

22nd February, 2019

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Consultation on the LSB's Business Plan

The Chartered Institute of Patent Attorneys (CIPA) is the professional body for patent attorneys in the UK. CIPA is responding to the consultation on the 2019/20 Business Plan by the Legal Services Board (LSB) in its capacity as an Approved Regulator, as defined in the Legal Services Act 2007, and as the representative professional body for Chartered Patent Attorneys in the UK.

Q1 – Has the LSB identified the most relevant developments in its external operating environment?

In broad terms, we believe that the LSB has identified the key developments in its operating environment. We suggest that the impact of the UK leaving the European Union should have more prominence in the LSB's business plan, as this is somewhat lost in its place within the strategic objective of increasing innovation, growth and the diversity of services and providers. These are extraordinary times and it would be appropriate for the LSB to make its response to Brexit an additional strategic priority, rather than subsuming this work within another objective.

Q2 – What are your views on the LSB's proposed five-year policy objectives?

Setting aside the question of whether or not the UK leaving the European Union should be identified separately within the LSB's five-year policy objectives, we believe that it is right that the LSB should continue to ensure that there is independent, effective and proportionate regulation; to make it easier for consumers to access the services they need, where appropriate, to get redress and to increase innovation, growth and the diversity of services and providers. We have some more detailed comments relating to specific areas of work within each strategic objective, which are reported below.

Q3 – Do you have any comments on the LSB's proposed business plan and work for 2019/20? Are there any workstreams that you disagree with? Is there any work that you think the LSB should pursue that is not currently included?

Please see detailed comments below.

Q4 – Please identify any elements of our business plan that you think present an opportunity for more detailed dialogue and/or joint working between your organisation and the LSB.

Please see detailed comments below.

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Q5: Please provide comments regarding equality issues which, in your view/experience, may arise from the LSB's proposed business plan for 2019/20.

We note that, other than the LSB carrying out an Equality Act Assessment to demonstrate due consideration to its obligations under the Equality Act 2010, there is no reference to the LSB's role in supporting the Approved Regulators to address issues relating to equality, diversity and inclusion (EDI), nor is there any reference in the business plan to how the LSB addresses EDI as an employer. The LSB should be acting as an EDI role model for the regulatory bodies and we would expect to see a clear focus on the LSB's approach to EDI as an employer in the business plan.

Detailed comments

1. Continuing professional competence

We recognise the importance of regulatory bodies having in place appropriate frameworks for the continuing assurance of professional competence throughout the careers of the professionals they regulate. CIPA's members are aware of the need to ensure that they remain fit-to-practise throughout their working lives, as can be evidenced through our members' engagement in CIPA's programme of continuing professional development.

Patent attorneys have a dual-professional identity. Having first studied in fields such as science, technology and engineering, they add the legal training required by both UK and European regulations to qualify as Chartered Patent Attorneys and European Patent Attorneys. The LSB's thematic review of how regulators ensure that the people they regulate remain competent throughout their careers must recognise that maintaining competence in a technical field such as science, technology and engineering is of equal importance to remaining in good legal professional standing. The review must also recognise where legal professionals, such as CIPA's members, are subject to other forms of regulation which will have an impact on the nature and volume of CPD undertaken.

2. Review of the Practising Certificate Fee (PCF) approval process

We welcome the LSB's intention to review its approach, rules and guidance on its PCF approval process. We have previously raised concerns with the LSB about the budget-setting methodology employed by IPReg and, whilst we now believe that we are in a better place in terms of the relationship with our regulatory body, we support the LSB's statement that there is scope to improve the transparency of the PCF applications made by regulatory bodies. We would go further than this and suggest that the LSB examines the timetable employed by the regulatory body for consulting with the regulated community, the representative body and other stakeholders. We also propose that the PCF application should include an impact assessment in relation to any increase in practising fees, in particular any risks associated with the regulated community challenging the value of remaining within the regulatory framework.

We are not overly concerned about the impact of non-regulatory permitted purposes on the level of the PCF. IPReg sets, collects and utilises the PCF separately from CIPA and this should ensure that income derived for regulatory purposes is not spent on representative activities. We recognise, however, that there may be aspects of a regulatory body's business or operational plan which could straddle this boundary. This should be addressed during an open consultation period employed by the regulatory body in advance of submitting the PCF application to the LSB and we urge the LSB to ensure that its approval process relates to the proposed new Internal Governance Rules (IGRs) in that the Approved Regulator is not inhibited in its ability to seek to influence the regulatory body's plans.

3. The LSB is at the forefront of enhancing public legal education

The LSB rightly recognises that there are many and varied organisations actively educating the public in legal matters. In the case of intellectual property (IP), the UK Intellectual Property Office (IPO) plays an important role in educating the public about the benefits of IP and CIPA's members support this through speaking at IPO masterclasses and other awareness-raising events. We would be happy to work with the LSB to see what, if any, contribution it could make to IP education, recognising that patent attorneys generally work in a business-to-business relationship. We urge the LSB to recognise that small businesses are essential users of the IP legal system and would be an important audience.

In terms of the reference to the support available for litigants in person, CIPA responded to an intervention by Judge Hacon, presiding judge in the Intellectual Property Enterprise Court (IPEC), to create IP Pro Bono. Working alongside our colleagues at CITMA and in close liaison with IP solicitors and barristers, we established IP Pro Bono primarily to support litigants in person. This initiative, operating entirely through volunteers, has supported a large number of individuals and small businesses on a *pro bono* basis and we would welcome the opportunity to work with the LSB to raise the public's awareness. We would also urge the LSB to examine how the regulatory framework can evolve to ensure there are few barriers to those who wish to volunteer to advise litigants in person through schemes such as IP Pro Bono.

4. Individual legal needs survey

Given the business-to-business relationship which dominates the work of patent attorneys, the concept of the "consumer" is somewhat different in the world of IP. The previous research into the met and unmet needs of consumers tended to focus on individual needs in areas such as family law, conveyancing and criminal justice. For the research to be more meaningful to our members, we urge the LSB to broaden the scope of its research to look at the needs of micro and small businesses. We acknowledge that, when partnering with the Law Society, the focus will inevitably be on the personal needs of the individual consumer, but this does not read across well to IP and should not be used as a benchmark for patent attorneys.

5. Access to legal services through the promotion of technological innovation

With our members working at the leading edge of technological innovation, we are well-placed to react to the impact of technology in the provision of legal services. We would be interested in participating in the LSB's research examining the regulatory implications of developments in technology. This raises important questions about access to legal services, ethics and, of course, the role of regulation when legal services are provided with little or no human professional interaction. Whilst this is not at all common in IP, we recognise that such advances in the provision of legal services are inevitable and carry risks, not least where these services are provided by unregulated entities.

6. Brexit

The work required to ensure that there is a smooth transition for the public, for consumers and for legal services providers as the UK leaves the EU should feature more prominently in the LSB's business plan. There are different consequences for each of the regulated legal professions, depending on the existing relationship with the EU. For example, the work of UK trade mark professionals in Europe is under great threat, as the European Intellectual Property Office (EUIPO) is an EU agency. The European Patent Office (EPO) is not an EU agency, meaning that access to the EPO for UK professionals who are European Patent Attorneys (EPAs) is not affected by Brexit.

If the LSB sees itself with a leadership role for legal services as the UK leaves the EU, it is essential that the LSB has meaningful discussions with the representative bodies in this regard, as the regulatory bodies are likely to lack the experience and expertise of European work. As the LSB aspires to contribute to maintaining the international standing and competitiveness of the legal sector, which of itself appears to be outside of the LSB's regulatory oversight remit, it will need to have the confidence and support of the representative bodies to be successful in this ambition. We would welcome the opportunity to discuss how the LSB can contribute to the ongoing work to promote the British legal professions overseas now and post-Brexit.

Please do not hesitate to contact me should you require any amplification or clarification of the observations made in this consultation response. CIPA would be happy to discuss its response with representatives of the LSB.

Yours sincerely



Lee Davies
Chief Executive