



## IPReg Guidance – Improving Information for Consumers and Small Businesses

### Decision Document May 2019

1. To help consumers and small businesses make an informed choice about who is the best person to give them advice on intellectual property law, IPReg has developed guidance to help attorneys and firms (including sole traders) provide better information about the services they provide and the cost of those services.

2. This guidance has been developed following the recommendations of the [CMA Legal Services Market Study](#) (“CMA study”),<sup>1</sup> review of research into small business needs and consumer behaviour conducted by the Legal Services Board (LSB) and other regulators, and responses to our two consultations:

[IPReg Transparency Consultation Oct 2017 - Jan 2018](#)

[IPReg Price and Service Transparency Guidance Dec 2018 - Feb 2019.](#)

3. One of the key recommendations of the CMA study was for the frontline legal regulators to take action to:

*“deliver a step change in standards of transparency to help consumers*

*(i) to understand the price and service they will receive, what redress is available and the regulatory status of their provider and*

*(ii) to compare providers.”<sup>1</sup>*

The CMA study focused on the needs of individual consumers and small businesses (i.e. those with up to 10 employees). Our regulated firms and attorneys typically advise businesses (rather than individual consumers) and, after careful consideration, we decided that it would be more proportionate to publish guidance rather than impose detailed rules on all firms (as other regulators have done).

4. Regulated firms and attorneys should know their client base and we therefore expect them to judge for themselves whether the guidance is applicable to them. However, we consider that it may be beneficial for all IPReg registrants to consider whether they provide appropriate levels of information on their public-facing communications.
5. The Guidance primarily concerns providing information to potential clients. The primary focus is on online information but, because we know that 8.4% of UK adults have never used the internet,<sup>2</sup> the Guidance also suggests providing this information in all consumer-facing communications.

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<sup>1</sup> CMA Study, paragraph 45(a)

<sup>2</sup> [Office for National Statistics 2018](#)

6. IPReg received responses to the consultation from the Chartered Institute of Patent Attorneys (CIPA) and the Chartered Institute of Trade Mark Attorneys (CITMA). A headline summary of their feedback and how it has helped inform the shape of the Guidance follows.

7. *Outcomes – Consultation Question 1 asked, “What are your views on the proposed outcomes?”*

CIPA supported the proposal that information provided should be sufficient, reliable and relevant, though it suggested that cost will depend on a “large number of factors for which allowance cannot be made in general information”. CITMA supported the proposed outcomes but said that including “websites and in their client-facing communications” was overly prescriptive.

IPReg Guidance – the outcomes state that information should be clear, accurate, sufficient, reliable and relevant and the guidance seeks to help firms deliver this. Individual firms can decide how best to provide information about those services and related costs. The guidance suggests that if other factors may have an impact on costs this should be made clear.

8. *Price and Services Information – Consultation Question 2 asked “What are your views on the proposed price and services information?”*

CIPA suggested there is “...a danger, however, attempting to provide more detailed information about the variable costs of securing IP protection, in the form of examples or scenarios, may put prospective clients off or push them towards unregulated providers” and that the guidance should take account of initial advice/fee scoping meetings. CITMA suggested there is “a risk that an individual or small business might be more confused or misled by the myriad of different approaches to prices by firms and the different ways in which price information could be displayed on website (if firms choose to do so)...it is likely that more information and detail will be provided in any proposed engagement/client care letter than upfront on websites and client-facing communications”. Additionally, CIPA offered to support this programme of work through its CPD and webinar programme.

IPReg Guidance – we want consumers to be able to make informed choices *before* they approach an attorney (e.g. for an initial advice session). However, reference is made in the Guidance to fee scoping meetings and firms can qualify examples, scenarios and pricing, as they judge appropriate. The Guidance includes research findings on the type of information that consumers are likely to find useful. The research indicates that there is a potential commercial advantage to firms that display this information clearly. We welcome CIPA’s offer to support this work through its CPD programmes and webinars.

9. *Regulatory Status and Redress – Consultation Question 3 asked “What are your views on the information about regulatory status and redress?”*

CIPA supported the focus on the protection afforded by a firm’s professional indemnity insurance and IPReg’s insurance compensation policy. It suggested that reference should be made to a firm’s internal complaints procedure. CITMA said that it was pleased that IPReg was not suggesting that information on the number of complaints that a firm had received should be displayed. It suggested more signposting information to IPReg, its Registers, disciplinary findings and the Legal Ombudsman.

IPReg Guidance – this now refers to firms’ internal complaints handling procedures (which is already a requirement in our conduct rules) and provides hyperlinks to IPReg, its Registers, disciplinary findings and the Legal Ombudsman.

10. Other – Consultation Question 4 asked “Do you have any comments on any other aspects of this document?”

Both CIPA and CITMA supported our approach that firms should assess their client base and make a judgement about the applicability of the guidance to their circumstances. They also asked how IPReg intends to monitor compliance and review the effectiveness of the Guidance. Additionally, CITMA said that it would welcome clarification about whether the guidance applied to attorneys who work in firms regulated by other regulators.

IPReg Guidance – we will consider in due course how to evaluate effectiveness of our Guidance. We hope that the market evaluation work that the LSB plans to undertake and the Legal Services Consumer Panel tracker survey will provide some information about this. The Guidance now makes clear that it is primarily aimed at IPReg-regulated firms including sole traders but that all firms and attorneys can follow it if they wish to. For attorneys that are also regulated by another regulator, the requirements of the entity regulator prevail in the event that there is any conflict between the regulators’ requirements.

11. General – guidance rather than rules

Both CIPA and CITMA reiterated that they welcomed guidance being provided rather than the introduction of rules, given that IP law firms tend to have businesses as their client base.

IPReg Guidance - we considered this issue carefully (see paragraph 3). The oversight regulator, the LSB recognises that IP attorneys serve primarily business consumers and identified in its assessment that “given the profile of IPReg’s regulated community” our approach of producing voluntary guidance rather than mandatory requirements was “proportionate” (albeit that the LSB has asked us to keep our approach under review).

**May 2019**