

Approved Regulator: Intellectual Property Regulation Board (IPReg)

Part One: summary and recommendation

Summary

The proposed practising certificate fees (PCF) for 2019 comprises an increase of 8.8%. This is set out as being RPI (3.8%) + 5% in order to address the increased cost of regulation. This is the first increase since 2016.

For 2019, IPReg has set a total budgeted expenditure of £1,076,200. This is a 39.4% increase on that set for 2018 (£771,800). IPReg does not receive any financial support from either CIPA or ITMA.

- IPReg concluded that in order to discharge its regulatory functions and to focus on three key items (IT Project, Office Move and revising regulatory arrangements) an increase to the PCF is required.
- IPReg will focus on the IT Project and potential office move in 2019. The full review of its regulatory arrangements will not take place until 2020.
- IPReg will use £154.5k of its reserves to contribute to the development and implementation of a new IT system.

There is no change to the fee structure.

Recommendation

We recommend that the proposed fees for 2019 be approved and that our decision letter:

- Records LSB concern at the significant percentage increase
- Accepts the necessity of the increase to enable IPReg to undertake its core regulatory responsibilities
- Sets an expectation that upon completion of projects associated with the increase, IPReg will bring down the level of fee to reflect any reductions in costs and efficiency savings
- Welcomes the use of reserves to ameliorate the impact of the PCF increase
- Welcomes IPReg's assurance that it is willing to take steps to monitor the impact of PCF increases on attorneys
- Notes that the LSB considered carefully the concerns raised in IPReg's consultation, particularly from the attorney representative bodies, and concluded that IPReg had responded adequately to queries raised about staffing costs, board costs and the projected IT costs.

Part Two: Assessment of the application against LSB acceptance criteria

1. Pre-submission	
Were there any pre-submission discussions or a draft application; were any issues identified	Yes. We pointed IPReg to the LSB PCF rules and requirements in relation to approved regulators proposing an increase PCF.
Were there any areas for improvement or specific issues in the last approval letter	Yes. We confirmed we were glad IPReg had committed to keeping its reserves policy under review and expressed a hope that IPReg would consider reducing the PCF should it be possible in the future.
Developing the application and budget	
Is it clear that the regulatory arm has led the development of the application?	Yes. PCF income is used solely for regulatory costs. PCF is IPReg's main source of income. They also have limited income from other sources (see section 3 of this assessment).
<p><i>Budget</i></p> <ul style="list-style-type: none"> Is it clear how the budget has been arrived at Is there evidence that the immediate and medium terms needs have been taken into account Are the contingency fund arrangements clear? 	<p>Yes. The budget is clearly set out in the application with the 2018 budget for comparison. The 2018 budget against actual year to date is also provided.</p> <p>Yes. The budget covers the operational expenses for IPReg and the levies to the Legal Services Board and the Legal Ombudsman, as well as the cost associated with the Legal Choices Website.</p> <p>Within the reserves, certain monies are ring-fenced for future known activities (for example, research, practice development and funding diversity initiatives).</p> <p>IPReg has allocated a total of £154,500 from its reserves to be used within its 2019 budget. This will largely assist with the priority IT system development project. We had expressed a desire for reserves to be used where possible and we are pleased to see the IPReg board reviewed its reserves policy.</p> <p>Yes. IPReg publishes details of its reserves which have been created from operating surpluses on preceding years.</p> <p>There is a clear reserves policy. This year IPReg has reallocated its reserves and produced a document setting out the proposed uses for the reserves.</p>
<p><i>Consultation</i></p> <ul style="list-style-type: none"> Has the proposed fee been consulted on – if so summarise 	Yes. A consultation on the Business Plan, budget and the proposed PCF was published on 6 August 2018 and comments invited by 7

<ul style="list-style-type: none"> Was the consultation clear about the level of fee and how it will be collected Was feedback fully considered 	<p>September 2018. 46 responses were received, including responses from CIPA and CITMA.</p> <p>Yes.</p> <p>Yes. IPReg supplied the LSB with the responses submitted by CIPA and CITMA. It also produced at Annex 8 of its application a document setting out its consideration of consultation responses.</p> <p>During the assessment period, the LSB received unsolicited correspondence from CIPA and CITMA. The correspondence raised opposition to the proposed increase in PCF.</p> <p>While there is no public consultation element to the LSB's PCF assessment, we considered unsolicited correspondence to the extent that it was relevant to our decision.</p>
<p><i>Clear and transparent</i></p> <ul style="list-style-type: none"> Is the information provided to fee payers on the level of fee clear and transparent When was/is this issued to fee payers 	<p>Yes. In the consultation and also to be issued individually to fee payers after LSB approval, as soon as IPReg has been able to make the necessary arrangements.</p>
3. Permitted purposes	
<p>Is there evidence that the PCF income is used solely for permitted purposes</p>	<p>Yes. PCF income is used solely to cover the costs of IPReg.</p>
<p>Is any other income to be applied to permitted purposes</p>	<p>Yes. In addition to PCF, IPReg has a small amount of income from the issue of litigation certificates, late payment fees, licensed body application fees and bank interest earned. As at 30 September 2018, IPReg's total income was £828,036 which included £14,379 of non-PCF income</p>
4. Regulatory functions	
<p>Is there evidence of how much of the PCF income is applied to permitted purposes that are regulatory functions</p>	<p>Yes. All PCF income applied to regulatory purposes.</p>
<p>Are any shared services clearly explained</p>	<p>Not applicable to this application</p>
5. Regulatory and equality impact assessment (optional requirement)	
<ul style="list-style-type: none"> Completed and included? If not included, is there an explanation of the potential impact Does the application contain commentary on the regulatory objective and the Better Regulation Principles 	<p>Not included.</p> <p>IPReg has set out that the monetary increase is relatively small. However, it accepts that there will be a greater impact on sole practitioners.</p>

	IPReg will consider a restructure of attorney/entity categories (and therefore fees) when it reviews its regulatory arrangements (in 2020).
6. Consultation with non-commercial bodies (optional requirement)	
<ul style="list-style-type: none"> • Does the application include a description of the steps taken • Have the proposed fees been shared with such bodies • What was the response 	<p>Not applicable to this application.</p> <p>N/A</p> <p>N/A</p>
7. LSB Review	
Have we consulted with any other body on the application	Not necessary.
Were any issues raised by LSB colleagues from the first review	<p>Two substantive queries were raised with IPReg:</p> <p>We asked IPReg if it was able to confirm whether there will be any monitoring of the impact of the proposed increase in PCF.</p> <p>IPReg confirmed it is open to monitoring the impact of the increase and considering an impact assessment in the future. It would be interested in discussion with the LSB and CIPA/CITMA on the approach to be taken to monitoring.</p> <p>With regard to IPReg's three year budget forecast, this suggested an increase in the PCF above RPI. We asked whether this was on the basis of an increase in numbers of practising attorneys, or if there were other reasons for the proposed increase.</p> <p>IPReg confirmed that it was estimating an increase in the number of practising attorneys whilst cautioning that any projection must be treated with caution, particularly given the potential impact of Brexit on the work of trademark attorneys.</p>