

# IPReg’s 2023/24 business plan and budget: IP Inclusive consultation response

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## 1 Introduction

These submissions are made by the IP Inclusive initiative, in response to IPReg’s July 2022 consultation on its 2023/24 business plan, budget and practising fees.

They are made on behalf of the UK-based IP professionals – including many registered patent and trade mark attorneys – who support IP Inclusive in its efforts to improve equality, diversity, inclusion and wellbeing across the UK’s IP sector.

## 2 General comments

We welcome the ongoing support for diversity initiatives in IPReg’s proposed 2023/24 budget. Increasing diversity is not only part of the regulatory objectives under the Legal Services Act 2007, but also beneficial for the patent and trade mark professions and their clients.

We are also pleased to see the continued use of equality impact assessments in considering the 2023 practising fees, as well as in IPReg’s other work on its regulatory arrangements this year. Its 2021 diversity survey provides a reasonable evidential base for the impact assessment, although we urge IPReg to update the survey annually from now on, to ensure that future impact assessments are properly informed.

## 3 The proposed 2023/24 business plan

### 3.1 Improving diversity and access

The proposed 2023/24 business plan includes a number of measures likely to improve diversity in, and access to, the patent and trade mark professions. These we welcome as an appropriate use of IPReg’s resources, and one which is likely to have a significant positive impact on the strength and sustainability of the regulated community.

We are delighted that “funding diversity initiatives” is one of the anticipated main areas of work, as well as “building our evidence base about the IP sector” (which we understand will include gathering diversity data: see 3.2 below).

### 3.2 Diversity data gathering

We note the intention to undertake further diversity data gathering during 2023. We stand ready to work with IPReg and others on this project, and to help optimise participation levels.

For the reasons given in section 7 of our 2021 submissions on the proposed 2022 budget<sup>1</sup>, we urge IPReg not to treat this as a one-off project for 2023, but rather, to implement a robust and sustainable data gathering process that can be incorporated into its annual registration renewal procedure. In these rapidly changing times, diversity statistics can vary significantly even over a year. It is important that IPReg has up-to-date evidence, not only to inform its annual practising fees review but also to evaluate the impact of ongoing changes to its regulatory arrangements and the intended diversity-improving measures in its business plan.

The regulator is perhaps better placed than any other organisation in this sector to provide accurate diversity benchmarks for its registrants and their businesses. We believe it has a responsibility to do so.

Finally, we note with approval that any new diversity monitoring requirement for regulated entities (under the proposed new regulatory arrangements) will be subject to further consultation with stakeholders beforehand. Again, IP Inclusive stands ready to contribute to those consultations.

### 3.3 Education policy

We approve the proposed creation of an Education and Diversity post. We believe that education and training have a direct impact on access to, and diversity and inclusion within, the regulated professions, and that the removal of unnecessary barriers to entry during the qualification process is key to downstream diversity. We look forward to working with the new team member once appointed.

We fully support the encouragement of new providers and delivery methods for education courses, and of a variety of routes into the profession, including potentially through apprenticeships. We agree that these measures are likely to increase diversity in the regulated community.

We also support IPReg's intention to review, on a more regular basis, the quality and performance of accredited education providers. We would urge the inclusion of EDI (equality, diversity and inclusion) impact assessments within the review process, in particular regarding the accessibility of both training and assessment methods, however delivered.

We are pleased to see reference to a review of the competencies framework. An accurate and current framework can provide a sound basis for the recruitment of new talent into the regulated professions; help employers to select and appoint more objectively; reduce the risk of unconscious bias or other forms of discrimination; and in turn improve access to the professions. It can also help education providers to build, and IPReg to accredit, appropriately tailored courses.

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<sup>1</sup> See <https://ipinclusive.org.uk/wp-content/uploads/2021/09/210930-ipreg-budget-consultation-ip-inclusive-response.pdf>

### 3.4 Website redevelopment

In this context we urge IPReg to ensure that its new website follows best practices for accessibility, in particular for disabled (including neurodivergent) people. In addition, people without reliable internet access, or who are otherwise unable or reluctant to use online services, should still be able to access regulatory information and support when necessary.

## 4 The proposed 2023 budget

### 4.1 Diversity allowance

We approve the inclusion, in the proposed 2023 budget, of a £7,000 allowance for supporting diversity initiatives in the regulated community, underpinned by the continuing £20,000 diversity initiatives reserve. This we believe represents a concrete commitment to diversity in the sector.

Ideally, we would like to see this allowance increase in line with inflation in subsequent years, especially at this time when diversity is increasing in importance to clients, employees and employers.

We appreciate that an additional £10,000 has been allocated for a diversity survey. We believe this is an appropriate use of IPReg budget, since the regulator is well placed to gather meaningful diversity data from the regulated community. This will allow it to target its diversity initiatives more effectively and to gauge the impact of its regulatory arrangements on EDI. We look forward to seeing more detail about the survey as plans progress, and to the chance to provide input from IP Inclusive's wider perspective. See also our comments at 3.2 above.

We have very much appreciated and thank IPReg for using some of its previous diversity budget to sponsor IP Inclusive's operating costs as well as specific projects such as our 2018-2019 website upgrade. This has allowed us to continue our work to promote equality, diversity, inclusion and wellbeing in the UK's IP sector – a sector which embraces not only IPReg's regulated community but also the other IP professionals who work alongside them for the benefit of their clients. We hope that this funding can continue during 2023.

We also thank IPReg for its support in promoting and participating in IP Inclusive's work, in sharing relevant information and experiences, and in collaborating on projects where appropriate. We believe this benefits the UK's IP system and its users.

IP Inclusive, in particular through its regional networks<sup>2</sup>, communities<sup>3</sup> and Careers in Ideas outreach campaign<sup>4</sup> and their respective contacts, would welcome the opportunity to work with IPReg to

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<sup>2</sup> See <https://ipinclusive.org.uk/our-regional-edi-charter-networks/>

<sup>3</sup> See <https://ipinclusive.org.uk/community/>

<sup>4</sup> See <https://ipinclusive.org.uk/careers-in-ideas/>

ensure that the 2023 diversity budget is appropriately spent on projects that will have a positive impact on EDI in the patent and trade mark professions.

#### **4.2 IPReg’s working arrangements**

We note the assumption that 2023 Board meetings will be held in person. We would urge IPReg to continue to make use of virtual and hybrid meeting formats where possible, not only to reduce operating costs but also to widen accessibility for current and future Board members and therefore facilitate recruitment and retention of a more diverse membership. For similar reasons, we note with approval that executive staff work can still work remotely for some of the time. This aligns with the situation in many regulated organisations.

#### **4.3 The proposed fee waiver**

The proposed 2023 budget does not specifically allow for the discretionary fee waiver should this be implemented. We presume it could be supported from the “general contingency reserve”. As discussed at 6 below, we do not in any case believe that the financial or administrative impact of an extended waiver scheme is likely to be high bearing in mind the size and nature of the regulated community. That said, the UK is facing difficult economic circumstances and IPReg should be prepared for that to impact to at least some extent on its 2023 practising fee revenue.

### **5 The proposed 2023 practising fees**

We have no specific comments on IPReg’s proposal to increase practising fees for 2023, other than regarding the importance of a discretionary waiver scheme to cushion its impact in cases of need: see 6 below.

### **6 The fee waiver**

We very much support the continuation of the discretionary fee waiver, and its extension beyond hardship resulting from the Covid-19 pandemic. We believe that this is by far the most effective and proportionate way to ensure an inclusive approach to regulation – especially in a smaller profession – that can take account, where necessary, of individual circumstances. It will be particularly important in view of the proposed increase to the practising fees in 2023, set in the context of a rising cost of living and a looming UK recession.

We are pleased to see that the scope of the proposed waiver is sufficiently broad to encompass professionals who – for example because of a disability or caring (including parenting) responsibility – are still able to work to at least some extent but are nevertheless suffering financial hardship and finding practising fee levels problematic.

We note that IPReg did not receive any applications under the Covid-19-limited waiver scheme during 2022. This suggests that a more general discretionary waiver is unlikely to represent a huge administrative or financial burden. The availability of such a scheme, to those who genuinely need it,

is nevertheless a matter of good practice in a profession that prides itself on its ethical principles and that strives to improve diversity, inclusion and access. We believe it will help the regulated professions to embrace and nurture a more diverse range of people.

## **7 The equality impact assessment (EIA)**

### **7.1 The importance of the discretionary waiver**

Firstly, as a general point, there appear to be some protected characteristics for which IPReg has relatively little statistically significant data. In these areas we believe it may be difficult for the regulator to say with confidence that the proposed increase in practising fees will not have a negative impact. This is especially the case in view of the large proposed fee increase and the predicted economic conditions in the UK during 2023.

We believe this underlines the case for the discretionary waiver discussed at 6 above. Such a waiver would mitigate the risk of the new fees having a detrimental effect on specific groups of people, allowing IPReg the flexibility to compensate in individual cases of negative impact.

### **7.2 Gender and parenting**

We wish to emphasise again the comments we made in response to IPReg's equality impact assessment on its proposed 2022 fees<sup>1</sup>. Registrants on maternity leave can apply to be put in the "not in active practice" category in order to obtain a reduction in their practising fees, but this does not extend to parents of other genders. The increase in practising fees may therefore have a disproportionate negative impact on some attorneys who become parents, because of a protected characteristic (in this case "sex", as per the Equality Act 2010).

We believe this issue has potentially wider repercussions. If only women have access to the maternity leave provisions, it will continue to be the women in the regulated professions who are more likely to take leave to look after children. Parents of other genders will be discouraged from doing so. This could continue to inhibit gender diversity in the sector, particularly at more senior levels.

That there is a greater gender imbalance among senior patent and trade mark attorneys is evidenced by IPReg's own survey data. The EIA states that: "The professions' senior ranks reflect a higher (59%/40%) male/female ratio than the average for the professions as a whole (48%/42%)". A similar effect was observed in IP Inclusive's 2019 benchmarking survey<sup>5</sup>. We disagree with IPReg's conclusion on this point that "No targeted action is required." A regulator seeking to promote a strong and diverse profession should move to prevent this potential "back door" discrimination. We believe it should use its regulatory arrangements to support a more gender-balanced approach to

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<sup>5</sup> See <https://ipinclusive.org.uk/wp-content/uploads/2020/01/ipi-2019-benchmarking-survey-report.pdf>

parenting, and therefore to individual professionals' choices about career progression and work-life balance.

As in our 2021 submissions, we urge IPReg, whilst reviewing the effects of its 2023 fees for different groups, to consider the following improvements to the Practising Fee Regulations and their implementation:

- A recognition that parental leave may be taken by people of all genders, not just women, and may not necessarily be linked to a pregnancy.
- Allowance of a pro rata fee reimbursement if a registrant begins a period of parental leave mid-year, so as not to disadvantage the large number of parents whose children are born at times other than the end of the calendar year.
- The treatment of adoption leave in the same way as parental leave.

We also recommend that IPReg consider the impact of the practising fees on registrants who, as a result of becoming parents, reduce their working hours without leaving active practice. The effects of the increased fees for these people – many of whom are currently women – are likely to be more negative than for other registrants. We believe this may be a particular issue for self-employed attorneys, or attorneys in smaller practices, for whom a period of full parental or adoption leave might not be viable. Again, we believe the availability of a general discretionary waiver is vital to allow for such situations if genuine financial hardship results.

### 7.3 Disability

We recommend that IPReg reconsider its comment under this category, that “The level of reporting of disability was below the benchmark that the LSB has identified (15%) *so there may be under-reporting*” (emphasis added). It is possible that the patent and trade mark professions genuinely do have a lower proportion of disabled people than the LSB benchmark, regardless of reporting levels. If so, it is even more important for IPReg to support measures that improve access and inclusion for disabled people.

In the context of this impact assessment, we also believe that the *number* (or proportion) of disabled people is not relevant to the question of whether, and to what extent, those people could be disadvantaged.

## 8 About IP Inclusive

IP Inclusive is an association of individuals and organisations who share a commitment to improving equality, diversity, inclusion and wellbeing throughout the UK's IP professions. Its founding organisations were the Chartered Institute of Patent Attorneys (CIPA), the Chartered Institute of Trade Mark Attorneys (CITMA), the IP Federation and The UK Association of the International Federation of Intellectual Property Attorneys (FICPI-UK), with active support and involvement from the UK Intellectual Property Office. CIPA and CITMA do not have any organisational ownership or control of IP Inclusive.

Our supporters span the IP-related professions and include patent and trade mark attorneys, IP solicitors and barristers, and other professionals who work in or with intellectual property. Many CIPA and CITMA members are actively involved in the initiative.

Our work, which is overseen by the governing body IP Inclusive Management<sup>6</sup>, includes:

- A voluntary best practice Equality, Diversity and Inclusion Charter<sup>7</sup>, which now has over 150 signatories from across the IP professions, and an associated “Senior Leaders’ Pledge”<sup>8</sup>.
- The “Careers in Ideas”<sup>4</sup> campaign, which raises awareness of IP-related careers in order to diversify the pool from which the professions recruit.
- Networking and support “communities”<sup>3</sup> for under-represented groups and their allies, currently including our Women in IP community; IP & ME for professionals from minority ethnic backgrounds; IP Ability for disabled (including neurodivergent) people and carers; IP Futures for early-career IP professionals; the IP Non-traditional Family Network for professionals in non-traditional families (including solo parents and “blended” family members); and IP Out for LGBT+ professionals.
- Diversity-related resources<sup>9</sup>, training, news<sup>10</sup> and information, which we disseminate through our website, events<sup>11</sup> and regular updates to our supporters.

Our Lead Executive Officer Andrea Brewster is a Chartered Patent Attorney, European Patent Attorney, and former CIPA Council member and President. In the past she has served on the Institute’s Education and Business Practice Committees. She is regulated by IPReg but not currently in active practice.

For more information about IP Inclusive, please visit our website at <https://ipinclusive.org.uk/>, or email [contactipinclusive@gmail.com](mailto:contactipinclusive@gmail.com).

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<sup>6</sup> See <https://ipinclusive.org.uk/ip-inclusive-management/>

<sup>7</sup> See <https://ipinclusive.org.uk/about/our-charter/>

<sup>8</sup> See <https://ipinclusive.org.uk/the-ip-inclusive-senior-leaders-pledge/>

<sup>9</sup> See <https://ipinclusive.org.uk/resources/>

<sup>10</sup> See <https://ipinclusive.org.uk/newsandfeatures/>

<sup>11</sup> See <https://ipinclusive.org.uk/events/>