

THE CHARTERED INSTITUTE OF PATENT ATTORNEYS

OLC CONSULTATION ON SETTING A FAIR CASE FEE

1. CIPA is the representative part of the Approved Regulator for the 1,850 members of the patent attorney profession.
2. CIPA welcomes the opportunity to comment on the proposals, which we believe provide a fair basis for charging practitioners for dealing with complaints against them. In preparing our response, we have borne in mind that consumers in the sense of private individuals with a one-off need to consult a patent attorney form a very small part of the clientele of the IP professions, most clients being sophisticated companies who will be more likely to sack their advisers than to seek redress through the OLC scheme. We also bear in mind that the present system of regulating the profession means that individuals and firms can opt out of the regulatory system altogether, or cease to offer their services to individuals and small companies if they perceive that the higher risk of complaints from this sector of the market means that it is not economic to continue to offer these services.

Q1. Do you think our approach to the case fee is fair? Please give your reasons.

3. Yes, in general. It is important when setting the fees to ensure that IP legal services will be available to everyone and that firms prepared to offer these services to small clients or individuals (i.e. contentious clients), who are least likely to understand complex patent systems and, possibly, least able to afford them, must not bear the brunt of offering these services whilst firms not taking these risks avoid any fee charges. We believe that case charges should not be raised until the end of the process when cause and effect have been established, if not for all complaints, at least for those firms dealing with an individual inventor or very small enterprises. At the outcome of the case it would be for the OLC to determine whether any case fees were due at the fixed amount. To do otherwise runs the risk of creating a two tier system where high complaint-risk clients can only obtain services from certain firms or, worse still, from unregulated members of the patent profession. We think that it would not be cost effective for the OLC to collect the fees at the outset and subsequently to refund fees in appropriate cases; we do not believe that there would be any different level of non-compliance where the fees are collected at the end of the case than where they are collected at the outset.

Q2. Do you think there is likely to be a potential impact on small firms or sole practitioners, or specific areas of the law which might attract more complaints or potential impact on diversity within the profession? Please give your reasons and provide any evidence that you think will help us measure any impact.

4. There will be greater impact on provincial firms serving the public community, as opposed to London-based practices or in-house practices serving large industry, these provincial firms tending to be smaller and to include sole practitioners. This is because the client, and so complainant, of such provincial firms is not likely to be used to the complex legal systems of the patenting regime and is also likely to be personally involved in the outcome of any patent venture. These provincial firms are important employers and we should not lose sight of this fact. Whilst their client management systems need to be better than firms serving more sophisticated clients, they may need OLC support to achieve this. We therefore need a system that will serve this objective. At the outcome of the case it would be for the OLC to determine whether any case fees were due at the fixed amount.

Q3. Do you agree with the option of structuring the case fee as a flat fee with two free cases per firm per year? Please give your reasons why or why not.

5. We agree with the flat fee structure for the reasons of efficiency and certainty given by the OLC, provided the fees are in the suggested order of £200-400 rather than £1,000 per claim.

Q4. Do you think that £200 – £400 pounds for the case fee is at the correct level? Please give your reasons why or why not.

6. Yes, but we think that the lower figure of £200 is more appropriate. Any more than this would risk firms withdrawing from serving small clients or increasing the size of the unregulated profession.

Q5. Do you have any comments on the attached initial consultation impact assessment? Do you think there is likely to be any other potential impact of implementing the case fee that we have not captured in the attached impact assessment? Please give your reasons and provide any evidence that you think will help us measure any impact.

Q6. Are there any other points or issues you wish to raise in relation to the case fee level or structure? Do you think there is anything missing? Is there anything you disagree with? Please give your reasons.

We stress again that because registration provides only protection of the title 'patent attorney' and anyone can offer the unreserved legal service of giving advice on intellectual property issues, those offering such services include both registered and unregulated practitioners. Thus, any actions to regulate one part of the market must be viewed having regard to the other. In particular one needs to bear in mind that high case fees could see clients (whose interests the OLC is trying to promote) being forced to seek advice from the unregulated part. For this reason, measures to regulate the legal profession as a whole, must not operate in such a way that regulated patent practitioners are not alienated from the system with the consequence that they choose not to service a selected part of the public (the more contentious part) or they themselves choose not to be members of the regulated profession.