

LSB consultation: Consultation on proposed regulatory performance assessment framework

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, as defined in the Legal Services Act 2007 (the Act) and as the representative body for Registered Trade Mark Attorneys, Chartered Trade Mark Attorneys and the wider trade mark and design profession.

We broadly support the proposed changes, approach, and intended aims of the new regulatory performance assessment framework.

We believe that it is sensible to try to reflect more closely the requirements and terminology set out in the Act. This, in conjunction with a more principles-based approach, should enable regulators to determine what performance metrics are relevant and the evidence needed to support decisions made and show how standards are being met.

A key success factor for any new arrangement will be flexibility, to ensure that performance is not assessed in a 'one size fits all' approach.

In our view, the assessment should cater for the different consumers which regulators protect and whose interests they promote. For the intellectual property community and thus the Intellectual Property Regulation Board (IPReg), the consumer is largely from the business sector and therefore at least partly different to other areas of the legal services sector whose primary consumer is more likely to be from the general public.

The way in which the LSB monitor and assess the performance of IPReg may therefore require adjustment in some ways from the assessment of other regulators, although we fully support the need for regulator transparency and the need for regulators to provide appropriate evidence to inform and substantiate how standards are being met.

Transparency will also be required by the LSB in order that front-line regulators, Approved Regulators and the consumer can see how and why the LSB has determined any findings in any report published.

We would hope that the new framework will enable regulators to be more efficient in the time and effort needed to provide to the LSB evidence of meeting the performance standards and overall compliance. Based on the proposals set out, this should in theory be a positive outcome of the proposed new arrangements.

There is a need to ensure that regulators demonstrate that they are effective regulators and the LSB, the Approved Regulator and the consumer need to receive appropriate assurance that standards are being met. Obtaining appropriate assurance should be balanced with the resource and cost of providing such assurance. Any increased cost in this area will ultimately be passed on to the regulated community and the consumers.

We support the notion of the Sourcebook being a living document, but would suggest careful thought with regard to the frequency and volume of updates. There is a risk that multiple and frequent updates might induce "regulator fatigue". Regulators require stability and frequent updates may be disruptive and counterproductive. The LSB should plan carefully and communicate its plans with regulators and the community, possibly providing a clear timetable for any changes. There could also be a limit on the number of changes made in any given year.

With regards to other areas of the consultation, for example transitional arrangements, we have seen and read the consultation response submitted by IPReg and support their comments.

We are grateful to the LSB for the opportunity to provide a response.

For and on behalf of the Chartered Institute of Trade Mark Attorneys

A handwritten signature in black ink, appearing to read 'K. Bader', with a long horizontal flourish extending to the right.

Keven Bader
Chief Executive

1st July 2022