

IPREG consultation on the assessment of character and suitability

The Intellectual Property Regulation Board (IPREG) seeks views on the draft guidelines on the assessment of character and suitability set out at the end of this document.

At present there is no requirement for an applicant requesting entry onto the register of patent attorneys or trademark attorneys to establish that they are of good character. This contrasts with the position of individuals applying to become qualified as barristers and solicitors. The Legal Service Act will permit patent attorneys and trademark attorneys to enter into mixed practices with other regulated professionals. As entry in the registers opens up the possibility of becoming involved in a mixed practice it is considered appropriate to introduce a check on the good character of individuals applying for entry onto the patent and trademark attorney registers similar to those required of barristers and solicitors.

The draft guidelines are closely based on the corresponding guidelines issued by the SRA.¹ It is proposed that the following questions will be asked at the point of application for entry onto the Patent Attorney and Trade Mark Attorney Registers:

- i) Have you ever been convicted of a criminal offence in any court or received a caution, reprimand or warning in the UK or elsewhere in relation to an offence involving dishonesty or, violence, any offence associated with obstructing the course of justice or the unauthorised use of a protected professional title, any racially motivated offence, any sexual offence or any offence resulting in an actual or suspended term of imprisonment?*
- ii) Have you ever committed an act of plagiarism or cheating in any form of professional or university assessment?*
- iii) Have you ever had a County Court Judgement placed against you?*
- iv) Have you ever been made bankrupt?*
- v) Have you ever been under investigation for any matters or censured, suspended or the subject of any other disciplinary activity by a professional or regulatory body?*
- vi) Are there any other factors which may call into question your character and suitability to become a patent attorney or trade mark attorney?*

The SRA regulations ask applicants to disclose the existence of any criminal convictions other than motoring offences. It is believed that the more limited list of offences set out in question (i) is

¹ Available for download at www.sra.org.uk/documents/students/student-enrolment/characterguide.pdf

proportionate to the lower level of risk to the public presented by the kind of work that mixed practices of firms involving patent and trademark attorneys are likely to be involved in and to minimise the intrusion relating from any inquiry as to character. IPREG is not entitled to inquire into spent convictions and it is not intended to try to obtain the right to inquire into spent convictions under the Rehabilitation of offenders Act 1974.

The remaining questions mirror questions asked of prospective solicitors. If an applicant's answers raise any issues further investigation will be undertaken.

In addition to the questions asked on entry, it is also proposed that when renewing their registration registered patent attorneys and registered trade mark attorneys should in addition to confirming compliance with CPD requirements be asked to confirm the following:

I can confirm that nothing has occurred in the last 12 months which would call into question my character and suitability to remain on the register of patent attorneys or trade mark attorneys.

Any attorney who is unable to make the above declaration will be asked to provide such information as required by IPREG to enable IPREG to assess whether renewal of the attorney's registration should be refused.

Your views and comments on the proposed approach are invited. They may be sent to IPReg at the following address:

Intellectual property Regulation Board
95 Chancery Lane
London
WC2A 1DT

Alternatively, you could e-mail your views to:

mike.knight@ipreg.org.uk

The closing date for comments is **** **2009**.

[DRAFT] Guidelines on the assessment of character and suitability

1. Introduction

1.1 IPREG's role is to ensure that individuals entered in the patent attorney or trade mark attorney registers have the level of honesty, integrity and professional conduct expected by the public and other stakeholders, as well as other members of the profession, and do not pose a risk to the public or the profession.

1.2 Character and suitability issues will mainly be considered as a result of self declaration at the admission stage. IPREG reserves the right to verify the information volunteered by the applicant. As explained below, IPREG regards failure to disclose information as evidence that an applicant might not be of acceptable character and suitability.

1.3 The following questions will be asked at the point of application for entry onto the Patent Attorney and Trade Mark Attorney Registers:

i) Have you ever been convicted of a criminal offence in any court or received a caution, reprimand or warning in the UK or elsewhere in relation to an offence involving dishonesty or, violence, any offence associated with obstructing the course of justice or the unauthorised use of a protected professional title, any racially motivated offence, any sexual offence or any offence resulting in an actual or suspended term of imprisonment?

ii) Have you ever committed an act of plagiarism or cheating in any form of professional or university assessment?

iii) Have you ever had a County Court Judgement placed against you?

iv) Have you ever been made bankrupt?

v) Have you ever been under investigation for any matters or censured, suspended or the subject of any other disciplinary activity by a professional or regulatory body?

vi) Are there any other factors which may call into question your character and suitability to become a patent attorney or trade mark attorney?

Instances in relation to any of the above issues warrant investigation and assessment. These guidelines detail the underlying approach that is to be taken in all such circumstances.

2. General principles for assessment

2.1 The consideration of character and suitability issues is a process that is based primarily on a risk assessment of the individual and the danger he or she may pose to clients, to the public's confidence in the profession and to the confidence of the profession itself. The objective is to ensure that those admitted to the Registers of Patent Attorneys and Trade Mark Attorneys have a level of honesty, integrity and professional conduct expected by the public and members of the profession. An applicant should only be admitted to the Register of Patent Attorneys or Trade Mark Attorneys where there is confidence that he or she is of appropriate character and suitability.

2.2 Before admitting an individual to a register, it should be established that, taking into account the past and current behaviours, there is confidence that the individual is:

- honest and trustworthy; and
- willing to comply with regulatory requirements; and
- able responsibly to manage financial affairs for themselves and clients;

and that there is no reasonable risk that his or her admission will:

- diminish the public's confidence in the patent attorney or trade mark attorney professions; or
- be harmful to members of the public, the profession or to him or herself.

When considering an application against these criteria IPREGs will apply the following tests.

3. Is there confidence that the applicant is trustworthy and honest?

3.1 Unless there are exceptional circumstances there will not be confidence if the applicant has:

- convictions for offences involving dishonesty;
- deceived or sought to deceive others, e.g. academic authorities or employers.

3.2 In such cases, unless confidence can be established, the application should be refused.

3.3 The following might enable confidence to be established in the applicant's trustworthiness and honesty:

- the behaviour occurred many years ago and there was subsequent evidence of rehabilitation;
- the incident was not of a serious nature, as indicated by the sentence or sanction applied.

3.4 The evidence considered should include the following:

- at least one independent account of the event(s), including sentencing remarks following a

criminal conviction;

- references from at least two independent people who know the applicant well and are familiar with the matters being considered. Ideally one of the references should be provided by a patent attorney or trade mark attorney of good standing;
- evidence of rehabilitation e.g. probation reports, references from employers;
- the applicant's account of the events and attitude towards them.

3.5 In the case of academic offences, there will be particular concern where offences have been deliberate and dishonest acts committed in order to achieve personal gain or advantage. In assessing whether this is the case, the following factors will be of particular interest:

- the extent to which the individual was aware of the rules and procedures governing the referencing of material, or the use of group work or collaborative material;
- the extent to which the individual could reasonably have been expected to realise that the offence did not constitute legitimate academic practice;
- the extent to which the individual acted with intent to deceive;
- the degree of benefit or advantage gained as a result of the offence.

3.6 As in the approach to consideration of criminal convictions, the assessment will not seek to re-open the investigation undertaken by the training organisation, nor will it cast doubt on the veracity of the decision taken, providing appropriate investigation and disciplinary proceedings were followed, but statements intended to explain or mitigate the conduct in the issue will be considered.

4. Is there confidence that the applicant is willing to comply with legal and regulatory requirements?

4.1 Unless there are exceptional circumstances there will not be confidence if the applicant:

- has been convicted of a criminal offence associated with obstructing the course of justice;
- has failed to disclose information to a regulatory body when required to do so, or has provided false or misleading information;
- has breached the requirements of a regulatory body;
- has failed to comply with the reasonable requests of regulatory body.

4.2 In such cases, and unless confidence can be established, the application should be refused.

4.3 The following might enable confidence to be established in the applicant's willingness to comply with legal and regulatory requirements:

- the incident occurred many years ago and there is evidence of rehabilitation;
- a matter that was not disclosed was trivial or occurred many years ago or the breach was not

serious, as indicated by any sanction;

- the incident was the result of a genuine mistake or oversight.

4.4 The evidence considered should include the following:

- the material itemised at paragraph 3.4 above in relation to a criminal offence.
- certificates of standing or statements from the relevant regulatory body or disciplinary tribunal and any limitations on the applicant's rights to practise/freedom to act;
- the applicant's explanation for his or her failure to comply.

5. Is there confidence that the applicant is able to manage responsibly financial affairs?

5.1 Unless there are exceptional circumstances there will not be confidence that the applicant can manage responsibly financial affairs if:

- the applicant has been made bankrupt, has entered into individual voluntary arrangements or has unmanageable debts arising from the applicant's recklessness, incompetence or dishonesty;
- the applicant has deliberately sought to avoid responsibility for their debts;
- there is evidence of dishonesty in relation to the management of finances.

5.2 In such cases, and unless confidence can be established, the application should be refused.

5.3 The following might help to establish confidence in the applicant's ability to manage financial affairs:

- the bankruptcy/debts occurred many years ago and there is evidence of subsequent sound financial management and conduct and that creditors have been repaid;
- the applicant was affected by exceptional circumstances beyond his or her control or which he or she could not have reasonably have foreseen.

5.4 The evidence considered should include the following:

- credit check information;
- the applicant's explanation of event, corroborated where possible;
- actions taken to clear any debts.

6. Is there a risk that the applicant's admission would diminish public confidence in the patent attorney or trade mark attorney's profession?

6.1 Unless there are exceptional circumstances there is a risk that public confidence in the profession would be diminished by the following:

- the admission of an individual who had served a prison sentence, who remained on licence or who was listed on the sexual offences register;
- the admission of an individual who had misused his or her position, particularly if associated with the provision of legal services, to obtain pecuniary advantage;
- the admission of an individual who had been responsible for dishonest or violent behaviour;
- the admission of an individual who had been convicted of offences associated with obstructing the course of justice;
- the admission of an individual who had been convicted of a racially motivated offence.

6.2 In such cases, unless the risk can be addressed satisfactorily, the application should be refused.

6.3 The risk might be addressed satisfactorily if:

- the misbehaviour occurred many years previously and there was subsequent evidence of rehabilitation
- the misbehaviour was not of a serious nature, as indicated by the sentence or sanction applied.

6.4 The evidence considered should include:

- independent accounts of the convictions and behaviours that have given rise to the concerns, e.g. sentencing remarks.

7. Is there a risk that the individual's admission could cause harm to members of the public, the profession or him or herself?

7.1 Unless there are exceptional circumstances to consider there will be a risk if there is evidence:

- that the applicant is or has been dependent on drugs or alcohol;
- that the applicant's mental health or exposure to stressful situations can seriously impair his or her judgement, and/or ability to manage his or her work and/or professional relationships;
- that the applicant has been violent with colleagues or clients.

7.2 In such cases, unless the risk can be addressed satisfactorily, the application should be refused.

7.3 The risk might be addressed if:

- the behaviour/dependency/illness occurred many years ago and there has been no

subsequent cause for concern.

7.4 The evidence considered should include:

- recent and medical reports including psychiatric reports where relevant;
- accounts from employers and other parties;
- a statement from the applicant;
- any other evidence that might be indicative of recurrent illness or dependency concerns

8. On-going assessment

8.1 In addition to the assessment at the admission stage attorneys registered in the Patent Attorney and Trade Mark Attorney Registers will be asked to confirm the following when renewing their registration:

I can confirm that nothing has occurred in the last 12 months which would call into question my character and suitability to remain on the register of patent attorneys or trade mark attorneys.

8.2 Any attorney who is unable to make the above declaration will be asked to provide such information as required by IPREG to enable IPREG to assess whether renewal of the attorney's registration should be refused.