

DECISION OF THE CIPA LITIGATOR'S ACCREDITING BOARD

Under the CIPA Higher Courts Qualification Regulations 2007, the Litigators Accrediting Board ('LAB') is required to act on behalf of CIPA: in validating and monitoring litigation courses (including evaluating relevant institutions); in considering and, if deemed necessary, altering the syllabus for litigation courses; and in granting, refusing to grant and revoking litigator certificates. When considering an application for course accreditation, the regulations provide that the LAB's overall duty is to evaluate whether the institution is fit to teach the course, *i.e.* whether it can impart the necessary legal knowledge and practical skills so that those who have completed the course can act effectively as litigators in the High Court and on appeal. In considering any applications the LAB is required to have regard to the *Validation Guidelines* set out in Schedule II of the Regulations.

Nottingham Law School ('NLS') have been an accredited provider for the training of Patent Attorney Litigators since the establishment of the Patent Attorney Litigators scheme. NLS are also an accredited provider under the ITMA Trade Mark Attorney Litigator scheme and have applied for and the ITMA LAB have approved their courses as accredited training courses for trade mark attorney litigators.

On 27 May 2011, NLS made an application to the CIPA LAB for a modified version of the course approved by ITMA for trade mark attorney litigators to be accredited under the CIPA Higher Courts Qualification Regulations 2007. This application was reviewed and the LAB provided their initial comments to NLS on 7 June 2011 stating the LAB's preliminary view that the LAB required additional information in order to be able to approve the course. The requested further information was then provided to the LAB and reviewed. Further queries were then raised and NLS provided a response on 4 August 2011.

The LAB have now reviewed all the information submitted by NLS and having conferred with IPREG and in particular the Patent Regulation Board which now is ultimately responsible for patent attorney regulatory matters the LAB has concluded that the proposed modified course is suitable for accreditation under the CIPA regulation.

Reasons for decision

The LAB have reviewed the documentation provided and assessed the documentation against the criteria for the validation of an accredited course set out in schedule II of the Higher Courts Qualification Regulation as follows:

(a) Do those intending to teach the course understand the reasons why the course has been set up and the objectives that it is required to achieve?

NLS has been the sole accredited provider for the training of Patent Attorney Litigators since the establishment of the existing training regime and therefore the LAB is satisfied that NLS is well aware of the understand the reasons why the course has been set up and the objectives that it is required to achieve.

(b) Does the institution have the physical and other resources necessary for the course to be taught?

NLS is the law faculty of Nottingham Trent University (NTU). It has 136 teaching staff and in the region of 3,000 students including a variety of LLBs, GDL, LPC, BVC/BPTC students, students on LLM and a dedicated MBA programme as well as higher rights and the SRA's Professional Skills Course

students. NLS has provided education enabling patent attorneys to qualify as patent attorney litigators for many years and therefore the LAB is satisfied on the basis of the information provided that NLS fulfils this criteria.

(c) Will a candidate's written work and examinations be appropriately supervised?

NLS have provided the LAB with details of the proposed assessment scheme for the course being a combination of a written examination and an advocacy assessment. Such an approach replicates the assessment strategy for both the BPTC and the FILEX litigator scheme. In addition the approach is identical to that approved by ITMA's LAB for granting registered trade mark attorneys similar rights. NLS have also provided the LAB with a detailed analysis benchmarking the examination and tests with the standards required by other authorised bodies awarding litigation and advocacy rights. In view of this the LAB is satisfied that the proposed course satisfies these criteria.

(d) Is there is a sufficient team of suitably qualified people available to teach the course? How is the course is to be run, what will be the expected size of the student groups, and how are exercises aimed at developing practical skill to be carried out to sufficiently rigorous standards and under adequate supervision?

NLS's application is for the amendment of course content rather than for the accreditation of a new course provider. NLS have confirmed that the manner of running the course, size of student groups and how exercises are to be provided will be substantially the same as has been the case on previous courses.

In particular NLS have confirmed that the method of delivery will remain the same and that the tutor to student ratio for the advocacy course will be a maximum of 1:8 in line with good practice for the provision of advocacy tuition required by the BPTC for trainee barristers and in the past under the Higher Rights of Audience Regulations 2000 for solicitor advocates. The tutors for the course will comprise members of the NLS faculty together with patent attorneys, trade mark attorneys and specialist IP barristers and solicitors.

In addition to the face to face teaching at the residential weekends, teaching will be supplemented with on-line teaching and through directed reading.

Compared with the previously approved course, NLS is also proposing that the manner of assessment of candidates should be changed. In particular rather than assessing skills throughout the course, NLS is to introduce a formal end-of-course examination to replace the learning portfolio, extended piece of work, and reflective reports which previously were used to assess a candidates progress.

In this respect it is noted that the proposed assessment scheme has already been approved by the ITMA LAB for the course leading to similar rights for trade mark attorney litigators and is similar to the skills assessments for aspiring solicitors acquiring litigation and advocacy rights

In view of the above, the LAB is satisfied that the proposed course fulfils all the above criteria for a validated course.

(e) Is the proposed course adapted to the needs of the students?

As with the existing litigators course, the new course is described as being based around a combination of distance learning and extended residential weekends to enable practising attorneys

to fit the course around their professional obligations. In their original paper NLS describe the course as being equivalent to the course required by ITMA for an award of similar rights with the substitution of a patent based practical exercise.

NLS have confirmed that the new course will use the same case study platform as the previously approved LLM in Intellectual Property Litigation which was focused on patent and trade mark issues but which also required students to undertake an analysis of passing off and design right issues. Other case studies are focused on registered and unregistered design rights. As such the LAB is satisfied that the content of the course extends across the subject matter of the rights which are to be awarded.

The LAB has reviewed the learning outcomes as provided and amended by NLS and are satisfied that the outcomes are appropriate for establishing that those who have completed the course have the legal knowledge and practical skills so that can act effectively as litigators in the High Court and on appeal.

(f) What theoretical syllabus will be covered and what practical skills will be taught? What specimen exercises and specimen examination papers are available for consideration?

NLS have provided the LAB with an outline course timetable, a set of learning outcome for the course and a marked up copy of the syllabus set out in schedule III of the 2007 regulation indicating how the syllabus for the proposed course differs from that in the regulation.

Compared with the syllabus set out in schedule III, NLS have stated that the following subjects are not specifically covered by the revised course other than as part of the general background to the course:

English Legal System; Sources of Law; UK and European Law; Functions of Parliament and of the Courts; Construction of UK Statutes, European Conventions and Delegated Legislation; the Doctrine of Precedent and its Application; The Supreme Court Act, County Courts Act, and Courts and Legal Services Act. The effect of European law on intellectual property rights, in particular the impact of Articles 28, 30, 81, 82, 234 and 295 of the Community Treaty; the doctrine of exhaustion of rights; and the block exemptions for intellectual property.

And the following are not covered but are implicit in the knowledge base for applicants attending the course:

Contract Law: the requirements for the formation of a valid contract, privity of contract, agency, deeds, implied terms, misrepresentation, mistake, illegality, frustration, exclusion clauses, discharge and breach.

NLS have stated that these subjects are not covered by the course in detail as NLS anticipate that students attending will have sufficient grounding in these matters. However to ensure that all students are up to speed basic refresher materials on the above will be included in the course pre-reading bundle and a short "group quiz" will be undertaken at the beginning of the course to gauge applicants' levels of knowledge and understanding.

Finally, NLS have informed us that the following subjects are not covered by the revised course:

- Criminal Liability under the Trade Descriptions Act 1968, the Copyright, Designs and Patents Act 1988 and the Trade Mark Act 1994

- Appreciation of the applicability of the relevant aspects of insolvency and tax law, *e.g.* in licensing deals.

NLS have also informed us that whilst contempt of court per se is dealt with as a pervasive issue through out the course in relation to for example evidence, disclosure and compliance with court orders etc., the course does not attempt to include detailed coverage of contempt of court proceedings themselves.

The LAB have considered these differences between the proposed course and the syllabus set out in the regulation and believe that the similarities between the syllabus for the course and the syllabus set out in the regulation are sufficient to enable the course to be accredited. In particular as noted above, either the omitted elements form part of the background knowledge of prospective patent attorney litigators attending the course or alternatively are peripheral to the rights which are awarded as a result of acquiring a litigators certificate.

The LAB is therefore satisfied that the proposed course can impart the necessary legal knowledge and practical skills so that those who have completed the course can act effectively as litigators in the High Court and on appeal.

Transitional provisions

NLS have commented on the possibility of transitional provisions enabling candidates who have attended the existing LLM course and have taken and passed the examination for a certificate in intellectual property law but who have not completed the LLM because they have not completed the extended piece of work or a reflective report to qualify as patent attorney litigators by completing the advocacy assessment under the new course regime.

Having reviewed the changes in the proposed course compared with the previous course it is apparent that individuals who have taken and passed the examination for the certificate in intellectual property law will have been tested on the subjects covered by the examination on the new course. Additionally, as NLS is proposing to use the same case studies as those covered in the previous course, such candidates will have undertaken the same training exercises as candidates attending the new course. Not having completed the reflective report or the extended piece of work the assessment of advocacy skills of such students will however not be complete.

In view of the above, the LAB would agree to NLS certifying as having completed the new course any candidate who NLS establishes that he/she:

- i) Attended the previously certified NLS Intellectual Property Litigation Course;
- ii) Took and passed the NLS examination leading to an Certificate in Intellectual Property Law; and
- iii) Takes and passes the advocacy assessment under the new course.

Nicholas Fox
Chairman,
CIPA Litigators Accrediting Board

4 August 2011