

LSB Consultation – Reviewing the Internal Governance Rules (IGRs)

The Chartered Institute of Trade Mark Attorneys (CITMA) is responding to the consultation by the Legal Services Board (LSB) in its capacity as an Approved Regulator (AR), as defined in the Legal Services Act 2007 (the Act) and as the representative body for Chartered Trade Mark Attorneys and the wider trade mark and design profession.

The consultation document asks a number of specific questions. Rather than answer each of these individually, we feel it important to set out what the key issues and concerns which the LSB should consider as part of the review.

We believe the LSB need to consider what it is they want to achieve and indeed need to achieve as a result of any IGRs put in place and the effectiveness of any rules prescribed. Particular thought needs to be given to what the role of the LSB is in providing oversight? What additional functions the AR provides? And what residual rights remain with an AR? A clear indication of the rights and responsibilities of the LSB, the AR and the arms length regulator is key to providing clarity which is a desired outcome for all.

It is worth noting the constitution of the Intellectual Property Regulation Board (IPReg), our arms length regulator. IPReg is a company limited by guarantee providing full legal separation between representative and regulatory functions, which we understand to be unique within the legal sector. It is financially independent, the income generated by IPReg through practice fees is entirely ‘owned’ by IPReg. Despite this legal independence, we have still encountered a number of issues in relation to the existing IGRs. In our experience, these issues have developed largely due to a lack of clarity or understanding of the rules, with no arbitrator or decision maker to set out the correct position on points of confusion. Misunderstandings have also arisen where there has been confusion between the IGRs and the Delegation Agreement drawn up between CITMA, CIPA and IPReg which is the formal document delegating regulatory functions from CITMA and CIPA to IPReg. It is difficult to estimate the amount of time these ‘disagreements’ have taken up, but clearly it is time and resource which could have been spent on other, more important, regulatory matters which would be in the public and consumer interest.

We would strongly advocate for a simplification of the IGRs. The IGRs should be clear, prescriptive but allow for flexibility, recognising that there are different models of operation which the various Approved Regulators and their arms length regulators use. In drawing up any new IGRs or reviewing and changing existing IGRs the LSB should ensure that inconsistencies are avoided or removed to prevent misinterpretations. E.g.

the section on appointments sets out illustrative guidance that an AR should be involved at all stages and form part of the appointment panel, but also states the recruitment of a chair should be delegated to an independent appointment panel.

We would suggest the LSB needs rules to enable it to be an adjudicator and provide a backstop for the oversight function. Issues will arise from time to time between the AR and arms length regulator. Where this has happened in the past the LSB has not sought to provide any determination of the matter which has led to matters continuing for inordinate lengths of time which could have been avoided. If there were more robust and clearer IGRs in place, 'disagreements' regarding independence could be avoided or minimised. Also if the LSB were to act as an adjudicator where necessary, this could be beneficial and secure quicker resolutions.

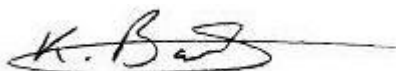
We would recommend the LSB carries out benchmarking of other sectors / professions, finding out what others have done in terms of the process they follow, the matrix they use and any performance indicators they put in place. Whilst other sectors may not have the apparent constraints the Legal Services Act imposes, they may well have useful information from which the legal sector could benefit.

With regards to the options put forward by the LSB in the table of options (p16), we feel that an amalgamation of the options (option 2a, 2b and 2c) would potentially offer a set of IGRs which provide greater clarity and be more effective in delivering independence of regulatory functions with appropriate oversight by Approved Regulators and the LSB. Not to change the IGRs we would suggest is not a valid option. There are clearly issues with the current IGRs and we would therefore support some form of change.

CITMA would not support a return to the dual self-certification model for assurance of compliance which we felt did not work particularly well. We would support AR and regulatory body led assurance against performance indicators set and agreed.

We would be happy to discuss any of these points further with representatives from the LSB if it would be of assistance.

For and on behalf of The Chartered Institute of Trade Mark Attorneys.



Keven Bader
Chief Executive
9th February 2018