



Approval of 2021 Practising Certificate Fee (PCF) application made by Intellectual Property Regulation Board (IPReg) to the Legal Services Board (LSB) under section 51 of the Legal Services Act 2007 (the Act)

1. The LSB has approved an application made by IPReg to the LSB under section 51 of the Act. Section 51 of the Act relates to the control of PCF charged by approved regulators.
2. A PCF is a fee payable by a person under an approved regulator's regulatory arrangements, in circumstances where the payment of the fee is a condition which must be satisfied for that person to be authorised by the approved regulator to carry on one or more activities which are reserved legal activities. An approved regulator may only apply amounts raised by PCF for one or more of the permitted purposes which are set out in section 51(4) of the Act.
3. A PCF is payable under the regulatory arrangements of an approved regulator only if the LSB has approved the level of the fee required by section 51 of the Act. The Chartered Institute of Patent Attorneys (CIPA) and Chartered Institute of Trade Mark Attorneys (CITMA) as the joint approved regulators have delegated their regulatory function to IPReg.
4. In making an application, an approved regulator must comply with the provisions of the Practising Fee Rules 2016 (Rules)¹. The Rules² set out the criteria against which the LSB will assess PCF applications, as well as the evidence required for the LSB to be satisfied the criteria is met. The LSB's [Guidance to Approved Regulators on PCF applications](#) (Guidance) provides approved regulators with the detailed criteria and evidence it requires to consider such an application³.
5. This notice sets out the decision taken, including an assessment of the PCF application.

Overview of PCF application and decision

6. The PCF application of IPReg submitted to the LSB, proposes that the PCF to be charged to the different categories of registrants and registered bodies will remain

¹

https://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/2016/20160601_Practising_Fee_Rules_2016.PDF

² Ibid, Rules 10 and 11.

³

https://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/2016/20160601_PCF_Rules_Guidance_June_2016.PDF

constant for 2021. IPReg expects this to result in a total of £906,936 being collected in 2021. This is a decrease of £52,603 compared to the PCF collected in the previous year, an estimation reflecting a projected 5% decrease in the number of registered attorneys.

7. IPReg proposes to increase the maximum late payment fee to £200, from £125. This is expected to incentivise attorneys to pay on time and reduce the administrative costs of reaching out to those who have not. IPReg consulted on this proposal as part of the PCF consultation.
8. The proposed fees for 2021 are:

Attorneys/Individuals	Single Register Fee	Both Registers Fee
Attorney solely undertaking corporate work	£177	£283
Attorney in private practice	£215	£353
Attorney not in active practice	£161	£258
Sole trader attorney not employing other attorneys or professionals	£353	£504
Sole trader attorney	£353	£504
employing other attorneys – add fee per attorney	£71	£71
employing other professionals – add fee per professional	£283	£283

Registered Bodies	Fee
Registered Body through which a single attorney and no other attorneys or other professionals provide services	£138
Any other registered body: Base Fee	£353
add fee per attorney	£71
add fee per other professional practising via the registered body	£283

9. The LSB's decision is to approve in full the levels of the 2021 PCF as set out in the above table.

LSB assessment

Development of the overall budget and application

Evidence that the regulatory arm has led the development of the application

10. It is apparent from the application that IPReg developed its own budget. In March 2019, the IPReg Board met to discuss its strategic priorities for 2019 to 2021. The

2021 budget was developed against this background. The proposed budget and PCF were discussed with CIPA and CITMA at IPReg's quarterly Regulatory Forum.

Clarity and transparency of overall budget setting

11. The LSB is satisfied with the budget setting process outlined in the application. There is a detailed analysis of expenditure and assumptions. The application clearly sets out the income and expenditure levels for IPReg. The IPReg budget is based on:

- Income from:
 - annual practice fees paid by attorneys and entities
 - bank interest
- Expenditure on:
 - operational costs (Board and staff costs, IT support etc.)
 - levies for the LSB and OLC (Office of Legal Complaints)
 - Legal Choices website
 - Education

12. In its application IPReg forecasts a 5% decrease in PCF income for 2021. IPReg has explained that this forecast took account of the projected impact of the Covid-19 pandemic and the end of the transitional period for the UK's exit from the EU, on attorney numbers.

13. Alongside its PCF application, IPReg proposed introducing a waiver from the PCF for attorneys who are facing hardship as a result of Covid-19. IPReg provided a notification under the LSB's Covid-19 blanket exemption⁴ ('blanket exemption') as part of its PCF application, which the LSB confirmed fell within the scope of the blanket exemption on 30 October 2020.

14. In the course of assessing the application, we also asked IPReg to explain whether the number of attorneys it anticipated would submit applications for a waiver as part of the PCF renewal process, was accounted for in the 5% decrease in the PCF income. IPReg confirmed that this figure takes into account their forecast of successful waiver applications but noted that it would be difficult to accurately predict the number of applications it would ultimately receive and approve.

15. The LSB assumes that if the actual number of successful waiver requests exceeds IPReg's forecast, the decrease in PCF income will be met by IPReg's contingency reserve arrangements (see paragraph 18 below).

Evidence that immediate and medium term needs have been taken into account

16. The application contains IPReg's business plan for 2021/22 and budget, which has been set to achieve IPReg's wider strategic objectives for the period 2019 to 2021. IPReg has provided a detailed analysis of expenditure and assumptions in its budget

⁴ <https://www.legalservicesboard.org.uk/wp-content/uploads/2020/04/ED149-Coronavirus.pdf>

and it is consistent with its business plan. The business plan (at Annex 1 of the application) includes:

- day to day regulatory activities (such as investigating complaints and taking disciplinary action where necessary)
- work on issues concerning education providers, including ensuring accreditation recommendations and quality assurance are put in place, accreditation standards are maintained and encouraging more education providers to offer new qualification pathway options
- Board and disciplinary panel recruitment
- conducting a full review of its regulatory arrangements.

17. IPReg has also explained in its application how its planned activities set out above, are compatible with the regulatory objectives and better regulation principles.

Contingency reserve arrangements

18. The application shows that IPReg has made an assessment of the level of reserves it requires in order to respond to unexpected events. Its reserves policy (provided at Annex 3a to the application) explains that IPReg holds reserves to:

- cushion against unexpected or exceptional increases in costs
- finance specific projects
- alleviate short-term pressure on the level of PCF
- ensure sufficient funds to support regulatory and disciplinary actions
- cover costs for a 3-month period should IPReg be unable to collect PCF.

19. The reserves policy also notes that the IPReg Board will review the level of financial risk it faces, using information on its risk register and the results of the annual external audit of its accounts and adjust allocations within its reserves accordingly⁵.

20. IPReg holds a number of designated reserves (set out in Annex 3b of the application). It has a general contingency reserve which stood at £200k at the start of 2020. The target level for this reserve is to represent 3 months of operational expenditure, which would require an additional £50k. We are content with the target level, given the number of designated reserves in addition to the contingency reserve. We note that IPReg's expenditure from 1 January to September 2020 will leave a surplus which will more than adequately cover the £50k shortfall and reach the target level by the end of this financial year.

Consultation on PCF

Summary

21. IPReg published its consultation on its proposals for its PCF on 8 September 2020. The consultation closed on 6 October 2020. IPReg has confirmed that the consultation was publicised through an email to all its registrants. Copies were also provided directly to CIPA and CITMA, one day prior to publication.

⁵ IPReg has set out the different reserves it holds in Annex 3b of the application.

22. The consultation received 10 responses. Of these, 6 were from individual attorneys and 2 from firms; CIPA and CITMA also responded.
23. This response rate was similar to the response rate to the 2019 PCF consultation, which had shown a significant decrease in responses, relative to those received in respect of the 2018 PCF consultation (46 responses). We had raised this during our assessment of last year's PCF application. IPReg had noted in reply, that the lower response rate was more typical of previous years.
24. As we set out in the 2019 PCF decision notice, the relatively low level of responses may indicate that the profession is not properly engaged and could represent a missed opportunity to communicate with the profession on the benefits and purpose of regulation. We recognise that this year has presented novel challenges but see it as important that IPReg seeks to improve engagement in future years. Effective engagement is important for transparency, accountability and for regulators to understand the impact of their proposals on their regulated community.

Consultation responses

25. The application sets out a summary of the points made in response to consultation and IPReg's consideration of these.
26. The respondents were largely supportive of the proposal to keep the PCF at the same level as 2020. The proposal to waive PCF for attorneys who face hardship due to the pandemic was welcomed by all the respondents.
27. In response to the feedback it received, IPReg adopted the following changes:
- in respect of the waiver from the PCF:
 - those who wish to make an application, will not need to provide a redundancy letter specifically citing the pandemic as a reason for the redundancy
 - those who have had their PCF waived and subsequently find new employment, will have up to 3 months to pay their PCF, and
 - IPReg will make explicit that it has the power to request additional evidence from applicants, if they apply for a waiver, to inform its decision
 - late payment will be set at £200, instead of £250 which was the initially proposed figure.

Permitted purposes

Allocation to permitted purposes

28. The application explains that all PCF income is used to undertake permitted purposes covered within the scope of section 51(4)(a) of the Act, other than the levies payable to LSB and the OLC which fall under section 51(4)(b).

29. IPReg has provided a breakdown of the activities it undertakes and the percentage of its costs that apply to them, as follows:

- Resources (includes Chair, Board and staff costs) **62.1%**
- Operational costs (includes Corporation Tax, Financial Expenses, General Administrative Expenses, IT Expenses, CRM development, Legal & Professional and Contingency) **19.4%**
- Policy & Governance (includes Compensation Policy Insurance Premium, CMA re Legal Choices, Conduct & Disciplinary, Diversity Initiatives & Education **10.5%**
- LSB and OLC levy **7.7%**
- PR/Communications **0.3%**.

30. We welcome the additional detail on the allocation of costs to all the specific activities which IPReg has provided in this application (Annex 6). This is in response to the LSB's expectation that IPReg provide estimates on the allocation of PCF to specific areas of work under section 51(4)(a), which we set out in the 2019 PCF decision notice.

LSB review of PCF approval processes

31. In our 2019/20 Business Plan⁶ we set out an intention to conduct a review of the PCF approval process, including a targeted review of the regulators' approach to non-regulatory permitted purposes as set out in section 51 of the Act.

32. Having engaged closely with approved regulators and their regulatory bodies, including IPReg, the LSB published a consultation on the new draft practising rules and guidance on 30 July 2020. The consultation closed on 8 October 2020. We received a response from IPReg which we will assess along with the other responses we received.

Transparency of PCF information to fee paying members

Clarity of information provided

33. IPReg confirmed its intention to provide details of the 2021 PCF to all registered individuals and entities by sending emails to them via the new CRM system. IPReg included the template email it will send to all registrants in its application.

34. IPReg has stated that the 2021 budget and the 2021/22 business plan and supporting information on how the PCF is set, will be accessible on IPReg's website following the LSB's approval of its PCF application.

Regulatory and Equality Impact assessment

35. In the 2019 PCF decision notice the LSB set out its expectation for IPReg to provide either full impact assessments or an explanation of why such assessments were not

⁶ https://www.legalservicesboard.org.uk/news_publications/publications/pdf/2019/Final_business_plan_2019-20.pdf

considered appropriate. IPReg explains in its application that it did not consider it necessary or proportionate to undertake either a regulatory or equality impact assessment, although it did carry out some limited analysis against EHRC guidance on the Equality Duty⁷. IPReg's rationale for this is that the proposal to hold PCF levels and the provision to waive PCF for attorneys who have suffered hardship as a result of the pandemic, is likely to benefit attorneys, including those with protected characteristics.

36. In the LSB's view, even where fees are proposed to remain unchanged, it is good practice for regulatory bodies to make an assessment – which may be brief – of the extent to which the environment in which they operate may have changed since fees were last set and, consequently, whether there has been any material change in the impact of the fee arrangements.
37. In addition, we note that IPReg has limited diversity data and has not collected diversity data since prior to 2017, although we understand that it intends to conduct a diversity survey of registrants in January 2021. We also note that IPReg has set out in its application that it remains committed to keeping a ringfenced reserve (which stood at £23,783 from 1 January 2020) to fund diversity initiatives. We would encourage IPReg to deploy these funds and ensure the lack of diversity data is addressed as a priority.
38. Given that IPReg does not currently have reliable diversity data on those that it regulates, it is not in a position to make a credible assessment of the impact of its current fee structure on those with protected characteristics. This needs to be remedied for its application next year, and indeed, is a broader issue that may have implications for future performance assessments.

Decision

39. The LSB has approved the PCF application submitted by IPReg for 2021 under section 51 of the Act.

Summary of expectations for next application

- IPReg to take additional steps to improve its consultation response rate in future in accordance with the final PCF Rules (paragraph 24)
- IPReg to provide impact assessments in accordance with the final PCF Rules (paragraph 38).

Matthew Hill, Chief Executive
Acting under delegated authority granted by the Board of the Legal Services Board
19 November 2020

⁷ https://www.equalityhumanrights.com/sites/default/files/meeting_the_duty_in_policy_and_decision-making.pdf