

LSB assessment of market transparency action plan

Intellectual Property Regulation Board (IPReg)

Date action plan was published: 29 June 2017

The action plan is published [here](#).

LSB Assessment: SUFFICIENT

1. IPReg's operating context is a key factor in our assessment. IPReg regulates a relatively small number of entities, the majority of whom serve business consumers, with many of these clients based overseas. By contrast, the CMA's recommendations were focused primarily on the domestic retail market. Therefore, we are satisfied that it is appropriate for IPReg to take more limited action compared to some of the other legal services regulators. Despite this, small business consumers do need intellectual property services and our research indicates ongoing unmet need¹ which greater transparency could help to address. Therefore, activity by IPReg in this area could positively improve market outcomes.
2. In this context, it is encouraging that IPReg intends to continue to engage with this agenda. In particular, it is welcome that IPReg is committed to ongoing collaboration with the other regulators on joint initiatives, such as the development of Legal Choices, consumer testing and exploring the feasibility of creating a single digital register. We also welcome the separate analysis of the action plan against the LSCP's criteria for successful information remedies.
3. Our suggested template asked regulators to provide information against a number of areas. Although the template we provided was optional we were clear that regulators should give reasons if action was not planned in these areas and explain the governance process used to reach this decision. IPReg's action plan did not include the required information in a number of areas. IPReg has since clarified that the decision on whether to take action in

¹ Analysis of our 2015 small business legal needs survey shows that intellectual property problems were strongly associated with no action being taken (46% of respondents took no action).

each case was made following input from Board members which was then discussed and agreed at Board meetings.

4. We highlight the following issues in relation to the action plan:

- We encourage IPReg to seek to understand current charging structures and existing levels of price transparency among attorney firms. The web sweeps carried out by some other regulators show how this can be achieved at little financial cost. Such a step would help IPReg to decide whether any regulatory measures are necessary and if so where these might most effectively be targeted.
- The main focus of IPReg's transparency measures is at the engagement stage, whereas the CMA's emphasis is on the pre-engagement stage (information available to a consumer before engaging a legal services provider). We would ask to see more details on the rationale behind the proposal for a fixed-fee scoping meeting and how unintended consequences, such as adding cost or creating an unnecessary barrier to accessing services, could be avoided.
- IPReg has not provided evidence as to why it would not be possible for firms to publish some fee information online, even if it is the case that some types of work carried out by attorneys are not amenable to predictable advance pricing. We believe that any risks of overseas competitors being able to undercut English and Welsh attorneys if there is price transparency will depend on how detailed any obligations are around increased transparency. Furthermore, there are competitive benefits of transparency in terms of building consumer trust so they will be more confident to purchase from a domestic firm compared to an overseas firm.
- IPReg plans to produce voluntary guidance on transparency, rather than introduce mandatory requirements. Given the profile of IPReg's regulated community we consider this is proportionate, but we would ask IPReg to keep this under review.
- IPReg has clarified that it publishes complaints data at an aggregated level in its annual report. Nevertheless, IPReg should explain why it does not consider it necessary at this stage to explore options to enhance transparency around the quality of services provided by named attorneys, at either individual or entity level. In particular IPReg should consider whether to publish first-tier complaints data. Further, we consider IPReg could integrate the disciplinary information it already makes available into the published lists of attorneys on its website. While there are low levels of

complaints and disciplinary proceedings, we consider this would be good practice and can be achieved at little cost.

- While there are advantages in aligning implementation dates of transparency measures across the regulators, other regulators are not planning to focus on intellectual property initially. This means it could be a long time before consumers benefit from greater transparency in Intellectual Property. IPReg should not wait for other regulators before progressing the work that it considers is necessary.
- It is welcome that IPReg intends to encourage attorneys to participate in third party independent feedback platforms but it is unclear from the action plan how this will be achieved. We would like to clarify that there is no expectation that IPReg introduce specific feedback platforms for attorneys. We would welcome it if the market delivers such platforms on its own. IPReg has since confirmed that if the market delivers these platforms it will consider how to help its attorneys to engage with them.
- We note the absence of information about any plans for regulatory badges.
- The action plan does not propose review dates against any of the key milestones so we will need to agree these with IPReg.