison of 2018 and 2019 fees
Annex 2	3 year budget and projection of fees 2019 to 2021
Annex 3	2019 budget with 2018 comparative
Annex 4	Reserves Policy and adjusted reserves (July 2018)
Annex 5	2018 Budget v Actual comparison to 9 months ending 30-9-18
Annex 6	Balance sheet as at 30-9-18
Annex 7	Estimated income - attorneys and entities
Annex 8	Consideration of responses to consultation
Annex 9	Final Business Plan 2019-2020
Annex 10	Practice Fee Regulations 2018

Comparison of 2018 and 2019 fees

Attorneys/Individuals	To remain on a single register			To remain on both registers		
	2018 Fee	RPI 3.8% + 5%	Proposed 2019 Fee	2018 Fee	RPI 3.8% + 5%	Proposed 2019 Fee
Attorneys solely undertaking corporate work	£159	£14	£173	£255	£22	£277
Attorneys in private Practice	£193	£17	£210	£317	£28	£345
Attorneys not in active practice	£144	£13	£157	£232	£20	£252
Sole Trader not employing other attorneys or other professionals	£317	£28	£345	£453	£40	£493
Sole Trader employing:	£317	£28	£345	£453	£40	£493
other attorneys - add fee per attorney	£63	£6	£69	£63	£6	£69
other professionals - add fee per professional	£255	£22	£277	£255	£22	£277

Registered Bodies	To remain on a single or both registers		
	2018 Fee	RPI 3.8% + 5%	Proposed 2019 Fee
Registered Body through which a single attorney and no other attorneys or other professionals provide services	£124	£11	£135
Any other registered body			
Base Fee	£317	£28	£345
add fee per attorney	£63	£6	£69
add fee per other professional practising via the registered body	£255	£22	£277



**PROJECTED PRACTICE FEES AND EXPENDITURE**

	<b>2019</b>			<b>2020</b>			<b>2021</b>		
	£	£	£	£	£	£	£	£	£
<b>PROJECTED INCOME</b>									
Budgeted Practice Fees - Attorneys & Entities		885,738			943,765		1,004,769		
Admissions (attorneys)		<u>26,112</u>			<u>27,026</u>		<u>27,972</u>		
			911,850			970,791			1,032,741
Bank Interest - projected			2,000			1,200			1,200
			<u>913,850</u>			<u>971,991</u>			<u>1,033,941</u>
<b>PROJECTED EXPENDITURE</b>									
<u>Legal Services Board Levy</u>		58,600			58,600		58,600		
LSB Levy		<u>5,000</u>			<u>5,000</u>		<u>5,000</u>		
LeO/OLC Levy		63,600			63,600		63,600		
<u>Operational Expenditure</u>									
<u>Board Costs</u>									
Chair	42,000			43,470			44,991		
Board Members Fees	40,000			41,400			42,849		
Chair & Board Expenses including Travel	6,500			6,728			6,963		
Replacement of Board Members	<u>5,000</u>			<u>5,000</u>			<u>10,000</u>		
			93,500			96,598			104,803
<u>CMA Market Study (Legal Choices) (supported by Reserve)</u>		5,000			4,167				0
<u>Compensation Policy Insurance Premium</u>		35,000			35,000				35,000
<u>Conduct &amp; Disciplinary incl Assurance &amp; Litigation</u>	35,000			35,000			35,000		
External Legal costs and hearing costs	<u>10,000</u>			<u>10,000</u>			<u>10,000</u>		
Recruitment/training of panel members			45,000			45,000			45,000
<u>Corporation Tax</u>		500			500				500
<u>Diversity Initiatives (supported by Reserve)</u>		2,500			2,500				2,500
<u>Education &amp; Projects</u>		5,000			5,000				5,000
<u>Financial Expenses</u>		5,500			5,693				5,892
<u>General Administration Expenses</u>									
Rent	30,000			30,000			30,000		
Rates & Service Charge	35,000			35,000			35,000		
Other Office Costs	18,200			18,837			19,496		
Relocation Contingency (supported by Reserve)	<u>25,000</u>			<u>0</u>			<u>0</u>		
			108,200			83,837			84,496
<u>IT Support (office and website)</u>									
Support	15,000			25,436			26,326		
CRM development (supported by Reserves)	<u>122,000</u>			<u>0</u>			<u>0</u>		
			137,000			25,436			26,326
<u>Legal &amp; Professional</u>		20,000			20,700				21,425
<u>PR/Communications</u>		5,400			6,000				6,000
<u>Staff Costs</u>									
CEO	75,000			77,625			80,342		
Regulatory Officers	263,000			272,205			281,732		
Administrative Staff	79,000			81,765			84,627		
Employer's NI	49,300			51,026			52,812		
Pension Costs	12,700			13,145			13,605		
Staff Benefits	6,000			6,210			6,427		
Temporary Staff (Renewal of Fees)	12,000			0			0		
Staff development and training	<u>3,000</u>			<u>3,000</u>			<u>3,000</u>		
			500,000			504,976			522,545
			<u>1,026,200</u>			<u>899,007</u>			<u>923,087</u>
Additional Budget for staff - CRM work (2019); Paralegal (2020/2021)		50,000			30,000			30,000	
<b>Total Projected Expenditure</b>			<u>1,076,200</u>			<u>929,007</u>			<u>953,087</u>
			(162,350)			42,984			80,854
<u>Reserves Offset</u>									
CMA Reserve Re Legal Choices		5,000		4,167			0		
Diversity Initiatives		2,500		0			0		
Relocation Contingency		25,000		0			0		
IT/Website re CRM		<u>122,000</u>		<u>0</u>			<u>0</u>		
			154,500			4,167			0
<b>Projected Operational (Deficit)/Surplus</b>			<u>(7,850)</u>			<u>47,151</u>			<u>80,854</u>

**2019 BUDGET**

	2019 Budget			2018 Budget comparative		
	£	£	£	£	£	£
<b>LEGAL SERVICES BOARD AND LEGAL OMBUDSMAN LEVY</b>						
LSB Levy			58,600			53,700
LeO Levy			5,000			5,000
			<u>63,600</u>			<u>58,700</u>
<b>OPERATIONAL EXPENDITURE</b>						
<b>Board Costs</b>						
Chair		42,000			35,000	
Board Members Fees		40,000			40,000	
Chair & Board Expenses including Travel		6,500			10,000	
Replacement of Board Members		<u>5,000</u>			<u>5,000</u>	
		<b>93,500</b>			<b>90,000</b>	
<b>CMA Market Study (Legal Choices) - supported by Reserve of</b>		<b>5,000</b>			<b>0</b>	
<b>Compensation Policy Insurance Premium</b>		<b>35,000</b>			<b>35,000</b>	
<b>Conduct &amp; Disciplinary incl. Assurance &amp; Litigation</b>						
External Legal costs and hearing costs		35,000			35,000	
Recruitment/training of new Panel Members		<u>10,000</u>			<u>0</u>	
		<b>45,000</b>			<b>35,000</b>	
<b>Corporation Tax</b>		<b>500</b>			<b>500</b>	
<b>Diversity Initiatives - supported by Reserve of</b>		<b>2,500</b>			<b>0</b>	
<b>Education &amp; Projects</b>		<b>5,000</b>			<b>0</b>	
<b>Financial Expenses</b>		<b>5,500</b>			<b>4,000</b>	
<b>General Administrative Expenses</b>						
Rent		30,000			30,000	
Rates & Service Charge		35,000			35,000	
Other Office Costs		18,200			9,500	
Relocation Contingency -supported by Reserve of		<u>25,000</u>			<u>0</u>	
		<b>108,200</b>			<b>74,500</b>	
<b>IT Expenses (office and website)</b>						
Support		15,000			15,000	
CRM development - supported by Reserve of		<u>122,000</u>			<u>0</u>	
		<b>137,000</b>			<b>15,000</b>	
<b>Legal and Professional</b>		<b>20,000</b>			<b>15,000</b>	
<b>PR/Communications</b>		<b>5,400</b>			<b>15,000</b>	
<b>Staff Costs</b>						
CEO		75,000			60,700	
Regulatory Officers		263,000			248,600	
Administrative Staff		79,000			64,300	
Employers NI		49,300			43,900	
Pension Costs		12,700			5,600	
Staff Benefits		6,000			0	
Temporary Staff (Renewal of Fees)		12,000			6,000	
Staff development and Training		<u>3,000</u>			<u>0</u>	
		<b>500,000</b>			<b>429,100</b>	
		<b>962,600</b>			<b>713,100</b>	
 Additional Budget for staff re CRM development, testing & implementation		 <u>50,000</u>			 <u>0</u>	
<b>TOTAL OPERATIONAL EXPENDITURE</b>		<b>1,012,600</b>			<b>713,100</b>	
<b>TOTAL BUDGETED EXPENDITURE</b>		<b>1,076,200</b>			<b>£771,800</b>	
 Reserves Offset		 <u>(154,500)</u>				
<b>BUDGETED EXPENDITURE AFTER RESERVES OFFSET</b>		<b>£921,700</b>				

## 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. At the same meeting, 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.

### *Review of Reserves*

Following completion of the audit, the Board undertook a review at its July 2018 meeting and the Reserves were adjusted/reallocated.

The adjusted Reserves are shown on the next page.

<b><u>Reserves and Surplus</u></b>	<b>At 1 January 2018 £</b>	<b>Adjusted Reserves July 2018 £</b>
Board & Chairman Appointments/Communications Reserve	50,000	<b>25,000</b>
IT/Website Reserve	16,394	<b>122,684</b>
General Contingency Reserve	225,000	<b>170,000</b>
Assurance Disciplinary & Litigation Reserve	150,000	<b>200,000</b>
Projects (including research) Reserve	50,000	<b>15,000</b>
Practice Development Reserve	31,290	<b>0</b>
Funding Diversity Initiatives Reserve	30,000	<b>30,000</b>
CMA Funding Reserve	30,000	<b>10,000</b>
Relocation Reserve	0	<b>25,000</b>
Communication Reserve	0	<b>5,000</b>
Income & Expenditure Account	28,769	<b>8,769</b>
	<b>£611,453</b>	<b>£611,453</b>

Please note the position above does not take into account any operating balance for the year ended 31 December 2018.

**2018 BUDGET v ACTUAL EXPENDITURE TO 9 MONTHS ENDING 30 SEPTEMBER 2018**

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

	2018 Budget			Actual 9 me 30-9-18		
	£	£	£	£	£	£
<b>LEGAL SERVICES BOARD AND LEGAL OMBUDSMAN LEVY</b>						
LSB Levy			53,700			42,619
LeO Levy			5,000			3,750
			<u>58,700</u>			<u>46,369</u>
<b>OPERATIONAL EXPENDITURE</b>						
<b>Board Costs</b>						
Chair	35,000			16,030		
Board Members Fees	40,000			26,367		
Chair & Board Expenses including Travel	10,000			3,030		
Board Training	0			685		
Replacement of Board Members	<u>5,000</u>			<u>35,780</u>		
		90,000			81,892	
<b>CMA Market Study (Legal Choices)</b>		0			3,000	
<b>Compensation Policy Insurance Premium</b>		35,000			25,364	
<b>Conduct &amp; Disciplinary incl. Assurance &amp; Litigation</b>						
External Legal costs and hearing costs	35,000			7,069		
Refresher Training for Panel Members	<u>0</u>			<u>8,127</u>		
		35,000			15,196	
<b>Corporation Tax</b>		500			0	
<b>Diversity Initiatives</b>		0			6,217	
<b>Education &amp; Projects</b>		0			6,369	
<b>Financial Expenses</b>		4,000			4,852	
<b>General Administrative Expenses</b>						
Rent	30,000			22,500		
Rates & Service Charge	35,000			23,821		
Other Office Costs	<u>9,500</u>			<u>11,037</u>		
		74,500			57,358	
<b>IT Expenses (office and website)</b>		15,000			22,910	
<b>Legal and Professional Fees</b>		15,000			18,666	
<b>PR/Communications</b>		15,000			4,421	
<b>Staff Costs</b>						
CEO	60,700			49,231		
Regulatory Officers	248,600			187,564		
Administrative Staff	64,300			58,620		
Employers NI	43,900			31,552		
Pension Costs	5,600			4,768		
Staff Benefits	0			2,928		
Temporary Staff (Renewal of Fees)	6,000			4,633		
Staff development and Training	<u>0</u>			<u>288</u>		
		429,100			339,584	
<b>TOTAL OPERATIONAL EXPENDITURE</b>		713,100			585,829	
<b>TOTAL BUDGETED EXPENDITURE</b>		<u>£771,800</u>			632,198	
<b>INCOME RECEIVED</b>						
Practice Fees				813,657		
Other Income (incl. Licensed Body application fees, approval fees and interest)				<u>14,379</u>		
					828,036	
<b>OPERATING SURPLUS</b>					<u>£195,838</u>	

**Balance Sheet as at 30 September 2018***These figures are prepared for management purposes and are unaudited*

	£	£
<b>Fixed Assets</b>		2,405
<b>Current Assets</b>		
Debtors & Prepayments	2,930	
Cash at bank and in hand	905,319	
	<hr/>	
	908,249	
<b>Current Liabilities</b>		
Creditors & Accruals	103,363	
	<hr/>	
<b>Net Current Assets</b>		804,886
<b>Total Assets less Current Liabilities</b>		<hr/> <b>£807,291</b> <hr/>

**Reserves**

Board & Chairman's Appointments Reserve	25,000
IT/Website Reserve	122,684
General Contingency Reserve	170,000
Assurance Disciplinary & Litigation Reserve	200,000
Projects (including Research)	15,000
CMA Reserve	10,000
Funding Diversity Initiatives	30,000
Relocation Reserves	25,000
Communication Reserve	5,000
Income & Expenditure	8,769
	<hr/>
	611,453
<b>Operating surplus</b>	
Operating surplus as at 30 September 2018	195,838
	<hr/> <b>£807,291</b> <hr/>

Projected Fee Income for 2019 was calculated using 2018 Income as a basis:

	Estimated 2018 Fees  £	Projected 2019 Fees (incl. RPI + 5% ) £
Fees from Attorneys	607,664	661,138
Fees from Regulated entities (226)	206,434	224,600
	<u>814,098</u>	<u>885,738</u>
Estimate for admissions for 2019 - attorneys	24,000	26,112
	<u><b>£838,098</b></u>	<u><b>£911,850</b></u>

A proof in total calculation based on estimated numbers of attorneys at the end of December 2018 is shown below:

	Number	Proposed 2019 Fees	Estimated Practice Fee Income £	£
<b>Attorneys in private practice</b>				
Dual Register	191	£345	65,895	
Single Register	<u>2,020</u>	£210	<u>424,200</u>	
	2,211			490,095
<b>Attorneys not in active practice</b>				
Dual Register	13	£252	3,276	
Single Register	<u>105</u>	£157	<u>16,485</u>	
	118			19,761
<b>Attorneys solely undertaking corporate work</b>				
Dual Register	27	£277	7,479	
Single Register	<u>499</u>	£173	<u>86,327</u>	
	526			93,806
<b>Sole trader employing others</b>				
Dual Register	2	£493	986	
Single Register	<u>3</u>	£345	<u>1,035</u>	
	5			
Adjustment for: employees (5)		£69	345	
other professionals (1)		£277	<u>277</u>	
				2,643
<b>Sole trader not employing other attorneys or other professionals</b>				
Dual Register	39	£493	19,227	
Single Register	<u>103</u>	£345	<u>35,535</u>	
	142			54,762
	<u><b>3,002</b></u>			
Estimate for admissions in 2019 - use Attorney in private practice	124	£210		26,040
	<u><b>3,126</b></u>			
<b>Estimated Income/Fees from attorneys</b>			<u><b>£687,107</b></u>	

## **Consideration of responses to IPReg's consultation**

### **CIPA's response**

1. CIPA's response was made in its representative role and it does not support any increase in fees. CIPA's main points of concern/disagreement – and our consideration of them - are:

- a. Budget presentation – as in previous years, CIPA expressed a number of concerns about the presentation of the 2019 budget and that it is difficult to track expenditure over consecutive years. CIPA considers that the budget should include a breakdown of income, expected surplus/definite rather than a statement of anticipated expenditure. CIPA considers that the Delegation Agreement is relevant in that it states that the budget shall include an estimate of fee income. CIPA considers that evidence about how the income figure has been derived should be published and that a detailed analysis of anticipated number of registrants by practice fee category should be included.

Response: this year, taking into account CIPA's comments in previous years, we did include in the same document the proposed 2019 budget and a comparison with the 2018 budget. The descriptions used in the budget lines have been improved and reflect better the actual source of expenditure. In some cases, this has given the appearance of increasing costs (for example: temporary staff salary and additional staff time to cover the re-registration process were previously shown in the budget line for IPReg Pro rather than as staff costs; WorldPay commission and charges are now shown as part of our financial expenses).

In terms of expected income, paragraph 9 of the consultation document (and associated footnotes) set out what the anticipated practice fee income would be and how that income was calculated (i.e. by multiplying the 2018 income by the % proposed increase). We also provided figures for the actual monetary increase for different categories of attorney/entity. We have provided a breakdown of total estimated income by practice fee category at Annex 7 to our application to the LSB.

- b. CIPA considers that IPReg should be reducing practice fees, not increasing them. It acknowledges the need for improvements in performance and infrastructure but considers that IPReg should propose a planned reduction in fees.

Response: see points below.

- c. CIPA is concerned about the increase in staff costs year on year. CIPA says that it asked IPReg to conduct a review of its structure and operations once the appointments of the new CEO and Head of Registration had been made but that it has not been made aware of the results of any review.



Response: the IGRs make clear that those performing regulatory functions must have the freedom to define a strategy for the performance of those functions and work to implement that strategy independently of representative control or undue influence.<sup>1</sup> We have made clear throughout 2018 that we have been reviewing our core regulatory processes and the budget consultation document (at paragraph 1) also made that clear. The outcome of that review is the 2019/20 Business Plan and the need to implement a new CRM system and conduct a full review of our regulatory arrangements. Other areas where we consider changes need to be made following the review were also set out in the draft Business Plan.

d. CIPA also raises a number of other matters on which it seeks clarification:

i. The increase in the CEO's salary.

Response: we consider that, under the IGRs, matters of staff and Board remuneration are for IPReg to decide. However, in the interests of transparency: after a full appraisal following 12 months in post, the Board considered it appropriate to increase the CEO's salary to that of her predecessor, bearing in mind that, prior to her appointment, the recruitment agency advised that our proposed salary was at the bottom end of the lower quartile (compared to other similar positions in the legal and regulatory field);

ii. Introduction of budget for staff benefits.

Response: part of the review of our core activities highlighted the fact that IPReg had a very poor level of staff benefits compared to other regulators. This obviously has a potential impact on our ability to attract and retain staff as well as having implications for our approach to diversity, given that all staff work part-time and all but one are women. The Board therefore took the decision to introduce a modest range of benefits including (for example) life insurance.

iii. Increase in temporary staff costs.

Response: the way the proposed 2019 budget is displayed should increase transparency about where IPReg's costs arise. There has not actually been an increase in temporary staff costs – but the 2018 budget figure was split between different budget lines. Our new approach makes it clear what some of the additional cost of this process actually is (the rest being increased permanent staff time, which is included in the remaining staff costs). This, in turn, reinforces the need to implement a new database which, amongst other things, removes the need for a temp.

iv. Board costs. CIPA considers that now that a new Chair has been appointed, one of the existing lay members could stand down, reducing overall costs.

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<sup>1</sup> IGRs Schedule Part 3 – this is subject only to the oversight permitted under part 4 of the Schedule

Response: we consider that the overall composition and size of the Board is a matter for IPReg since it is one element of defining our strategy. Once the final version of the IGRs is known, we will be in a better position to decide on an appropriate Board structure. One professional Board member reaches the end of their second term of office during 2019 and we would welcome discussions with CIPA and CITMA on how that might impact Board structure.

- v. Increase in other office costs.

Response: this is due to a more accurate reflection of actual office costs and includes costs such as room hire and catering, conference subscriptions, depreciation, office insurance, office running expenses, printing and postage, stationery and travel.

- vi. Recruitment and training of panel members.

Response: IPReg needs to ensure that its panel members are kept up to date with case law and best practice. There is a cost to recruiting and training panel members.

- vii. Proposed work should be phased.

Response: we agree and now that the resources needed for development and implementation of the new CRM are clearer, we have revised our timescales for the other areas of work that were proposed.

- viii. The LSB levy increase.

Response: This is a matter for the LSB.

- ix. Cost of new CRM is too high.

Response: The amount provided for in the reserves is based on advice from external IT advisers about the likely cost of a new CRM. It includes provision for external project management during the development and implementation phases as IPReg does not have any in-house expertise in this area.

- x. Relocation and accommodation costs need to be reconsidered.

Response: we are likely to use an external adviser to ensure that we can get the best value for money for an appropriate new office. If we decide to move offices, we will need to do so before the end of the current lease (February 2020) so that we do not have the disruption of a move during the 2020 annual renewal process; this may mean that we have to continue to pay rent on our current accommodation to the end of the lease. We consider that identifying a reserve to cover these and other moving expenses is a prudent one. We will consider the implications and cost of a move out of central London as part of considering the value for money of new offices. However, although large

organisations may be able to absorb the loss of some staff as a result of geographical location, this is not possible for an organisation of IPReg's size.

- xi. In our discussions with CIPA (and CITMA) the timing of the consultation (over the summer holiday period) was also raised.

Response: a significant element in the timing of our budget consultation is the need to get LSB approval for the level of practising fees and the time that process takes, given that the fees become payable on 1 January each year and we need to provide certainty as soon as we can about what individuals and entities will have to pay. We will consider having earlier discussions with CIPA and CITMA about the 2020 budget and the practicalities of bringing forward the consultation so that people have more time to consider our proposals and comment on them. However, we will need to take into account that projections as to the following year's budget are likely to be less accurate the earlier they are done in the preceding year.

#### CITMA's response

- 2. CITMA's response was made in its capacity as a representative body and as an Approved Regulator. CITMA does not support any increase above RPI. CITMA's main points of concern/disagreement – and our consideration of them - are:

- a. New CRM: there is little information about the expected efficiency savings. More detail would further justify and support the proposed investment.

Response: the anticipated efficiency gains include: significant reductions in the manual/duplicative processes currently associated with fee collection, chasing non-compliant CPD registrants and chasing non-provision of PII information; no longer having to employ a temporary member of staff to help with invoicing during the fee collection process; reducing the additional staff time required during the fee collection process, especially in dealing with queries about how to complete the process. At this stage, we cannot put a monetary value on the expected efficiency gains, but the improved budget transparency that we have introduced means that, as they emerge, we will be able to identify them.

- b. Accommodation: supports work to consider options well in advance of lease expiry.

Response: we welcome the opportunity to work with CITMA so that decisions on relocation are taken in the best interests of both organisations.

- c. General:

- i. Business Plan: CITMA welcomes the inclusion of some information about timing of planned activities. It suggests that key deliverables against objectives and activities as well as performance metrics would also be useful.

Response: we have reviewed the draft Business Plan in the light of responses and our decision on the proposed level of practising fees and we have included

the final plan in our application to the LSB for approval of the proposed level of fees. We will publish the plan on our website once we know what the level of fees will be. We will try to flesh out the planned activities in more detail with deliverables as we accept that this is one of a number of factors that could be used to assess our effectiveness. Given the intensive nature of the activity around the new CRM, it may be appropriate to provide more detail on a quarterly basis rather than try to plan for the whole year.

- ii. Complaints – CITMA encourages IPReg to include a review of its processes for handling disciplinary cases is the most efficient and effective mechanism and whether there would be any scope to use other regulators' skills.

Response: after the new CEO started in 2017, we joined the cross-regulators group (led by the BSB) that was seeking to set up a common panel of independent people to consider disciplinary cases. Unfortunately, the work of the cross-regulators group had to stop as a result of resources constraints. We are open to exploring with other regulators in due course whether they would be able to provide this type of service to us, the cost of any arrangements and whether this approach would be consistent with our statutory duties and overall strategy. However, any discussions would be resource-intensive for both parties. In addition, any changes would almost certainly require consultation on rule changes by both regulators, subsequent applications to the LSB for approval of changes to regulatory arrangements and would therefore be a very lengthy process.

- iii. Diversity funding: CITMA welcomes the fact that we are keeping a reserve to fund suitable initiatives and hopes that we will continue to support IP Inclusive.

Response: we will continue to support IP Inclusive and others working to improve the diversity of those working in IP. We welcome the open channels of communication that have been established with IP Inclusive.

- d. Draft budget: CITMA points out that it has previously raised concerns about increases in operational costs and its desire for the 2019 operation budget to decrease. It is surprised at the over £150k increase over two years (2018 and 2019). It would welcome more transparency about the reason for the increases and a breakdown of staffing structure and costs.

Response: see above points in relation to CIPA's comments. In addition:

- i. Chair's costs – these now include VAT, as do most of our other external advisers (e.g. on IT or education);
- ii. We consider that the level of detail provided in the draft budget is sufficient as it splits out Board, CEO, regulatory officers and administrative staff costs. The capital cost of the new CRM will be met from reserves. We expect the additional staff costs associated with the annual re-registration process to be reduced in 2020 and removed from 2021;

- iii. Going forward, as we are proposing an increase in practising fees, the LSB's rules require us to produce an outline 3-year budget and this has been included with the application. We have worked on the basis that fees will increase by RPI (of 3.5%) each year. However, there are a number of caveats concerning the figures for 2020 and 2021 and they should not be interpreted as binding the Board to any future approach to fees.
- iv. The line for education and projects has been included in anticipation of some external support being required for the accreditation process.
- e. New and appropriate fee structure should be an outcome from the CRM and review of core activities.

Response: we have already identified that the current categorisation of some attorneys does not reflect the commercial reality of the way they practise. We have also said that we will consider reducing the regulatory burden on in-house attorneys and overseas attorneys. We will include both these issues in the review of our regulatory arrangements and we welcome CITMA (and CIPA) involvement in those discussions. However, it is important to note that any change to fee paying categories is dependent on a new CRM system being in place (with changes then being under our control rather than having to pay our IT provider) and would be subject to a full consultation process and require LSB approval.

#### Other responses

- 3. The responses from individual attorneys and firms focused mainly on the proposed increase and, on the whole, most were opposed to any increase (although a few did state that an increase of RPI would be acceptable). Other comments included:

*Already considered above in response to CIPA and CITMA:*

- a. High staff costs, including CEO's salary and Chair's fees;
- b. The need to consider moving out of London; need to move to accessible offices;
- c. Why the database needed to be replaced after such a short period;
- d. Surprise that re-registration process is so resource intensive;
- e. Not surprised that re-registration process is so resource intensive because IPReg is poor at communicating;
- f. There should be an overseas category for those doing no UK work.

In addition, the following matters were raised:

- g. Reserves should be used rather than increasing fees.

Response: we will use reserves to cover a significant amount of expenditure (around £155k), but we will ensure that we act in a way that is consistent with our Reserves Policy, in particular keeping sufficient reserves to run the office in the event of an IT system failure at fee collection time and to ensure that we can defend any litigation brought against us.

- h. The need to be competitive with unregulated IP firms and solicitors who conduct IP work.

Response: we do recognise the competitive environment within which IP attorneys work and that an increase in practising fees might lead to a reduction in the number of attorneys and/or firms on the register(s). However, we understand that many individual attorneys and firms see commercial value in being able to tell their clients that they are regulated by IPReg and the protection that brings. In addition, our fees and the proposed increase are low compared to those of many other legal regulators including the SRA.

- i. IPReg is too small and should explore merger with another regulator.

Response: the Government has made clear that it does not anticipate making any changes to the legal regulatory landscape in the near future. Professor Stephen Mayson is conducting a review of the regulatory framework.<sup>2</sup> Given all the other work we have to do, we consider it would be appropriate to await the outcome of that review and the Government's reaction to it before taking this suggestion further.

- j. The option to operate solely as a European Patent Attorney and not be regulated by IPReg at all.

Response: we recognise that this is an option for some attorneys and it will be for them to consider whether operating solely as a European Patent Attorney and not being able to conduct reserved legal activities (because they are not on IPReg's register) is appropriate for them commercially.

- k. RPI is an outdated measure to use.

Response: we recognise that the use of RPI has been criticised, that it has been de-designated as a National Statistic and that there are other measures of inflation. The UK Regulators Network (UKRN) has reviewed what measures of inflation are used in economic regulation.<sup>3</sup> The UKRN paper notes, amongst other things, that:

*"RPI continues to be widely used as the inflation metric in financial markets and the ONS has committed to the continued publication of RPI. Other measures of inflation – CPI and CPIH – are also widely used, for example, the Bank of England's inflation target has been set by reference to CPI since 2003. Pension scheme liabilities for many schemes are now linked to CPI, and, since March 2017, CPIH has been the primary focus of the ONS. We note, however, that the UK government has recently ruled out providing powers for employers or trustees to change rules for existing defined benefit schemes to apply inflation increases using CPI instead of RPI."*

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<sup>2</sup> <http://www.ucl.ac.uk/news/news-articles/0718/120718-legal-services-review>

<sup>3</sup> <http://www.ukrn.org.uk/wp-content/uploads/2018/06/UKRN-2018-Inflation-paper.pdf>

Given that ONS continues to publish RPI data and that it is used by other regulators, we consider that it is appropriate to continue to use it as a metric when considering whether to increase practising fees.

- I. Impact on different categories of attorney:
  - i. The fees for attorneys who are recorded as “not in active practice” are disproportionately high, especially because they normally pay their own fees. Any increase should not apply to these attorneys;
  - ii. Sole practitioner’s fee is an unfair burden; adverse impact on sole traders and small practices;
  - iii. Increase will have an adverse impact on in-house attorneys/their employers;

Response: We recognise that any increase in fees is unwelcome and that many attorneys who are not in active practice pay their own fees; but many also have their fees paid by their employer (e.g. those on maternity leave, sabbaticals or long term sick leave). As set out in response to one of CITMA’s comments, we will be reviewing the categorisation of attorneys and this will probably lead to a consultation on changes in fee structure once the new CRM is in place. We recognise that any percentage increase will have a greater impact on sole practitioners since their fees are higher to start with. However, our experience is that those types of practice do take more of IPReg’s resources, particularly dealing with issues such as PII and run-off cover. The Business Plan states that we will, as part of the review of regulatory arrangements, consider a “lite” version for overseas and in-house attorneys.

## **Business Plan 2019/20**

1. The appointment in 2017 of a new Chief Executive and a Head of Registration provided the opportunity for IPReg to review the way in which it carries out its core regulatory activities. This review has highlighted a significant range of areas where can improve our overall efficiency and effectiveness.
2. The changes that we have identified so far are likely to take time to implement; more changes may be identified in due course, now that our new Chair is in post and has started working with the Board and the executive team to develop IPReg's strategy for the medium term. We consulted on a draft Business Plan over the summer of 2018. This Business Plan takes into account the responses to that consultation and sets out our current view of the key work that we need to do over the next 1-2 years. Once a new strategy is developed, we will consult on that and make any necessary consequential adjustments to our Business Plan.

### **Improving our efficiency and effectiveness**

#### **Our "core regulatory activities"**

3. The IPReg team carries out a wide range of "business as usual" activities. These include:
  - considering applications from individuals and entities for registration;
  - providing advice on our regulatory arrangements;
  - investigating complaints and taking disciplinary action where necessary;
  - dealing with enquires to 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 (e.g. on the regulatory performance framework and diversity);
  - developing policies following recommendations from external bodies (e.g. the CMA legal services market survey).

These activities occupy most of the team's time over the course of a typical year.

4. In addition, the annual re-registration process currently takes significant resources, particularly dealing with telephone and email queries from registrants. We estimate that over the period from December to March, around 80% of the team's time (including additional days worked) is spent on the re-registration process.
5. We have been reviewing how we carry out these "core" activities and have identified two key areas where we want to significantly improve how they are conducted. These are:

#### ***Implementing a new IT system***

6. We have identified that the database which supports the operation and maintenance of the registers (and has been in use since 2013) needs significant improvements to its functionality. It would not be cost-effective to make the required changes on the current system and we are therefore in the process of scoping a new CRM system that will include our registers of individuals and entities. The improved functionality that it will offer should help to streamline our annual renewal process as well as improving the way in which we interact with registrants



and reducing the number of queries that get. Inevitably, developing, testing and implementing a new system will take a considerable amount of the team's time during 2019, particularly because we want to have it in place well in advance of the 2020 annual renewal process.

#### *Improving our regulatory arrangements*

7. 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 need to review our regulatory arrangements in their entirety. In doing so, we will make them more streamlined and consistent. We will also consider whether a “lite” version of regulatory arrangements for in-house attorneys and overseas attorneys would be appropriate, taking into account the risk posed to consumers. In developing new regulatory arrangements, we will remove any actual or perceived barriers to providing *pro bono* advice, whilst ensuring that regulatory protection is afforded to consumers who are provided with *pro bono* advice.

8. This is a significant piece of work, both for IPReg and those we regulate and we would like to maximise the input we get from the consultation process Our initial thinking on timing is:

Q1 – Q4 2019 – scoping the review (building on work already done in 2018) with input from CIPA, CITMA and other stakeholders

Q1 2020 – initial consultation on proposed approach and outline of new regulatory arrangements

Q3 2020 – detailed proposals for new regulatory arrangements

Our aim would be to apply to the LSB for approval of the new regulatory arrangements in Q1 of 2021 with a view to them being in force in Q3 2021.

#### **Other activities**

9. There are also other areas where we consider that changes are needed. These are:

#### *Improving the application process for individuals and entities*

10. We receive applications from individuals and entities to be regulated. We have identified that we could make the application process more efficient overall. Our aim, once our new CRM is in place is to move to on-line applications for individuals and entities.

11. We have a statutory objective to promote competition in the provision of legal services and want to ensure that our application process for entities is not an unnecessary barrier to entry. We therefore want to review our approach – this could include new guidance and new application forms. Our initial thinking on timing for this review is:

Q3 2019 – scoping the review and identifying areas for change/improvement

Q1 2020 - consultation on proposed changes

Q3 2020 – application to the LSB for approval of the new arrangements

12. We are not planning any changes to the standard education requirements for qualification as an attorney (i.e. the foundation courses and subsequent specialised examinations). However, we

consider that it is appropriate to review whether the current system of exemptions (e.g. for qualifications and for litigators) is targeted, proportionate and consistent. This work is unlikely to start until late 2020.

#### *More appropriate categories of registrant*

13. In reviewing the operation of the current register, we have identified that some categories of registrant need to be changed to reflect better the commercial framework within which they practise. This is particularly the case for some attorneys who are classified as sole traders. We also consider that it is appropriate to review whether attorneys who are “not in active practice” should be allowed to remain on the register indefinitely, or whether it would be more appropriate to restrict this category to events such as sabbaticals or maternity leave. Ideally, we would conduct this review in time for implementation before the 2021 annual renewal process. We consider that it would be appropriate to start this consultation in 2019 since there are potential overlaps with the review of our regulatory arrangements (see paragraphs 7 and 8). Our initial thinking on timing is:

Q1 - Q4 2019 – initial discussions with CIPA, CITMA and other stakeholders about possible changes to registrant categories;

Q1 2020 – consultation on proposed changes

Thereafter, implementing any changes will take into account the need to provide certainty as to the level of fees in 2021 and progress on reviewing our regulatory arrangements.

#### *Moving offices?*

14. The lease on our current premises (which we sub-let from CITMA) expires in February 2020. We are considering whether we should move to other offices that would be more suitable for our needs. Any move would have to take place well before the start of the 2020 annual renewal process.

#### Diversity funding

15. For the avoidance of doubt, we will continue to keep a ring-fenced reserve to fund suitable diversity initiatives.

#### **Summary**

16. In addition to our business as usual activities (see paragraph 3) and developing a new CRM system, we propose to do the following (colour coded for ease of reference):

<b>2019</b>	
Q1 – Q4	<ul style="list-style-type: none"> <li>• Scope review of regulatory arrangements</li> <li>• Initial discussions on possible changes to registrant categories</li> </ul>
Q2	
Q3	<ul style="list-style-type: none"> <li>• Possible office move</li> <li>• New CRM system in place</li> <li>• Scope review of application process</li> </ul>
Q4	
<b>2020</b>	

## Annex 9

Q1	<ul style="list-style-type: none"> <li>• Initial consultation on new regulatory arrangements (high level)</li> <li>• Consultation on proposed changes to registrant categories</li> <li>• Consultation on proposed changes to application process</li> </ul>
Q2	
Q3	<ul style="list-style-type: none"> <li>• Consultation on detailed proposals for new regulatory arrangements</li> <li>• Application to LSB for proposed changes to registrant categories (with 2021 practising fees, etc.)</li> <li>• Application to LSB for changes to application process</li> </ul>
Q4	<ul style="list-style-type: none"> <li>• New registrant categories in place</li> <li>• New application process in place</li> </ul>
2021	
Q1	<ul style="list-style-type: none"> <li>• Application to the LSB for approval of new regulatory arrangements</li> </ul>
Q3	<ul style="list-style-type: none"> <li>• New regulatory arrangements in force</li> </ul>

## IPREG PRACTICE FEE REGULATIONS ~~2016~~2018

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 2016<sup>69</sup>, 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	<del>£159</del> <u>173</u>	<del>£255</del> <u>277</u>
ii) Attorney in private practice	<del>£193</del> <u>210</u>	<del>£317</del> <u>345</u>
iii) Attorney not in active practice	<del>£144</del> <u>157</u>	<del>£232</del> <u>252</u>
v) Sole trader attorney not employing other attorneys or other professionals	<del>£317</del> <u>345</u>	<del>£453</del> <u>493</u>
v) Sole trader attorney employing other attorneys or other professionals	<del>£317-345</del> + <del>£63-69</del> for each attorney employed by the sole trader attorney + <del>£255-277</del> for each other professional employed by the sole trader attorney	<del>£453-493</del> + <del>£63-69</del> for each attorney employed by the sole trader attorney + <del>£255-277</del> for each other professional employed by the sole trader attorney

### Regulation 3 – Late fees

The late fees provided for under regulation 7.45 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 fee of £125.

### 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	£ <del>124</del> <u>135</u>
ii) Any other registered body	£ <del>317-345</del> + £ <del>63-69</del> for each attorney practising via the registered body + £ <del>255-277</del> for each other professional practising via the registered body

### Regulation 5 – Commencement

The fees set out in these regulations shall apply from 1st January ~~2016~~2019 until further amended or substituted by further regulation.

\* 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.