Meeting: Legal Services Board

Date: 22 January 2020

Item: Paper (20) 03

Title: Technology Policy Objective: Next Phase

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Status: Official

Purpose of the paper/Issue

1. This paper presents the Board with proposals for the next phase of work on the technology five-year policy objective.

Recommendation

2. The Board is invited to discuss and approve proposals developed following consultation with the board lead for this work (Marina Gibbs) for three workstreams to be conducted during 2020-21:

   - send an information request to regulatory bodies (RBs) to establish current activity and identify examples of good practice, in two areas: a) unlocking innovation in the sector; ii) emerging approaches to technology regulation

   - establish an expert reference group chaired by LSB

   - use the standing 'public panel' we are creating to conduct research into the social acceptability of different aspects of technology in legal services.

Timing

3. The first phase of the technology project is due to end in April 2020. Work on the proposed next phase should begin in earnest in May 2020, although preliminary work can begin beforehand.

Background

4. The LSB has a strategic objective of:

   Increasing innovation, growth and the diversity of services and providers

   …and has adopted the following five-year policy objective:

*Access to legal services is increased through the promotion of responsible technological innovation that carries public trust***.**

5. We should interpret these objectives in the context of the LSB's role as the oversight regulator of legal services. As such we consider that we should use our convening power and sector-wide perspective to take a leadership role in policy development and ensure good standards of regulatory performance. This includes removing barriers to innovation as well as addressing risks.

Current project

Our work to date

6. Promoting responsible technological innovation that carries public trust will require the creation of a well-designed regulatory framework that encourages innovation while addressing the risks it creates. There is a high level of interest in these issues and our work sits alongside contributions from a wide range of organisations both within and outside of the sector. This includes work by legal sector regulatory bodies, for example the SRA's innovative project with Nesta.

7. Our initial work in this field has aimed to assist the regulatory bodies develop approaches to technology regulation tailored for their respective professions. We have published a series of substantial papers and podcasts by experts on various aspects of technology regulation. We will soon be publishing a collection of short 'perspective' papers from key stakeholders (eg lawtech companies, legal regulators, consumer advocates, the judiciary etc). A stakeholder event kindly hosted by Simmons and Simmons will be held on 26 March. The first phase of our work will conclude by distilling the learning from these various external insights into a report that will act as a springboard for the next phase of our work.

8. Our current project has been steered and complemented by the LSB's 2018 research report on Technology and Innovation in Legal Services as well as engagement with a range of relevant stakeholders including the LSCP, the Information Commissioner's Regulators' Working Group on AI, the Centre for Data Ethics and Innovation Criminal Justice Group, the Regulators' Innovation Network, and the International Conference of Legal Regulators.

Follow-up activity on phase one

9. There is significant media interest in technology, and we have already started to build our public profile in this area – both domestically and internationally – through the podcasts, written articles and by speaking on conference platforms. The final report on phase one of the project will deliver some high-level conclusions, which will help us to further establish our position as a key contributor to public debates on these issues.

10. Over the next 12 months, we will monitor regulatory bodies' development of their approaches to technology regulation through our relationship management work. We may receive rule change applications that include technology elements.

11. We will continue to engage with sectoral regulators (including PSA, medical technology and drug regulators, FCA) and cross-sectoral agencies (eg CMA, CDEI, ICO) about these issues.

Proposals for next phase of work

12. Over the course of our current project we have identified several potential projects and initiatives that the LSB could lead or participate in. The consultation on the draft business plan may identify further candidates and the fast-moving nature of this area means that opportunities are likely to arise in-year. While we have prioritised three workstreams below, we should be flexible in our approach.

13. We have also carefully considered a letter from the LSCP in August 2019, which was discussed by the CEOs of the regulatory bodies at their September meeting. This underlined the need for a coordinated approach across the sector where regulators engage early with tech businesses, law firms and consumers. The second workstream (external reference group) aims to help address this point.

14. In developing our proposals, we have considered how best to use our existing regulatory levers, either 'soft' influencing power or harder tools (e.g. regulatory performance outcomes, policy statements, rule changes, statutory guidance) to achieve our objectives. We consider it premature to deploy our statutory toolkit now, not least since we do not yet have the expertise or evidence base to set clear standards against which to assess the regulators. While use of statutory tools may be appropriate in future, we assess that a collaborative approach focused on supporting the regulators to develop appropriate responses in their respective parts of the market is the best way forward at this stage.

Workstream 1: Information request to regulatory bodies

15. We will send an information request to regulatory bodies to find out what each is doing, to:

- proactively facilitate innovation in legal services, including through sandboxes and similar approaches – this would fulfil the commitment in the current business plan which was deferred due to lack of resources;
- develop their approaches to technology regulation – this might include, for example, an assessment of issues of concern, the resources/expertise they can draw on to respond, and current and planned activities.

16. We will use responses to this information request as follows: to prioritise areas of focus for the expert reference group (see paragraphs 17 to 18, below); as a useful source of intelligence on the performance of the regulators; and to inform future decisions about possible deployment of statutory tools in future.

Workstream 2: Expert reference group

17. In collaboration with the regulatory bodies we propose to set up and chair an expert reference group to share knowledge, consider issues and act as route for

external partners to engage with legal regulators collectively. In doing so we will ensure that the group complements, and does not cut across, work by the LawTech Delivery Panel. We are establishing a good relationship with TechNation, which has been appointed as the Panel's executive delivery partner. The group should involve technology experts and practitioners from outside of the regulatory bodies as well as staff at the regulators working on these issues.

18. We have developed some indicative terms of reference for the expert reference group, at **Annex A**. To ensure this group does not simply become a talking shop, it would need to have clearly identified goals and its work should produce some specific published outputs. The potential benefits for LSB include helping us to further develop our understanding of technology issues, building our networks and profile in this area, and facilitating delivery of the other two workstreams. Some regulatory bodies have indicated enthusiasm for such a group, and we consider it would particularly benefit the smaller regulators.

<u>Workstream 3: Research</u>

19. In his paper, Professor Roger Brownsword emphasised the importance of social acceptability: that the regulation of new technologies should be broadly acceptable to legal professionals and consumers, as well as being compatible with general societal interests. In his view, regulation will not be acceptable if a technology is permitted to cross any 'red lines'. The LSCP's tracker survey shows that more services are being delivered online than ever before, but nearly half of consumers view lack of trust as a barrier to using services provided through AI-type technologies. Therefore, we plan to use the standing panel of members of the public that we are establishing to learn about public attitudes towards technology in legal services. This would focus on areas of likely controversy, e.g. predictive analytics.

20. Further, as a 'quick win' we propose to carry out in-house analysis of the individual legal needs survey by cutting the data to explore experiences of legal services delivered online.

Next steps

21. Subject to the Board's approval, and responses to the consultation on the draft business plan, we would develop a PID for this work for approval by the senior leadership team and begin work on the three workstreams in May.

Annexes

Annex A – Indicative terms of reference for external reference group

Risks and mitigations	
Financial:	Part of the 2020/21 research budget would be allocated to carrying out consumer research.
Legal:	N/A

Reputational:	In the consultation responses to our 2018-21 Strategic Plan and 2018/19 Business Plan, respondents welcomed the LSB's focus on technology and how legal regulation should engage with it. Respondents expressed similar views in their responses to our 2019/20 Business Plan and welcomed our emphasis on the ethical dimensions of technology use, though some respondents cautioned against increased use of technology to deliver services being seen as a reason to reduce funding for Legal Aid and other types of financial support.
Resource:	We expect to deploy approximately the same level of staffing resource to this work as has been the case in 2019/20.

Freedom of Information Act 2000 (FoI)		
Para ref	**FoI exemption and summary**	**Expires**
None	N/A	N/A

Annex A

Indicative terms of reference for external reference group
(to be further developed with the regulatory bodies)

Purpose and functions

1. The underlying policy rationale behind the formation of the group is to support the delivery of a regulatory environment for legal services that supports responsible technological innovation that carries public trust. This involves both removing unnecessary barriers to use of technologies and addressing ethical and consumer protection risks these may create.
2. The core functions of the group include, but are not limited to:
   - Facilitating good practice and knowledge sharing between the legal services regulatory bodies
   - Gathering and sharing intelligence on developments in technology and monitoring regulatory developments in other sectors
   - Considering live and emerging issues, including where a coordinated response by legal services regulatory bodies may be required
   - Providing a route for external agencies (e.g. government, lawtech businesses, representative bodies and regulators from other sectors) to engage with the legal services regulatory bodies collectively.

Membership

3. The LSB will chair the group and provide the secretariat, although members will commit to pooling resources to deliver an agreed programme of work.
4. The core membership will consist initially of the legal services regulatory bodies, the Legal Ombudsman and the Legal Services Consumer Panel, plus nominated external technology experts and practitioners.
5. The core membership may co-opt other members in an advisory capacity.

Operation

6. The group will agree a programme of work on an annual basis and members will take responsibility for the planning and delivery of specific initiatives.
7. Sub-groups may be established to look at specific issues.
8. The group may produce jointly badged publications.
9. The group will meet at least quarterly (four times per year).
10. The group will operate transparently. Agendas and minutes of meetings will be published on LSB's website, once agreed by members in advance.

Duration

11. The group will be ongoing and not time-limited, but members will review its operation after the first twelve months.