



External Assurance Review of the Policies, Procedures and Processes of the Patent Examination Board

**A REVIEW COMMISSIONED BY THE PATENT EXAMINATION
BOARD**

June 2017

About this review

This is a report of an external assurance review of the policies, procedures and processes adopted by the Patent Examination Board (PEB). It follows an initial review conducted by the Quality Assurance Agency for Higher Education (QAA) at the request of the Chartered Institute of Patent Attorneys (CIPA) in 2015. The initial review, which was completed in June 2015, suggested that a two-year review period was appropriate. Consequently, PEB commissioned QAA to conduct this second external assurance review of its policies, procedures and processes in 2017. The review took place from 28 April to 2 June 2017 and was undertaken by Dr Irene Ainsworth on behalf of QAA.

Executive Summary

The report provides an external perspective on the Patent Examination Board's (PEB) policies, procedures and processes. It reflects the progress that PEB has made since 2015 when the first external assurance review was undertaken by QAA, noting good practice and making recommendations relating to the further development of PEB. In addition, the report acknowledges work that has started in the interests of ensuring that the examinations PEB provides continue to be fit for purpose, fair and appropriate to the needs of the Patent Attorney profession which it serves.

The 2015 external assurance review report commented on the work that had been undertaken by PEB since its establishment in 2013, leading to robust, straightforward and transparent policies, procedures and processes. This review confirms that PEB continues to be responsive to its stakeholders and has continued to develop its policies, procedures and processes to reflect emerging needs and best practice. Established systems have bedded down as their value has come to be recognised.

PEB's Governance Board members have worked well together, bringing to bear their individual strengths, based on their expertise (in the Patent Attorney profession, higher education, examination and assessment), in the further development of PEB's activities. The Governance Board is well supported by a small administrative team, led by CIPA's Head of Education. As the report indicates, the Governance Board and its supporting administration have faced particular challenges relating to finance and staffing in 2016 but these have now been resolved and there is a sense of greater stability.

The Governance Board has established an Examination Committee, as recommended in the previous report, and published a revised PEB Constitution setting out the relationship between the Governance Board and the Examination Committee. Given the relatively recent establishment of the Examination Committee, it is too early to comment on the contribution it will make to PEB's work. However, it is expected to provide an important forum for discussion of issues that PEB will wish to address as it continues to develop its activities.

It is clear that PEB is a responsive body committed to ensuring that it contributes to maintaining and enhancing standards expected of the Patent Attorney profession. It has continued to develop its communications with candidates, and has sought to provide as much information as possible to facilitate their understanding of assessment expectations, without compromising its position as an examination body.

At the time of the previous report, PEB had been in existence for only a short period and the relationships between PEB, CIPA and the Intellectual Property Regulation Board

(IPReg) were at an early stage of development as the parties concerned sought to clarify their respective roles and responsibilities in a changing regulatory landscape.

The picture emerging from the review suggests that these relationships have become clearer, are more settled, and are leading to effective collaboration, most notably with regard to the research project investigating the candidate success rate in one of the Final Diploma examinations, involving PEB membership of an IPReg Steering Group. The project report has only recently been published and its findings have yet to be discussed by PEB but this initiative has demonstrated the benefits that collaborative working can bring to the future development and good standing of the Patent Attorney profession.

Good practice

The report identifies the following as features of **good practice** at the Patent Examination Board.

- The openness and transparency with which it conducts its activities and engages with stakeholders.
- The actions taken in continuing to standardise the setting of Foundation Certificate examination papers and mark schemes.

Recommendations

The report makes the following **recommendations** to the Patent Examination Board.

By June 2018:

- continue to keep its staffing base under review to ensure that the Governance Board, Examination Committee and other key stakeholders are provided with effective and ongoing support, and that appropriate succession and contingency planning arrangements are in place
- develop its relationships with employers to ensure that any syllabus and assessment review activity undertaken takes account of the employer 'voice' and reflects current and developing professional practice
- engage with the findings of the research project on the Infringement and Validity (FD4/P6) examination and, in particular, observations made about the marking scheme, the nature and purpose of the examination and the intended learning outcomes candidates are required to demonstrate
- consider action to be taken to address candidates' perceptions about the clarity, consistency and fairness of the examination requirements and determine what more could be done to develop candidates' understanding of assessment expectations and help them to prepare for examinations accordingly
- continue to respond to candidate surveys, indicating actions taken, closing the feedback loop, and engendering shared understandings and expectations in the process.

Consideration of the self-assessment reports for the previous two years and associated documentation confirm PEB's capacity for self-reflection and action orientation. Given the progress that it has made, and continues to make, and bearing in mind that it is shortly to be subject to re-accreditation by IPReg, it is suggested that the next review should be undertaken in 2020. This timing will enable an assessment to be made of the impact and effectiveness of initiatives that PEB has recently, or will shortly, set in train on its policies, procedures and processes. These include the newly established

Examination Committee; the three-year business planning process; and PEB's developing relationships with candidates, CIPA, IPReg, and employers.

Background/Context

Founded in 1882 and incorporated by Royal Charter in 1891, the objects of the Chartered Institute of Patent Attorneys (CIPA), as indicated in the Royal Charter, are:

- (a) to act as a professional and representative body for Intellectual Property Practitioners in patents, designs, trademarks, and other forms of intellectual property
- (b) to promote the education, standing, training and continuing professional expertise of Intellectual Property Practitioners and to establish, maintain, and enforce high standards of professional conduct and compliance with the law.

CIPA now represents over 2,500 chartered patent attorneys, in industry or in private practice, and has over 3,500 members including trainee patent attorneys and other professionals with an interest in intellectual property matters. CIPA maintains the statutory Register of Patent Attorneys through its regulatory arm, the Patent Regulation Board, which operates with the Institute of Trade Mark Attorneys (ITMA) Trade Mark Regulation Board as the Intellectual Property Regulation Board (IPReg).

Established in 2010 by CIPA and ITMA, IPReg is the independent regulatory body for the Patent Attorney and Trade Mark Attorney professions. It is responsible for setting the education and training requirements for qualification as a Patent Attorney and a Trade Mark Attorney and has the statutory power to accredit courses and examination pathways leading to qualifications in intellectual property law and practice. Such qualifications are required of candidates for entry onto Registers of UK Patent and Trade Mark Attorneys held by IPReg.

In 2013, CIPA, with IPReg approval, established a new Patent Examination Board (PEB) following a decision by ITMA to cease offering examinations through a CIPA and ITMA Joint Examination Board and replace this route by a university recognition scheme. PEB assumed responsibility for foundation and final examinations with effect from the 2014 series of examinations.

In 2015, CIPA commissioned QAA to undertake an external assurance review of PEB's policies, procedures and processes. That review was completed in June 2015. Given the comprehensiveness and accuracy of PEB's Self-Assessment Report for 2014 which reflected on its first year of operation, the June 2015 report indicated that it would be appropriate to conduct a second review in 2017 with the outcome of that review informing the timing of the subsequent review.

About the Patent Examination Board

The Patent Examination Board (PEB) was established in 2013 as a committee of the Chartered Institute of Patent Attorneys (CIPA) and can only exist and operate as such. PEB derives its income from examination fees. Although it has its own budget and is accountable for its plan of work and activities, it is supported by CIPA seconded staff and is dependent on the heads of information technology and finance for much of its information and operations.

PEB is responsible for organising and managing examinations leading to qualifications as a registered patent attorney and in the region of 400 candidates take these examinations in October each year. In addition, it has recently developed Litigation Skills examinations and Patent Administration examinations which it administers and quality assures.

PEB carries out its functions, powers and duties through a Governance Board and an Examination Committee which reports to the Governance Board. The Governance Board is chaired by a lay member and comprises five members in total, including three lay members with expertise in assessment, education and examination, and two members who are patent attorneys. Members of the CIPA Council are precluded from membership, reflecting PEB's independent status. The Governance Board's terms of reference reflect its responsibilities for strategic leadership; monitoring effective and efficient delivery of strategy; quality assurance and risk management; and stakeholder engagement. The Board meets four times a year with additional meetings arranged, as required.

The Examination Committee's remit includes advising on topics requiring examiner expertise and input; for example, syllabi and test specification; standard setting, developing setting guidelines and review of procedures; responding to feedback, particularly from students; and recommending ongoing examination improvement and the development of new qualifications.

An Operations Manager (CIPA's Head of Education) reports to the Chairman of the Governance Board and manages PEB's routine business with two other staff members who also have CIPA responsibilities.

The June 2015 review report commended PEB on the standardisation and marking procedures which contained examples of good practice; and for its sensitive and professional approach to handling complaints, special consideration and reasonable adjustment requests, which were in line with best practice in UK higher education.

The report also identified eight recommendations including:

- explicit consideration being given to the progress made on each of PEB's terms of reference and the continued relevance of these
- clarification of responsibility for determining awards, both in terms of its constitutional location and the persons eligible for making award judgments with the role, purpose, status and constitution of the Examination Committee being reconsidered accordingly
- the further development of PEB's approach to reviewing its schedule for determining which of its policies and procedures should be updated and published on its website and how these should be most effectively signposted
- a review of all PEB policies and procedures by the Governance Board for consistency, attributing a version control and/or date signifier in signing them off and consideration to be given to the most appropriate frequency for review of each policy and procedure to meet PEB's responsibility 'for assuring the quality of all processes and procedures used for the development and delivery of PEB qualifications'.
- careful consideration being given to the rationale for very different examination paper structures and mark allocations at Foundation Certificate level to ensure that each paper, and each question within a paper, makes an equal intellectual demand on candidates

- giving candidates a clearer sense of examiners' expectations by drawing on examples from both high scoring candidates and those just above the threshold pass level
- re-asserting PEB marking guidelines and taking appropriate action in the event of an examiner's persistent refusal to follow these. In addition, careful investigation of the reasons for the poor candidate success rate for the Final Diploma examination, Infringement and Validity (FD4/P6) over an extended period was advised
- building on the good practice already initiated to elicit candidates' views and, where possible, those of other stakeholders through a variety of channels and methods.

PEB has responded constructively to the recommendations made in the previous report as indicated in this report.

The Governance of the Patent Examination Board

Governance Board Terms of Reference

The Governance Board's terms of reference are not combined in one document with the Constitution but are intended to be read in conjunction with the Constitution. The separation stems from the need for changes in the Constitution to be approved by IPReg and subject to comment by CIPA. The Governance Board wishes to have the flexibility to review and refine its terms of reference, as necessary, to ensure that they remain fit for purpose and reflect identified need. At the time of the review, the location of the terms of reference was not apparent from the website although there is a link to progress against these in the self-assessment reports.

The Governance Board has continued to monitor progress against, and reviewed the continued relevance of, its terms of reference, as recommended in the previous review report. The terms of reference are grouped under four main headings, namely, strategic leadership; monitoring effective and efficient delivery of strategy; quality assurance and risk management; and stakeholder engagement.

Actions under each of those headings have been taken as follows.

Strategic Leadership

- A revised Constitution was published in March 2017 to provide greater clarity or to reflect emerging practice.
- Close liaison with IPReg has continued to ensure that PEB continues to meet the regulator's accreditation requirements.

Monitoring Effective and Efficient Delivery of Strategy

- Procedures have been put in place to enable more accurate cost forecasting following the experience of the 2015-16 budget which proved insufficient to meet all operational costs.
- Following the departure of one member of staff and, in the absence of a suitable replacement being found, temporary staff were employed to ensure the delivery of essential operations. A new staff member appointment was made early in 2017.

Quality Assurance and Risk Management

- The Governance Board has played an active and key role in monitoring the quality assurance and coordination of the development of PEB qualifications, including the development of assessment material and their operation. Data on candidates' characteristics has been collected annually and guidance intended to minimise any unintentional bias in assessment materials has been issued to Foundation Certificate examiners. Changes have been made to assessment-related policy, as in the case of the reasonable adjustment policy, for example, which was amended to reflect consideration of the position of examination candidates with young babies. The Board has also approved, monitored and amended the appeals policy.
- PEB Governance Board members have attended examiner meetings to monitor compliance with policies and procedures and to draw any issues to the Governance Board's attention. The Board has received and considered statistics on examination performance, candidate survey outputs and examiner reports' comments in addition to receiving and considering recommendations from the Examination Committee. The Board has also considered the performance of examiners and delegated responsibility for operational decisions relating to the performance of examiners to the PEB Operations Manager in consultation with supervising examiners. In addition, the Board has delegated responsibility for examiner succession planning to the Operations Manager who reports to the Board on examiner recruitment and any issues arising.
- Accounts, budgets and a risk register have been monitored on a quarterly basis and procedures have been put in place to increase the level of financial detail available to the Governance Board, and key budget heads have been identified for closer scrutiny.

Stakeholder Engagement

- Annual candidate surveys have continued to be undertaken and candidates have access to support and guidance which is readily available on the PEB website and through a mentoring programme offered through CIPA for candidates taking the Infringement and Validity examination.
- Candidates have been consulted about changes to examination dates, the publication of results and PEB support available to them.
- Engagement with CIPA and IPReg has continued on areas of mutual interest including work on a collaborative project on the Infringement and Validity Examination following a recommendation in the previous QAA report arising from the poor candidate success rate in the examination.
- Considerable attention has been given to the production of clear, concise and accurate reports and the use of external consultants has enabled further improvements to be made in the quality and clarity of published reports.

The Governance Board has worked hard in its formative years to develop PEB's policies, procedures and processes so that they are fit for purpose and reflect best practice. This has been achieved, despite a reduction in the administrative support available to underpin the work of PEB from three to two members of staff for an extended period in 2016-17 following the departure of a member of the administrative team. Challenges have also been presented by CIPA's introduction of a new database and website and associated teething problems which PEB staff have had to address. The two remaining staff members seconded by CIPA to support PEB have sought to maintain normal service with the assistance of temporary staff, as required.

PEB's risk register signals PEB's dependence on CIPA's heads of information technology and finance for much of its information and operations and classifies dependency on key CIPA staff as high risk. The Governance Board acknowledges the strains the reduced staffing base and additional challenges arising from CIPA's introduction of a new website, database and accounting system, placed on the PEB administrative team in 2016-17. The situation has now improved following the appointment of a full-time member of staff to the PEB administrative team in January 2017. PEB's use of working instructions help to ensure that procedures are consistently applied, known and followed, enabling team members to provide cover for each other, as required.

Although the appointment of a new staff team member has helped to ease the situation, it is **recommended** that PEB continue to keep its staffing base under review to ensure that the Governance Board, Examination Committee and other key stakeholders are provided with effective and ongoing support, and that appropriate succession and contingency planning arrangements are in place.

The development of a three-year business plan has been put on hold pending (i) resolution of major budget challenges that arose in 2016/17 and (ii) the outcome of the implications of IPReg's review of foundation level qualifications for PEB. Following consideration of PEB's financial position, procedures have been put in place to ensure that it is better placed to act in a timely manner based on more detailed financial information that is tailored to its needs. Now that the budget issues have been resolved and PEB's longer-term financial position is clearer, coupled with clarity about IPReg's accreditation requirements, the Governance Board is better placed to turn its attention to the three-year business plan and matters of a more strategic nature.

PEB has continued to develop productive relationships with stakeholders and the openness and transparency with which PEB conducts its activities and engages with stakeholders constitutes **good practice**. It has established constructive working relationships with CIPA and IPReg, collaborating on areas of common interest that benefit the Patent Attorney profession. The most obvious manifestation of this collaboration is the research project investigating the reasons for the poor and variable performance of candidates in the Infringement and Validity (FD4/P6) examination over several years. This research, which included consultation with candidates, represents a significant milestone in understanding the issues involved with a view to improving candidate performance in this subject area.

PEB acknowledges that more needs to be done with regard to employer engagement. Given the findings of the research project commissioned by IPReg, in conjunction with PEB, there is potential for fruitful discussion about the contribution that employers and other stakeholders can make to ensuring that the Infringement and Validity examination continues to meet current and future professional needs. The findings of the research project may prove helpful in engaging employers in discussion of experiential learning opportunities or other activities that would serve to enhance and support candidates' examination preparation.

PEB is therefore **recommended** to develop its relationships with employers to ensure that any syllabus and assessment review activity undertaken takes account of the employer 'voice' and reflects current and developing professional practice.

Patent Examination Board Policies and Procedures

Policies are grouped under separate headings which follow an examination cycle, namely, examination policies; results and post results policies; and general policies.

Procedures are grouped under the headings of examination procedures and results and post results procedures.

The previous QAA report recommended that PEB should further develop its approach to reviewing its schedule for determining which of its policies and procedures should be updated and published on the website; reviewed for consistency and version control; and how these should be most effectively signposted. It was also recommended that consideration should be given to the most appropriate frequency for review of each policy and procedure. PEB has responded by presenting its policies and procedures for annual review and approval by the Governance Board at its December meeting in line with a reporting and approvals schedule that categorises information to be published, indicating the month this information is due, the author(s) and intended audience.

The annual review of policies and procedures enables the Governance Board to revise, or otherwise refine, policy reflecting PEB experience and best practice, and remaining responsive to stakeholder needs. The Malpractice Policy and its associated procedure, for example, were amended following discussion by the Governance Board. New policies have been produced, as required, for example, a Missed Examinations Policy was published in the wake of an appeal from a candidate in 2015. The Governance Board has also adopted an appointments and re-appointments policy and a performance review procedure for its members.

The information provided on the PEB website is clear and comprehensive and readily accessible to candidates and other stakeholders. The easily navigable website offers clear signposting to information on regulations; policies; procedures; registration; support; communications; frequently asked questions; and contact. In addition, links to policies and procedures that apply to candidates are incorporated within the examination regulations published on the website. There is also a link to the annually agreed policies and procedures from the annual self-assessment reports, which are published on the website.

In addition to the published information mentioned above, instructions have been developed for examiners to ensure there is a common and shared understanding of PEB requirements. As previously indicated, the PEB administrative team have also developed working instructions to ensure procedural consistency and to enable staff members to provide cover for each other, as required. The value of such instructions resides in the currency of the information provided and, now that the team is at full complement, it should turn its attention to ensuring that the instructions produced are updated, as required.

The Patent Examination Board's Examinations

Responsibility for determining awards

The previous report strongly recommended that PEB should clarify responsibility for determining awards, both in terms of its constitutional location and the persons eligible for making award judgments with the role, purpose, status and constitution of the Examination Committee being reconsidered accordingly.

The Governance Board had not been convinced initially about the need for an Examination Committee since it believed that the functions of such a committee were already being fulfilled within existing arrangements established by PEB. These include the appointment of examiners to the roles of Marking Examiner, Principal Examiner and Chief Examiner, interacting in a series of standardisation, setting and awarding activities designed to ensure the integrity of the assessment process.

The revised PEB Constitution (March 2017) confirms that the Governance Board is responsible for the quality assurance of examinations with the Chair of the Board being accountable for the validity, reliability, freedom from bias and comparability of the question papers, the quality of marking and the monitoring of standards over time.

Notwithstanding the Governance Board's earlier doubts about the need for such a committee, it has now established an Examination Committee whose work is separate from, and additional to, that carried out in standardisation, setting or awarding meetings although issues identified in those meetings may be brought to the Examination Committee. The Committee's remit includes:

- advising on topics requiring examiner expertise and input; for example, syllabi and test specification
- standard setting, developing setting guidelines and review of procedures
- responding to feedback, particularly from students
- making recommendations for ongoing examination improvement and the development of new qualifications.

The Examination Committee comprises the Chief and Principal Examiners in addition to the ex-officio patent attorney and lay members of the Governance Board, as appropriate. Marking examiners, or others with appropriate expertise, may also be invited, as required. The Committee is expected to meet at least once a year and should normally be chaired by a chief examiner. Where more than one chief examiner is present, the Committee is expected to nominate a chair for that meeting.

The first meeting of the Final Diploma Examination Committee was held in April 2017 and was chaired by the Governance Board Chair who introduced the newly published PEB Constitution, purpose of the meeting and the Committee's terms of reference. Other agenda items included issues arising from the 2016 examination series; the quality of marking and return of marked scripts from 2017 onwards; an update on the research project investigating the poor candidate success rate in the Infringement and Validity Examination (FD4/P6) examination; an update on developments at the Foundation Certificate stage; the PEB budget; and items for future discussion including a review of the efficacy of the monitoring process; a review of the development and use of the level descriptor and minimum time in the profession before undertaking Final Diploma examinations. The Examination Committee is expected to be heavily involved in the development of PEB's responses to the Infringement and Validity research project.

Pre-dating the revised Constitution, two meetings of a Foundation Certificate Examination Committee were held in June 2016 and in February 2017 under the chairmanship of a Governance Board patent attorney member. The minutes of the June 2016 meeting (produced by a lay member of the Governance Board who was able to test the efficacy of a template for recording purposes) indicated that the Committee considered current examination formats and the history of their development; the suitability of those formats; and a proposal for changing the format. The minutes of the February 2017 meeting refer to discussion of the 2018 examination question papers and syllabi changes.

The previous QAA report noted that the examination papers for 2014 did not take a standard form and different questions appeared to require different orders of cognitive skill, despite attracting similar marks. This was judged to be a particular issue at Foundation Certificate level and PEB was therefore advised to consider carefully the rationale for the very different examination paper structures and mark allocations at that level to ensure that each paper, and each question within it, made equal intellectual demands on candidates.

The Foundation Certificate Examination Committee reviewed the rationale and structure of the five Foundation Certificate examinations (UK Patent Law, FC1; Law, FC2; International Patent Law, FC3; Design and Copyright Law, FC4; and Trade Mark Law, FC5) in June 2016. It agreed that all papers should consist of two parts with part A, comprising short compulsory questions (40 marks in total, divided as required) with a focus on knowledge and part B, requiring candidates to answer three out of four longer questions, each worth 20 marks, making 60 marks in total), testing the application of knowledge and understanding of areas of complexity, including scenarios as appropriate.

The new format for the 2018 question papers was agreed at the February 2017 meeting of the Foundation Certificate Examination Committee when the time allotted for each examination was also discussed in light of candidates' feedback about the duration of the FC2 and FC5 examinations (both two hours in length) which some candidates considered to provide insufficient time to demonstrate their knowledge and understanding. The Examination Committee considered a proposal to extend the duration of both examinations and agreed that justification for extending the duration of the examination length would need to be based on syllabus or credit changes. Subsequently and, responding to comments made about the FC2 examination in the 2016 candidate survey report, the published PEB response (March 2017) indicates that, from 2017, all the Foundation Certificate examinations will be three hours in length.

The establishment of the Examination Committee provides a useful forum for Governance Board members and examiners to discuss issues relating to the further development of PEB's examinations, including standard setting; marking schemes; the 50 per cent pass mark; and a minimum pass descriptor, for example.

Setting examination papers

PEB has continued to refine its question paper setting process and, in April 2017, issued instructions for setting examination papers and mark schemes to examiners responsible for setting question papers and mark schemes for the Foundation Certificate to ensure that all papers set reflect the principles of reliability, validity, clarity and fairness associated with sound assessment. In developing these Instructions, PEB has sought to consolidate best practice and the various instructions issued previously. It plans to monitor the use and effectiveness of the new set of instructions on an annual basis and consideration is being given to the possibility of adopting or adapting the instructions for use at Final Diploma level.

PEB quality assures the setting of examination papers and mark schemes at Foundation Certificate level by way of:

Pre-setting (the recruitment and selection of examiners; the training of examiners; and instructions for examiners).

Setting the examination paper and mark scheme (the preparation of a draft examination paper and mark scheme by each Principal Examiner; the sitting of the draft examination paper by a tester who has answered the draft examination paper in the allotted time and has subsequently reviewed the draft mark scheme; question paper examination committee meetings attended by the Principal Examiners and the Chief Examiner to review each draft examination paper and mark scheme; amendment of the draft examination paper and mark scheme, as necessary, in the light of any feedback; proof reading of the question paper and mark scheme; and the approval of the examination paper and mark scheme by the Principal Examiner and the Chief Examiner).

Post-setting review to finalise the examination paper (review and amendment (if necessary)) of the examination paper and mark scheme reflecting any changes in the law or other changes since the setting of the paper; approval of the final examination paper and mark scheme by the Principal Examiner; proof reading of any amended sections of the final examination paper; and final approval of each final examination paper by the Chief Examiner).

The actions taken in continuing to standardise the setting of Foundation Certificate examination papers and mark schemes represent **good practice**.

Marking examination papers

The 2015 QAA report drew attention to difficulties that some examiners who failed to follow PEB's marking guidelines could present for fellow markers and advised PEB to reassert its marking guidelines, taking appropriate action to ensure guidelines are followed. PEB's marking and awarding instructions for examiners are comprehensive and detailed. They are reinforced through PEB's quality assurance of the three-stage quality of marking model and through its examiner quality assurance process. This includes an assessment of the services provided by each examiner, taking account of their adherence to deadlines and to examiner instructions, including marking protocols and annotation adherence.

The quality of marking model involves:

Pre-marking (including the recruitment and selection of examiners; the training of examiners; and instructions for examiners).

Marking (the standardisation of examiners' marking; finalising the provisional mark scheme; and the monitoring and supervision of examiners' marking, including checking a minimum of three post-standardisation marked scripts).

Post-marking (the awarding process; and the quality of assurance of examiners process).

The standardisation process involves all examiners for a question paper provisionally marking the same scripts before discussing their marking with their supervising examiner with a view to seeking to ensure that the mark scheme is complete and being applied consistently.

The Principal/Marking Examiner(s) and the Chief Examiner attend standardisation meetings, chaired by the Chief Examiner who also leads discussions about script marking at the meetings and is responsible for approving the final mark scheme. These meetings are attended by a member of the Governance Board.

Following the standardisation meeting, marking examiners are required to submit an additional three marked scripts to the Chief Examiner for review and, review any live marking before finalising, if required, in light of feedback received. The Chief Examiner is responsible for finally signing off examination papers, in terms of their content.

The outputs of the marking process are considered at awarding meetings where candidates' results and borderline cases are discussed. These meetings normally involve the Chief Examiner, Principal Examiners, a PEB officer, and two PEB Governance Board members (one lay member and one patent attorney member).

The Principal and Chief Examiners ensure that the marks awarded are reliable and sign them off; the Governance Board lay member ensures that the agenda and processes

have been followed, recording this and any actions arising from the meeting on an Awarding Meeting Record form; and the Governance Board's Patent Attorney member provides advice and guidance, as required. PEB members of staff ensure that all necessary materials and information are available at the meeting, that they are accurate, and that all amendments are recorded accurately. They also ensure that actions identified are completed, reporting to the PEB GB lay member on progress.

Agreed actions arising from the Awarding Meeting include the Principal Examiner report to candidates; signing of the results for submission to the PEB Governance Board for approval; confirmation of the final mark scheme for publication; and selection of scripts for training and standards purposes.

The Chief Examiner reports to the Governance Board on the performance of the question papers; the outcomes of the marking; and any other issues.

The quality assurance arrangements adopted for examination paper setting and marking are robust and have continued to be refined, taking account of feedback from examiners following each examination cycle. Consideration of a sample of marked examination scripts indicated that examiners were adhering to marking expectations.

The actions taken to standardise the setting of Foundation Certificate examination papers and mark schemes represent **good practice**.

Complaints, appeals, special consideration, reasonable adjustments

The previous QAA report commended PEB on its sensitive and professional approach to handling complaints, special consideration requests and reasonable adjustment requests in line with its own policies and procedures and with best practice in UK higher education. In 2015, PEB received eight complaints (three complaints relating to the qualifying examinations) and, in 2016, four complaints were received (of which two related to the qualifying examinations). It has responded to complaints in line with its Customer Feedback Policy. PEB has received and managed a small number of appeals with only one reaching the final stage in its appeals process to date.

The number of special consideration cases rose from three to four in 2015. In 2016, it rose again to eight with seven instances of illness during examination being recorded. These cases were considered at the relevant awarding meeting. The number of candidates requesting reasonable adjustments rose from nine (requesting 36 adjustments) in 2015 to 21 (requesting 23 adjustments) in 2016. PEB remains sensitive to the needs of candidates wishing to sit its examinations and has put in place appropriate arrangements to accommodate individual needs.

Candidate support and communication

The 2015 QAA report recommended that the PEB should give candidates a clearer sense of examiners' expectations by drawing on examples from both high scoring candidates and those just above the threshold pass level. A review of the support section of the PEB website indicates that past examination material is available on the website, including question papers, mark schemes, examiners' reports and pass scripts reflecting different levels of performance. Currently, candidates may have their marked scripts returned to them on request. This matter has been discussed by the Governance Board and a phased approach to the automatic return of candidates' assessed work is to be adopted.

It is clear from the latest student survey report (2016) that candidates have appreciated the examination materials, including past question papers, mark schemes and

examiners' reports, provided in support of their examination preparation. In addition, and responding to feedback from candidates in the 2016 student survey report, an examiner explained changes to the 2017 FC2 English Law syllabus, indicating that, while the scope of the syllabus had not been altered, efforts had been made to clarify the level of detail expected and assist candidates in their examination preparation.

It is also evident, however, that some candidates have been concerned about what they perceive to be unclear, inconsistent (both within examination question papers and between years) and, consequently, unfair requirements. PEB is **advised** to consider action to be taken to address candidates' perceptions about the clarity, consistency and fairness of the examination requirements and determine what more could be done to develop candidates' understanding of assessment expectations and help them to prepare for examinations accordingly.

The 2015 QAA report drew attention to a poor candidate success rate in the Final Diploma Infringement and Validity examination (FD4/P6) and advised that an investigation be undertaken into the reasons for this. This examination had the lowest pass rate of all the qualifying examinations held from 2011 to 2015 and the second lowest pass rate in 2016 (when the Final Diploma Drafting of Specifications examination (P3) had the lowest pass rate).

Following discussion between IPReg, CIPA and PEB, IPReg agreed to fund the investigation and established a Steering Group, with PEB membership, to commission and manage independent research into this matter. The research project, conducted by a team of researchers from the Institute for Work Based Learning and School of Law at Middlesex University, was published in March 2017. The project involved a survey of 2014 and 2015 candidates and in-depth interviews with key stakeholders (examiners, tutors and mentors, and employers).

While responses to the research themes varied, there was consensus about the need for greater transparency in question setting and examiners' expectations regarding this paper. IPReg has commended the report, which makes several practical suggestions, to both PEB and CIPA. These suggestions include further consideration of the examination marking design and the alignment of learning outcomes to the assessment criteria for the Infringement and Validity examination paper (the latter issue also being raised by candidates in the survey feedback).

In addition to this research project, PEB has established a mentoring project involving candidates taking the FD4/P6 Infringement and Validity examination. Analysis of the data for the mentored cohort, compared with the whole cohort data, demonstrates little, if any, evidence of a significant improvement that could be attributed solely to the mentoring activity across the cohort. However, some mentees' examination scores were markedly higher. Further action relating to the mentoring scheme is to be discussed in conjunction with the outcomes of the research project report investigating candidate performance in the examination.

The previous report encouraged PEB to continue its attempts to elicit candidates' views through a variety of channels and methods, building on the good practice already initiated to elicit candidates' views. PEB has continued to survey candidates and compile reports on responses made for consideration within PEB and for publication on the website. In March 2017, PEB published a response to the 2016 candidate survey indicating that the findings would inform its ongoing monitoring of the Qualifying Examinations and responding to specific points raised by candidates. PEB expects to continue this practice, resources permitting.

A review of comments made in the candidate surveys which have seen an increase in respondents, from 104 in 2014, to 161 in 2015, and 227 in 2016, indicate that there is a willingness to engage with PEB about the candidates' experience, providing a useful means to assess the extent to which PEB is realising its objective of providing examinations that are equitable, valid and reliable. PEB is therefore **advised** to continue to respond to candidate surveys, indicating actions taken, closing the feedback loop and engendering shared understandings and expectations of its examining process.

The involvement of candidates in the research project on the Infringement and Validity examination has provided an additional channel for PEB to hear from candidates about their experience of the examinations. The findings of the report have yet to be discussed in detail by PEB but offer helpful pointers for action to be taken in relation to the nature and purpose of the examination which is reflected in the learning outcomes candidates are expected to demonstrate.

PEB is **recommended** to actively engage with the findings of the research project on the Infringement and Validity (FD4/P6) examination and, in particular, take appropriate action to consider observations made about the marking scheme, the nature and purpose of the examination and the intended learning outcomes candidates are required to demonstrate.