



External Assurance Review of the Policies, Procedures and Processes

Patent Examination Board

Review Report

March 2024

Contents

About this review	1
Executive summary	1
Good practice.....	2
Recommendations	2
Background/context	3
About the Patent Examination Board	3
The Governance of the Patent Examination Board	4
Governance Board.....	4
Patent Examination Board Response to External Reviews	4
Patent Examination Board policies and procedures	9
Responsibility for determining awards	9

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 continues the external reviews conducted by the Quality Assurance Agency for Higher Education (QAA) at the request of PEB in 2015, 2017 and 2020. The current external assurance review of the policies, procedures and processes adopted by PEB took place on 12 February 2024 and was undertaken by Dr Margaret Johnson 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 2020 when the last 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.

Since the last QAA review, the Mercer Review 2021 has been published. The review was conducted through the Chartered Institute of Patent Attorneys (CIPA) Education Committee and considered the training, support and assessment of trainees, including consideration of best practice in other professions where appropriate. The PEB Governance Board (PEB GB) submitted its formal response to the Mercer Review Report in January 2022 with detailed comments on the conclusions and recommendations of each substantive chapter. Overall, the Mercer Review expressed continuing confidence in the system of examinations overseen by the PEB GB.

PEB has also undergone scrutiny by the Intellectual Property Regulation Board (IPReg) and the IPReg's Finals Accreditation Assessor's Mandatory Requirements and Recommendations, were received in January 2023. The reaccreditation of the PEB Final Diploma qualifying examinations was based on PEB implementing the Assessor's report's Mandatory Requirements and Recommendations and formal independent review of this, as well as an implementation plan.

The 2020 QAA external assurance review report commented on the progress made by PEB since the 2017 review and confirmed that PEB has robust, straightforward and transparent policies, procedures and processes, remains responsive to its stakeholders, and continues to reflect critically on its progress. The current review of 2024 confirms that PEB continues to effectively collaborate with CIPA and IPReg, has comprehensive, robust and forward-thinking policies, procedures and processes that remain responsive to its stakeholders, and continues to reflect critically on its progress, allowing practical outcomes from its consultations. In addition, the recommendations made in 2020 have been systematically actioned in annual updates reported to the PEB GB.

Quality assurance improvements have been made to the Foundation Certificate question paper setting process that now includes examiner testing before the first draft is submitted to PEB, and all newly appointed Principal Examiners are now briefed by PEB staff when they first take up the role. Additional marking examiners have been recruited so that examiner allocations can be reduced and marking quality maintained. In addition, communication and consultation with candidates' representatives ('informals') has been improved through regular committee meetings and emails disseminate important information to candidates. Since the review of 2020, policy and procedure documents have been reviewed although there are still some anomalies where policies contain old dates. An Examinations

Coordinator was appointed in November 2022 following a review and upgrading of the previous administrative support role.

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.

The relationships between PEB, CIPA and IPReg continue to strengthen with effective collaboration, particularly in addressing the Mercer Review and the IPReg's Finals Reaccreditation Assessor's Report outcomes that are being actioned by PEB. PEB has made steady progress in the consideration of the recommendations made in both reviews to further enhance the examination process and maintain the good standing of the Patent Attorney profession. The qualification as a whole is undergoing a comprehensive review, starting with the FD4. Recent and current candidates will be asked to trial the specimen FD4 question paper in April/May 2024. Publication of all revised syllabi and specimen assessment materials is planned for September 2024.

Good practice

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

- The quality assurance arrangements adopted for examination paper setting and marking that are robust and have continued to be refined, taking account of feedback from examiners following each examination cycle, and in response to the Mercer Report and the IPReg Assessors Report (paragraph 60).
- PEB continues to remain sensitive to the needs of candidates wishing to sit its examinations and has put in place appropriate arrangements to accommodate individual needs (paragraph 66).
- The detailed response to candidate surveys - clearly indicating the rationale for the actions taken, and how the feedback loop is closed - that is accessible to candidates on the PEB website (paragraph 75).

Recommendations

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

By June 2025:

- explore ways to re-establish the Employer Meeting and ensure future consultation on the changes to syllabi and examinations, thereby improving the quality of support and guidance offered to candidates during their training (paragraph 34).
- revisit the processes in place to ensure that all policies and procedures are reviewed and updated annually, and version control is accurate (paragraphs 36, 67).
- keep under review, the pass rate for the Infringement and Validity (FD4/P6) examination, consider any recommendations from the Mercer Review, and/or candidates for improvement, and implement changes where appropriate (paragraph 42).

Consideration of its annual reports, associated documentation, and meeting with members of the PEB GB confirms PEB's capacity for self-reflection and action planning. Given the progress that it has made, and continues to make, and the successful reaccreditation by

IPReg, it is suggested that the next review should be undertaken in the spring of 2027. This timing will enable implementation of actions taken in response to the Mercer Review of 2021 and IPReg 2022 Recommendations, together with the impact of subsequent changes that PEB may need to implement to its policies, procedures and processes.

Background/context

1 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.

2 CIPA now represents over 2,000 chartered patent attorneys, in industry or in private practice, and has over 3,000 members including trainee patent attorneys and other professionals with an interest in intellectual property matters. Since 2010, CIPA has set up an independent Patent Regulation Board, which acts with the Trade Mark Regulation Board as the Intellectual Property Regulation Board (IPReg) and acts as the regulator of both the patent attorney and the trade mark attorney professions.

3 Established in 2010 by CIPA and the Institute of Trade Mark Attorneys, IPReg is the independent regulatory body for the Patent Attorney and Trade Mark Attorney professions and is regulated by the Legal Services Board. 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.

4 In 2023, PEB commissioned QAA to undertake an external assurance review of PEB's policies, procedures and processes. That review was completed in February 2024 and enables an assessment to be made of PEB's response to the QAA Report, the Mercer Review and the IPReg Assessor's report's Mandatory Requirements and Recommendations. This report includes commentary on the impact and effectiveness of initiatives that PEB has recently, or will in the future, set in train on its policies, procedures and processes. This includes the work of the Examination Committee; the three-year operational planning process; and PEB's developing relationships with candidates, CIPA, IPReg and employers.

About the Patent Examination Board

5 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 managed by an employee of CIPA and uses CIPA's Head of information technology and external accounting firm for much of its systems support and operations.

6 PEB is responsible for organising and managing examinations leading to qualification as a registered patent attorney, and over 1,000 candidates take these examinations in October each year. It carries out its functions, powers and duties through a Governance Board (GB) and Examination Committees (ECs) which report to the GB.

7 The GB consists of five members: three lay members with expertise in the area of education, assessment and examinations; and two members who are qualified patent attorneys. The patent attorney members are not members of CIPA Council. A Chair is elected from the lay members of the GB on an annual basis. The Head of Qualifications is a non-voting member of the GB. The terms of reference of the GB 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.

8 The ECs are chaired by the Chief Examiner and comprise the Chief and Principal Examiners for the Foundation Certificate and Final Diploma, with ex-officio patent attorney and lay members of the GB as appropriate. Marking Examiners, or others with appropriate expertise, may be invited to the EC as required. The remit of the ECs includes: advising on topics requiring examiner expertise and input - for example, syllabi content and assessment specifications, standard setting, developing setting guidelines and review of assessment procedures; responding to feedback - particularly from candidates and professional stakeholders; making recommendations for the development of new qualifications; and ongoing assessment improvement. The ECs' 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 relevant EC.

9 The Head of Qualifications reports to the Chair of the PEB Governance Board and is responsible for the management of the operation of PEB. An Examinations Coordinator was appointed in November 2022 to provide administrative support, and a Qualifications Consultant provides ad-hoc support on a consultancy basis.

The Governance of the Patent Examination Board

Governance Board

10 The Governance Board monitors progress against and reviews the continued relevance of its terms of reference in December of each year. The terms of reference are grouped under four main headings: strategic leadership; monitoring effective and efficient delivery of strategy; quality assurance and risk management; and stakeholder engagement.

11 Members of the PEB Governance Board attend and monitor Examiner Standardisation Meetings and Awarding Committees. The GB receives the monitoring reports of the Standardisation and Awarding meetings. GB members also attend Examination Committee Meetings and the Candidate Consultative Committee (CCC). The Examination Committees provide the route for examiner feedback on quality assurance mechanisms and other assessment-related matters. The Minutes of the Examination Committee Meetings are an agenda item at the subsequent GB meeting.

Patent Examination Board Response to External Reviews

12 The December 2020 QAA External Review report highlighted good practice in PEB's engagement with stakeholders; the maintenance of robust quality assurance systems; and in PEB's arrangements to accommodate individual candidate needs for examinations. PEB has continued to enhance the features of good practice by engaging with stakeholders, maintaining robust quality assurance systems and by accommodating individual candidate needs for examinations.

13 The report also identified six recommendations, to be concluded by June 2021:

- continue to keep its staffing base under review to ensure that the Governance Board, Examination Committees and other key stakeholders are provided with timely, effective and ongoing support
- ensure that a consistent version control and/or date signifier is attributed to all policies and procedures
- keep under review the pass rate for the Infringement and Validity (FD4/P6) examination, implementing any future recommendations by the Mercer Review; in particular, consider what employers want from new entrants to the profession, to ensure that they are 'fit-for-purpose'
- recruit and appoint a Finals External Examiner to oversee the standardisation process at Final Diploma level
- continue to consider action to be taken to address candidates' perceptions about the clarity and fairness of the examination requirements and processes
- consider the mechanism used to respond to candidate surveys, clearly indicating the rationale for the actions taken, and how the feedback loop is closed, ensuring that candidates are cognisant of both.

14 The recommendations made in 2020 have been systematically actioned in annual updates reported to the GB although there is still a need to ensure consistency in the review of its policies and procedures. Improvements have been made to Qualifying Examinations that are now timetabled over two weeks to avoid timetable difficulties for candidates. External examiners have been appointed for the Foundation Certificate (FC) and Final Diploma (FD), and the external examiner reports have been available to candidates on the PEB website since the 2020 examination session. There is also an overarching PEB Feedback report to candidates that was made available on the PEB website from the 2021 session. Further improvements were made to examinations including improvements to the online examinations system (PEBX) in conjunction with PEB contractors, PEB-trained invigilators who invigilate FD examinations via Zoom, and verbal time warnings to candidates towards the examination end time. There is still a need to ensure consistency in the review and updating control of PEB's policies and procedures. PEB has responded constructively to the recommendations made in the previous report as indicated in the Executive Summary of this report.

15 The Mercer Review 2021 made 16 recommendations of which PEB has completed the action for three: the inclusion of professional ethics prior to registration; the length of Final Diploma examinations; and a two-week schedule for examinations. A further 11 actions are in progress and include areas of revision of the syllabi and website, the review of assessment and marking criteria, and an increase in diversity and inclusion in the profession. Two recommendations were considered to be outside of PEB's control or not feasible to implement: early registration of candidates and having two examination sittings a year.

16 The key recommendations made by the Mercer Review include:

- Ensuring that any changes to the training and examination systems increase accessibility, encourage diversity and lead to a fully inclusive profession.
- Creating a level playing field for foundation-level qualifications, while retaining a diversity of routes to this qualification and improving access for all prospective candidates.

- Ensuring that the syllabi and examinations at both Foundation and Finals adequately reflect the skills and knowledge required by a competent patent attorney at registration, but also test a basic knowledge of areas which may not be encountered by all attorneys in day-to-day practice.
- Bringing focus to the examinations to ensure there is no unnecessary overlap of subject matter between exams.
- Providing prospective trainees with better and more accessible information on training and career progression offered by different categories of employers.
- Increasing provision, methods and accessibility of training, but ensuring the outcome is directed to a common standard.
- Providing opportunities for qualified attorneys to expand their areas of expertise in more specialised areas of intellectual property - for example, via voluntary non-examined study modules.
- Continuing to provide Foundation and Finals examinations in electronic format and keeping the length of exams to a reasonable limit.
- Encouraging use of the modular exam system.

17 An operational plan was put in place in December 2023 that covers the recommendations from both IPReg and the Mercer Report. The strategic aims of PEB were stated as:

- the development and delivery of assessments that are valid, reliable and fit-for-purpose
- the provision of clear and accessible information to all stakeholders regarding results and processes
- to ensure, in collaboration with CIPA, the long-term financial and operational sustainability of PEB.

18 Success will be measured through feedback from stakeholders, external and internal reviews of the quality of assessments, and financial and operational performance. PEB is systematically addressing each recommendation and has resolved to carry out a general review of the FC and FD syllabi and assessment methods, develop a project plan, engage with stakeholders, and implement all changes which are determined to be necessary to ensure that assessments are valid, reliable and fit-for-purpose.

19 This work was started in September 2022, following the Middlesex external review (2017) on the FD4 commissioned by IPReg. This research has informed the general curriculum and assessment review. Staff met during the review confirmed that initial work on the FD4 examination had resulted in a new draft syllabus template, written in a standard format of learning outcomes and marking criteria, although the content was not significantly changed other than the elimination of some duplication with other units. The draft specimen marking scheme has been mapped to the learning outcomes and syllabus to ensure that assessment is made clearer to candidates.

20 The review has also considered and reduced the length of the FD4 examination and the framing task, as well as the training and relationship between PEB, CIPA and IPReg. This information will be provided in a revised Programme Specification - currently in draft format - and will be made available to all candidates and other stakeholders. Consultation with stakeholders on the proposed FD4 changes will take place in spring 2024. Depending on the outcomes of that consultation, the model developed for FD4 will be applied, as appropriate, to the other FD units. The revised syllabi will be published in September 2024

with specimen papers for candidates, to prepare them for the first new-style examinations in October 2025. While this will not result in immediate change, it will consider the reports mentioned above as well as feedback from candidates and elsewhere, in this and previous years.

21 Other project plans that were considered from September 2022 to September 2023 include: improvements to the PEB website; the establishment of a finance sub-group of the PEB GB to provide strategic oversight of finances to ensure long-term financial sustainability; the implementation of a structured system for performance review and appraisal of all PEB examiners; promotion of equality, diversity and inclusion in assessments; and to generate and communicate more granular data on candidate examination performance.

22 During September 2023 to September 2024, PEB aims to:

- implement a programme of stakeholder engagement with a particular focus on employers to better inform stakeholders of PEB's activities and to obtain feedback on its performance
- evaluate the online system for the delivery of assessments to ensure that it is optimal
- undertake research on the relationship between examination performance by candidates and the duration of their employment, with the aim of providing information to inform candidate decisions.

Quality assurance and risk management

23 The Governance Board has played an active and key role in monitoring the quality assurance and coordination of the development of PEB qualifications, including assessment materials and the development of online examinations for 2020. Data on candidate characteristics has been collected annually, and guidance and instructions to examiners is reviewed and updated annually.

24 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 report comments, in addition to receiving and considering recommendations from the Examination Committee.

25 Since the last QAA review, PEB has implemented a Candidate Consultative Committee (CCC) that meets twice yearly. It is pleasing to note that there has been an increase in the number of 'informals' attending these meetings since 2021, with eight 'informals' attending in September 2023. Representatives bring feedback to each meeting to discuss with board members, and the PEB GB discuss revisions in policies and processes.

26 There have been six meetings of the Committee since 2021, where a range of issues have been discussed. Some issues were raised about the clarity and conciseness of the information provided in PEB communications. At the time, candidates had noted inconsistencies, poor version control of documents and incomplete iterations of documents. PEB agreed to improve communications in the future. Issues around examinations were discussed including the move to online examinations, invigilation, feedback for borderline failures, and some general concerns about upload times at the end of examinations. A number of improvements have been implemented by PEB in response to CCC comments, including progress to 'trial examinations' through the PEBX system, improvements to the training of invigilators, and clearer instructions to advise candidates of the process for successful uploading of completed examination papers; in progress are discussions concerning appropriate feedback to candidates following borderline failures. The latter may

include the return of marked scripts or the production of a report on failed scripts, but both may incur a fee.

27 The overriding quality assurance issue of 2023-24 was PEB's response to both the Mercer Review and the IPReg Assessors Report. The PEB GB has engaged positively with these reports and has developed a three-year operational plan that incorporates actions from both. In particular, PEB is concentrating on one major activity over the course of the next three years. PEB will carry out a general review of the FC and FD syllabi and assessment methods, develop a project plan, engage with stakeholders, and implement all changes which are determined to be necessary in order to ensure that assessments are valid, reliable and fit-for-purpose.

28 Accounts, budgets, a risk register and an incident log 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, to enable closer scrutiny.

Stakeholder engagement

29 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 (FD4) examination.

30 As discussed above (paragraph 25), PEB has been keen to develop regular discussions with candidates through the CCC. It continues to consult candidates about changes to examination dates, the publication of results and support available to them. It will also consult with candidates on changes to the FC and FD syllabi and assessment methods when available in the first half of 2024.

31 Engagement with CIPA and IPReg has continued in areas of mutual interest particularly since the Mercer Review 2021 - outlined in more detail earlier in this report.

32 A recommendation of the 2017 QAA Assurance Review was that PEB should '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'. In light of this recommendation, a paper was presented to the GB in March 2018 which proposed that the following would be appropriate areas for discussion with employers: the potential impact of Brexit; whether the 'standards' associated with the PEB Qualifying Examinations are considered fit-for-purpose for employment within the profession; the extent to which the 'content' of the PEB Qualifying Examinations is considered fit-for-purpose for employment within the profession; and consideration of the examination fee structure.

33 The paper identified a number of ways that could be used to engage in discussions with employers, including: a bespoke PEB forum - held either within CIPA or at an employer's premises; PEB regional meetings with employers; establishing an online consultation process; and taking advantage of events held by other organisations - for example, CIPA, IPReg and the IP Federation.

34 The GB met employers in November 2018 to discuss syllabus content, support and training for trainees, the rationale for following either the PEB or the higher education Foundation route and early trends. Although both PEB and the employers present agreed that the meeting had been useful, and that opportunities for continued dialogue should be pursued, there have been no further formal meetings. There are employers on the PEB GB and one patent attorney GB member on the Education Committee of CIPA who acts as a conduit for developments, and, in 2020, employers were consulted when work was moved to

online delivery and they have been involved as 'designated contacts' during examinations to help with the upload of scripts at the end of the examination period. It was felt that further consultation should take place following completion of the revisions to the FC and FD syllabi and assessments, later in 2024. Staff attending the review confirmed that, as an iterative process, there will be consultation with employers and students before the revisions are finalised. They also informed the QAA reviewer that there are plans to hold online surveys with employers. The success of these initiatives will need to be assessed in the next review cycle and it is **recommended** that PEB explore ways to re-establish the Employer Meeting and ensure future consultation on the changes to syllabi and examinations, thereby improving the quality of support and guidance offered to candidates during their training.

Patent Examination Board policies and procedures

35 PEB is mandated to present 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 should enable the Governance Board to revise, or otherwise refine, policy reflecting PEB experience and best practice, and remain responsive to stakeholder needs.

36 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 further contact details. In addition, links to policies and procedures that apply to candidates are incorporated within the examination regulations published on the website. There is a link to the annually agreed policies and procedures from the Annual Reports to IPReg, which are also accessible on the website. The policies and procedures scrutinised as part of the review, showed some inconsistency in the control of reviewed documents - particularly where policies had not been reviewed for a number of years. PEB has made significant progress in this area although the Covid pandemic had a major impact on PEB's workload and necessitated prioritisation of the development and delivery of online examinations rather than focusing on tasks that were less essential, in order to protect the interests of candidates. These concerns were noted as part of the QAA External review of 2020 and a recommendation was made as part of the report. It is **recommended** that PEB revisits the processes in place to ensure that all policies and procedures are reviewed and updated annually, and version control is accurate.

37 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. Examiner Setting Instructions and Examiner Marking and Awarding Instructions approved by PEB GB for the 2023 examinations provide comprehensive instructions to all examiners about the quality of marking and setting of individual examinations. Such instructions are valuable in ensuring that all examiners receive current information. External examiners agree that they are a useful aide memoire when carrying out their respective roles as external examiners, but, as mentioned in paragraph 36, there is inconsistency in the annual review and approval of such information. This will be crucial following the review of syllabi and assessments as part of PEB's response to external reviews.

Responsibility for determining awards

38 As previously stated in this report, the Patent Examination Board (PEB) is a committee of the Chartered Institute of Patent Attorneys (CIPA) and can only exist and operate as such. PEB acts independently of CIPA's Council and is fully and separately accountable for its plan of work and activities. PEB comprises a Governance Board (GB) and two Examination

Committees (ECs). The ECs report to the GB. PEB has a Head of Qualifications responsible for management of the operation of PEB. The Head of Qualifications reports to the Chair of the GB. PEB appoints Chief, Principal and Marking Examiners with expertise in the examined subjects as may be required for PEB to satisfactorily administer the requisite patent examinations.

39 The GB 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. It is held four times a year with additional meetings arranged as required. The remit of the Head of Qualifications includes the provision and administration of annual examinations in the field of intellectual property at appropriate times and places, publishing syllabi for each examination with guidance for candidates, providing information for candidates such as eligibility, the examination timetable, examination processes and the appeals procedures, and issuing a certificate of achievement.

40 The ECs comprise the Chief and Principal Examiners in addition to ex-officio patent attorneys and lay members of the GB, as appropriate. Marking examiners, or others with appropriate expertise, may also be invited, as required. The ECs are expected to meet at least once a year and are chaired by the Chief Examiner. The remit of the ECs 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 candidates, and making recommendations for ongoing examination improvement and the development of new qualifications.

41 In both the 2021 and the 2022 sessions, the Foundation Certificate and Final Diploma Award Meetings followed PEB's established procedures as set out in the Marking and Awarding Instructions. During the discussion for each unit, statistical data (mean, standard deviation, distribution and mark range) were considered. In addition to the statistical data, consideration was given to the Principal Examiner's comments and to candidate feedback where appropriate. The Principal Examiners confirmed that all marginal scripts had been reviewed against the relevant Minimum Pass Descriptor. The Award Meetings considered any special consideration requests individually. There were no suspected malpractice cases referred to the Award Meetings. Principal Examiner reports on the examinations are published on the PEB website.

42 There have been three meetings of the Foundation Certificate Examination Committee (FCEC) and Final Diploma Examination Committee (FDEC) since the last QAA review. Topics discussed at meetings included: standard setting, the review of the reconciliation process, 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 and the PEB budget. In 2020, the FDEC committee considered its response to the Mercer Review and began the review process of the Final Diploma Specification. There were also discussions about reducing the number of repeat examinations sitters in FD4 with a suggestion that candidates should be required to delay reattempting for one year. This is a recurring theme across the committee meetings. Since September 2021, detailed discussions have taken place about the embedding of online examinations, the implications of the Mercer Review regarding design copyright law, litigation and IPReg requirements, and use of 'open book' examinations. These discussions are still in progress. It is **recommended** that PEB keeps under review the pass rate for the Infringement and Validity (FD4/P6) examination, consider any recommendations from the Mercer Review, and/or candidates, and implement changes where appropriate.

43 The ECs are now fully embedded within the procedures and processes of PEB and provide a useful forum for Governance Board members and examiners to discuss issues

relating to the further development of PEB's examinations, such as standard setting, marking schemes and a minimum pass descriptor.

Setting examination papers

44 PEB has continued to refine its question paper setting process and has reviewed the assessment methodologies and strategies employed in its examinations to ensure they remain fit-for-purpose. A Finals External Examiner was appointed in 2020 to oversee the standardisation process at the Final Diploma level, in response to the QAA External Review Report 2020. This has given an external perspective which has proven helpful in providing knowledge that is remote from the detail of the examinations. The Principal Examiner interacts with the external examiner and formalisation of the process, and the audit trail is a constructive development that feeds into the overall quality assurance process.

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

- **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 two testers - one experienced and one newly qualified who have answered the draft examination paper in the allotted time and have subsequently reviewed the draft mark scheme. Question paper examination committee meetings, attended by the Principal Examiners and the Chief Examiner, 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. Proofreading 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; proofreading of any amended sections of the final examination paper; and final approval of each final examination paper by the Chief Examiner.

46 For Final Diploma examinations, advice is given to ensure that all the syllabus learning outcomes are covered in each examination. There are separate meetings of Foundation and Finals Principal Examiners together with the Chief Examiner and a patent attorney Governance Board member to evaluate all papers alongside feedback from testers. Testers (normally two - one recently qualified patent attorney and one more experienced) sit the paper, blind of the mark scheme, following which they review their answers in light of the mark scheme. As a result of discussion at the meeting and feedback from testers, amendments may be made to the questions and associated mark schemes.

47 Prior to examinations being held, examiners are issued with Marking and Awarding Instructions; there are separate documents for Foundation and Finals examiners. These documents outline the duties of examiners and include information on standardisation of marking, marks reconciliation and the Awarding meeting.

Marking examination papers

48 Following the examination, each Principal Examiner selects five scripts for standardisation marking. All Marking Examiners are then required to mark these papers and submit their marks prior to a Standardisation meeting (separate meetings are held for each

exam). Examiners are requested to mark up to five additional scripts which may be included in discussion at the meeting. Standardisation meetings include the Principal Examiner, all Marking Examiners, a patent attorney and lay member of the Governance Board. At the standardisation meeting, the marks awarded to the standardisation scripts by all examiners are reviewed and differences discussed. The outcome of such discussion is to define an agreed approach to marking questions or sections, which may require amendments to the mark scheme. Examiners may raise issues arising from the marking of any additional scripts, particularly if they raise questions about a candidate who has used a different approach that was not anticipated in the mark scheme. Decisions will be taken as to whether such an approach is valid and should be included in the mark scheme. Following the Standardisation meeting, the Principal Examiner finalises the mark scheme and forwards it to PEB, who issues it to all examiners for marking all scripts. Scripts considered at the standardisation meeting are remarked in light of the final mark scheme.

49 Finals Examiners are allocated their proportion of scripts and set a deadline for submission of marks. New examiners receive a smaller allocation of scripts compared to experienced examiners and a selection of their marked scripts is reviewed by the Principal Examiner. All their other scripts are marked by an experience examiner. Final Diploma papers are blind double-marked. Normally, all Foundation scripts are marked by the Principal Examiner as candidate numbers are low. For both Foundation and Finals examinations, the pass mark is 50 or 50% in exceptions when the mark scheme total is not 100.

50 There is a rigorous process for marks reconciliation at Final Diploma level:

- calculation of the mean mark for the script
- where a script has been awarded one pass mark and one fail mark, Marking Examiners agree a pair of marks that are both either Fail or Pass
- where marks differ by more than the 11 marks allowed, Marking Examiners agree on a pair of marks that differ by less than the allowed number
- if, after this process has taken place, the two original Marking Examiners still cannot reconcile their marks, the script is marked by a third examiner (the Principal Examiner if they have not already marked the script)
- the mean of the two passes or the mean of the two fail marks is then awarded
- where there are three marks, the result awarded to the candidate will be: a pass when two of the three Marking Examiners have awarded a pass, and a fail when two of the three Marking Examiners have awarded a fail
- every script where one mark, or the reconciled mark, falls within the 47-49 range is reviewed after reconciliation by the Principal Examiner using the Minimum Pass Descriptor; FDEC 2022 reported that reconciliation had worked well in 2022.

51 There were no significant changes to the assessment quality assurance processes issued to examiners for the marking of examination papers in 2023. However, the importance of compliance with data protection regulations throughout the examination process was highlighted to Principal and Marking Examiners. In addition, in 2020, an updated document - 'How qualifying examinations are marked' - was provided for candidates on the website with information on the procedures involved in marking their scripts, to allay concerns expressed by some candidates about the lack of transparency and/or rigour and fairness in setting, marking and awarding processes.

52 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 a performance review of the services provided by each examiner by the Principal Examiner. The review takes account of their adherence to deadlines and to examiner instructions, including marking protocols and annotation adherence. Operational decisions relating to examiners are taken by the PEB Head of Qualifications.

53 The quality of marking model involves the following:

- **Pre-marking:** The recruitment and selection of examiners; training of examiners; and instructions for examiners.
- **Marking:** The standardisation of examiner marking; finalising the provisional mark scheme; and the monitoring and supervision of examiner marking, including checking a minimum of three post-standardisation marked scripts.
- **Post-marking:** The awarding process and the quality of assurance of examiners process.

54 The Principal/Marking Examiner(s) and the Chief Examiner attend standardisation meetings. The standardisation meeting is led by the Principal Examiner and the Chief Examiner attends to ensure that the standard is consistent across all units at that level. These meetings are attended by a member of the Governance Board.

55 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.

56 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).

57 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 and report to the PEB GB lay member on progress.

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

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

60 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, and in response to the Mercer Report and the IPReg Assessors Report. This is considered to be **good practice**. Consideration of a sample of marked examination scripts indicates that examiners are adhering to marking expectations.

Complaints, appeals, special consideration, reasonable adjustments

61 The PEB Customer Feedback Policy states that PEB welcomes comments from those who are dissatisfied with any aspect of the service quality received, or who have feedback or suggestions for improvement. PEB considers all complaints, feedback and suggestions seriously. Complaints are handled in accordance with working instructions which mirror the published PEB Customer Feedback Policy.

62 The number of formal complaints has reduced over the past three examination sessions. In 2020-21, there were six complaints; three in 2021-22; and only one complaint in 2022-23. The majority of complaints were in relation to question papers or marking results (four) with single complaints about technical issues such as PEBX, the ProctorExam and Zoom, invigilators and PEB communications.

63 The reduction in the number of complaints overall is considered by PEB to be due to a number of factors:

- the rapid development of online examination and invigilation systems and the supporting processes in 2020 as a response to the Covid pandemic; systems have become embedded and adjustments made in light of feedback from students
- candidates have become more familiar with the online invigilation and examinations systems
- changes to question papers, particularly FD4, have made them more accessible for candidates.

It is confirmed that PEB gives due consideration to all complaints and has responded to complaints in line with its Customer Feedback Policy, and currently has had no appeals.

64 The trend between 2014 and 2020 had been a steady increase in the percentage of unit entries where Reasonable Adjustments were applied. However, there was a small percentage fall from 6% in 2020 to below 5% in 2021, and then a small percentage increase to just over 5% in 2022. The percentages of candidates in 2020 and in 2021, whose applications for Reasonable Adjustments were approved, was slightly higher than the figures for those who self-reported as disabled in the Candidate Survey.

65 In the 2021 and 2022 sessions, as in 2020, the change to online examinations meant that there was no need for candidates to request the use of a computer (and/or certain forms of computer-assistive technology). The majority of requests were for 'Extra Time' (36) and/or 'Supervised Rest Breaks' (five), and a variety of 'Other' requests were approved, including adjustable/standing tables, colour overlays and ear plugs. A small number of candidates, for varied medical reasons, made requests around the need to use the toilet frequently. These were approved and, where appropriate, invigilators notified.

66 There were no requests for handwriting as a Reasonable Adjustment in 2021 or 2022 instead of using a computer to produce answers. PEB continues to remain sensitive to the needs of candidates wishing to sit its examinations and has put in place appropriate arrangements to accommodate individual needs. This is considered to be **good practice**.

Candidate support and communication

67 The 2020 QAA review report commended PEB on the sensitive way it responded to the needs of candidates wishing to sit its examinations by ensuring appropriate arrangements were in place to accommodate individual needs. The report also made the following recommendations related to candidate support and communications:

- ensure that a consistent version control and/or date signifier is attributed to all policies and procedures
- continue to consider action to be taken to address candidates' perceptions about the clarity and fairness of the examination requirements and processes
- consider the mechanism used to respond to candidate surveys, clearly indicating the rationale for the actions taken, and how the feedback loop is closed, ensuring that candidates are cognisant of both.

As highlighted earlier in this report (paragraph 36), there is still a need to keep under review the processes to ensure that all policies and procedures are annually reviewed and updated, and that version control is accurate.

68 PEB issues its annual Candidate Survey to Qualifying Examination candidates immediately after the examination session. The Reports on the Candidate Survey are published on the website together with PEB's formal responses.

69 In the surveys of 2022, candidates were positive about the clear improvements made to some aspects of the assessment process, with one commenting: 'Would not change anything next year. Everything worked well.' The most marked improvements were in the technical arrangements for the assessments, with both ProctorExam and Zoom being more highly rated than the invigilation system used in 2021.

70 However, many candidates suggested that, while the manner in which the assessments had been dealt with was better than in previous years, there were still some areas of concern and room for improvement. Concerns covered a wide range of areas including invigilation arrangements: more clarity regarding the examination room, use of Zoom in the mock examination, better training for invigilators so that they can respond to candidate questions, use of multiple screens and issues with uploading at the end of the examination. PEB has reminded candidates that many of the issues raised are clarified in 'Instructions to Candidates' documents provided prior to examinations, and that all invigilators are provided with training as close to the examination period as possible.

71 There were also a number of issues raised by candidates concerning communication with PEB and CIPA, such as: a more efficient way of signing up for examinations; the perception that a faster response was needed from PEB on the day of the examination in response to emergency situations; shorter and more concise instructions; and improvement in the tone of email communications. Some of the concerns raised are out of the control of PEB, such as signing up for examinations, and other issues have been discussed and resolved at the CCC.

72 Some technical issues were raised, including: an audible timer warning; a reminder to candidates to refresh the page before it times out; and the compatibility of PEBX with systems such as Windows and Mac. PEB has responded to these and reiterated that most of the information being requested was included in the Technical Requirements documents 2022 but that the issues were being discussed as part of PEB's response to external reports.

73 Candidates suggested a number of improvements that could be made to examinations. These covered areas such as improving the consistency of formatting between papers, open book examinations, return of individually marked scripts for a fee, ensuring that question paper content is accessible to all candidates irrespective of their subject background, less focus on European Law, more fundamental revisions to the FD4 paper. Many of these are being actively discussed and actioned as part of the Operating Plan 2022-25 and students will be consulted on the changes before implementation. The next external review will assess how well the changes have been received and implemented.

74 PEB provided a detailed response to each of the issues raised and has discussed the survey results with candidates at the CCC. Many of the issues raised are being discussed as part of the Operating Plan 2022-25 that is considering the recommendations of the Mercer review and the IPReg Assessor Report; candidate satisfaction with PEB's response and any subsequent changes will need to be monitored as part of the next review.

75 Feedback on the examination support provided by PEB is gathered through the Annual Candidate Survey. The Survey Report following the 2022 examinations showed that candidates overwhelmingly ranked past question papers as the most useful form of support. This was followed by the provision of marking schemes, examiner reports, and model answers (FD4 only) and sample pass scripts. As part of the Implementation Plan for meeting IPReg's Requirements for Accreditation of the Final Diploma, PEB began a process of consultation with the 'Informals' at the June 2023 meeting of the Candidate Consultative Committee. The Informals undertook to carry out a survey with candidates to establish what additional forms of support they would wish PEB to provide. The detailed response to candidate surveys - clearly indicating the rationale for the actions taken and how the feedback loop is closed - that is accessible to candidates on the PEB website, is considered to be **good practice**.