

Title: Amend appeal route for design decisions of the Intellectual Property Office IA No: BIS0373 Lead department or agency: The Intellectual Property Office (IPO) Other departments or agencies: Department for Business, Innovation and Skills (BIS)	Impact Assessment (IA)		
	Date: 03/12/2012		
	Stage: Final		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
Contact for enquiries: Janette.McNeill@ipo.gov.uk 01633 814750			
Summary: Intervention and Options			RPC Opinion: RPC Opinion Status

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£0.05	£0	£0	Yes Zero Net Cost

What is the problem under consideration? Why is government intervention necessary?

The current route of appealing against decisions of the IPO in relation to design right applications is via a dedicated tribunal, which has only been used twice in the last ten years. It also offers no flexibility or route for further appeal. It was considered outdated by some stakeholders, and others - at consultation - have called for a change to the system to reflect that which already exists for trade marks. A change in the law is required to implement a more user friendly system and provide businesses with alternative appeal routes that suit their needs and financial situation.

What are the policy objectives and the intended effects?

To improve access to justice for businesses using the UK designs registration system by allowing them to choose, according to their needs, between:

- a low cost, reliable and efficient appeals route for users of the UK designs registration system
- an appeal route that allows important or complex cases to be further challenged beyond the initial appeal decision.

To make the system easier for users of different forms of Intellectual Property to understand by simplifying the appeal framework and aligning the appeal route with that of trade marks.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1: Do nothing - retain the current Registered Designs Appeal Tribunal (RDAT) route of appeal
Option 2: Replace the current route of appeal (RDAT), with a single route of appeal to the Patents County Court (PCC).
Option 3a: As option 2, but adding a second, cheaper alternative to the PCC, by extending the remit of the existing route of appeal to an 'Appointed Person' (AP) against the IPO's trade marks decisions, to designs.
Option 3b: Similar to option 3a (i.e. two alternative routes for appealing against IPO design decisions - the court and the AP), but the court to be the High Court, not the PCC
Option 3b is the chosen option as this will deliver the policy objectives more clearly, and follows responses to the consultation which suggested that in line with trade mark routes of appeal, the court alternative should be the High Court, rather than – as was initially suggested - the specialist Patent County Court.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: April 2018					
Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A		Non-traded: N/A

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: _____ Neville-Rolfe _____ Date: 5 Feb 2015 _____

Summary: Analysis & Evidence

Policy Option 1

Description: Do nothing - leave the current tribunal route of appeal in place

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0	High: 0	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

Description and scale of key monetised costs by 'main affected groups'

The do nothing option is cost neutral, however it does not meet the policy objectives.

Other key non-monetised costs by 'main affected groups'

N/A

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

Description and scale of key monetised benefits by 'main affected groups'

The do nothing option is benefit neutral, however it does not meet the policy objectives.

Other key non-monetised benefits by 'main affected groups'

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
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BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:	In scope of OIOO?	Measure qualifies as
Costs: 0	No	NA
Benefits: 0		
Net: 0		

Summary: Analysis & Evidence

Policy Option 2

Description: Replace the current route of appeal to the tribunal with a single route of appeal to the court, specifically the Patents County Court, PCC.

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -0.11	High: 0.14	Best Estimate: 0.02

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	0	0	0.003
High	0		0.013	0.110
Best Estimate	0		0.007	0.057

Description and scale of key monetised costs by 'main affected groups'

The court will cost between £338 and £11,830 per annum, based on a low estimate representing 1 case proceeding to appeal in 5 years with the RDAT, and the high estimate based on a percentage of the total number of trade mark applications which go to appeal - 7 appeals per year. Businesses will have to pay a different appeal fee of £27-£945 per annum. There will also be costs to the IPO of defending cases. The ability to further challenge the initial appeals may increase the award of costs to the losing party.

Other key non-monetised costs by 'main affected groups'

If the only route of appeal is through the PCC, many businesses, particularly SMEs, may see it as costly, lengthy and uncertain, so may be deterred from appealing. There may be minor resource implications for business and legal advisors in understanding the changes and additional time and resource costs to business through the uncertainty of legal outcomes and the scope for further appeal. There will also be businesses legal costs, estimated by one respondent to be at the upper end of the range £3,000 to £20,000, depending on the nature of the case.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0	0	0.004
High	0		0.017	0.143
Best Estimate	0		0.009	0.073

Description and scale of key monetised benefits by 'main affected groups'

The government will benefit from no longer having to fund a more expensive appeals system (RDAT). It will save between £473 - £16,548 per annum. This is based on the difference in pay for judges assigned to the RDAT and the PCC as currently formed. Businesses will benefit as they no longer have to pay the fee for the RDAT, we expect they will save between £1.20 and £42 per annum.

Other key non-monetised benefits by 'main affected groups'

This option enables businesses to further challenge the initial PCC decision, and to try and overturn it - which may be important to businesses in certain cases. Decisions arising from challenging an appeal to a higher level court give increased certainty to business and legal professionals about interpretation of the law, and the extent of protection a design has, because court decisions are more generally binding, as opposed to those of tribunals.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
That the number of appeals, and challenges to the initial appeal, is likely to be limited. Respondents to the consultation have confirmed that this is likely to be the case. That the costs to business of preparing for an appeal are likely to be somewhat different, comparing the RDAT (option 1) and the PCC (option 2). The figures are based on costings for the PCC in its current form, which is subject to change in the future.		

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	Yes	Zero Net Cost

Summary: Analysis & Evidence

Policy Option 3a

Description: As option 2, plus adding a second, cheaper alternative to the PCC, namely extending the remit of an existing route of appeal against the IPO's trade marks decisions, to designs.

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -0.03	High: 0.14	Best Estimate: 0.05

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	0	0.001
High	0	0.005	0.039
Best Estimate	0	0.002	0.020

Description and scale of key monetised costs by 'main affected groups'

Additional work for two existing systems will need to be funded: additional Design cases in the PCC will cost between £33.80 and £1,301.30 per annum. The AP system will cost between £90 - £3,115 per annum. The extra cost on business will only occur from fee payments if they choose the PCC in preference to the AP, and it will be between £2.70 - £103.95 per annum.

Other key non-monetised costs by 'main affected groups'

There may be some minor resource implications for business and legal advisors in understanding the changes to the appeal route mechanism. For those who choose the PCC, there may be additional time, resource and legal costs to business through the uncertainty of legal outcomes and the scope for further appeal. Uncertainty will be reduced with the AP system as there is no further appeal.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0	0.004
High	0	0.017	0.143
Best Estimate	0	0.009	0.073

Description and scale of key monetised benefits by 'main affected groups'

The government will benefit from no longer having to fund a more expensive appeals system (RDAT). This will save between £473 - £16,548 per annum. Businesses will benefit as they no longer have to pay the fee for the RDAT, we expect they will save between £1.20 and £42 per annum.

Other key non-monetised benefits by 'main affected groups'

Applicants challenging IPO decisions on design applications, and those involved in the invalidation of registered designs will have the flexibility to choose an appeal route which best suits their needs. Businesses with the necessary resources will be able to further challenge an initial appeal decision. There are likely to be savings in professional fees to businesses using the AP system, who are able to self-represent in what is a simplified, less risky and less formal process than the RDAT, or PCC. Businesses (and government) are likely to benefit from dealing with (and administering) fewer routes of appeal from IPO decisions on different rights.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

In calculating costs/benefits, the impact assessment makes several assumptions: a.) that design disputes can be modelled on trademark disputes; b.) the number of cases; c.) the length of hearings in court; d.) that the IPO continues to fund appeals to the Appointed Person, and that a cost of £500 per case is reasonable; and, e.) the costs to business of preparing for an appeal are different depending on the appeal route chosen.

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	Yes	Zero Net Cost

Summary: Analysis & Evidence

Policy Option 3b

Description: Similar to option 3a (i.e. two alternative routes for appealing against IPO decisions – the court and the AP), but the court to be the High Court, not the PCC.

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -0.04	High: 0.14	Best Estimate: 0.05

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	0	0.001
High	0	0.005	0.043
Best Estimate	0	0.003	0.022

Description and scale of key monetised costs by 'main affected groups'

Additional work for two existing systems will need to be funded: additional Design cases in the High Court will cost between £42.70 and £1,643.95 per annum. The AP system will cost between £90 - £3,115 per annum. The extra cost on business will only occur from fee payments if they choose the court in preference to the AP, and it will be between £4.70 - £180.95 per annum.

Other key non-monetised costs by 'main affected groups'

There may be some minor resource implications for business and legal advisors in understanding the changes to the appeal route mechanism. For those using the High Court, there may be additional time, resource and legal costs to business through the uncertainty of legal outcomes and the scope for further appeal. Uncertainty will be reduced with the AP system as there is no further appeal.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0	0.004
High	0	0.017	0.143
Best Estimate	0	0.009	0.073

Description and scale of key monetised benefits by 'main affected groups'

The government will benefit from no longer having to fund a more expensive appeals system (RDAT). This will save between £473 - £16,548 per annum. Businesses will benefit as they no longer have to pay the fee for the RDAT, we expect they will save between £1.20 and £42 per annum.

Other key non-monetised benefits by 'main affected groups'

The key non-monetised benefits are the same as for option 3a, with the additional benefit that, as the appeals system will effectively mirror that already in existence for trade marks, businesses and legal advisors dealing with more than one type of IP will find they already know the procedures/processes and will more readily be able to apply them to handling design cases. For those who wish to use a court to e.g. test matters of principle, this option does not have the time/costs limits associated with option 3a. Like option 3a, where businesses seek to use the AP system, rather than the courts, there are likely to be savings in the costs of professional legal advice.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
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In calculating costs/benefits, the impact assessment makes several assumptions: a.) That design disputes can be modelled on trademark disputes; b.) the number of cases; c.) the length of hearings in court; d.) that the IPO continues to fund appeals to the Appointed Person, and that a cost of £500 per case is reasonable; and, e.) the costs to business of preparing for an appeal are different depending on the appeal route chosen.

BUSINESS ASSESSMENT (Option 4)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	Yes	Zero Net Cost

Evidence Base

References

	Legislation or publication
1	“Transforming Public Services: Complaints, Redress and Tribunals” White Paper, 2004 http://webarchive.nationalarchives.gov.uk/+/http://www.dca.gov.uk/pubs/adminjust/transformfull.pdf
2	“Digital Opportunity: A review of Intellectual Property and Growth” by Ian Hargreaves, May 2011 http://www.ipo.gov.uk/ipreview.htm
3	IPO Call for Evidence on Designs, September 2011; IPO Assessment on Designs, December 2011 http://www.ipo.gov.uk/types/hargreaves/hargreaves-designs.htm
4	Tribunal, Courts and Enforcement Act 2007, specifically section 143 http://www.legislation.gov.uk/ukpga/2007/15/contents
5	The Patents County Court falls within ongoing plans to streamline the structure of the County Courts – see the results of the Ministry of Justice consultation “Solving disputes in the county courts” https://consult.justice.gov.uk/digital-communications/county_court_disputes
6	‘Reform of the UK designs legal framework’ http://www.ipo.gov.uk/pro-policy/consult/consult-closed/consult-closed-2012/consult-2012-designs.htm

Problem under consideration

The current route of appeal against decisions of the Intellectual Property Office (IPO) in relation to applications to register designs, or to invalidate registered designs, is via the Registered Design Appeals Tribunal (RDAT). The RDAT offers no further option for businesses to appeal against its decisions, should they disagree. Moreover, the RDAT is considered outdated, and a decision had previously been taken to abolish it, although that had not been implemented. The intended replacement offered an option to appeal further against its decision, but was considered more costly and time-consuming for businesses to use.

Having to make an exclusive choice between these single routes of appeal means that businesses do not have the ability to choose the most cost effective and efficient means for them to reach a final decision.

The overall scale of this problem is not large, given the relatively small number of appeals, but stakeholders have suggested at various times that the current system (and its replacement) need improvement. Responses to the consultation generally confirmed that the existing system already in place for trade marks offers a workable – and well used – alternative model. It will help meet the need to improve the designs framework for business (see below).

A change in the law is required to provide businesses with a fit for purpose system.

Background

Following the Hargreaves review of IP (Ref 2) we acknowledged that there was limited information on how important design rights were to growth, and whether the current design IP framework was meeting the needs of business (Ref 3). The IPO issued a ‘call for evidence’ and associated survey to acquire this information (Ref 3). Responses to the ‘call’ confirmed that the designs IP framework needed to be simplified and improved in a number of areas to make it more fully meet the needs of business. A follow-up consultation proposed numerous changes to the legal regime, as part of a package of reforms. This Impact Assessment (IA) deals with one specific proposal.

This IA responds to concerns that protecting designs can be uncertain. It specifically deals with appeals against the IPO’s decisions in relation to design rights. The IPO may reject a design application if it does

not think the design meets legal requirements or, after a design is registered, third parties may seek to invalidate it. In either case, the decision made by the IPO can be challenged via an appeal to the Registered Designs Appeal Tribunal (RDAT). There is generally no further appeal against the decision of the RDAT.

It is also important to note that the Intellectual Property Office is a trading fund, and its revenue comes from businesses registering Intellectual Property rights. Therefore all costs to the IPO are covered by business and all savings are filtered back to business.

Rationale for intervention

A decision to abolish the current RDAT was taken by the then Department of Constitutional Affairs in 2004 (Ref 1), as part of wider programme to streamline the general courts and tribunal service. It was considered out of step with other routes of appeal from IPO decisions, was not well used, and created an additional route of appeal for business to understand in its dealings with the IPO. The rules were considered outdated and the RDAT was considered anomalous by judges. Legislation was put in place to abolish it and replace it with a court (Ref 4), specifically the specialist intellectual property court, the “Patents County Court” (PCC – ref 5). This offered the benefit of business being able to appeal further against the initial appeal decision, should they deem the case important enough. However, the law was never brought into force.

Given the time that has elapsed since the original decision was taken to abolish the RDAT in 2004, this IA considers whether the reasons for abolishing it are still valid, and whether it should be retained (option 1). As part of that consideration, the IA also considers whether the original intended replacement, the PCC, is sufficient on its own (option 2) especially given comments by professional IP advisors that any replacement should be cost effective. Court proceedings generally are considered costly, time-consuming and resource intensive by business, which may deter business from necessary appeals.

To ensure that businesses retain a cheaper and quicker option for appeals, this IA then explores whether an additional alternative to the court should also be offered, namely the “Appointed Person” (AP), which is well-used by those appealing against the IPO’s decision on trade marks. This is option 3a. A business would either be able to use the PCC or the AP: they would not be able to take their dispute through both.

As a result of responses to the consultation, this IA now introduces option 3b, which is the one now to be implemented. This option is similar to option 3a in that it gives business the choice between the court and the AP, but the court is to be the High Court, not the PCC.

Policy objectives

The policy objectives are:

1. To improve access to justice for businesses using the UK designs registration system by allowing them to choose, according to their needs, between:
 - a low cost, reliable and efficient appeals route for users of the UK designs registration system, and
 - an appeal route that allows important or complex cases to be further challenged beyond the initial appeal decision.
2. To make the system easier for users of different forms of IP to understand by introducing greater uniformity in the routes of appeal against IPO decisions, by aligning the appeal route with that of trade marks. This consists of a choice between the court, which offers business the opportunity to appeal further against its decision, or the Appointed Person (AP), seen by business as a more informal, low-cost decision making body. It is already well-used for trade marks as an alternative to the courts, notwithstanding the fact that there is no further appeal from the AP’s decision. From 2007 to 2011, there were 267 appeals against the IPO’s decision on trade marks, 237 of which went to the AP, with the remaining 30 going to the court.

In considering the costs and benefits associated with changes to the current system, we have referred to figures relevant to trade marks. We consider that they can act as a useful indicative proxy in the absence of specific information on designs because both are forms of IP with visual elements, both are registrable forms of IP, and the registration processes are broadly similar to each other.

Description of options considered

Option 1: Do nothing

This option, of maintaining a single route of appeal to the RDAT, was not favoured by respondents to the consultation, and is not being pursued.

A decision had already been taken to abolish the RDAT (Ref 1) and although not yet commenced, legislation has been put in place to do this (Ref 4). This option therefore goes against the previous policy to streamline the courts and tribunals service, which was at that time supported by members of the judiciary and, subject to retaining the time and cost benefits for users of any new system, members of the IP legal profession.

Costs/Benefits

Retaining the RDAT means that the fees to business for initiating an appeal through the RDAT remain low, currently £6 (see The Registered Designs Appeal Tribunal (Fees) Order 1973); other costs will still be involved in preparing the case and/or seeking legal advice.

Maintaining the RDAT single route of appeal with no option to appeal against its decision means that the only option for further action would still be via judicial review, which is more usually directed to the process by which the decision was made, rather than the decision itself.

With no change, the costs and benefits of this option are zero.

Option 2: Replace the current route of appeal to the tribunal, with a single route of appeal to the PCC

This creates a single court-based option (the PCC) for appeals against the IPO's designs decisions. Legislation was put in place to deliver this option about 5 years ago, but has not been brought into force (Ref 4). Given the delay in implementation, we re-visited this option to establish whether it remained valid. As with option 1, responses to the consultation indicated that a single route of appeal did not offer the flexibility business needed to pursue cases in the way most relevant to their situation. This option is therefore not being pursued.

This option will require court fees to be paid by business, and any awards against the losing party are based on actual costs, although these are capped at £50,000. The PCC offers the ability for businesses to challenge its appeal decision further, should they deem the case to be sufficiently important to them, but it is generally a higher cost route. This would increase costs to business should they disagree with the IPO's decisions and may inhibit them from pursuing an appeal.

Non-monetised Costs

Perceived risks to business

If the only option of appealing against IPO decisions is through the court, the complexity of court procedures and the risk of significant costs awards against them should they lose is likely to deter appeals, particularly from SME's. This type of 'costs risk' was confirmed by one respondent to the consultation. Although the PCC does have more streamlined "fast-track" processes and costs awards capped it is nevertheless able to take actual expenditure into account.

The (relative) complexity of the system may also be perceived as a barrier to business seeking to appeal: another respondent suggested that the PCC, despite being user-friendly, could be difficult to navigate, particularly for those representing themselves, which they said made up a large proportion of design applicants (over 80% according to internal IPO figures, although this was based on a small sample size).

Further appeals

There will be costs to business through the uncertainty over legal outcomes. If a party disagrees with the decision of the court they can make the decision to appeal further to have the initial decision overturned. If they choose to do this it will add to the costs, time and resource burden to business.

Information and transitional costs

There may be some transitional costs for both businesses and legal advisors to understand the new appeal route, and perhaps some transitional costs to Government of running appeals to the court, but in both cases additional costs are likely to be minimal as the court (including the PCC) is a well-established system.

Monetised costs

Initial fees to business

The PCC fee (should that be the only option) is currently £135 (see HM Courts and Tribunals Service, Civil and Family Court Fees, EX50) which would be a new fee incurred by businesses should this option be implemented – they will no longer have to pay the current RDAT fee, this is accounted for in benefits. In the last 10 years, 2 design cases have proceeded to appeal, according to publicly available reports of design cases. For such calculations on cost that we can currently make, we use this as the basis for our lowest estimates i.e. 1 case in 5 years.

Other proposed changes to the designs regime may make registration a more attractive option in future. If this encourages more appeals for designs, based on the number of appeals for trade marks, we could expect approximately 7 design cases per year, based on a percentage of the total number of trade mark applications which go to appeal:

- According to IPO figures, an average of 0.17% of trade mark cases have proceeded to appeal from 2007 to 2011, based on the total number of applications in that period of 160,586 and the total number of appeals in the same period of 267.
- Assuming the same percentage applies to design appeals, 0.17% applied to the total number of design applications (19,872, according to IPO figures) gives approximately 34 cases in the same 5 years, or approximately 7 cases per year.

We use this figure as the basis for our highest estimates for the cost calculations. No specific figures of the likely number of appeals were supplied by respondents to the consultation, but the consensus confirmed that it was likely to be low.

The costs to business of filing the appeal are based on the number of appeals per annum and the fees associated with the PCC (£135).

Costs to business:

- Lower estimate will be $0.2 \times 135 = \text{£27 per annum}$
- Higher estimate this will be $7 \times 135 = \text{£945 per annum}$

Cost of Running the PCC

According to HM Courts and Tribunals Service, the Government currently pays approximately £1,825 per day for the cost of a hearing at the court (PCC rates) minus the fee paid by business £135, making a net operating cost of £1690 per case.

So for the court (PCC), the annual costs to Government would be as follows:

- Lower estimate will be $0.2 \times £1,690 = \mathbf{£338 \text{ per annum}}$
- Higher estimate will be $7 \times £1,690 = \mathbf{£11,830 \text{ per annum.}}$

The figures used here are based on the current standing of the PCC which itself is subject to change (Ref 5).

Non-monetised Benefits

Professional fees to business

The figures above relate merely to official fees. There will be other costs to business in preparing their cases, both in terms of their own resources, and in seeking professional advice, which we believe will be more expensive than the current system, because of the complexity of court proceedings relative to those of tribunals. Initial soundings with IP legal professionals had suggested that preparation of cases for court proceedings may be 50% more expensive than other forms of appeal, such as to the Appointed Person, which will be reflected in the fees charged to clients. One response to the consultation has suggested, that depending on the nature of the case, costs could be of the order of £3,000-20,000 with the Appointed Person fees more likely to be at the lower end, and the court fees towards the higher end. Other respondents have confirmed that given their experience with trade mark appeals, they too would expect the Appointed Person route to be significantly less than going through the courts. In relation to the differences in costs between the current RDAT (option 1) and the court (option 2) respondents did not give a consistent view. In the 'best case', costs for both option would broadly be the same; in the worst case, the court would be more expensive, as court procedures tended to be more complex. However no figures were supplied.

Respondents to the consultation have also suggested that in a court scenario, such as is proposed under this option, businesses are more likely to seek representation by a barrister in addition to the attorney or lawyer already dealing with their case. This is therefore also likely to increase costs to business.

This option also provides the potential for business to challenge the initial appeal decision, potentially increasing costs to both sides in invalidation proceedings, for example, before a final decision is reached. While the winning party may expect its costs, in part or in whole, to be paid by the losing side, the losing side will of course have to pay those costs alongside its own. For an individual business this may be significant, although the overall costs to business at large will be partially offset by the payment of such costs to the winning party. Additionally, the small number of cases which respondents to the consultation expected to be pursued to this level, means that overall costs to business are likely to be minimal.

Further appeals

For businesses which disagree with the opinion of the court there will be increased flexibility in being able to appeal further, ultimately pursuing the case to the highest level of court, the Supreme Court, dependent on resources, and whether the case is considered important enough, to pursue.

Certainty in the law

This option would deliver a high degree of certainty about the general interpretation of the law, because court decisions are binding, whereas those of tribunals are taken as indicative. Such certainty will benefit not just the parties concerned, but legal advisors and design businesses in general. A clearer understanding of the nature of the rights and the protection they offer gives legal advisors more certainty about the advice they can offer, and enables businesses to better plan how to protect their products, including identifying resources used to seek protection for designs by registration, where they can rely on unregistered rights, whether to pursue potential infringers and how far to pursue them (e.g. warning letters, mediation, arbitration, court decisions). Respondents to the consultation have said that the court would provide a necessary route through which to raise important points of principle.

Administrative benefits to Government

There may be some slight administrative benefit to Government in streamlining the courts and tribunal service by removing a singular tribunal system, governed by a set of rules which – in relation to any changes - must be considered separately from those of the general court system.

Monetised benefits

Savings to Government

The Government will no longer have to fund RDAT (which is more expensive than the PCC).

According to figures from HM Courts and Tribunals Service, the Government currently pays approximately £2,370 per day for the cost of a hearing at the RDAT minus the fee paid by business (£6), making a net operating cost of £2,364 per case.

So for the RDAT, the annual saving to Government would be as follows:

- Lower estimate will be $0.2 \times £2,364 = \mathbf{£473 \text{ per annum}}$
- Higher estimate will be $7 \times £2,364 = \mathbf{£16,548 \text{ per annum.}}$

Fee savings to businesses

Businesses will save from no longer having to pay the RDAT fee, which is £6. These are actual savings to business as the fee goes directly to the running costs as shown in the paragraph above.

- Lower estimate will be $0.2 \times £6 = \mathbf{£1.20}$
- Higher estimate will be $7 \times £6 = \mathbf{£42}$

Net Present Value

The best estimate is an average of the high and low estimates. These figures are for the costs/benefits we could quantify, there are other monetary costs and benefits for which we do not have the data.

Total annual cost

Low Estimate	£27 + £338	£365
Best Estimate	£486 + £6,084	£6,570
High Estimate	£945 + £11,830	£12,775

Total annual benefit

Low Estimate	£473 + £1	£474
Best Estimate	£8,510 + £22	£8,532
High Estimate	£16,548 + £42	£16,590

Option 3a: As option 2, plus adding a second, cheaper alternative to the court (PCC), namely extending the remit of an existing route of appeal against the IPO's trade marks decisions, to designs.

The third option seeks to ensure that, when the RDAT is abolished, the benefits of it (speed and cost effectiveness, relative to the court) are not lost to business. This option would offer two alternative routes for designs appeals: the PCC, as proposed under option 2, and as an alternative, extending the remit of the existing "Appointed Person" (AP) to cover design appeals. The AP is seen as a more informal and low-cost decision making body than the court. It consists of several independent IP legal experts such as barristers or academics, and each sits individually to decide a case. The administration for each member of the AP is carried out by the Government's legal services, their costs are paid by the IPO.

Although the principle of two alternative routes of appeal (court and AP) was favoured by respondents to the consultation, concerns were raised about whether the PCC was the appropriate court. As a result, an amended version of this option - set out below as option 3b - is being taken forward which proposes that the court route is the High Court, not the PCC.

Non-monetised Costs

Information

As there will be two appeal routes a business could take they will need to understand the pros and cons of each. This may have some resource implications for them and their legal advisors when understanding which option best suits their needs. These are expected to be slight as the differences are not technically complex.

Transitional costs

Any transitional or set-up costs to the IPO and to Government are likely to be minimal – both the PCC and the Appointed Person are existing decision-making bodies with well-known procedural arrangements. There may however be some initial costs in ensuring that the current members of the Appointed Person have the necessary additional expertise in designs or of recruiting an additional panel member with such experience. If recruitment is necessary, some costs are likely to fall on the IPO, which specifies the requirements for recruiting additional members to join the Appointed Person, while recruitment costs will fall to the Judicial Appointment Board. Given the wide-ranging expertise of the current members of the Appointed Person, and the low numbers of additional cases likely to be heard, we would expect the costs of additional recruitment to be minimal.

Further appeals

If a party disagrees with the decision of the PCC they can make the decision to appeal further to have the initial decision overturned. If they choose to do this it will add to the legal costs, time and resource burden to business. There will also be a cost to business through the uncertainty over legal outcomes. Legal uncertainty will be reduced with the AP system as there is no option for further appeal.

Monetised costs

As with option two, there will be an extra fee cost for those switching to the PCC. The AP route has no fee.

As there are now two different routes of appeal, the total number of appeals will be split, which we must demonstrate so we can illustrate monetary impacts.

We expect the AP is likely to be a more attractive option for the micro-businesses and individuals who form the bulk of the IPO's design users. Legal stakeholders have suggested that many businesses prefer the certainty arising from a single appeal via the AP, as they see this as being the less risky alternative to the court: it does not contain the risk of potentially cost and time intensive further appeals, or the risk of potentially significant damages being awarded to the losing party. This seems to be borne out by the popularity of the AP relative to the court for trade marks appeals. Respondents to the consultation also expect this relative popularity to be the same for design cases.

IPO figures indicate that for trade marks, from 2007 to 2011, approximately 89% (237) of the 267 appeals against IPO decisions went to the Appointed Person, with approximately 11% going to the court. Using these figures as being indicative of the likely proportion of designs cases, and the assumed

number of cases given under option 2 this gives the number of cases likely to go through each appeal route as follows:

Number of design cases likely to go to appeal to the court (PCC):

- Lower estimate will be $0.2 \times 11\% = \mathbf{0.02 \text{ cases per annum}}$
- Higher estimate this will be $7 \times 11\% = \mathbf{0.77 \text{ cases per annum}}$

Number of design cases likely to go to appeal to the AP:

- Lower estimate will be $0.2 \times 89\% = \mathbf{0.18 \text{ cases per annum}}$
- Higher estimate this will be $7 \times 89\% = \mathbf{6.23 \text{ cases per annum}}$

Extra PCC fee

Taking the figure from option two, and adjusting it for the new split, the new cost which businesses will incur from switching to the PCC is:

- Lower estimate will be $0.02 \times 135 = \mathbf{£2.70 \text{ per annum}}$
- Higher estimate this will be $0.77 \times 135 = \mathbf{£103.95 \text{ per annum}}$

These are actual costs to business as the fee goes directly to the running costs as the Government currently pays approximately £1,825 per day for the cost of a hearing at the court (PCC) minus the fee paid by business £135, making a net operating cost of £1690 per case.

Cost of running the PCC

For the court (PCC), the annual costs to Government would be as follows:

- Lower estimate will be $0.02 \times £1,690 = \mathbf{£33.80 \text{ per annum}}$
- Higher estimate will be $0.77 \times £1,690 = \mathbf{£1,301.30 \text{ per annum.}}$

Cost of running the AP

The IPO currently pays approximately £500 per case to the AP for trade mark appeals; this figure varies significantly according to the level of complexity of the case. We assume this is a reasonable figure for designs cases. Using the figures given above gives the costs to the IPO as follows:

Annual cost is the number of appeals per year multiplied by the average cost of an appeal case

- Lower estimate will be $0.18 \times £500 = \mathbf{£90 \text{ per annum}}$
- Higher estimate will be $6.23 \times £500 = \mathbf{£3,115 \text{ per annum.}}$

Non-monetised Benefits

Information

For those (business, legal advisors, etc) who deal with appeals relating to more than one type of intellectual property, this will streamline the system by reducing the number of different routes of appeal from three (Appointed Person, court and RDAT) to two (Appointed Person and court only).

Flexibility for business

This option brings business the benefits of being able to choose an avenue of appeal against the IPO's decisions which best suits their business needs based on the money at stake and the relative importance of the case particularly if a further appeal may be envisaged.

Reducing perceived risks to business

Being able to appeal to the AP using the less formal and simplified procedures would address some of the concerns of micro businesses and individuals (who make up the majority of design companies in the UK) about the costs of protecting their rights, which could overwhelm any small business. Many of these will not use (or have the resources to use) legal representatives so will find the cheaper and quicker AP route less threatening, partly because they will not be liable for the larger scale costs associated with the court if they lose, but also because some may already be familiar with tribunal based processes in other areas, including in trade marks.

Those who advise business on IP matters have suggested that the introduction of the AP route will reduce the inhibitory effect of appealing where the only route is through the court (and/or RDAT).

Administrative benefit to Government

As with option 2, there may be some slight administrative benefit to Government in streamlining the courts and tribunal service.

Professional fees

It is likely that there will be savings in the costs of professional legal advice to those businesses which prefer to use the AP system available under this option. The most significant savings will arise from business being able to self-represent in what is a simplified and less formal process.

It is difficult to estimate the absolute costs of professional advice for an ‘average case’. However, initial soundings with legal stakeholders have suggested that the costs of appealing to the AP are likely to be some 50% less than the costs of similar proceedings before the court. As mentioned under option 2, figures are difficult to obtain, but respondents to the consultation have confirmed that the AP route is likely to be ‘significantly less’ costly than taking a case through the court. One response to the consultation has suggested, that depending on the nature of the case, costs could be of the order of £3,000-20,000 with the Appointed Person fees more likely to be at the lower end, and the court fees towards the higher end.

Monetised Benefits

Fee savings to businesses

Businesses will save from no longer having to pay the RDAT fee, which is £6.

- Lower estimate will be $0.2 \times £6 = \mathbf{£1.20}$
- Higher estimate will be $7 \times £6 = \mathbf{£42}$

Savings to Government

Government no longer have to fund the RDAT. The figures are the same as in option two.

- Lower estimate will be $0.2 \times £2,364 = \mathbf{£473 \text{ per annum}}$
- Higher estimate will be $7 \times £2,364 = \mathbf{£16,548 \text{ per annum.}}$

Net Present Value

These figures are for the costs/benefits we could quantify, there are other monetary costs and benefits for which we do not have the data.

Total Annual Cost

Low Estimate	£34 + £90 + £3	£127
Best Estimate	£668 + £1,602 + £54	£2,324
High Estimate	£1,301 + £3,115 + £104	£4,520

Total Annual Benefit

Low Estimate	£473 + £1	£474
Best Estimate	£8,510 + £22	£8,532
High Estimate	£16,548 + £42	£16,590

Option 3b: Similar to option 3a (i.e. two alternative routes for appealing against IPO decisions – the court and the AP), but the court to be the High Court, not the PCC.

This is the option that respondents to the consultation most favoured. It offers two alternative routes for designs appeals: namely the court, and as an alternative, extending the remit of the existing “Appointed

Person” (AP) to cover design appeals. This is similar to option 3a, but instead of using the PCC, the relevant court will be the High Court. This was considered preferable to the PCC (option 3a) by many respondents because in cases which are important enough to require a court decision, the High Court does not have the cost or time restrictions more usually associated with the PCC. It also means that the appeal routes from design decisions of the IPO will be fully harmonised with that for trade marks (High Court or AP), reducing the burden on businesses and their legal advisors of having to understand different options of appealing according to the type of IP.

Non-monetised Costs

Information

As with option 3a, having a choice of two appeal routes means that business will need to understand the pros and cons of each. Although there may have some resource implications for them when understanding which option best suits their needs, these are expected to be slight as the differences are not technically complex. In contrast to options 3a, resource implications for legal advisors are expected to be close to zero: many will already be familiar with the trade mark appeal route which this option will mirror.

Transitional costs

As with option 3a, any transitional or set-up costs to the IPO and to Government are likely to be minimal – both the High Court and the Appointed Person are existing decision-making bodies with well-known procedural arrangements. There may however be some initial costs in ensuring that the current members of the Appointed Person have the necessary additional expertise in designs or of recruiting an additional panel member with such experience. If recruitment is necessary, some costs are likely to fall on the IPO, which specifies the requirements for recruiting additional members to join the Appointed Person, while recruitment costs will fall to the Judicial Appointment Board. Given the wide-ranging expertise of the current members of the Appointed Person, and the low numbers of additional cases likely to be heard, we would expect the costs of additional recruitment to be minimal.

Similar expertise considerations are not likely to apply to the High Court: in practice cases going to the High Court will be allocated to the Patents Court, which has expertise in the full range of IP.

Further appeals

If a party disagrees with the decision of the High Court they can make the decision to appeal further to have the initial decision overturned. If they choose to do this it will add to the legal costs, time and resource burden to business. There will also be a cost to business through the uncertainty over legal outcomes. Legal uncertainty will be reduced with the AP system as there is no option for further appeal.

Monetised costs

As with option 3a, there will be an extra fee cost for those switching to the High Court (£235). The AP route has no fee.

As with option 3a, the total number of appeals will be split between the two different routes. We need to demonstrate how this split is likely to work in order to illustrate monetary impacts. We apply the same split as that used under option 3a, which is based on using the trade mark system as a proxy. The proxy should ‘fit’ slightly better though, because the two routes (High Court and AP) mirror exactly those used for trade marks. Using the same figures, and the same assumption that the AP is likely to be a more attractive option than the court for the bulk of IPO’s design users, the number of cases likely to go through each appeal route as follows:

Number of design cases likely to go to appeal to the High Court:

- Lower estimate will be $0.2 \times 11\% = \mathbf{0.02 \text{ cases per annum}}$
- Higher estimate this will be $7 \times 11\% = \mathbf{0.77 \text{ cases per annum}}$

Number of design cases likely to go to appeal to the AP:

- Lower estimate will be $0.2 \times 89\% = \mathbf{0.18 \text{ cases per annum}}$
- Higher estimate this will be $7 \times 89\% = \mathbf{6.23 \text{ cases per annum}}$

Extra High Court fee

Taking the figures for the potential number of cases from option two, and adjusting them for the new split as outlined above, the new cost which businesses will incur from switching to the High Court is:

- Lower estimate will be $0.02 \times 235 = \mathbf{£4.70 \text{ per annum}}$
- Higher estimate this will be $0.77 \times 235 = \mathbf{£180.95 \text{ per annum}}$

These are actual costs to business as the fee goes directly to the running costs as the Government currently pays approximately £2,370 per day for the cost of a hearing at the High Court minus the fee paid by business £235, making a net operating cost of £2,135 per case.

Cost of running the High Court

For the High court, the annual costs to Government would be as follows:

- Lower estimate will be $0.02 \times £2,135 = \mathbf{£42.70 \text{ per annum}}$
- Higher estimate will be $0.77 \times £2,135 = \mathbf{£1,643.95 \text{ per annum.}}$

Cost of running the AP

These will be the same as the figures given under option 3a: i.e. a cost to the IPO of approximately £500 per case, so the annual cost is the number of appeals per year multiplied by the average cost of an appeal case

- Lower estimate will be $0.18 \times £500 = \mathbf{£90 \text{ per annum}}$
- Higher estimate will be $6.23 \times £500 = \mathbf{£3,115 \text{ per annum.}}$

Non-monetised Benefits

Professional fees

As under option 3a, where business seek to use the AP system, rather than the courts, there will be savings in the costs of professional legal advice. The most significant savings will arise from business being able to self-represent in what is a simplified and less formal process. This view was confirmed by respondents to the consultation.

It is difficult to estimate the absolute costs of professional advice for an 'average case'. However, initial soundings with legal stakeholders have suggested that the costs of appealing to the AP are likely to be some 50% less than the costs of similar proceedings before the court (currently the PCC). As mentioned under option 2, figures are difficult to obtain, but respondents to the consultation have confirmed that the AP route is likely to be 'significantly less' costly than taking a case through the court. Though, professional fees through the High Court are probably higher than costs of going through the PCC under option 3a.

Information

In addition to the benefits offered by option 3a (streamlining the system by reducing the number of different routes of appeal from three to two), this option will mean that the procedures of the court itself will already be known, in the context of IPO appeals, to the business and legal communities because it is the same court as that used for trade mark appeals. One respondent to the consultation has indicated that the benefit of harmonising procedures as much as possible should not be underestimated.

Flexibility for business

As with option 3a, this option brings business the benefits of being able to choose an avenue of appeal against the IPO's decisions which best suits their business needs based on the money at stake and the relative importance of the case particularly if a further appeal may be envisaged.

In addition to the benefits under option 3a, the use of the High Court was considered by some respondents to the consultation to offer greater flexibility over the PCC for complex cases, because it did not have cost recovery caps or other restrictions of the PCC. For example, one respondent mentioned the two day time limit on hearings before the PCC might not be adequate, particularly if cross-examination was required.

Reducing perceived risks to business

As with option 3a, the ability to be able to choose a low cost, simpler AP route of appeal addresses some of the concerns of micro businesses and individuals (who make up the majority of design companies in the UK) about the costs of protecting their rights, which could overwhelm any small business. Many of these will not use (or have the resources to use) legal representatives so will find the cheaper and quicker AP route less threatening, partly because they will not be liable for the larger scale costs associated with the court if they lose, but also because some may already be familiar with tribunal based processes in other areas, including in trade marks.

Those who advise business on IP matters have suggested that the introduction of the AP route will reduce the inhibitory effect of appealing where the only route is through the court.

Administrative benefit to Government

As with option 2 and 3a, there may be some slight administrative benefit to Government in streamlining the courts and tribunal service.

Monetised Benefits

Fee savings to businesses

Businesses will save from no longer having to pay the RDAT fee, which is £6.

- Lower estimate will be $0.2 \times £6 = \mathbf{£1.20}$
- Higher estimate will be $7 \times £6 = \mathbf{£42}$

Savings to Government

Government no longer have to fund the RDAT. The figures are the same as in option 2 and 3a.

- Lower estimate will be $0.2 \times £2,364 = \mathbf{£473 \text{ per annum}}$
- Higher estimate will be $7 \times £2,364 = \mathbf{£16,548 \text{ per annum.}}$

Net Present Value

These figures are for the costs/benefits we could quantify, there are other monetary costs and benefits for which we do not have the data.

Total Annual Cost

Low Estimate	£5 + £43 + £90	£138
Best Estimate	£93 + £843 + £1603	£2,539
High Estimate	£181 + £1,644 + £3,115	£4,940

Total Annual Benefit

Low Estimate	£1 + £473	£474
Best Estimate	£22 + £8,511	£8,532
High Estimate	£42 + £16,548	£16,590

Affected stakeholder groups, organisations and sectors

These proposals are not likely to have a large impact given the small number of cases per year, but may affect the following groups to some degree:

Businesses engaged in the design industry: applicants seeking to register their design will be able to challenge a negative decision of the IPO by choosing a route of appeal which best suits their business needs: a cheaper and quicker final decision, or a more robust one enabling further challenge if necessary. This gives a degree of flexibility not available under either options 1 or 2. Registration holders and third parties will also have the same options, and degree of flexibility, of choosing an appeal route against decisions by IPO which best suits their needs. Depending on the choice made, it also means that businesses would be able to spend less on seeking legal advice. Initial stakeholder advice suggested this was cheaper in relation to the AP than to the court, and responses to the consultation have confirmed the difference could be 'significant'. Under options 2, 3a and 3b, cases deemed by business to be important enough will be able to be challenged further, which may give a greater degree of certainty, but is also likely to increase costs before a final decision is reached. For those choosing to pursue a case through the court (option 3a or 3b), Option 3b removes some of the restrictions placed on the court (PCC) and gives more flexibility in pursuing complex cases, although this may also increase costs relative to option 3a. Option 3b also fully harmonises the design appeal system with that of trade marks.

The **legal profession** (IP litigators and patent and trade mark attorneys): it is possible that the specific route of appeal (AP, the RDAT or the court) may make some difference to the resources needed to prepare the initial case for any client appealing against the IPO's decision, and therefore to the fees charged to clients. Although responses to the consultation about costs were mixed, respondents tended to the belief that pursuing cases through the courts cases would be more expensive than either the AP or the RDAT.

The legal community may need to spend more time explaining the differences between the two options available to their clients, but, as both the AP and High Court (option 3b) are well known to the legal community and are already offered as alternatives for trade mark appeals, is unlikely to need to spend any time acquainting itself with those differences. If businesses choose to use the AP route, as the AP makes a final decision, they may see a slight reduction in workload (over option 2), as that decision cannot itself be challenged. If other measures to improve the design system result in an increase in the number of application and registrations they may see an increase in workload going to appeal.

The **courts and judiciary** may be affected by a slight reduction in workload, if businesses appealing against the IPO's decisions choose instead to use the AP route of appeal instead of the courts under option 3b.

The **Appointed Person** and **Government legal services** may be affected by a slight increase in workload, if businesses appealing against the IPO's decisions choose this route of appeal instead of the court.

The **IPO** may be affected by any additional costs associated with funding an increase in the workload of the Appointed Person.

Risks and Assumptions

We have assumed that the number of appeals is unlikely to increase much, even in the light of other proposed improvements to the designs IP framework which may encourage more people to seek to register their designs. Responses to the consultation have confirmed this is a reasonable assumption. We have also assumed that the cost of, and resources used in, preparing the cases for appeal is less for the AP than for the court: responses to the consultation have tended to support this assumption, and that the RDAT may also be less than the court. We have assumed that court and RDAT cases will take an average of 1 day to resolve, although this will depend on how complex, or otherwise, the case is. We have also assumed that the deterrent effect of the potential higher cost awards given by the courts would encourage business to opt for the alternative, cheaper, quicker route of appeal in a high proportion of cases. Respondents have confirmed that costs are likely to be a factor for many users, who are therefore likely to seek the cheaper route. We have assumed the PCC costs are those which are currently applicable. It is possible that under reforms to re-structure the county court system that the PCC fees may be similar to those of the High Court. We have assumed that the High Court will be as likely to be used by potential appellants as the PCC.

There is a small risk that having two alternative routes of appeal may be more confusing to business than having only one, but we believe this will be largely offset for some IP users because the system will mirror that of the existing one for trade marks, which many will already be aware of. It will also reduce the number of routes of appeal from IPO decisions overall. We believe any confusion can be offset by the provision of suitable information about the relative advantages and disadvantages of both options.

Proportionality approach

The number of applications made at the UK design registry in 2011 was 4,600. Only 6 proceeded to the type of formal decision which is the prerequisite of any appeal, with none going as far as a formal appeal. On the assumption that all applications are made by UK SMEs, and that each application is filed by a different company, it would seem very few of the total number of SMEs in the UK will be affected by this. This suggests that the impact of these proposals on the economy as a whole is likely to be minimal.

The impact of our chosen option (3b) on any individual applicant seeking to appeal is also likely to be minimal but positive, in that they will be able to choose the route of appeal which best suits their needs and resources. According to the proportionality approach, we therefore believe that extensive analysis of the likely impact of this proposal is not justified.

We have given a higher estimate of the number of possible appeals based on the relative popularity of the trade mark system which these proposals seek to mirror. As the incidence of appeals is so low, and this option will reduce costs to business, and in view of the responses to the consultation that the rate of appeals is very likely to remain low, it would be disproportionate to undertake additional research on how the number of appeals would be affected by the change.

Impacts on SMEs/micro businesses

Micro businesses and individual applicants are the most frequent users of the UK design registration system, and tend to have fewer resources (time, expertise) at their disposal to help them understand the IP system. These measures are intended to help them by giving them greater choice in how they decide to appeal against decisions of the IPO relating to designs, as well as – if they choose it – giving them a final decision more quickly and cheaply. Introducing the more informal AP route also means that, as respondents have suggested, smaller businesses are less likely to seek additional costly legal representation, which they may otherwise choose if the court was the only option available to them.

Evaluation

A full evaluation strategy and Post Implementation Review is being developed for the introduction of the Hargreaves recommendations. The Post Implementation Review will detail the benefits associated with the introduction of the design reforms and will include input from external stakeholders. The plan will also set out how and when the benefits will be measured, which will depend on the type of benefit, as some benefits will be measured by applications and take-up that can be measured from the first year of operation, whereas others will depend on information that will take several years. The evaluation strategy will set out the activities that will be undertaken in order to evaluate the policy, drawing on management information collected through the design system, as well as research that is commissioned in order to measure the benefits.

The main source of data available for evaluation will be collated using industry figures. These statistics, alongside other management information on the operation of the system will be used by Government to assess the impact of the design reforms, including assessing whether benefits have been achieved and how policy or operations can be developed to realise benefits more effectively.

OITO

Currently design owners have a single route of appeal which is no longer considered fit for purpose. The proposal here is to introduce a more flexible system – mirroring existing options for trade marks - which offers a choice to businesses. Most of the quantified costs and benefits are to government, although there are costs and benefits to business that we have not been able to quantify with any degree of

accuracy. Following the OITO methodology we consider the preferred option as a regulatory measure (“an IN”) with a “Zero Net Cost” to business.

Summary

Although this measure does not have a large financial impact, it is one of a number of proposals which are intended to improve the functioning of the UK designs framework, particularly for the micro businesses and individuals which tend to use it. We believe that offering alternative routes for businesses to appeal against the IPO’s decision in relation to design registrations will give them a necessary choice about how to do that commensurate with their own business needs, and if they choose the Appointed Person route, will give them a cheaper option with swifter access to a final decision.