

Consultations
Legal Services Board
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Regulatory Performance Assessment Consultation

Please see below the responses from the Chartered Institute of Patent Attorneys (CIPA) to the consultation questions. CIPA is one of the Approved Regulators and has delegated its regulatory functions to the Patent Regulation Board which, together with the Trademark Regulation Board, acts as the Intellectual Property Regulation Board (IPReg).

1. *Please could you set out any other minimum standards required of a regulator which are not covered by the proposed regulatory performance standards?*

In addition to standards covering regulatory approach, authorisation, supervision, enforcement and governance and leadership, it would be beneficial to have minimum standards for communication and financial performance. In CIPA's experience, communication between the regulatory body and registrants, communication between the regulatory body and the Approved Regulator and communication between the regulatory body and stakeholders (including other representative bodies) is a significant factor in effective regulation and should form part of the performance assessment framework. Financial performance and the translation of financial health into the level of practice fees should be seen as a key indicator of performance.

2. *Please could you set out any items that should not be included within the regulatory performance standards? Please identify why they should not be included.*

CIPA has not identified any items that should not be included within the regulatory performance standards.

3. *Other than the items already listed in the revised data set, please could you list any other items that we should be collecting? Please identify why we should be collecting them.*

As can be seen from our response to question 1, the revised data set does not include the collection data on financial performance. CIPA considers that data on financial performance, such as analysis of financial information and management accounts, should be included in the list. CIPA believes that the assessment of performance should include the monitoring of financial performance and budget milestones. CIPA notes that the regulatory bodies will be required to report on the number of justified complaints about the regulatory body. It would be helpful for this to be set in the context of the total number of complaints received and why complaints about the regulatory body were deemed to be not justified.



4. Are there any items listed in the revised data set that should not be included in this?

CIPA has not identified any items listed in the revised data set that should not be included.

5. Is it necessary for the information collected in the revised dataset to be put into the public domain? What is the LSB's role, if any, in encouraging this?

If the public and the users of legal services are to have confidence in regulation, the performance assessment of the regulatory bodies should be transparent and open to scrutiny. CIPA holds the view that all data relating to regulatory performance should be publicly available and that the LSB should encourage the regulatory bodies to publish data on the web and in annual reports.

6. If you believe the collection of this dataset would have a disproportionate cost/time impact on the regulators, what would you estimate this to be?

CIPA believes that the data being requested should already be systematically generated and analysed by the regulatory bodies and that preparing reports for the LSB should have very little impact on cost or time.

7. Are there any other evidence-gathering approaches we should be using, or any evidence-gathering approaches listed which we should not use?

CIPA has not identified any other evidence-gathering approaches the LSB should be using, but would like to stress the importance of engaging with a wide range of stakeholders when assessing regulatory performance. In intellectual property services regulation, this should include CIPA and the Chartered Institute of Trade Mark Attorneys (CITMA), in their role as Approved Regulators and in their representative capacities; other representative organisations, such as the IP Federation; the UK Intellectual Property Office (IPO); and organisations such as the Confederation of British Industry (CBI) and the Federation of Small Businesses (FBS) as representatives of the businesses who are the clients of patent attorneys and trade mark attorneys.

8. Will a move to a risk-based process, with the ongoing monitoring proposed, provide sufficient evidence through which we can gain assurance about the regulators' performance?

CIPA understands the LSB's rationale that risk-based performance assessment can be targeted and will lessen the regulatory burden. The move to risk-based performance assessment should generate sufficient evidence through which the LSB can be assured about the regulatory bodies' performance. It would be helpful for some thought to be given to how the LSB will work with the Approved Regulators to identify risk and how the LSB will share information in order to satisfy the Approved Regulators that the responsibilities delegated to the regulatory bodies are being properly discharged. It may be that this will become clearer through the consultation on Internal Governance Rules.

9. Do you have any comments on the proposed methods of assessment and review for the regulators?

The proposed methods of assessment and review for the regulatory bodies appear to be sensible and proportionate.



10. Please provide your views as to whether the revised grading scale supports accurate measurement of the regulators' performance against the standards?

The revised grading scale enables the LSB to determine whether or not a regulatory body has met the minimum performance expected against a particular standard or outcome at the time of the performance assessment. Where the regulatory body is judged not to have met a standard or outcome, the distinction between grades 1 and 2 is not sufficiently clear.

11. Please provide your views as to whether the approach to reporting on the regulators' performance enables the reader to understand how a regulator is performing against the minimum standards?

CIPA is unable to comment fully on the arrangements for reporting on the regulatory bodies' performance as the consultation document does not go into detail on how the data and findings will be reported and who will have access to the reports. As an Approved Regulator, CIPA would expect a copy of the report and the opportunity to meet with the LSB to go through the findings. It is not clear how the findings will be reported to the regulated community and other stakeholders.

12. Where we identify good practice within a regulator's performance, how do you think we should share this with the other regulators?

In CIPA's experience as a professional body, webinars and seminars are a highly effective way of sharing best practice. In the case of webinars, there is the benefit of retaining an online digital copy of the event for future reference. It would be useful for the Approved Regulators to be involved in events which celebrate and share good practice.

13. If you consider that the regulatory performance assessment process document does not provide sufficient transparency about our approach to performance assessment, what could we do to make this more transparent?

The consultation document provides a clear overview of the intended direction of travel with respect to the performance assessment of the regulatory bodies. What is less clear, however, is how performance assessment relates to other regulatory management processes such as budget setting, business planning and the application of the Internal Governance Rules. Following the completion of the consultation process, it would be helpful for the LSB to hold a seminar or similar event for the Approved Regulators to set out how these various processes complement each other.

Yours sincerely



Lee Davies
Chief Executive

