

IPReg: 2021 Business Plan, Budget and Practising Fees consultation

1. The Chartered Institute of Trade Mark Attorneys (CITMA) is responding to the consultation by IPReg on their 2021 Business Plan, Budget and Practising Fees in its capacity as an Approved Regulator, 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. We are grateful to IPReg for the opportunity to comment.
2. Our response answers the specific questions asked in the consultation as well as offering some broader comments.

Question 1. What are your views on the proposal to keep practising fees at the 2020 level?

3. We support the proposal to keep practising fees at the 2020 level. We welcome the sensible approach outlined by IPReg in the consultation. The reasons provided for not uplifting fees as well as the reasons provided for not decreasing fees would appear reasonable and appropriate in these challenging and uncertain times.
4. In previous responses to practising fee consultations we made clear that we hoped for a reduction in practising fees, all things being equal, in future years. This was something the Legal Services Board supported through an expectation for the cost of regulation to reduce over time. This remains our overall position, but we appreciate the current uncertain times and accept fees remaining at 2020 rates. We would hope that for 2022 it may be possible for fees to be reduced if there is a degree of certainty and activities return to some form of normality.

Question 2. What are your views on the proposal to waive fees for individual attorneys who are facing hardship as a direct result of the pandemic?

5. We support the proposal to waive fees for individual attorneys who are facing hardship as a direct result of the pandemic. Any support towards those impacted in this unfortunate situation is to be welcomed.
6. We would like to take the opportunity to remind IPReg that as most Registered Trade Mark Attorneys are likely to be members of CITMA, should IPReg come into contact with someone who may be experiencing financial hardship, it might be helpful to signpost them to the [‘support’](#) services CITMA has available. For example, the CITMA Benevolent Fund.

Question 3. Do you have any comments on the approach to waiving fees? Have we identified the right requirements for proof of hardship? If not, please make suggestions as to what these should be?

7. We agree that it would be appropriate for any request to waive fees to be supported by proof of hardship. The requirements of proof, as outlined in the consultation, appear to be reasonable and fair.
8. We would hope that IPReg will be supportive where it is clearly difficult for an individual to obtain the required proof. There may be circumstances whereby it is not straightforward to obtain the proof required. IPReg should fall on the side of allowance rather than immediate refusal.

Question 4. What are your views on the proposed requirement that full fees should be paid if an attorney who has had their fee waived is employed again?

9. We have no objection to the proposal for full fees to be paid if an attorney is employed again, but we would suggest that a longer period is allowed for payment of the fees. A period of three months in our view would be more reasonable. This would allow time for an individual to settle into their new role, fully establish employment and, if necessary, accumulate the required funds. This would be especially beneficial if the new employer is not paying the fees on behalf of an individual.
10. We would welcome clarity on what would happen if an individual returned to employment in 2022, when the timeframe for waiving fees has ended. Would that individual be required to backdate payment for fees due in 2021?

Question 5. What are your views on the proposal to increase the maximum late payment fee to £250?

11. We have no objection to a late payment fee per se, but we have some concerns at the proposal to double the maximum fee which can be prescribed. This would appear to be excessive and not wholly justified by the information provided within the consultation.
12. If IPReg were able to provide further details on the circumstances under which an individual would be charged the full late payment fee it would help with transparency and may justify the increase and level proposed.

Question 6. Do you have any evidence of the impact that each of these proposals will have on different categories of individuals or firms? In particular, do you have any evidence of the potential impact on the diversity of the profession?

13. We do not have any evidence of the impact that each of these proposals would have on different categories of individuals or firms or on the diversity of the profession.

Question 7. Do you have any comments on the proposed Business Plan?

14. We are pleased to see that the 2021 business plan focusses on completing the activities identified in the 2020 business plan, but which have not yet been completed, namely the review of regulatory arrangements.
15. We deemed this to be an important piece of work for IPReg and we therefore welcome the fact that work on this will commence towards the end of 2020 and continue through 2021.
16. We consider it sensible for IPReg not to look to undertake too many other activities during 2021 and for the review of regulatory arrangements to be a key activity for the year.

Question 8. Do you have any comments on the draft Practising Fee Regulations at Annex A?

17. We question whether the following provision within the 'Guidance to Regulation 6' is in fact a guidance point or should be within the regulation itself?

"The chief Executive may require additional information from the attorney or their former employer."

It may be more explicit to include this as a rule as it will provide a clearer indication of the power for the Chief Executive to seek further information, especially if IPReg needs to contact a former employer to obtain the information required.

General comments

18. Although it is proposed that the practising fees will not be increased for 2021, we commented in response to the equivalent 2020 consultation that it may be appropriate for IPReg to base any financial analysis on the newer CPIH rate, rather than the RPI rate which IPReg were using. We encouraged IPReg to explore this option and we would like to put on record again a request for IPReg to consider this for the future.
19. We are pleased to see, once again, a ring-fence of reserves for diversity initiatives. It is important for IPReg to support and align with the broader work of the IP Profession in this area.
20. We are also pleased to see that IPReg plan to review the current system for exemptions for attorney qualification pathways and a high-level review of the Accreditation Handbook. Both of these would benefit from a review, along with other educational materials, such as the IPReg Competency Framework for Trade Mark Attorneys which hasn't been reviewed or updated for some time.
21. We would be happy to discuss any of these points further with representatives from IPReg if it would be of assistance.

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



Keven Bader
Chief Executive

8th October 2020