

Table of mandatory consultees advice and IPReg representations

Mandatory Consultee	Advice	IPReg Representation
OFT	<p>OFT's default position is that unless there is compelling evidence to show a significant detriment to competition, the OFT is unlikely to raise any substantive concerns.</p> <p>The OFT therefore had no objections to the application and considered that allowing IPReg to authorise ABS may indeed strengthen competition and promote innovation in the intellectual property market. Potentially this could, it said, place competitive pressure on the pricing of services and broaden access to justice.</p>	IPReg made no comment on the OFT's advice.
Consumer Panel	<p><i>General:</i> The Panel said it did not have any major policy concerns with the application. Noted IPReg already regulates ABS type firms but that it is not overhauling its existing regime as other bodies making licensing authority applications have done. Although did note it was modernising aspects of its arrangements to bring them in line with LSB expectations on good regulatory practice.</p> <p>The Panel also noted that IPReg proposes to restrict to intellectual property the type of work that authorised firms will be able to conduct.</p>	Pleased to note no major policy concerns.
Consumer Panel	<i>Risk to consumers:</i> Agreed that IP work is potentially lower risk to consumers than other areas of legal work - client base is mostly	Surveyed members in 2012. In relation to client types, survey looked at geographical locations and

	<p>a limited number of commercial organisations. But still a limited number of private clients and charities. Would expect a risk based regulator to focus its resources on safeguarding consumers who are at greater risk rather than matching resources to market share. Pleased to see that research (including consumer engagement) is highlighted within the proposed new organisational model. But did not appear to involve direct dialogue with consumers. Given the intellectual property client base, the Panel would encourage IPReg to reach out to organisations representing small businesses.</p>	<p>breakdown of client types. Corporate clients constitute around 50%. Small private clients represent lowest proportion. The second largest consist of UK solicitors, overseas attorneys or other professional intermediaries.</p> <p>Market for IP is sophisticated and increasingly global. External surveys and IPReg's own surveys indicate that IP advisers tend to be consulted by "IP aware" clients who are not just "the man in the street". IPReg consumer engagement policy is framed to meet that demand.</p> <p>In terms of reaching out, IPReg's new website has a "Got an idea?" page which has been developed with the client in mind. IPReg disagrees that consumer engagement is an area where smaller bodies lack the critical mass to carry it out. IPReg demonstrates how in a real and practical way, IPReg has taken account of consumers' interests (although practical examples are not illustrated in IPReg's response).</p>
<p>Consumer Panel</p>	<p><i>Fees:</i> IPReg's Rules of Conduct Rule 10 say that 'regulated persons fees must be justifiable'. Panel believe this should be expanded to include transparency of fees given concerns in this area highlighted by LeO and the Panel's tracker research. Acknowledges transparency of costs is included within the guidance on client care and service, but believes this should have the status of a rule and be included within the section on fees.</p>	<p>IPReg said both the Code in Rule 6 and Guidance 6.1, together with Rule 10 deal properly with fees. Strongly believe that the greater level of detail in rules, the less the practitioner will think through the implications of broader principles and how those principles apply in context.</p>

<p>Consumer Panel</p>	<p><i>CPD:</i> Thought the requirements in respect of CPD in Rule 16 of Rules of Conduct seemed underdeveloped. IPReg's Education Plan indicates that it will issue a CPD questionnaire to identify areas for development and amend guidelines and rules if appropriate. Expected IPReg to develop this aspect of its regulation in order to properly safeguard quality standards for consumers.</p>	<p>IPReg believes there has been a misunderstanding on the part of the Panel. With respect to the CPD questionnaire, the questionnaire was issued and the project was completed in 2012. Since January 2010 IPReg has had a detailed programme of CPD and detailed guidance. There are particular CPD guidelines for litigators. CPD returns are collected from all registrants. Any non-compliant returns are reviewed and necessary action is taken. Since 2010 around 95% of returns have been compliant. IPReg did not include the full CPD regulations and guidance in the application as it did not believe they were relevant in the context of the LA application. But in the light of the Panel' misunderstanding, the CPD requirements will now be included as an annex to the application.</p>
<p>Consumer Panel</p>	<p><i>Cooperation with LeO:</i> The Panel noted that Rule 20 of IPReg's Rules of Conduct refers to cooperation with the appropriate Regulation Boards. The Panel said this should be expanded to include cooperation with the Legal Ombudsman, even though a small number of attorney cases reach LeO.</p>	<p>IPReg responded that it has never had a concern raised that an attorney is not fully co-operating with LeO. It further said that if IPReg encounter significant issues with co-operation with other regulators or ombudsmen, it would consider the inclusion of an explicit requirement to co-operate with regulators and ombudsmen. <i>LSB Note: Aside from the Panel's advice, IPReg is in non-compliance with section 145 of the Act which requires provision be made requiring authorised persons to give all ombudsmen assistance. Once this omission had been brought to IPReg's</i></p>

		<p><i>attention, it helpfully agreed to rectify the position with an intention to add a provision so that it is in compliance with section 145. It will also add guidance to Rule 20 (Co-operation) making it clear that the TRB and PRB designate LeO and other ombudsmen as persons with whom those subject to the Code must co-operate.</i></p>
<p>Consumer Panel</p>	<p><i>Passporting:</i> Concern about passporting of existing registrants into HoLP and HoFA roles. Said it disagreed with the proposal in IPReg’s consultation on its application that existing registrants should be automatically passported into these roles.</p>	<p>IPReg said it was unclear as to which provision the Panel was referring to. It says it is true that Regulation 24.1 of the Registered Bodies Regulations states that a body which was registered before the Commencement Date (of being a licensing authority) will be deemed to be registered under the regulations but that simply means that bodies (other than those wanting to be ABS) that are already registered, will not need to apply for re-registration simply because the regulations have been amended.</p> <p><i>LSB Note: LSB understand the IPReg’s position to be that bodies already registered with IPReg will not need to re-register under the new IPReg Registered Bodies Regulations. However, existing registered bodies that want to become ABS <u>will</u> have to apply for registration under the new arrangements and go through IPReg’s authorisation process, including in respect of HoLP and HoFA requirements. Furthermore, in a meeting</i></p>

		<p><i>with IPReg's Chief Executive on 23 October 2013, she confirmed that IPReg had identified and anticipated around 10 'ABS like' firms that will initially want to apply. However, she said there would be no "passporting" of these firms. All applicants would have to go through the full licensing authorisation checks.</i></p>
Consumer Panel	<p>Should align the time limits for consumers making a complaint about conduct with that of the Ombudsman scheme rules (revised in February 2013). That is: Six years from the act or omission; or three years from when the complainant should reasonably have known there was cause for a complaint.</p>	<p>IPReg's rules permit complaints to be brought within one year of the complaint arising or within one year of the complainant becoming aware of the ground for complaint. Cases outside these time limits are to be treated as received in time when sufficient reason is given for the delay. IPReg said this creates far wider scope for admission of a complaint than the (now extended) time limits for LeO.</p> <p><i>LSB Note: LSB has not issued direction that ARs/LAs should replicate LeOs time limits. LSB understands that LeO may previously have indicated to ARs that the approach, such as that adopted by IPReg, is acceptable if not optimum.</i></p>
Consumer Panel	<p>Concerned that the IPReg Rule 16 of its Disciplinary Procedure Rules on publishing the names of respondent and complainant in cases before the Disciplinary Board may discourage the public or whistleblowers making a complaint.</p>	<p>IPReg clarified that 'the Complainant' under Rule 16 of the Disciplinary Procedure Rules is IPReg not a client. But IPReg accept the Panel's concern and will clarify the position by updating its guidance on the website if designated. IPReg adheres to and supports the statutory protections for whistleblowers, and would</p>

		for example redact papers used in disciplinary cases should that be necessary to protect the whistleblower.
Mandatory Consultee	Advice	IPReg response
LCJ	<i>General:</i> Advise against granting the application. Overarching concern about the effect of competition on standards.	IPReg said it shared concerns about need to maintain high standards. IPReg already regulates nine large firms that are ABS like. IPReg's experience is that they operate to the same high standards as other patent and trade mark attorneys. In addition IPReg as a LA will have robust authorisation and supervision arrangements to ensure that the high standard of IP work is maintained.
LCJ	<i>CPD:</i> Noted comments from Consumer Panel on CPD. Also concerned about lack of detail in Rule 16 of IPReg's Rules of Conduct in respect of CPD. Given UK's high reputation in IP law in Europe and internationally it is crucial for IPReg to put together a more detailed programme of CPD in line with those that exist elsewhere in the profession.	IPReg said it believed LCJ's view on CPD reflected a misunderstanding of the Panel. IPReg has detailed and robust CPD regulations, guidance and procedures and will add its CPD arrangements as an annex to the application.
LCJ	List of excluded areas of practice that IPReg will not authorise is not as comprehensive as it could be, for example, personal injury is not excluded.	IPReg said it has always intended to stay within the bounds of its professional expertise. The list of excluded area was never intended to be exhaustive, but accept the comments made by LCJ and have proposed amendments to its regulations to specifically make the position clearer

		and include personal injury in the list of exclusions.
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