

IPReg

The Intellectual Property Regulation Board - Annual Report 2018

July 2019

1. Introduction

The Intellectual Property Regulation Board (IPReg) regulates individual patent attorneys and trade mark attorneys and many of the firms that they work in. Our work covers a broad range of activities including:

- education and training requirements for qualification as an attorney;
- requirements for admission to the register for attorneys and firms;
- keeping the registers of attorneys and firms;
- setting the requirements for continuous professional development so that the knowledge, skills and expertise of attorneys is maintained at an appropriate level;
- setting and enforcing rules and regulations which set out the standards required of those we regulate; and
- handling complaints of misconduct made against an attorney or firm regulated by IPReg.

IPReg's strategic direction is set by its Board which comprises a lay (non-lawyer) Chair, four other lay members, three patent attorneys and three trade mark attorneys.

The IPReg executive team which takes forward IPReg's day-to-day operational work is a small team led by the Chief Executive Officer, Fran Gillon and Head of Registration, Shelley Edwards. These roles are in turn supported by a Director of Policy, a Chief Finance Officer, an Assurance Officer, an Authorisations Officer and an Administrative Officer.

This report sets out some key information about IPReg's activities during 2018.

2. Chair's Report, Lord Chris Smith

I hadn't known quite what to expect when I took over as Chair of IPReg's Board in September last year. What I found, in fact, was a group of truly dedicated Board Members – all giving their time and expertise unstintingly – and a hard-working professional staff, ably led by Fran Gillon and Shelley Edwards. And altogether, an organisation in a process of change, but already rapidly improving and developing into a respected regulator. Much of the credit for this change in recent years has deservedly to go to Steve Gregory, our Acting Chair through the two years up to last autumn. He set IPReg properly on the road, and has done us, and the IP profession, great service in the process.

We have identified three clear priorities for the immediate future. The first is the transformation of our customer relations database and system. And as I write, this change is already in full swing, with the aim of having the new CRM system in place by October. It will revolutionise the way in which we can provide our service to the IP profession, assist our regulated attorneys, and make each year's renewal process simpler and more efficient.

The second is our need to find a new office base for IPReg's staff. Our current office isn't particularly fit for purpose; it's well located, but it does have a number of real inconveniences including the fact that the lift only serves the floor below, which means the office isn't properly accessible; so we're looking to move this autumn.

And our third priority is going to be the most significant in terms of time, commitment and complexity over the next couple of years: a complete overhaul of our codes, rules, regulations, guidance and procedures. We've noticed over recent months how there are a number of gaps and inconsistencies, overlaps and anomalies, in our rules, and we want to bring them all up to date, and make sure they are really what the profession needs. We'll be consulting widely in the process, of course, and this is a task that will take some time, but it's our hope that it will put us onto a very sound footing for the future.

We're also beginning to look seriously at the way in which our accredited education providers are performing between the five-yearly accreditation points. We were very concerned to see feedback from a number of students that pointed to elements of below-standard performance from one or two providers; and we are taking action to raise the relevant issues, demand improvement, and monitor progress. We will examine carefully what is needed in order to ensure the highest possible standards, because entry into the IP profession has to be based on the best training and education available.

For many in the profession, recent months have been dominated by the malign prospect of Brexit. This will affect all IP professionals, but will have a particular impact on trade mark attorneys. IPReg itself cannot of course solve the problem (I wish!); but we can and will stand ready to help, whatever happens later this year.

In the meantime, we have hugely valued the close collaboration that has developed between IPReg and CIPA and CITMA. Under the leadership of Stephen Jones and now Julia Florence at CIPA, and Tania Clark at CITMA, we have been able to develop further the excellent working relationships that have grown over the last year or two. We will over the year ahead work jointly on implementing any new internal governance regulations that emerge from the Legal Services Board, but always seeking to do what is best for the IP profession and for its customers. These are after all our twin aims: to ensure a brilliantly effective profession, and to protect the interests of its consumers. We look forward to the year ahead with confidence.

3. Chief Executive's Report, Fran Gillon

I think 2018 was a significant – and positive - turning point for the IPReg executive team and Board:

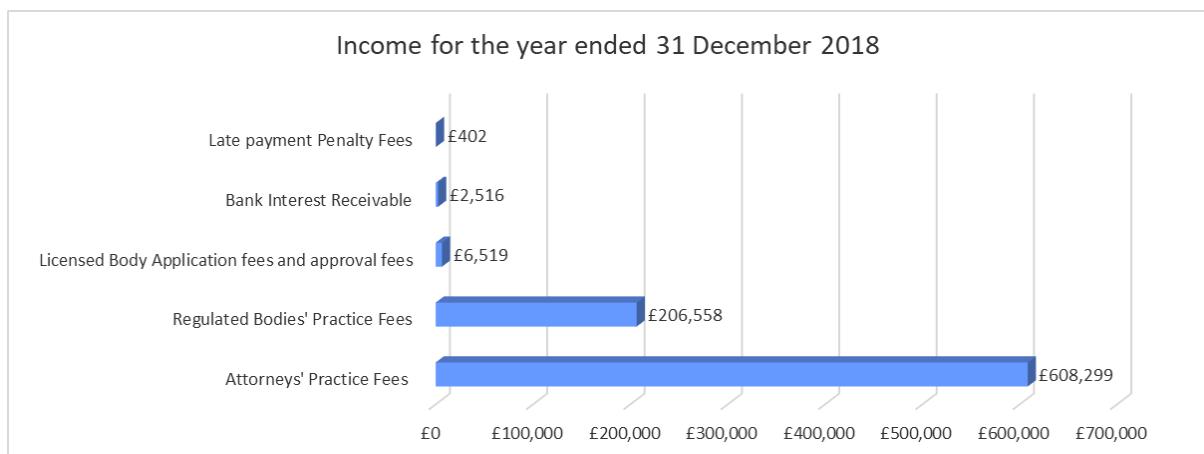
- under the leadership of our new Chair, the Board has set a clear vision of what we want to achieve over the next 2-3 years;
- the executive team has settled into a good – if challenging - equilibrium in its work;
- we have allocated a significant amount of our reserves and team time to develop a new CRM system to ensure that we can manage the trade mark and patent attorney registers properly and, pending its 'go live' in autumn 2019, have put in place measures to improve the way the registers operate;
- our relationship with CIPA and CITMA continues to develop constructively; and
- we have good working relationships with the Legal Services Board (our regulator) and the other legal regulatory bodies.

There is no doubt that, as an organisation, we have an interesting and varied workload. Some of the key issues we dealt with in 2018 are set out in section 5. Being a small team (seven staff, all part time) brings its own challenges given the sheer breadth and depth of the work that we have to do. I feel privileged to be leading such an incredibly talented, hard-working and committed team.

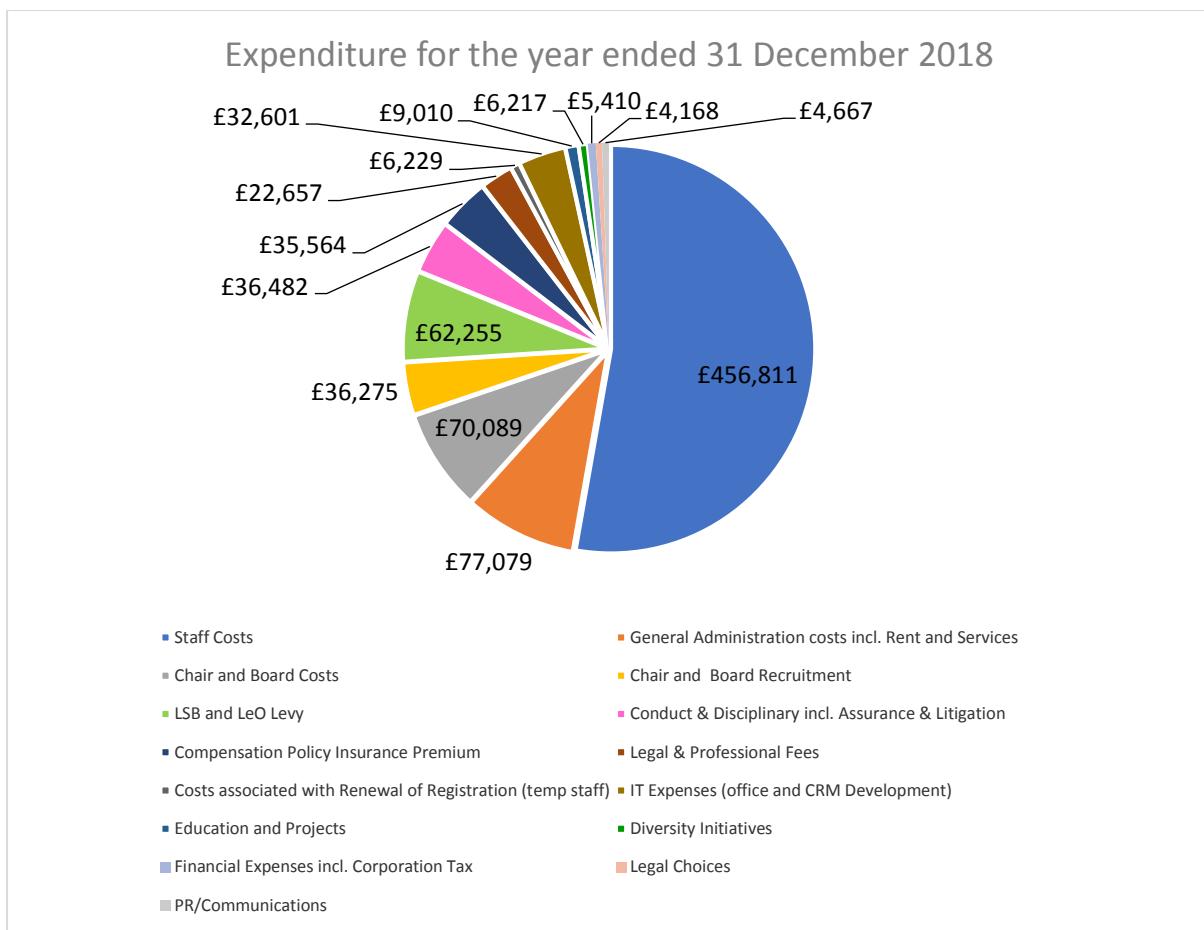
4. 2018 – Key Facts and Figures

Financial

4.1 Income: IPReg's income derives mainly from practising fees paid by registered attorneys and firms. We also have some limited additional income from (for example) application fees from firms applying to be licensed. IPReg is financially independent and does not receive any financial assistance from CIPA or CITMA. All the income it receives is spent on regulatory activities. A breakdown of income for the year ended 31 December 2018 is shown below:



4.2 Expenditure



A short explanation of each of these expenditure types follows.

Staff Costs

Staff costs include salaries, employer's National Insurance, staff benefits and pension costs.

General Administration Costs incl. Rent and Services

This includes general office costs, rent, rates and service charges.

Chair and Board Costs

Chair and Board members' fees and expenses as well as training for new Board members.

Chair and Board Recruitment

The cost of recruiting a new Chair and replacing three Board members.

Legal Services Board and Legal Ombudsman Levy

In common with other legal regulators, IPReg pays a "levy" to cover the costs of the [Legal Services Board \(LSB\)](#) the body with statutory oversight of the legal regulators. The levy is based on IPReg's proportion of the total number of regulated lawyers.

Additionally, the running costs of the [Legal Ombudsman](#) are met by regulated lawyers using a three-year reference period ending 31 March to calculate the average number of complaints made to the Ombudsman. Each regulator contributes a minimum of £5,000 unless there were 10 complaints or more in the rolling three-year period in which case the cost increases. IPReg pays the minimum £5,000.

Conduct & Disciplinary incl. Assurance and Litigation

This includes external legal costs and internal costs (such as Board member fees and expenses for committee hearings as well as associated costs such as photocopying and room hire) associated with assurance and disciplinary matters. Also included are costs associated with refresher training for members of both the Complaints Review Committee and Joint Disciplinary Panel.

Compensation Policy Insurance Premium

IPReg maintains an insurance policy under which grants may be made to compensate for losses or hardship suffered by consumers as a result of fraud or other dishonesty, or a fraudulent or dishonest failure to account for money, by a registered firm or its employees and managers or a registered attorney. These losses are typically not covered by professional indemnity insurance.

Legal and Professional Fees

This relates to costs for legal advice on areas such as audit & accountancy services, insurance, VAT, General Data Protection Regulation, EU Recognition Training , Practical Law and Westlaw subscriptions as well as practising fees for the professionally qualified members of staff.

Costs associated with Renewal of Registration (temporary staff)

This represents the cost of temporary finance administration support during the annual re-registration process.

IT Expenses (office and CRM System Development)

This relates to the support and maintenance of the office IT platform as well software licences. Also included are costs to maintain the existing website and IPReg Pro database as well as the costs for the development of the new Customer Relationship Management (CRM) system.

Education Projects

These are the costs associated with the accreditation (and reaccreditation) of examination agencies over and above what is re-charged to those agencies.

Diversity Initiatives

IPReg has a statutory objective to promote a diverse legal profession and accordingly supports initiatives aimed at promoting this objective. See paragraph 5.6 for information on diversity initiatives funded by IPReg.

Financial Expenses including Corporation Tax

This includes bank charges, card provider service charges and corporation tax on bank interest.

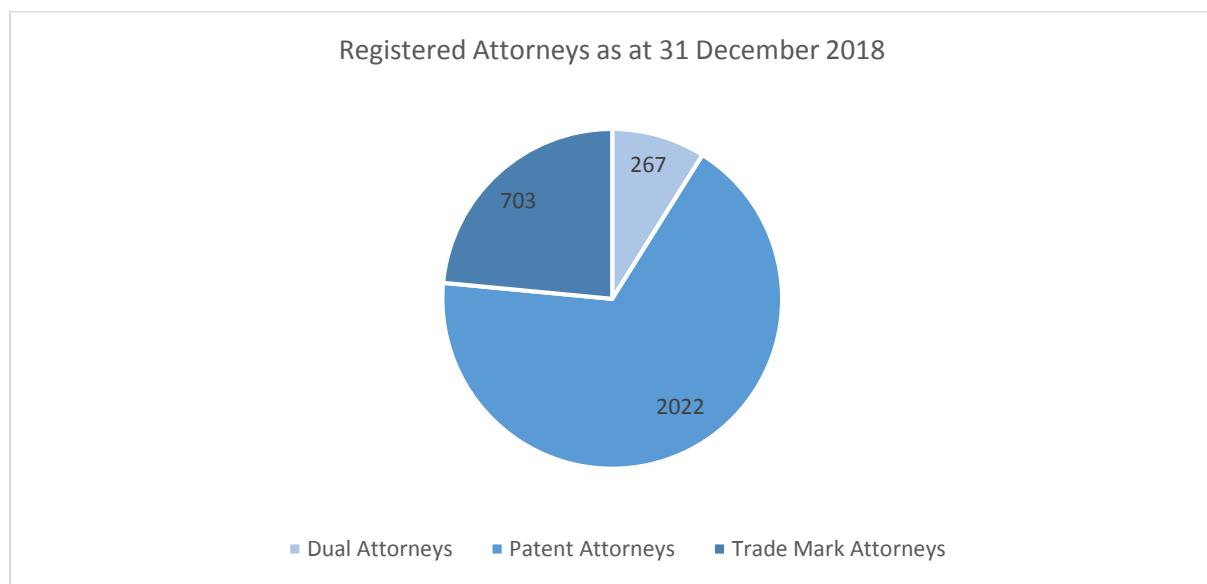
Legal Choices

This is a funding instalment for the [Legal Choices website](#) (a joint project undertaken by all the legal regulators to provide information for consumers about the type of legal services that are available).

PR/Communications

Costs associated with Board members activities with the profession and students.

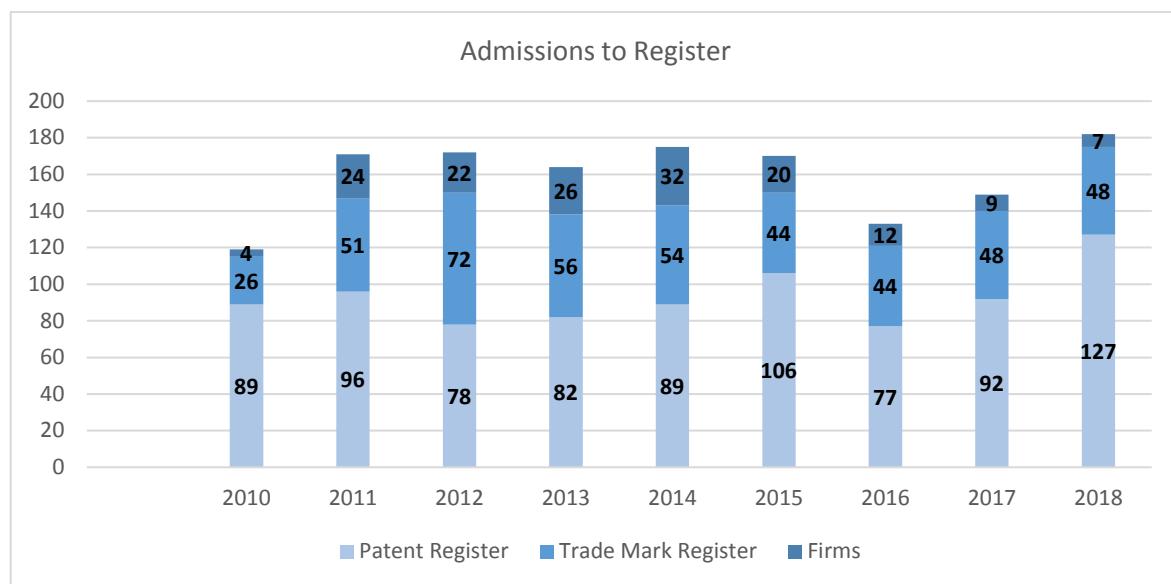
4.3 Who we regulate: as at 31 December 2018 there were 2,992 registered attorneys:



of which, 267 were dual-registered attorneys, 2,022 patent attorneys and 703 trade mark attorneys. Additionally, there were 227 registered firms providing intellectual property legal services.

4.3 Admissions

The bar chart below sets out the number of applications from individuals for admission to the patent attorney register and the trade mark attorney register received by IPReg each year over the last nine years (since IPReg's inception). The chart also includes the number of applications received annually by firms that applied for entry on to one or both registers. To be admitted to the register, attorneys must complete a rigorous examination and training programme and to remain on the register they must undertake further professional training each year. Successful admission to the patent and/or trade mark attorney register means that an individual or firm is registered with and regulated by IPReg and is subject to its rules and regulations. From a consumer protection perspective, using an IPReg-regulated attorney or firm affords consumers the confidence that in the event of any problem arising from the work carried out they will be protected by professional indemnity insurance and can in some cases complain to the Legal Ombudsman and/or IPReg. In addition, there are certain types of work (e.g. conduct of litigation) that only attorneys and firms registered with IPReg or another legal regulator can carry out.

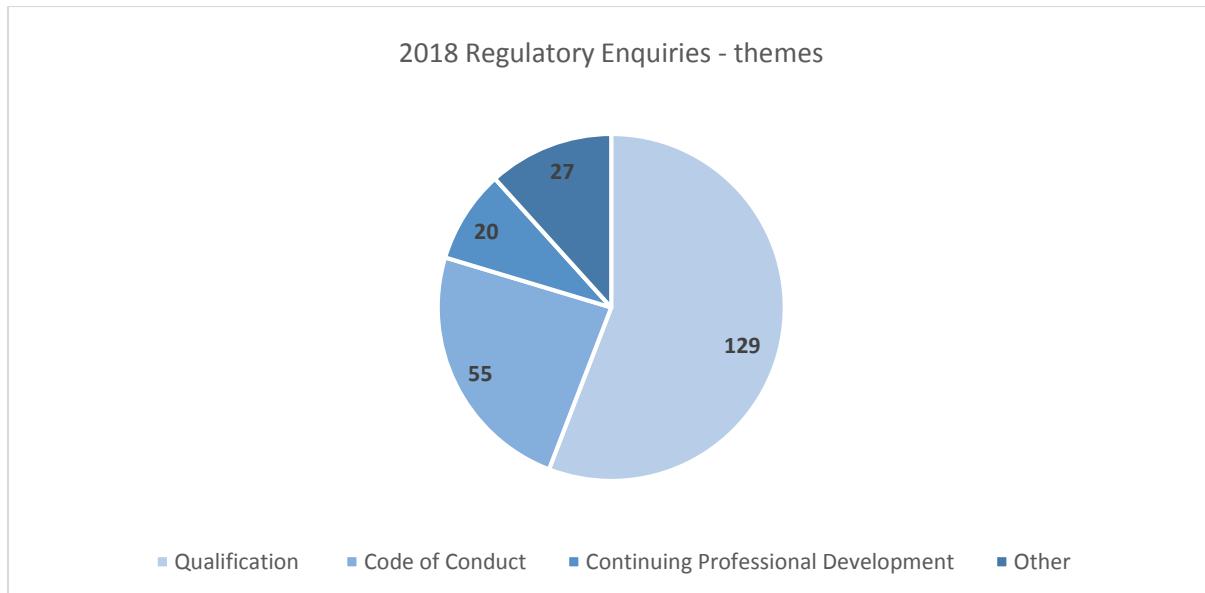


4.4 Enquiries to IPReg - each year, IPReg receives a significant amount of enquiries to its 'Info' email address (info@ipreg.org.uk). In 2018 over 8300 contacts were made. This equates to approximately 160 contacts a week, though there are times such as the annual re-registration process when there are significantly more contacts and – often at some points over the summer – when there are fewer. Whilst the majority are 'business as usual' administrative contacts, relating to issues such as the registration status of an individual, register applications, fee payment and category queries, calendar events etc., approximately 200-250 each year are substantive regulatory enquiries. By this we mean enquiries relating to regulatory responsibilities and qualification and education pathways. In 2018, 231 substantive regulatory enquiries were received (a 6% increase on the 2017 enquiry numbers).

The three most frequent themes in 2018 (the themes remain in the order of frequency that they were in 2017):

1. Qualification accounts for over half of the enquiries (55%/129 queries, an 18% increase on the 109 qualification queries in 2017);

2. Rules of Conduct (55 enquiries, a 22% increase from the 45 received in 2017); and
3. Continuing Professional Development (20 enquiries, a 37% reduction from 2017).



Qualification

Of the 129 qualification enquiries received, the most common remains how to become a trade mark attorney (32), followed by the process for firms to be registered (27) and how to become a patent attorney (20). Other enquiries concern litigation qualification (12 enquiries), EU mutual-recognition of qualifications (11) and non-EU mutual recognition of qualifications (11).

A total of 52 queries came from individuals based in and educated in the UK seeking information on entry and experience requirements. Another 22 queries came from those based and educated (and often professionally qualified) abroad; this was evenly split between EU and non-EU residents, with queries on how to qualify from Australia, Canada, Dubai, Germany, Ireland, Italy, Lebanon, Malaysia, Mauritius, New Zealand, Portugal, Republic of Azerbaijan, and Switzerland.

Although there is a significant amount of information on our website about examinations and exemptions, the frequency and complexity of enquiries about this tells us this is an area we need to redevelop. This requires a fair degree of work to ensure our message about existing arrangements is accurate and consistent with information provided by the various course providers and the institutes.

Rules of Conduct

By their very nature, the Rules of Conduct enquiries have an eclectic reach, covering a broad range of areas. As in previous years, common queries raised by attorneys were:

- Firm restructuring (8 queries) – including closure of firm, conversion to a sole trader, proposed consulting agreement, whether to provide reserved legal activities through a company or LLP.
- Client money (5 queries) – including terminating relationship with a non-paying client, what to do with residual client money, whether equity can be accepted in lieu of payment from client.

- File transfer (2 queries) – including seeking clarification concerning transfer of files when a new attorney takes over a matter and whether attorney can insist on full payment prior to transfer.
- Conflict of interest (2 queries) – whether two attorneys from same firm can act for conflicting parties, restrictive covenants and applicability of the rule on integrity.

Two other subject matters occurred more than once and have been added as new sub-categories for enquiry recording in 2019: sharing client information (with third parties such as HMRC and Trading Standards); and insolvency administration of a firm which an attorney was dealing with.

Continuing Professional Development (CPD) Enquiries

Three-quarters (15) of the CPD enquiries came from registered attorneys. Many of these related to whether an activity could be considered a CPD activity and whether they were subject to the 25% cap on the maximum number of hours that can count towards overall CPD for certain “non-interactive” activities such as watching a recording of a webinar. We want our CPD requirements to ensure that attorneys are continuing to develop in the areas that will benefit their practice and therefore best serve their clients. As a result, towards the end of 2018 we introduced a process by which attorneys could apply for waiver of the cap and we have recently removed the cap completely.

Response timeframe

IPReg replied to 96% of these enquiries within its 4-5 days target turnaround time (a slight improvement from the 95% achieved in 2017). Of the 4% (10 enquiries) which did not meet this target there was a range of reasons for the longer response time (half received a response in 6-7 working days; the longest response time was 15 working days).

4.5 Complaints made to IPReg

We can deal with complaints about “regulated persons”; this includes registered attorneys, registered firms (including alternative business structures), as well as managers and employees of registered firms. Where we receive information that a regulated person may not have met the standards of professional practice set out in the [Rules of Conduct](#), or where we have information that a registered person’s character and suitability to be on the register has been called into doubt, we consider taking action under the [Disciplinary Procedure Rules 2015](#).

If a complaint about a regulated person is received, we may seek additional information before deciding how to proceed. We can also initiate complaints where it appears to us that a regulated person has breached one or more of the Rules of Conduct or has otherwise been non-compliant with any of our regulatory requirements.

In 2018, IPReg received 14 complaints against regulated persons, all of whom were registered attorneys or firms:

- Acting without instructions / non-authorised involvement of agents – 4;
- Unprofessional practice (both inside and outside work) – 3;
- Poor service standards (including unjustified billing, poor advice) – 3;
- Acting where there was a conflict of interest – 3; and
- Lack of insurance / financial management – 1.

Where it appears that one of our regulatory arrangements has been breached, we can refer it to the Complaints Review Committee which will consider whether there is a *prima facie* case to be answered. The Complaints Review Committee may close the case or deal with it summarily if it would be disproportionate to refer it to a full disciplinary hearing before the Disciplinary Board. The Disciplinary Board is an independent Board made up of lay and professional members of the Joint Disciplinary Panel and has a wide range of sanctioning powers up to, and including, imposing fines of up to £5 million and removal from the register(s).

4.6 First Tier Complaints

Registered attorneys and firms must have effective procedures in place to deal with complaints. IPReg's Rules of Conduct require all regulated attorneys in private practice to have an established procedure for dealing with complaints. Clients must be informed at the point of engagement about the process for making a complaint and written details of the complaints procedure must be provided to the client on request. A complaint made by a client to the registered attorney or firm, is known as a "first tier complaint".

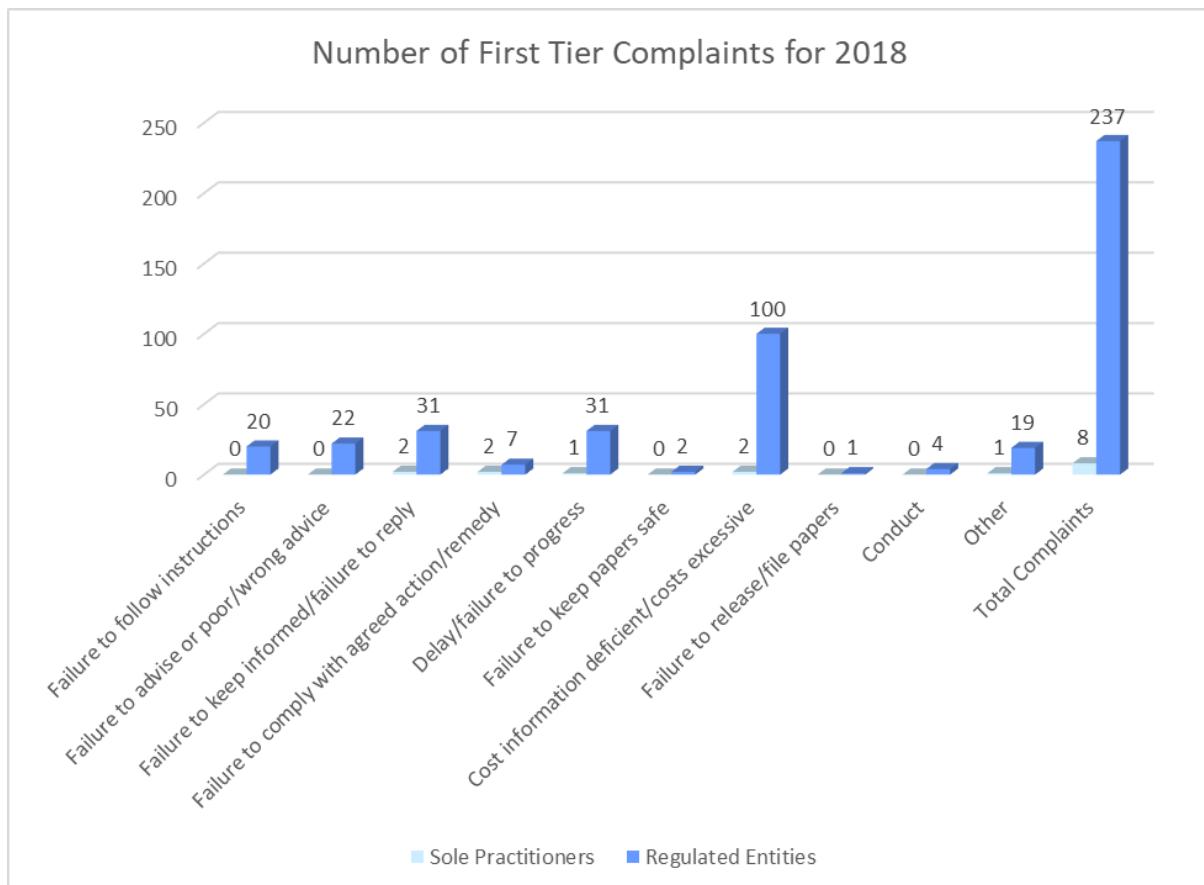
During our annual registration renewal process, all regulated attorneys in private practice must provide us with information about the number of first-tier complaints they received during the previous year. If the attorney works in a regulated firm, it is the firm that provides this information. Collecting this information can help us to identify good practice or, if we identify what appear to be widespread or systemic issues, we can require information to allow us to investigate further.

When a complainant is not satisfied with the way a regulated attorney or firm has handled their complaint they may be able to complain to the Legal Ombudsman.

Complaints statistics for the reporting year ended 31 December 2018, were collected from:

- Firms – 227 firms reported on the number of complaints received, with 47 of those firms declaring receipt of one or more complaints; and
- Sole practitioners – 130 sole practitioners reported on the number of complaints received, with 5 of those firms declaring receipt of one or more complaints.

The bar chart below shows the breakdown of these complaints:



The four main areas of reported complaints for 2018 (for regulated entities and sole practitioners) remain as they were in 2017:

- Costs information deficient/costs excessive - 102 total complaints (82 in 2017);
- Failure to keep informed/failure to reply - 33 total complaints (24 in 2017);
- Delay/failure to progress - 32 total complaints (22 in 2017); and
- Failure to advise or poor/wrong advice - 22 total complaints (28 in 2017).

In addition, there were 20 complaints about failure to follow instructions (10 in 2017).

The number of complaints made about these issues reinforces the importance of providing clear information to consumers about price, service and quality. IPReg has recently published guidance to help attorneys and firms provide better information – this is covered in more detail in item 5.4.

5. Review of progress against 2018's Business Plan activities

5.1 Introduction

Two professional members, James Turner and David Bream, retired from Board. IPReg had an acting Chair, Steve Gregory, until our new Chair, Lord Chris Smith, started in September 2018. The Board made a strategic decision to limit new initiatives in 2018. This meant that work could focus on the development of a new CRM system and preparation for the regulatory arrangements review in addition to our business as usual work.

Regulatory and Policy

5.2 Assurance Programme

We identified that we needed a new CRM system to support the operation and maintenance of the registers. The new system will improve functionality (for example by streamlining the way information is gathered from registrants during the annual re-registration process) and provide better data. An invitation to tender and a tender process was conducted at the end of the year. We are now working with our chosen provider to ensure that the new CRM system will be in use for the 2020 re-registration process.

5.3 Operation and Maintenance of Registers

In addition to identifying the need for a new CRM system to improve the operation and maintenance of the registers, we undertook a review to change some aspects of the way in which we operated the registers. This resulted in two consultations being undertaken in August 2018:

- [Length of suspension and service of documents](#) - this proposed tightening compliance timescales and allowing the service of documents by email in most circumstances.
- [Preventing registration lapses](#) – this proposed that IPReg should be able to refuse to comply with a registrant's request to take their name off the register. This is an important regulatory safeguard as it would prevent a registrant from deliberately avoiding disciplinary action by simply removing themselves from regulatory oversight.

Both rule changes were agreed by the LSB and have been in force since 3 December 2018.

Additionally, at the end of 2017, the Legal Services Board authorised IPReg to suspend registrants from the register where they failed to comply with annual renewal requirements including the payment of practice fees, making a declaration of compliant CPD or providing professional indemnity insurance information within three months of the renewal date (1 January 2018).

In 2018, IPReg suspended:

- 8 registrants for non-payment of fees;
- 12 registrants for failure to make a compliant CPD declaration (of which 5 had also not paid fees); and
- 1 registrant for failure to provide PII information.

In 2018 we removed:

- 6 registrants for continued failure to pay their practising fee; and
- 1 registrant for continued failure to provide PII information.

From 2019 we have been able to take action to suspend attorneys from the register after two months if they have not provided CPD or PII information or have not paid their fees. We will report on this in more detail in the 2019 annual report but, for comparison, in 2019 we suspended 35 registrants for non-payment, of which 25 either paid their fees with the late penalty fee or had applied for voluntary removal from the register. The remaining 9 were later removed from the register for non-payment of fees. All 25 registrants that were suspended for failure to make

compliant CPD declarations (and who were not removed for failure to pay fees also or removed using the voluntary removal process) were brought into compliance and no disciplinary action has had to be undertaken.

5.4 Consumer Engagement

Our consultation on improving price and service quality information for consumers and small businesses closed at the beginning of 2018. This followed the Competition and Markets Authority (CMA) [Legal Services Market Study](#) which had concluded that the legal services market was not working well for individuals and small businesses. The CMA was particularly concerned by the lack of transparency about price, service and quality available to a consumer prior to securing the services of a legal service provider. Towards the end of 2018, we launched a further [Consultation and this resulted](#) in publication of [new guidance](#) in May 2019.

The [Legal Choices website](#) provides factual and independent information to potential consumers to help them make informed choices regarding their legal needs. IPReg continued to provide a share of the funding and took an active role in the development of the website.

5.5 Brexit

Under the [Recognition of Professional Qualifications Directive 2013/55/EC](#), IPReg is a Competent Authority and assesses applications from EU nationals to be admitted to our registers. IPReg continues to work closely with the Department for Business, Energy and Industrial Strategy, the Ministry of Justice (MoJ) and other legal regulators to ensure that a process of mutual recognition of EU professional qualifications is maintained after the UK leaves the EU. The MoJ has issued Technical Notices <https://www.gov.uk/government/organisations/department-for-exiting-the-european-union> in the event of a no deal.

5.6 Diversity

The development work on the new CRM system (see item 5.2) will allow us to greatly improve the depth and quality of reporting on diversity. In addition, we allocated £30,000 from our reserves to fund appropriate diversity initiatives by external bodies. A £5,000 grant was made to [Generating Genius](#) which works with young people from disadvantaged backgrounds who are talented in STEM (Science, Technology, Engineering, Mathematics) for funding the development of materials for a proof of concept project to promote sponsoring opportunities. In addition we gave £1,000 for a website upgrade to [IP Inclusive](#) and, with other legal regulators, IPReg sponsored a logo on a 2018 London Pride parade bus. A member of our Board also attended and represented IPReg in the parade itself.

The Board's diversity profile has also changed (e.g. the number of women Board members has doubled from 2 to 4) and staff benefits were significantly improved (e.g. maternity pay, sick pay and pension provision are no longer set at the statutory minimum thresholds).

5.7 IPReg Code

With professional ethics now included as a requirement of the Foundation Level Qualification Core Syllabus (as set out in the [IPReg Accreditation Handbook](#)) we decided not to continue with the historic programme of workshops on ethics and conduct.

We continued to conduct investigations into alleged breaches of IPReg's Code, Rules and Regulations (see item 4.5).

Education, Training and Qualification

5.8 Continuing Professional Development

Please see item 4.4 regarding the waiver of the 25% cap applied to certain activities and its subsequent removal. We remain committed to reviewing the wider CPD arrangements as part of our scheduled regulatory arrangements review.

5.9 Competency Training

We issued a one-page [IPReg Practical Training Protocol Template](#) which is a voluntary guidance tool for trainees in, and supervisors of, the experience element of qualification as an attorney. It aims to help those who consider they would benefit from having a written training framework and can be altered as required by the parties who use it. The Protocol signposts both parties to the [Competency Frameworks](#) setting out the general and technical skill sets within which a trainee attorney is expected to work when undertaking IP legal services.

5.10 Accreditations

We continued the cycle of the accreditation of Examination Agencies that provide elements of the attorney qualification pathway. The agencies are assessed against the standards in the [IPReg Accreditation Handbook](#). We do this through independent specialist assessment of the courses and examinations.

The foundation level qualifications of:

- the Patent Examination Board – patent attorney route; and
- Bournemouth University – both patent and trade mark attorney routes;

were both approved for accreditation in 2018, subject to a number of recommendations arising from the independent assessments.

The accreditation of the trade mark advanced level qualification at Nottingham Trent University and its litigation course started in 2018 and continued into 2019 so that the assessments of both courses could be considered together.¹

The standard accreditation period is for five years. In extenuating circumstances, such as significant concerns being raised or other aggravating factors, accreditation may be subject to review prior to the end of the standard five-year timeframe and IPReg is currently acting on reports about Queen Mary University London that some elements of its courses and administration are falling below the standards expected.

5.11 Events promoting IPReg and its regulatory approach

The Board continued to network with individuals in other organisations involved in IP so that a wider audience understands IPReg's purpose and its value as an independent specialist regulator.

¹ In 2019, the reaccreditation of both was approved by the IPReg Board, subject, as with all accreditations, to a satisfactory implementation plan of the assessment's recommendations.

In 2018, Board members attended 18 events to promote awareness of IPReg and its regulatory approach, as well as to help gain market insight. These events included student induction days and multi-stakeholder meetings with business and industry representatives.