

Patent Examination Board (PEB)

Self-assessment report 2018-2019

July 2019

PEB

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Foreword

This is the fifth annual report of the Patent Examination Board (PEB). The 2016 report highlighted three main challenges that the PEB faced. These were its financial position, the infrastructure support for the PEB provided by CIPA, and the accreditation requirements published by IPReg.

The PEB must be financially viable if it is to continue offering qualifications. The action taken, to increase examination fees year on year by 20% for both the 2017 and the 2018 examinations, assured PEB's financial security for the foreseeable future. The 3.3% fee increases from 2019 examinations onwards is intended to maintain our financial stability, whilst investing in quality and candidate support.

PEB has continued to worked closely with IPReg on new Foundation Certificate accreditation requirements, and details of progress are in this report on page 11 under 'Foundation Accreditation'.

In June 2017 the PEB was subject to its second Qualifications Assurance Agency External Assurance visit, the report of which is published [here](#). PEB reported to IPReg on progress in June 2018, before publishing progress on the recommendations.

The PEB Governance Board (GB) held a Strategy Day in August 2018, when it was determined that the PEB should focus on identifying and agreeing strategic priorities and associated actions that would form the basis of a three-year operational plan. The issue of quality of assessment will remain a PEB focus in 2019-2020.

The PEB continued to work on the suggestions in the FD4 Research project conducted by Middlesex University in conjunction with IPReg, CIPA and the PEB. The FD4 Study Guide was edited and updated by an examiner for the 2018 examinations. However, the 2018 Awarding process established that there was an issue with the FD4 question paper and mark scheme and, exceptionally, the Award meeting reduced the FD4 pass mark by 3 marks. Details of this issue and the subsequent PEB responses are included in the section on Incidents on page 8.

Following adverse publicity surrounding FD4, CIPA Council considered the issue at length as well as the education and assessment of patent attorney students in general. Council resolved that, through the CIPA Education Committee, CIPA would lead a review of the training, support and assessment of students, including consideration of best practice in other professions where appropriate.

PEB GB will work with IPReg, CIPA, the CIPA Education Committee and stakeholders to develop the examination system to ensure that it produces patent attorneys with the requisite knowledge, skills and abilities.

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Robert Taylor, who had been chair of the PEB since its inception in 2014, departed at the end of 2018. In December 2018 Damian Day joined the GB as a lay member.

Michael S. Yates

Michael Yates, Chair of the PEB Governance Board

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Purpose of this report

It is a requirement of the PEB Constitution that it produces an annual self-assessment report. This report is intended to provide information to all interested stakeholders, including the PEB Governance Board, the PEB Examiners, CIPA, IPReg and candidates about the status and conduct of the PEB and its ability to discharge satisfactorily its responsibilities to conduct examinations which are fit for purpose, reliable and valid.

Summary

The report covers the period 1 April 2018 to 31 March 2019 and relates to all examinations and related activities for the period.

Previous reports had indicated a continuing steady state as the PEB's published policies, procedures and instructions became embedded with examiners, invigilators and candidates. The 2018 examination session, unfortunately, caused significant disruption both to that progress and to the standing of PEB and CIPA within the profession.

Operations and staffing: The Head of Education retired in December 2018. The Qualifications Manager was appointed to the post of Head of Qualifications. The Qualifications Consultant agreed to take on some tasks previously within the Head of Education's responsibilities. It was not possible to fill the role of PEB administrator on a permanent basis.

Foundation Accreditation: PEB submitted documentation to IPReg in January 2019 to confirm implementation of the Required Measure and Recommendations in line with the agreed schedule.

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Constitutional matters

The PEB published its Constitution in March 2017. This has remained unchanged during this period. During 2018 the PEB GB decided to publish both its own Terms of Reference and those of the PEB Examinations Committee. All three documents can be found [here](#).

PEB Governance Board

The GB met formally as follows:

13 June 2018;
9 July 2018 (by teleconference);
25 September 2018
12 December 2018;
27 March 2019.

It held a Strategy Day on 8 August 2018 to focus on identifying and agreeing strategic priorities (and associated actions) that would form the basis of a three-year operational plan for the PEB.

All the meetings were quorate. An agenda with standing items is used at all formal meetings with other items being added as required, and in accordance with the updated (January 2018) approval and reporting schedule which can be viewed [here](#).

Dr Robert Taylor, who had acted as Chair since the PEB GB's inception, resigned at the end of 2018. Dr Michael Yates took on the role of Chair at the December 2018 meeting. Damian Day was appointed as lay member to replace Dr Taylor. There were no other changes.

The GB appointments and reappointments policy and a performance review procedure makes clear the processes to be followed in order that the requirements of the constitution should be met consistently, and all necessary performance reviews were carried out during the year.

During 2019 and 2020 two of the five GB members' terms of office (one lay and one patent attorney) are due to cease in accordance with the constitution. David Amos has been appointed to replace Hilary Maxwell-Hyslop. In order to manage the transition both Ms Maxwell-Hyslop and Mr Amos will attend the June, September and December 2019 meetings.

GB Terms of Reference (ToR)

These were revised, updated and published in December 2017. The purpose of the revision was to create terms of reference at a higher level since, as explained in the 2017-2018 report, it is intended that the three year business plan, not the terms of reference, will provide the objectives against which the PEB measures its performance.

At its August 2018 Strategy Day the PEB identified key priorities for further work. These priorities were further refined at its second strategic planning day in September 2018, with the aim of translating these into a three year operational [plan](#) during 2018-2019.

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Examination Committee

The Foundation Certificate and Final Diploma Examination Committees both met in February 2019 following the Award meetings.

The Quality Assurance Agency (QAA) Report

It is a requirement of IPReg accreditation of the PEB that the PEB is quality assured by the QAA. The QAA reported following visits and in June 2015 and May 2017. The report arising from this second visit and the recommendations (p.2) can be found [here](#). The GB reported to IPReg on its progress on actions in June 2018. The report recommended the next visit be in 2020.

Financial matters

The PEB's Budgetary Policy (January 2018) requires PEB to establish a Reserve to ensure the financial independence of the PEB and continuity of funding. PEB recognises that sudden, large increases in examination fees could penalise candidates in the short term and will therefore accumulate a reserve over a minimum period of five years.

Following operating losses in 2015-2016, the GB agreed with CIPA and IPReg, two consecutive year on year 20% fee increases in both 2017 and 2018. The operating surpluses generated in the financial years 2016-2017, 2017-2018 and 2018-2019 have formed the basis of the PEB accumulating reserves in accordance with its Budgetary Policy.

The 2019-2020 forecast budgets for the Qualifying Examinations and Introductory Certificate in Patent Administration (ICPA) are Appendix A of this report.

CIPA is again not offering its Litigation Skills Course in 2019, and so the PEB has not created a forecast budget for delivering the related examinations.

Reporting and approvals

As part of its routine approvals schedule, and in order to meet IPReg's requirements for re-accreditation of the Foundation Certificate, PEB reviewed all its policies and procedures for 2019 examinations. In order to meet an IPReg Recommendation relating to Foundation accreditation, the Enquiries about Results Policy was labelled so that it would clear to candidates that it covered appeals. These were published in February and March 2019 [here](#).

Complaints report

The complaints report is submitted to the GB in March of each year. Complaints are handled in accordance with working instructions which mirror the published PEB Customer Feedback Policy.

Whilst the number of formal complaints received in the year was again low, PEB received an unprecedented amount of adverse criticism via email concerning the FD4 issue and, to lesser extent, about the IPAC pass mark and pass rate. Responses were made in all cases.

Three cases were handled as formal complaints. They were:

- a series of emails and letter about the ICPA pass mark from a patent attorney who had mentored a candidate;
- a letter from a patent attorney about the ICPA pass mark;
- a series of emails from an FD2 candidate about the mark scheme.

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Enquiries about Results (EAR) received and processed with outcomes

2018				2017			2016	
	Stage 1	Stage 2	Stage 3	Stage 1	Stage 2	Stage 3	Stage 1	Stage 2
QEs	47	40	3 (FD4)	16	14	1	15	7
Changed results	0	5 (4 FD4 and 1 FD1)	0	0	2 changed to Pass	0	0	1 changed to Pass
ICPA	6	3	0	5	0	0	0	0
Changed results	0	2 changed to Pass	n/a	0	n/a	n/a	n/a	n/a
Totals	53	43	3	21	14	1	15	7

Subject Access Requests

As at mid-May 2019, 15 candidates had submitted requests for examiner annotations on their scripts in relation to the 2018 Qualifying Examination. Two candidates made requests in respect of FD2, FD3 and FD4. One request related to FD2 only and all other requests to FD4 only. The total of 19 requests was a significant increase on the two requests that follow the 2017 examinations. Three of these candidates also made Subject Access Requests specifically for copies of notes, emails or correspondence between examiners about their scripts.

Status of PEB working instructions

There are now 53 working instructions which cover the work of the PEB. There were only minor changes to working instructions in the year.

Reasonable adjustments granted

19 candidates requested Reasonable Adjustments for Qualifying Examinations and one for ICPA. A report comparing adjustments requested and granted in 2018 with previous years is at Appendix C.

Invigilators

The pool of invigilators was relatively stable in 2018-2019 with the majority having previously invigilated. Invigilators were issued with instructions. All invigilators for Qualifying Examinations took part in a training teleconference. There were only minor changes to the ICPA Instructions for Invigilator, so ICPA invigilators were not required to participate in training.

All examinations were fully staffed, and lead invigilators at each venue submitted a report on each examination within 24 hours of the examination.

Matters arising from these reports were compiled and actioned where appropriate. There were none that required consideration at Award meetings.

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Quality of assessment

There were no significant changes to the assessment quality assurance processes issued to examiners in the Instructions for the Setting of Examination papers and mark schemes and the Instructions for Marking and Awarding for either Qualifying Examinations or for ICPA. However a number of unprecedented issues arose with the potential to impact on assessment quality.

FC4: Additional marking checks were put in place. The CE reviewed all scripts and accurate results were issued.

FC5 contained a question that was identified, following the examination, as being beyond the syllabus. This was discounted from marking and all candidates marks scaled appropriately. Additional checks were made on scripts immediately below the pass boundary. The statistics in Appendix B of this report indicate that candidates were not disadvantaged as a result of the question paper error.

FD4: the Student Survey contained a greater number of adverse comments on this question paper than normal. However, it was not until the Awarding statistics were considered that it was established that the question paper constituted a greater challenge than expected. Accordingly the Award meeting decided that the pass mark should be reduced by 3 marks and additional checks should be made on scripts just below the pass mark. PEB issued a statement to candidates before results were published and a follow-up statement in response to considerable subsequent criticism.

Results and pass rates

Results were issued on the published dates.

The Qualifying Examination pass rates were generally in line with previous years. However there were serious concerns about the FD4 pass rate which, at 33.8%, was at an all time low, even after the pass mark had been reduced by 3 marks.

The ICPA pass rate boundary was higher than previous years and the pass rate at 55% was the lowest ever.

The Examiners' [reports](#) provided further information.

Appendix B of this Self-Assessment Report contains the examination statistics.

Incidents

There were 17 incidents logged for the period. This compares with three in 2014-15 and three in 2015-2016, 16 in 2016-2017 and 12 in 2017-2018. 10 incidents were directly related to problems with running examinations. Other incidents related to the FC4, FC5 and FD4 issues discussed in this report.

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Risk Register

The PEB risk register is updated and reviewed quarterly. It remains in the format published in the [2015 version](#) of this report.

A number of risk factors at the end of this year were linked to the IPAC, FD4, FC4 and FC5 issues, and the additional workload resulting from these issues.

Quality and status of examiners

The 2018 examinations were fully resourced with examiners.

There was a new Principal Examiner for Foundation FC4. A new Principal Examiner will again be in place for the 2019 session.

All other Principal Examiners were experienced.

As usual there were some new examiners marking the Final Diploma, particularly for FD4. These new FD4 examiners attended a training session and underwent the usual standardisation and supervision process. In accordance with procedure, where a candidate's script was allocated for marking to a new examiner, the second marker was a more experienced examiner.

One FD4 examiner resigned and a second will not be invited to mark again.

The two Principal Examiners for ICPA were unchanged. Sufficient ICPA examiners were successfully recruited and trained.

All examiners were issued with comprehensive marking instructions, and were subject to performance appraisal via a quality assurance report completed by the supervising examiner.

Examination Entries

Entries for Qualifying Examinations were slightly lower than for 2017. Appendix A of this Self Assessment Report contains the QE entry figures with 2017 as a comparison.

The ICPA examination entry saw a 9% increase from 161 to 176. .

Student survey

The PEB issued its annual Student Survey to Qualifying Examination candidates after the 2018 examinations.

The 2018 report is published [here](#). The PEB's response is on the same page.

Syllabus review

There were no significant changes to the syllabuses for ICPA or Qualifying Examinations Final Diploma syllabuses in 2018.

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The Foundation syllabuses were amended in January 2019 to meet IPReg requirements as set out in the [Accreditation Handbook](#). Amendments included reference to: QAA Credits of Study and Level 6 benchmarking; content mapping to IPReg's Schedule A and Schedule B subjects and skills; the Minimum Competence Standard required for a Pass; and the Foundation Programme Specification.

Foundation Accreditation

The PEB's request for accreditation to deliver the Foundation Certificate examinations was submitted in September 2017, with the expectation of accreditation being granted for the 2018 Foundation Certificate examinations. The process was delayed, because of the original IPReg assessor's incapacity. The process re-started in May 2018 and the replacement Assessor visited PEB in April 2018.

The IPReg Assessor's report was finalised in July 2018. It identified a number of areas of good practice and set out a Required Measure and Recommendations. Following discussions between PEB and IPReg, IPReg advised PEB that delivery of the implementation plan would not be subject to intensive oversight although PEB should notify IPReg when it considered the Required Measure had been met.

In January 2019 PEB forwarded its response to the Required Measure and the Recommendations to IPReg. PEB notified IPReg that it considered the Required Measure would be met by implementation of specific recommendations for the 2019 examinations. A timetable for implementation of the remaining Recommendations was also provided.

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**Appendix A PEB Qualifying Examinations and IPAC Forecast Operating Budget April
2019 – March 2020**

PEB Qualifying Examinations Forecast Operating Budget from April 2019 - March 2020	Forecast 2016	Forecast 2019-2020	Assumptions and comment	2017-2018 figures based on March 2018 accounts updated June 2018 Actual 2017- 2018	GB meeting rate
Entries and Price					
No.Foundation entries		266	Based on average of 2017 & 2018	286	RPI (Sep 2018)fact or
Charge per Foundation paper (unit)		298	Increase by RPI Sep 2018	288	
No.Finals entries		788	Based on average of 2017 & 2018	753	
Charge per Finals paper		446	Increase by RPI Sep 2018	432	
No. international entries		15	Based on historical average numbers	14	
International premium		310	Increase by RPI Sep 2018	300	
Income					
Foundation Examinations		79268		59040	
Finals Examinations		351448		289800	
International premium		4650	15 candidates	4720	
Exemptions Fee		0	Based on 2017 actual	0	
Exam cancellation fees		1200	Based on 2017 actual	1134	
Late Entry Fees		0	Based on 2017 - 2018	0	
EARs		6000	Based on 2017 - 2018	6020	
Total income		442566		£360,714	
Expenditure					
Examiner Fees		159,112	See QE exam fees tab	135933	
Examiner Expenses		16,500	See QE exam fees tab	15326	

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GB Fees	35,820	15 days for 6 members (6 members to deal with succession planning)	24774	398	Increase in 2018 rate (£385) by RPI (3.3%)
GB Expenses	6500	Based on 2017-2018	4591		
Exam Logistics	34735	5% increase on 2018-2019 budget			
Typing scripts	4387	5% increase on 2018-2019 budget			
Return of marks breakdown	4200	5% increase on 2018-2019 budget			
Invigilation	8,000	Based on 2017 - 2018	7885		
Invigilation expenses	1,800	Based on 2017 - 2018	1644		
Printing	1500	Based on 2017 - 2018	1290		
Courier	850	Based on 2017 - 2018	749		
Exam venues	30000	Estimate of 2019-2020 costs	26777	2018 costs	
R&D	10,000		899		
Bank Charges	250	Based on 2017 - 2018	207		
External Review Costs	5000				
Payroll and consultant costs (incl. NI& pensions)	32812	5% increase on 2018-2019 budget	26644		It is assumed that any consultant cost is funded by CIPA
Misc.	5000	Based on 2017 - 2018	4244		
Irrecoverable VAT	9000	Based on 2017 actual	8257		
Website upgrade	0	Not applicable			
Fee to British Council	2700	Based on 2017 - 2018	2502		
Contribution to surplus	40000	Aim to achieve budget surplus of 200,000 in 5 Years			
Total Expenditure	408,166		315658		
Balance	34,400				

Appendix B Pass Rates

2018 Qualifying Examinations

Year	2018	2017	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005
Foundation Certificate														
FC1 (P1)	85.20%	86.00%	93.61%	90.91%	90.32%	94.44%	73.53%	89.47%	89.47%	82.76%	100.00%	84.00%	89.29%	84.00%
FC2 (Law)	88.46%	89.36%	80.95%	95.45%	91.89%	85.71%	88.24%	90.00%	68.00%	61.70%	61.54%	69.44%	71.11%	65.22%
FC3 (P5)	82.00%	88.00%	87.18%	94.00%	83.78%	82.86%	78.13%	85.71%	75.00%	93.10%	93.75%	80.65%	86.67%	86.67%
FC4 (D&C)	72.13%	64.81%	73.68%	76.00%	69.23%	75.68%	81.82%	65.63%	70.27%	64.86%	47.27%	68.33%	69.09%	84.21%
FC5 (P7)	69.39%	80.95%	91.30%	94.76%	94.70%	88.89%	96.15%	86.21%	83.33%					
Final Diploma														
FD1 (P2)	60.98%	48.12%	47.95	57.79%	67.79%	54.65%	48.85%	52.17%	54.17%	50.62%	66.51%	59.72%	51.53%	51.08%
FD2 (P3)	53.78%	34.23%	33.07	44.86%	50.89%	58.88%	53.54%	51.30%	45.35%	60.33%	55.56%	44.14%	50.36%	51.77%
FD3 (P4)	72.97%	57.48%	58.82	60.78%	60.19%	68.63%	62.50%	57.28%	55.81%	65.35%	39.34%	57.01%	44.78%	50.34%
FD4 (P6)	33.80%	41.20%	41.73	38.81%	41.62%	43.61%	36.45%	42.92%	54.21%	39.17%	40.87%	55.69%	46.40%	44.40%

Paper		FC1	FC2	FC3	FC4	FC5	FD1	FD2	FD3	FD4	Total
Total number of candidates	2017	50	47	52	55	42	243	149	128	301	1067
	2018	54	52	55	61	49	246	119	111	266	1013

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2019 ICPA

Pass rates 2016 – 2019				
Year	2019	2018	2017	2016
ICPA	55.00%	78.99%	79.00%	89.29%

2019 Grade boundaries and percentage in grade		
Grade awarded	Grade Boundaries	Percentage in grade
Pass	79-91%	36%
Merit	93-95%	11%
Distinction	96-100%	8%
Total number of candidates		176
Total pass %		55%

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Appendix C Reasonable Adjustments

Examination	Adjustment granted	2014 QE	2015 QE	2016 QE	2017 QE	2018 QE	LSC 2015- 2017	2015 ICPA	2016 ICPA	2017 ICPA	2018 ICPA
Foundation Certificate	Extra time	5	5	0	0	5					
	Laptop	0	0	0	0	5					
Final Diploma	Extra time	11	12	17	21	12					
	Laptop	4	8	4	5	4					
	Extra time and laptop				12	6					
	Coloured lenses/overlay/paper/modified print	3	4	1	0	0					
	Supervised Rest Breaks	0	4	1	0	0					
	Other	0	3	0	0	2					
ICPA	Laptop						0	0	0	0	0
	Extra time						0	1	0	3	1
LSC	Any						1				
Total number of requests		23	36	23	38	34	1	1	0	3	1
Total number of candidates making the requests		9	13	21	17	18	1	1	0	3	1
Requests as percentage of total examination entries		3%	4%	2%	4%	3%	7%	1%	0	2%	0.5%