



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

**A Review Commissioned by the  
the Patent Examination Board**

**December 2020**

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## 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, completed in June 2015, suggested that a two-year review period was appropriate. Consequently, a second external assurance review took place in April 2017. The third external assurance review of the policies, procedures and processes adopted by the PEB took place on 8 December 2020 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 2017 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.

Following adverse publicity surrounding the 2018 FD4 examination, CIPA Council considered this specific issue, as well as the education and assessment of Patent Attorney students in general. Council resolved that, through the CIPA Education Committee, CIPA would lead the Mercer Review: a review of the training, support and assessment of trainees, including consideration of best practice in other professions where appropriate. The PEB Governance Board (PEB GB) submitted a detailed response to the Call for Evidence issued by the Mercer Review. The review is ongoing with no clear indication of publication of its findings. Some actions planned by the PEB have been delayed until the Mercer Review is completed and its outcomes published.

The 2017 external assurance review report commented on the progress made by PEB since the 2015 review and confirmed that it had continued to develop its policies, procedures and processes to reflect emerging needs and best practice. Established systems had bedded down as their value had come to be recognised and the relationships between PEB, CIPA and the Intellectual Property Regulation Board (IPReg) had led to effective collaboration. This review confirms that PEB has robust, straightforward and transparent policies, procedures and processes, remains responsive to its stakeholders, and continues to reflect critically on its progress.

PEB GB members have worked well together to strengthen its policies and procedures over the past two years. It is a compact board that utilises individual strengths, based on their expertise (in the Patent Attorney profession, higher education, examination and assessment), in the further development of PEB's activities. This has been demonstrated during 2020 in its response to the COVID-19 pandemic that required PEB to adapt its 2020 examinations to an online format. It achieved this in 16 weeks. The GB is supported by a small administrative team, led by CIPA's Head of Qualifications, and its actions have been well received by both candidates and stakeholders. As the report indicates, the GB considers finance at its quarterly meetings and with that its staffing and supporting administration. There are less staff than at the last review but there is still a sense of stability and the GB confirmed that they are in a process of negotiation with CIPA to employ one half-time administrator to ensure efficient and effective support to the board and committees.

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 have strengthened and are leading to effective collaboration, particularly through the Mercer Review being conducted by the CIPA Education Committee. Whilst it is not possible at this stage to forecast the findings of the review, PEB is ready to consider its proposals to further enhance the examination process and maintain the 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 PEB has engaged with stakeholders that provides an opportunity to further enhance the selection, training and examination of candidates [paragraph 17].
- The action taken by the Head of Qualifications not to renew the contract of an examiner found to display inadequate marking [paragraph 38].
- The robust quality assurance arrangements adopted for examination paper setting and marking that have continued to be refined, taking account of feedback from examiners following each examination [paragraph 47].
- The sensitive way PEB responds to the needs of candidates wishing to sit its examinations by ensuring appropriate arrangements are in place to accommodate individual needs [paragraph 49].

## Recommendations

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

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 [paragraph 15]
- ensure that a consistent version control and/or date signifier is attributed to all policies and procedures [paragraph 20]
- 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 of new entrants to the profession, to ensure that they are 'fit-for-purpose' [paragraph 27]
- recruit and appoint a Finals External Examiner to oversee the standardisation process at Final Diploma level [paragraph 30]
- continue to consider action to be taken to address candidates' perceptions about the clarity and fairness of the examination requirements and processes [paragraph 66]
- 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 [paragraph 67].

Consideration of the self-assessment reports for the previous three years, and associated documentation, confirm PEB's capacity for self-reflection and action planning. Given the progress that it has made, and continues to make, and the successful re-accreditation by

IPReg, it is suggested that the next review should be undertaken in the Spring of 2023. This timing will enable an assessment to be made of the Mercer Review and 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 2,500 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. Since 2010 CIPA has been the “Approved Regulator” for the patent attorney profession, but it has been required to separate the regulatory functions from the representative functions. It has done this by setting up an independent Patent Regulation Board, which acts with the Trade Mark Regulation Board (similarly set up by the Institute of Trade Mark Attorneys) as the Intellectual Property Regulation Board (IPReg) as the regulator of both the patent attorney and the trade mark attorney professions.

3 Established in 2010 by CIPA and ITMA, 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 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.

5 In 2017, CIPA commissioned QAA to undertake an external assurance review of PEB's policies, procedures and processes. That review was completed in June 2017. Given the progress that had been made and the imminent re-accreditation by IPReg it was suggested that the next review should take place in 2020. The timing would enable an assessment to be made of the impact and effectiveness of initiatives that PEB had recently, or would shortly, set in train on its policies, procedures and processes. Those included the newly established Examination Committee; the three-year business planning process; and PEB's developing relationships with candidates, CIPA, IPReg, and employers.

## About the Patent Examination Board

6 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.

7 PEB is responsible for organising and managing examinations leading to qualification as a registered patent attorney and approximately 1,000 candidates take these examinations in October each year.

8 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, 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.

9 The remit of the Examination Committees (EC's) 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 recommending ongoing examination improvements and the development of new qualifications. Examination Committees are chaired by the Chief Examiner and, as appropriate, comprise Chief and Principal Examiners for the Foundation Certificate and Final Diploma, ex-officio patent attorney and lay members of the GB, and Marking Examiners, or others with appropriate expertise when necessary.

10 PEB's Head of Qualifications reports to the Chair of the Governance Board and manages PEB's routine business with responsibility for the operational delivery of and quality assurance procedures for the PEB Introductory Certificate in Patent Administration and the Patent Examination Board (PEB) Qualifying Examinations. A Qualifications Consultant provides ad hoc support as required on a consultancy basis and administrative support is provided by CIPA on a part-time basis. PEB will recruit a part-time dedicated PEB Administrator in early 2021.

11 The June 2017 review report highlighted good practice in the openness and transparency with which it conducts its activities and engages with stakeholders, and the actions taken in continuing to standardise the setting of Foundation Certificate examination papers and mark schemes.

12 The report also identified five recommendations, to be concluded by June 2018, including:

- 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.

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

13 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. The terms of reference are available on the website.

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

#### Strategic Leadership

- At the PEB Governance Board's (GB) Strategy Day in August 2018, 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 plan for 2018-21 was completed and published in September 2018.
- During 2018 the PEB GB published both its own Terms of Reference and those of the PEB Examinations Committee. These were reviewed in December 2019.
- Continued close liaison with IPReg has ensured that PEB continues to meet the regulator's accreditation requirements. IPReg re-accreditation of the Foundation Certificate was confirmed in June 2018.

## **Monitoring Effective and Efficient Delivery of Strategy**

- The PEB's Budgetary Policy (January 2018) requires PEB to establish a Reserve to ensure the financial independence of PEB and continuity of funding. Following operating losses in 2015-16, the GB agreed with CIPA and IPReg two consecutive year-on-year 20% fee increases in both 2017 and 2018. The operating surpluses generated have ensured that PEB have accumulated reserves in accordance with its Budgetary Policy.
- Since 2018 the organisation has two fewer staff and ad hoc administrative support is provided by CIPA. PEB is in negotiation with CIPA about the costs of administrative support. Once agreed the PEB plans to pay the full costs for the employment of one half-time administrator, to be recruited in January 2021.

## **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 assessment materials and the development of online examinations for 2020. Data on candidates' characteristics has been collected annually and guidance and instructions to examiners is reviewed and updated annually. The Board has also discussed amendments to the Enquiries about Results and Appeals Policy (EaR) following comments from the Principal Examiner about Stage 2 of the process.
- 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 Head of Qualifications in consultation with supervising examiners. In addition, the Board has delegated responsibility for examiner succession planning to the PEB Head of Qualifications who reports to the Board on examiner recruitment and any issues arising.
- The overriding quality assurance issue of 2018 was CIPA's response to the continuing negative comments from candidate surveys related to the FD4 examination, and a perception by the candidates that PEB does not respond to their comments, and that the examination process lacks transparency and/or rigour and fairness in the setting, marking and awarding processes. The Board is currently engaging positively with CIPA and the Mercer Review, but the report is not yet published; the results and subsequent actions will need to be monitored at the next review.
- 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**

- 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.

- PEB continues to consult candidates about changes to examination dates, the publication of results and support available to them.
- Engagement with CIPA and IPReg has continued on areas of mutual interest, and in particular since 2018 on the Mercer Review, focusing on the Infringement and Validity Examination following continuing concerns from candidates about poor candidate success rate in the examination.
- There is a strong input from professionals and stakeholders. For example, all examiners are practising attorneys who are engaged in the setting, marking and standardisation of examinations. The COVID-19 pandemic has meant that PEB has engaged more with stakeholders during 2020 and that has provided stronger informal links. Since 2017 PEB has held two meetings with its stakeholders (October 2018, May 2020) and discussed the need to establish regular meetings and extend their input to the development of its examinations.
- Reports are clear, concise and accurate, helped in large part by using external consultants who are able to quality assure the standard of published reports.

15 The Governance Board is now well established and works closely with the Examination Committee to review PEB's policies, procedures and processes so that they are fit-for-purpose and reflect best practice. Staffing is reviewed quarterly as a standing item on the PEB GB agenda but there are continuing challenges to the work of PEB with two fewer staff than in 2018 and a reliance on ad hoc and temporary administrative staff supplied by CIPA. The PEB GB has this under review and ongoing negotiations are taking place to fund one half-time administrator. It is **recommended** that the Governance Board continues to keep its staffing base under review to ensure that the Governance Board, Examination Committee and other key stakeholders are provided with timely, effective and ongoing support.

16 A three-year Budgetary Plan has been developed and was published in September 2018. Its vision is to award qualifications that are recognised as the highest standard within the Intellectual Property profession. This will be achieved by concentrating on three strategic aims: developing assessments that are of the highest possible validity, reliability, consistency and accessibility to candidates from diverse backgrounds; supporting candidates through ensuring that examination qualification requirements are clear, and relevant to the profession; and developing operational procedures that ensure the long-term financial stability of PEB and effective internal and external processes.

17 PEB has further developed its relationships with stakeholders. It held an inaugural meeting with 30 employers from 11 companies at CIPA's offices on 29 November 2018. The purpose of the meeting was to discuss four issues of strategic importance to PEB. Firstly, to hear employers' views about the standard, content and style of the examinations offered, to set alongside candidates' views on the same issues, as collected in annual surveys. Also, to explore approaches that could be adopted to improve the quality of support and guidance offered to candidates during their training. Then, to understand more about the rationale behind decisions about which qualification route to follow at Foundation level, for example higher education and/or examination only routes. Finally, the Board wished to understand more about medium and longer-term recruitment trends in the profession, that might impact on candidate numbers, in order to help PEB plan for the future. Both PEB and those employers present agreed that the meeting had been useful, and that opportunities for

continued dialogue should be pursued. The openness and transparency with which PEB has engaged with stakeholders constitutes **good practice** and provides an opportunity to further enhance the selection, training and examination of candidates.

## Patent Examination Board Policies and Procedures

18 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.

19 PEB presents 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 remain responsive to stakeholder needs. Since the 2017 QAA review the 'Reasonable adjustments', 'Change of examination venue' and 'Withdrawal and refunds' policies have been amended and updated. All policies were reviewed in preparation for the 2020 online examinations, as a result of the COVID-19 pandemic. Amendments were made to the 'Enquiry about results and appeals' policy following concerns raised by the Principal Examiner in January 2017 and were implemented for the 2019 examinations. New procedures have been written for the 'Procedure in the event that an examination is cancelled' and the 'Procedure for selection and appointment of Principal Examiners'. Both were approved for the 2020 examinations.

20 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. However, there is a lack of consistency in indicating version control of the updating or amendment of these documents. It is **recommended** that PEB ensure that a consistent version control and/or date signifier is attributed to all policies and procedures.

21 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 2020 examinations, provides 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. Examiners agree that they are a useful aide memoire when carrying out their respective roles as external examiners. These instructions are reviewed annually before issue to examiners and are amended as necessary.

## The Patent Examination Board's Examinations

### Responsibility for determining awards

22 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 (EC's). The EC's 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.

23 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.

24 The EC's 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 EC's are expected to meet at least once a year and are chaired by the Chief Examiner. The remit of the EC's 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 on-going examination improvement and the development of new qualifications.

25 There have been four meetings of the Final Diploma Examination Committee (FDEC) since the last QAA review. Each meeting discussed 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 addition, the meeting held in February 2020 discussed the introduction of a checklist for FD question papers for 2020, and possible changes to the format of the FD1 examination in anticipation of the outcome of the Mercer Review. The Committee also considered further concerns relating to the low pass rate in FD4 and the introduction of Mentors and the inclusion of section marks to the paper to be trialled in 2020. Examples of items raised and resolved from examiner feedback include Principal Examiner concerns about Stage 2 of the 'Enquiries about results and appeals (EaR) process, and future emailing of the Examiners Report form.

26 The FDEC has been proactive in its response to the recommendations made from the research project investigating the poor and variable candidate success rate in the Infringement and Validity Examination (FD4/P6). Since 2017 the following have been put in place: a system of Mentors; a CIPA webinar, delivered by two experienced FD4 examiners, for any mentor/trainer in any firm; sample scripts published on the website that have the examiners' full annotations, showing where marks were awarded; in addition to the overall mark, all candidates were supplied with the marks breakdown as awarded by section for their answer paper; the CIPA FD4 Study Guide has been edited by an experienced FD4 examiner and is available to buy; and the examination time has been increased to five hours. Despite these measures the success rate has not significantly improved and prompted the Mercer Review in 2018, which is currently ongoing.

27 PEB is continuing to consider actions to increase candidate success including the use of vivas and (briefly) coursework but concludes that these are not appropriate at the current time. However, on-line examinations have provided an opportunity for candidates to word-process their answers. There has been progress to ensure examiners' understanding

of the programme specifications, learning outcomes and assessment expectations through standardisation meetings and additional training meetings. This needs to be kept under review, particularly as examiners change. Further changes are likely to require professional support, for example as a result of the outcomes of the Mercer Review or as required by IPReg. It is **recommended** that PEB 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 of new candidates to ensure that they are 'fit-for-purpose'.

28 The Foundation Certificate EC also met on four occasions since the last QAA review. The minutes indicate that the Committee considered current examination formats and agreed changes to the format of the FC2 and FC5 examination papers increasing the time by 30 minutes to two hours and 30 minutes for each examination. Following the IPReg re-accreditation process, changes to the syllabus across all areas were discussed including an update of the Foundation Certificate Programme Specification 2019 and the development of a minimum competence standard. There was also an update to the formal Tester selection, training and quality assurance of the process. It was agreed to increase the number of Testers for each paper with one experienced Tester and one newly qualified Tester. Completion of the Tester form and consideration of Tester performance will be monitored in 2020.

29 The EC's 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**

30 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. For the Foundation Certificate level, a newly appointed External Examiner oversees standardisation, checks that all question papers cover the relevant learning outcomes as part of the setting process, and oversees Awarding. This was part of the response to IPReg re-accreditation in 2018. A similar process has been implemented for the Final Diploma level although there is a need to appoint an examiner to oversee the process. It is **recommended** that, at the earliest opportunity, PEB recruit and appoint a Finals External Examiner to oversee the standardisation process at Final Diploma level.

31 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 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 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; 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.

32 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.

33 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.

34 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, and 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 particular 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 issue it to all examiners for marking all scripts; scripts considered at the standardisation meeting will be re-marked in light of the final mark scheme.

## **Marking examination papers**

35 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. 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.

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 allowed number (11 marks) 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 where he/she has 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.

36 There were no significant changes to the assessment quality assurance processes issued to examiners for the marking of examination papers in 2019. However, the importance of compliance with data protection regulations, particularly during marks reconciliation, was highlighted to Principal and Marking Examiners. In addition, in 2019, a 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 the setting, marking and awarding processes. This was updated and re-published in 2020.

37 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 and it is a feature of **good practice** that the contract for an examiner found to display inadequate marking was not renewed.

38 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).

39 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 applied consistently.

40 The Principal/Marking Examiner(s) and the Chief Examiner attend standardisation meetings. The standardisation meeting is led by the PE 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.

41 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.

42 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).

43 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.

44 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.

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

46 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 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**

47 In 2018, PEB carried out three Stage 3 independent reviews following three complaints (two complaints relating to the qualifying examinations). In 2019, one complaint was received relating to an error in one question on the FC1 examination paper. Although there were no official complaints there were also several emails expressing dissatisfaction with the FD4 examination in 2019. One complaint was received in 2020 relating to examination results but after thorough investigation it was found to be unsubstantiated. PEB has responded to complaints in line with its Customer Feedback Policy and currently has had no appeals.

48 The number of special consideration cases rose from four in 2017 to nine in 2018 and 10 in 2019. In 2017, there were 11 health-related instances and three cases of external disturbance. In 2018, 15 cases related to health and five candidates recorded a family crisis. Ten of the 19 special consideration requests in 2019 related to health issues and four recorded a family crisis. All cases were considered at the relevant awarding meeting. The number of candidates requesting reasonable adjustments has risen significantly since 2017, with 38 requests from 17 candidates in 2017 to 34 requests from 18 candidates in 2018 and 59 requests from 22 candidates in 2019. PEB remains 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

49 The 2017 QAA review report made the following recommendations.

- PEB actively 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 candidate's 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.

50 Following adverse publicity surrounding the 2018 FD4 examination, CIPA Council considered the issue at length as well as the education and assessment of patent attorney students in general. The Council resolved that, through the CIPA Education Committee, CIPA would lead the Mercer Review, a review of the training, support and assessment of trainees, including consideration of best practice in other professions where appropriate. The PEB Governance Board submitted a detailed response to the Call for Evidence issued by the Mercer Review but subsequently the need for PEB to focus on moving the examinations online in response to the COVID-19 pandemic meant that work on the FD4 projects was halted in 2020.

51 The initial evaluation and result of the FD4 Report has been the subject of discussions at PEB GB, PEB EC's and the Awarding Committee with a commentary provided by the Chair of PEB GB considering the recommendations. The report published in March 2017 included six recommendations for addressing the low pass rate.

- Preparing mentors and trainers.
- Shadowing a real-life infringement and validity opinion (CIPA/trainer responsibility).
- The appropriateness of handwriting for the exams.
- Is a conventional exam sufficient to judge the learning outcomes?
- Reviewing the FD4 marking scheme for the upcoming exams.
- Aligning learning outcomes to assessment criteria.

52 The report has now been superseded by the more general Mercer Review but PEB has made some progress against the recommendations which are outlined below.

53 In particular, PEB has started supporting mentors and trainers in line with the first recommendation. Examiners have delivered webinars to the CIPA membership to help both candidates and their trainers understand the assessment expectations. These include:

- FD4 for Students - September 2019
- FD4 for Mentors - August 2019
- Mentoring FD4 candidates - advice and guidance - August 2018.

54 One of the examiners in each team has also updated some of the key revision texts to help candidates understand how to approach the examinations:

- FD3 Amendment of Specifications Paper - updated 2017
- FD4 Infringement and Validity - updated 2018.

55 PEB have also supported the CIPA/Informals project for mentoring repeat sitters. In the first round, marked scripts were issued to the mentees taking place in the mentoring project but these have subsequently been withdrawn. An analysis of the first project showed that there were significant improvements for the pass rate of the mentees despite small statistical improvements. Additional suggestions include holding a mentor training day, similar to the FD4 examiner training, in which each mentor marks a paper before the training day and then spends the day understanding how the mark scheme would be applied.

56 The second recommendation has been discussed by PEB GB but is not considered relevant. Similarly, the two recommendations relating to the use of computers, viva examinations and coursework were considered not to be appropriate at that time. However, the Covid-19 pandemic resulted in the 2020 examinations being delivered remotely and online. The results of the Mercer Review may require PEB to reconsider some of these options.

57 The final two recommendations have been discussed at length and considerable progress on both the examiners' and candidates' understanding, and shared expectations of, the examination process have been made, with new documents, standardisation meetings and additional training meetings. These include:

- 1) More transparency by providing:
  - a breakdown of the marks awarded in each section appended to the results letter,
  - annotated scripts, published on the website, showing where marks are awarded,
  - a minimal pass descriptor included as part of the explanation of the marking process.
- 2) For the 2019 examinations, there were notably fewer scripts with a greater than 10-mark difference to be reconciled. This improvement in the consistency of application of the mark scheme results from a combination of:
  - improved standardisation meetings - examiners are engaging more with, and appreciate, the value to be gained from these meetings. As an example of an improvement, in 2019, after the standardisation meeting, another script was marked by each examiner and all outlying marks were discussed,
  - additional training - in 2019, the training session was very well received,
  - the detailed mark scheme that is agreed and implemented by examiners.

58 As PEB moves forward, the following additional improvements are proposed:

- in 2020, to show the breakdown of marks for each section on the FD4 examination paper,
- to incorporate guidance for candidates into the published mark schemes which gives better guidance to the candidates on how to prepare for the examination,
- to continue the discussions at standardisation (and during reconciliation, if needed) to make sure that candidates can be awarded marks for sensible comments which do not appear on the mark schemes, but could be added to the advantage of the candidate.

59 Changing procedures to assess each individual learning outcome rather than providing an overall pass mark is not a change that PEB can make in isolation from the profession and IPReg, but the following actions, undertaken since the report, are trying to address the recommendation for the benefit of candidates.

- a minimal pass descriptor has been published for the Final Diploma as part of the explanation of the marking process, and will be trialled in 2021,
- all marginal scripts are now considered against the minimum pass descriptor in the reconciliation process to ensure that candidates who have been awarded a narrow fail (for example, 47, 48, 49) have not met the minimum standards,
- investigation into alternative ways of setting the pass mark. Borderlining appears to be the most promising and was used for the 2018 examinations to address a statistically significant drop in the pass rate. Implementation has been delayed due to the demands of delivering on-line examinations, but will need to be reviewed in the future.

60 There are two outstanding actions relating to: examiner concerns that candidates can pass with poor marks in one section. However, negative marking has not, to date, been a feature of the examination and along with the 50% fixed pass mark would need consultation with the profession and IPReg before implementation; and review and update of the documents relating to Examination Guidance that are not often used by candidates and could be improved, for example, 'PEB Examination Regulations', 'PEB Results and Post-results policy', and 'How qualifying examinations are marked'.

### **Candidate surveys**

61 PEB seeks candidate feedback on the PEB Qualifying Examinations annually and all comments from candidate surveys are compiled into a report that is forwarded to and discussed at the relevant Awarding Committee. In 2017, in response to the 2016 survey, PEB increased the length of two of the Foundation Certificate examinations to make them all three hours. 262 candidates completed the survey. 41% of them commented negatively about the examinations, compared with 30% in the January 2017 survey, and there were more comments from candidates than in previous years.

62 The 2018 survey repeated many of the themes of the previous years, for example, difficulty, length, stress and time-pressure of the FD4 (P6) exam; perceived inconsistency of marking and difficulty of knowing how to prepare and what to expect based on past papers; errors in the papers; perceived lack of relevance of the exams in testing fitness for the job of a patent attorney; and frustration that they feel CIPA is not taking on board candidate feedback. A significant new theme was around the lack of transparency and accountability in delivery of the exam, and the moderation and appeal process. 54% of candidates who completed the survey felt that the PEB examination processes lead to fair outcomes (11% of respondents felt strongly confident that the processes are fair, 43% considered it to be moderately fair.) 46% of candidates felt that it was only a little fair or not fair at all.

63 As previously reported (page 6) the level of challenge of the question paper and the subsequent low pass rate in the FD4 examination in 2018 generated adverse publicity, and CIPA Council considered the issues at length, as well as the education and assessment of patent attorney students in general. The Council resolved that, through the CIPA Education Committee, CIPA would lead the Mercer Review: a review of the training, support and assessment of trainees, including consideration of best practice in other professions where appropriate. The PEB Governance Board submitted a detailed response to the Call for Evidence issued by the Mercer Review.

64 In 2019, candidates reported improvements to the exams and supporting materials, and found the recently provided sample pass scripts the most useful. Some candidates found the FD4 exam more manageable and the satisfaction rating increased slightly. Overall satisfaction levels were good for FC1, FC3, FC4, FD2, FD3, and increased for FC1, compared with 2018. However, the majority of candidate comments continued to be critical of the PEB and CIPA's provision of support to prepare for the exams. Candidate feedback

included continued dissatisfaction about the demand for memorising amounts of material, the time pressure/large volume of material to cover, inconsistency in marking from examiners, fairness of the process, and relevance of the exams in assessing skills needed to be a competent patent attorney. All of these concerns had been raised in previous surveys.

65 Candidates also felt frustration that, although PEB acknowledges candidate feedback, it does not respond adequately. For example, candidates comment that efforts to address the time pressures have not worked because although the examination times for FC1 and FD4 have lengthened, so have the examination papers. A new issue was that some candidates felt that the CIPA webinar focused on defending FD4, which reinforced the view that candidate feedback is not being fully considered. Many candidates felt that the examination was not fit for purpose.

66 PEB has continued to respond to candidate comments to improve the examinations and there are some signs of positive progress. 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. In 2019, a reviewer performed additional analysis of the candidate survey to incorporate candidate comments into an overall assessment of satisfaction, to highlight the proportion of candidates who are satisfied with the exam process or not. The rating took account of the tone and content of the candidates' comments, combined with their rating for the question about whether the exam process leads to fair outcomes. On this rating, 29% of candidates were 'satisfied'. 35% were concerned and 28% were dissatisfied. (8% were blank). On this basis, satisfaction levels were lower in 2019 than in 2018. It is **recommended** that PEB continue to consider action to be taken to address candidates' perceptions about the clarity and fairness of the examination requirements and processes.

67 The PEB GB has tried to address the issues raised in candidate surveys and staff gave examples of positive changes such as: the introduction of the Mentoring scheme and increased time for the FD4 examination, publication of the allocation of marks to each section of the examination paper and to each question, a breakdown of the marks allocated to help candidates improve their performance following a failure, and PEB's response to the survey that is now posted on the website together with a weekly FAQ page in the run up to the 2020 examinations being delivered online for the first time. In addition, an 'How qualifying examinations are marked' document was produced and posted to the website to better inform candidates. However, this and some of the measures outlined above were not well received in the 2019 survey and generated more comments that candidates would like better processes for internal moderation and appeal. It is likely that these issues will be addressed in the Mercer Review but it is **recommended** that PEB 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.