

IPReg

Promotion of the Regulatory Objectives Policy Statement



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Policy Statement (Section 82 Legal Services Act 2007)

This Policy Statement is made by Intellectual Property Regulation Board, acting under delegation from the Chartered Institute of Patent Attorneys and the Institute of Trade Mark Attorneys.

Purpose

Section 82(1) of the Legal Services Act (LSA) requires each applicant ABS Licensing Authority to prepare and issue a statement of policy. This must show how, in the exercise of its functions under this Part, it will comply with the provisions of section 28 (duties to promote Regulatory Objectives etc).

Section 28 of the LSA states:

- “1. In discharging its regulatory functions (whether in connection with a reserved legal activity or otherwise) an approved regulator must comply with the requirements of this section.*
- 2.** *The approved regulator must, so far as is reasonably practicable, act in a way-*
- a) which is compatible with the Regulatory Objectives, and*
 - b) which the approved regulator considers most appropriate for the purpose of meeting those objectives.*
- 3.** *The approved regulator must have regard to-*
- a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and*
 - b) any other principle appearing to it to represent the best regulatory practice.”*
- Section 1 of the LSA sets out the regulatory objectives:**
- “1. In this Act a reference to ‘the Regulatory Objectives’ is a reference to the objectives of-*
- a) protecting and promoting the public interest;*
 - b) supporting the constitutional principle of the rule of law;*
 - c) improving access to justice;*
 - d) protecting and promoting the interests of consumers;*
 - e) promoting competition in the provision of services within subsection (2);*
 - f) encouraging an independent, strong, diverse and effective legal profession;*
 - g) increasing public understanding of the citizen’s legal rights and duties;*
 - h) promoting and maintaining adherence to the professional principles.*
- 2.** *The services within this subsection are services such as are provided by authorised persons (including services which do not involve the carrying on of activities which are reserved legal activities).*
- 3.** *The ‘professional principles’ are-*
- a) that authorised persons should act with independence and integrity;*
 - b) that authorised persons should maintain proper standards of work;*
 - c) that authorised persons should act in the best interests of their clients;*
 - d) that persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice; and*
 - e) that the affairs of clients should be kept confidential.*
- 4.** *In this section ‘authorised persons’ means authorised persons in relation to activities which are reserved legal activities.”*

How IPReg complies with section 28 in exercising its regulatory functions: *summary view*

We exercise our regulatory functions through regulatory arrangements defined by section 21 of the LSA. The cornerstone of these arrangements is our set of regulatory codes or regulations, all available to the public on our website (<http://www.ipreg.org.uk>). These address in a clear, consistent manner a comprehensive range of key topics affecting our regulatory community and the public at large:

- the *IPReg Code of Conduct*
- the *IPReg Code of Conduct for Litigators (and Disciplinary Rules)*
- regulations governing the education and qualification of attorneys
- regulations concerning their continuing professional development (CPD)
- regulations covering the admission of firms and other entities onto the *IPReg Register*
- policy statements such as the *IPReg Complaints and Enforcement Strategy*.

In addition, we have vested in us as part of our regulatory remit inherent powers to authorise, supervise and – where justified – enforce action against regulated firms and individuals. However, properly received guidance, supervision and monitoring coupled with an open, co-operative and constructive approach by a regulated practitioner may lead us to decide against formal action. Once they have been notified, we would require a clear demonstration of understanding and acceptance of the issue and the requisite prompt compliance.

We see our enforcement role in terms of constructive engagement with our regulated community. This currently comprises some 2,300 individuals and 185 firms. This grouping

is of a size to facilitate good ‘relationship management’. Our aim is to influence behaviours positively to ensure that legal services are provided to the required high standard and that the public are thereby served and protected.

How IPReg complies with section 28 in exercising its regulatory functions: *comprehensive view*

“Act in a way which is compatible with the Regulatory Objectives and which the approved regulator considers most appropriate for the purpose of meeting those objectives.”

Our fundamental approach to regulation is risk-based. As the most effective means of guarding against risk, we identify in our *Code of Conduct* a set of core principles which are mandatory for our regulated community. We consider these principles essential to the provision of high-quality, responsible and ethically-based legal services.

We require individuals and firms who are regulated by IPReg to observe these principles:

- act with due skill and care and only within their own competence
- act with integrity, putting their clients’ interests foremost
- work in a timely manner with proper regard for standards of professional service and client care
- not act in situations of conflict
- keep client and former client matters confidential
- work with other lawyers in a professional manner

- ensure fees are justifiable and ensure that arrangements for liens are transparent
- manage their professional finances appropriately, ensuring that client monies are kept separately
- ensure a complaints procedure is in place
- act in the interests of justice
- not unfairly or unlawfully discriminate against any person
- ensure personal continuing professional development
- maintain professional indemnity insurance
- ensure publicity is fair, honest, accurate and not misleading.

We consider our regulatory approach effective at an operational level because:

- the Code and the Rules focus directly on the professional principles. This promotes practical compliance by stripping out extraneous detail which might cloud the essential conceptual standards
- by concentrating on principle rather than detail and distinction, we make our regulatory framework more accessible to the consumer
- whenever possible, the Code and Rules are harmonised across our regulatory community, not differentiated by type of practitioner or firm. This broad inclusive approach facilitates competition within the regulated community, thus serving our primary objective of protecting and promoting the interests of the consumer
- with this approach in place, we offer a relatively straightforward avenue by which practitioners and firms can obtain ABS authorisation and carry out ABS activities
- since there is no restriction on the type of business model we may authorise, we in this respect open up access to justice. ABS practitioners can operate in ways which are the most effective in serving their different IP client bases (which we

recognise in practice mostly means large commercial firms)

- working very closely with the professions, industry and commerce, academics and the public at large, we are highly flexible in responding to new developments and refining our arrangements to ensure that they remain fit for purpose
- we ensure through our quality assurance processes that the professionals we regulate are at the forefront of developments in IP education and training. We are mindful that access to justice is not static. It depends on the services of professionals whose skills and competence are continually being refreshed and honed.

We comment below on how we address each of the LSA regulatory objectives individually. Referring to each objective, we look first at the regulatory arrangements we have put in place and second, outline how these arrangements operate on a day-to-day basis.

Protecting and promoting the public interest

Regulatory arrangements: The need to protect the public interest is at the heart of our *Code of Conduct* and the *Code of Conduct for Litigators (and Disciplinary Rules)*, and these are fundamental to how we regulate our community. We require practitioners to make these Codes integral to all aspects of their business. Some concrete ways in which the public interest element specifically manifests itself are:

- we seek to optimise competition in the provision of IP legal services, in their operational context and in the education and training resources provided for those within and aspiring to the professions we regulate
- firms and individuals are obliged to manage their professional finances rigorously, ensuring that client monies are kept separately
- we require firms to determine for themselves the level of professional indemnity insurance (PII) they consider

appropriate. They thus take direct responsibility for adequately protecting the public

- our rules for litigators stipulate that protection must be extended not only to clients but also to third parties in the manner in which litigation is conducted
- when setting the requirements for authorisation as an ABS in our *Registered Bodies Regulations* we specifically define the type of firm which can be authorised by IPReg by reference to the type of IP work it does. That regulators authorise only those firms where regulators possess the necessary professional expertise and ethical standards is clearly in the public interest.

Day-to-day practice: A commitment to the protection of the public is paramount in our decision-making and in our interaction with our regulated community and the public at large.

- our website and communications from our in-house team set out clearly for the consumer what to expect from the IP legal services available and the channels for seeking redress
- we ensure the voice of the consumer helps shape regulatory policy through regular and wide-ranging consultation processes
- we monitor complaints and complaint-handling within our regulatory community so that we can respond to issues as they emerge
- where the public interest was in doubt we would not consider granting ABS authorisation. When we clearly identify a potential but rectifiable risk to the public, we will impose specific pre-conditions on ABS authorisation which address that risk
- direct enforcement action will be taken whenever we consider it is in the public interest to do so
- ABS authorisations will be revoked or suspended where the risks to the public are such that this is clearly the only justifiable course of action.

Supporting the constitutional principle of the rule of law

Regulatory arrangements in place: The primary means by which we support the rule of law are:

- the comprehensive nature of our regulatory arrangements, reflecting legal obligations set out in the LSA and elsewhere
- the specific obligations placed on attorneys in our Codes, particularly relating to the requirement to act in the interests of justice; not acting where there is a conflict of interest and obligations relating to the conduct of litigation
- constructive engagement with our regulated community, which enables us to be assured that the constitutional principle of the rule of law is being upheld and to identify any trends or activities which may require intervention
- the framework created by our rules for our own decision-making processes which are based upon sound principles of good governance and regulatory independence

Day-to-day practice: We uphold the rule of law in the manner in which we make decisions, conducting our activities in accordance with both our legal obligations and regulatory best practice:

- we are ever mindful of the need to act as a regulator in a way which is both appropriately independent and yet maintains the necessary checks and balances
- our organisational structure comprises a small executive team, headed by a CEO with a legal background, which is answerable to a lay-majority Board
- the Board comprises three patent attorney members, three trade mark attorney members and four lay members with a lay chairman, and served by two committees – a Governance Committee and an Education, Qualification, Conduct and Disciplinary Committee

- the IPReg Board itself reports to the Legal Services Board
- these arrangements provide IPReg with a flexible and proportionate operational context with strong governance oversight

Improving access to justice

Regulatory arrangements in place: We strive to enhance access to justice in the form of just and fair outcomes across the spectrum of IP endeavour which we regulate and in the way we operate as a regulator. We also seek to contribute to public engagement processes and opportunities through which consumers, as well as providers, are becoming increasingly informed and empowered.

As a recent practical example of improving access to justice, we have harmonised the qualification regime for patent and trade mark attorneys to permit all IP attorneys to conduct IP litigation and appear before the PCC in matters within their competency. This has been welcomed as a positive step towards increasing access to the PCC particularly for SMEs.

In this context we welcome the facilitation of new forms of business such as ABS. We set no barriers to different types of business model, funding structures or external ownership. However, we will require firms to set out how their own application furthers access to justice both in principle and in practice.

Day-to-day practice: The operational means of achieving this outcome are necessarily varied and incremental – some relatively lofty and some decidedly humdrum. We work to ensure the necessary information we impart is publically available, fully updated and legally sound. Our web presence, publications, routine personal interactions, as well as our wider engagement with consumers and registrants, are both informative and impartial. Our dispute resolution procedures have been carefully refined to ensure that they provide access to justice through a process which is both fair and transparent to public scrutiny.

When applicant ABS licensees apply to IPReg we will scrutinise applications to assure ourselves that the ABS will facilitate access to justice in its broadest sense and not just access to newly-constituted legal services.

Protecting and promoting the interests of consumers

Regulatory arrangements in place:

Protection of the public is at the heart of all IPReg's regulatory arrangements. Examples are:

- IPReg's principles-based *Code of Conduct* (whose main requirements are set out above) focuses on the essential requirements for dealing with clients
- all applications for admittance to the IPReg Register are scrutinised to ensure that they fulfil the necessary ethical and professional requirements and have an appropriately high and well-maintained standard of education and experience
- IPReg's *Disciplinary Procedure Rules* enable us to take enforcement action against firms, where it is in the public interest to do so, and in order to protect clients by creating an effective deterrent to non-compliance
- IPReg's *Registered Bodies Regulations* set criteria for ABS authorisation which will identify only those firms – and approve only those role holders – which are fit and proper to provide IP legal services
- firms which fail, on application, to meet these criteria will not of course be authorised.

Day-to-day practice: A commitment to protect consumers is fundamental to all IPReg's regulatory activity and we have the flexibility to respond to the challenges thrown up by a marketplace which is increasingly dynamic and international. We carry out risk-based supervision and engage constructively with those we regulate. We will assess tailored approaches to effective risk management. Should we determine that particular activities put consumers at risk we will:

- take steps to tackle those risks within the firm which are geared to the situation. Our actions will be both proportionate and appropriate, and normally involve imposing conditions intended to eliminate the risks
- use our supervisory tools to ensure such activity is not more widespread and, if it is, to contain it effectively
- take enforcement action where appropriate.

In addition, we provide guidance on our website and in our publications to members of the public which explains what action they can take when their case is not handled to their satisfaction. Consumers are directed to the Legal Ombudsman, to PAMIA (the mutual insurer for most IP firms) and can of course report cases of misconduct directly to IPReg where it will be dealt with in a timely manner and in accordance with published guidelines.

Promoting competition in the provision of services subsection (2)

Regulatory arrangements in place: Our regulatory arrangements facilitate competition by opening pathways to better performance, which clearly serves both consumer and provider. We work closely with our constituency and are able to respond quickly to innovation in delivery and access. Thus with regard to ABS licensees our regulatory arrangements facilitate competition by not imposing controls on the level of ownership or on non-lawyer management and by accepting non-standard business models.

Day-to-day practice: We will also regularly monitor competition amongst IP firms to ensure a healthy market for consumers.

Our concern extends to those entering the profession. Through a programme of quality audits we seek to ensure that institutions providing education and training to students compete not only on quality but also on modes of delivery. We are equally concerned that continuous professional development (CPD) provisions for practitioners should benefit from the innovation and choice fostered by competition.

As part of the ABS authorisation process, we will consider what impact our authorisation of a firm will have upon competition. Committed to the provision of increasing competition through the opening up of the legal services market, we see safe and proportionate ABS regulation as a welcome means to this end.

Encouraging an independent, strong, diverse and effective legal profession

Regulatory arrangements in place: Our principles-based Code provides the ethical and behavioural framework for an IP legal profession which fulfills these important criteria; for example, it requires individuals and firms not to unfairly or unlawfully discriminate against any person.

Our criteria for registration as a patent or trade mark attorney stipulate rigorous requirements as to fitness and propriety, thereby serving to ensure the integrity and reputation of the profession.

Our Registered Bodies Regulations sets criteria for ABS authorisation which serve to enhance the strength and stature of the legal profession while not being tied by prescriptive regulations. Providing flexibility and scope for new business models serves to strengthen the effectiveness of the IP regulated sector.



Day-to-day practice: In addition to implementing the regulatory arrangements to promote these objectives we actively monitor them amongst our regulated community. Thus with regard to diversity, we will take supervisory or enforcement action against any individual or firm acting in a discriminatory manner and bringing the profession into disrepute. We are extending awareness of diversity issues through awareness-raising presentations and articles as a practical means of moving forward the diversity agenda.

Increasing public understanding of the citizen's legal rights and duties

Regulatory arrangements in place: Our *Code of Conduct* imposes obligations on firms and individuals to ensure clients understand their legal rights and responsibilities. Should a client be dissatisfied with the service provided, our complaints procedures set out clearly the rights and responsibilities of all parties and the channels open to them. All our materials are written in clear accessible language so that clients can proceed in a confident and informed manner.

Day-to-day practice: Regularly updated guidance is provided on the IPReg website, over the telephone and in correspondence with consumers. Such guidance aims to ensure that consumers understand both their rights and their obligations when taking legal advice and engaging in litigation. We log all such communications. This provides a valuable resource with which to anticipate potential issues and to inform the development of policy, particularly with regard to any need to amend the Code.

Promoting and maintaining adherence to the professional principles.

Regulatory arrangements in place: This objective is at the heart of our *Code of Conduct* which indeed itself embodies the professional principles. These are exemplified by the requirement for attorneys to:

- act with due skill and care and only within their own sphere of competence
- act with integrity, putting their clients' interests foremost
- work in a timely manner with proper regard for standards of professional service and client care
- not act in situations where there may be a conflict of interest
- maintain the confidentiality of client and former client matters.

We also expect that our regulated community will ensure the professional principles operate throughout their workplace.

Meanwhile, the educational requirements for new and practising patent and trade mark attorneys, determined by IPReg, promote standards of professional competence which are underpinned by the professional principles.

Day-to-day practice: Professional principles inform our operational activity and our regulatory decision-making. This applies equally to the individuals or organisations which we authorise, our supervisory focus and our enforcement procedures and actions.



How IPReg addresses the overarching principles of regulation

“Have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and any other principle appearing to it to represent the best regulatory practice.”

We have regard to these overarching principles of regulation in the following ways:

Transparency

Regulatory arrangements in place: Our *Code of Conduct*, as well as our rules, set out with clarity the obligations of firms and individuals. All are publically available and have evolved from consultative processes carried out in the public domain. Thus transparently framed, they constitute the entirety of the obligations appropriate to those we regulate. We thus ensure that we avoid the risk of ‘regulation by the back door’.

Day-to-day practice: Transparency is fundamental to all our dealings with individuals and firms. The most obvious example of this is our disciplinary process, which combines both transparency and fairness:

- at each stage those who are the subject of disciplinary action, as well as those taking it forward, are aware of their rights and obligations and the facts relied upon by IPReg
- on reference to a disciplinary board the name of the attorney will be published together with the relevant rules within the Code in respect of which the complaint has been made

- with the exception of specific, pre-defined conditions (public order, national security, protection of juveniles, etc) hearings are open to the public
- written decisions of disciplinary boards are published in full although, using the same test as above, parts may be omitted.

Accountability

Regulatory arrangements in place:

Accountability is built into IPReg’s regulatory arrangements in the following ways:

- our *Disciplinary Procedure Rules and Enforcement Strategy* facilitate effective disciplinary action against any individual or firm found to be in breach of the IPReg *Code of Conduct*
- our *Registered Bodies Regulations* enable us to revoke or suspend authorisation, to withdraw approval of individual role holders and to disqualify persons from holding roles.

We in turn are held accountable for our decisions by the rights of appeal granted to firms and individuals. In addition of course our proceedings, reports, minutes, etc are available for public scrutiny on the website.

In governance terms the IPReg Board comprises the Patent Regulation Board (PRB) and the Trade Mark Regulation Board (TRB) – the regulatory arms of the Chartered Institute of Patent Attorneys and the Institute of Trade Mark Attorneys. The PRB and the TRB each consists of three professional members who exercise their regulatory functions independently and in the public interest. None is a member of either Institute’s Council. The majority on the Board consists of four Lay Members who, with the Chairman, are appointed by open competition. The selection of PRB and TRB members of the Board is carried out by a panel of Lay Members. All Board appointments are carried out under Nolan Principles.

Day-to-day practice: Ensuring the accountability of individuals and firms is built into our decision-making process in the following ways:

- through our supervisory activities – thus for a potential ABS licensee we would monitor their compliance with IPReg’s licensing rules
- we take proportionate action should we identify issues either at the firm or at a sectoral or profession-wide level – this would extend to ABS licensees
- should we have concerns regarding any aspect of an applicant ABS’s planned activity at the point of authorisation – and should it be proportionate to do so, bearing in mind the risks to the regulatory objectives – we will impose conditions that specifically enable any non-compliance to be assessed and, if required, for the applicant ABS to be held accountable for such non-compliance.

We ourselves will be held accountable by means of:

- appeals against our decisions
- the process whereby independent members of the IPReg Board handle any complaint against a member of staff or action on the part of IPReg.

In practical terms there is clear accountability in operational matters. These are handled by the IPReg Executive, headed by a CEO. It is responsible to the IPReg Board, which in turn is responsible to the Legal Services Board.

Proportionality

Regulatory arrangements in place: IPReg’s Code, together with its sets of rules, were compiled from a risk-based perspective – based upon specific actual complaints and claims data. This data was originally gathered by CIPA and ITMA, a process which has been continued by IPReg from its establishment. Our own experience of disciplinary action against firms, coupled with research conducted amongst the regulatory community, also

contributes to the formulation of these cornerstone documents.

This foundation of research data ensures that our Code and Rules impose requirements only proportionate to the risks encountered. In this regard ABS licensees can be assured that we will not seek to “gold plate” the requirements of the LSA in terms of the obligations we impose.

Our reporting requirements are likewise determined by risk and are thus proportionate. We seek only such information from individuals and firms as will enable us to carry out their effective regulation.

Day-to-day practice: Our organisational structure, operational resources, work plans and budget are proportionate to IPReg’s closely-defined goal of ensuring robust and effective regulation of specific IP professions. Also, whilst we are vigilant in our regulatory duties, we work through education and strong links with our regulated community towards the goal of ‘a well-run profession, self-regulating’.

Each application for ABS authorisation will be treated in a proportionate manner. This approach will determine not only the level of information required for an application but also what, if any, constraints should be imposed on a firm, its managers and owners, in the form of conditions, should the body be authorised. We encourage potential applicants to discuss with us whether we consider they are suitable for IPReg authorisation by reference to the type of work they intend to conduct.

We have sought to avoid regulatory overlap and increase efficiency through our Memoranda of Understanding with other regulators and the Framework Memorandum of Understanding on the regulation of multi-disciplinary practices.

Consistency

Regulatory arrangements in place: Consistency is achieved in the IPReg Code and Rules primarily through:

- our harmonised approach to regulation: all firms are subject to the same obligations unless a differentiated approach is required

by statute or justified on the basis of risk

- the clarity of the criteria by reference to which decisions are made.

From our inception we have sought to eliminate unnecessary distinctions in the rules which originally applied within our regulated community. Common sense and consumer interest dictate that the same regulatory rules should wherever possible apply to both patent and trade mark professionals.

Similarly there should be common education and training provisions to facilitate mobility within the professions. Thus we have removed the requirement that entry-level patent attorneys must have a degree which is science or technology-based. We have increased the CPD requirement for trade mark attorneys to conform to those of their patent attorney colleagues. We have also reformed the qualification process so that patent and trade mark attorney litigators are able to exercise new and consistent rights to conduct litigation in the PCC.

Day-to-day practice: Decisions within IPReg are made by a small team who, as and when necessary, draw upon the expertise of a small regular group of external specialists. This facilitates regular consultation and consistent decision-making. To assist us in quality assurance and consistency, we regularly undertake a sample review of decisions.

A targeted approach

Regulatory arrangements in place: In determining which obligations to impose on firms and individuals, we have sought through our principles-based Code to impose regulatory obligations only where there is a demonstrable need to do so based on risk. This allows individuals and firms the flexibility to grow and diversify without unnecessary and detailed constraints. It subjects them to only high-level and material supervision - yet ensures essential safeguards are firmly in place.

In developing our regulatory arrangements, and ensuring they are appropriate and

proportionate, we examine carefully the client base of current IP practitioners and those we expect to authorise and regulate in the future. Our experience and research demonstrates that by far the majority of clients are commercial organisations; only a limited number are private clients or charities. We have sought to understand the specific needs of this client base, the nature of services offered to them and the breakdown of clients amongst firms.

Day-to-day practice: As a small regulator of a small group of professionals, our operational processes are necessarily targeted and this is assisted by our overall regulatory arrangements and specialist skills base. We target issues and the activities of individuals and firms which represent a significant risk in terms of our regulatory objectives.

Risks will be identified through the information reported by firms together with IPReg's supervisory activity. Thus, staff and resources are deployed in a targeted and cost-effective manner. Having said that, we naturally take very seriously the right of clients to complain and to have their complaint handled fairly and transparently.



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