

## Committee on Standards in Public Life – Progress Update Request

Name of organisation: Legal Services Board

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Role of respondent: Regulatory Policy Manager

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### 1. Do you know where to go for guidance and advice on the use of AI in the public sector (yes or no)? If yes, please provide details.

1. Yes. The Office for Artificial Intelligence has useful guidance on the use of AI in the public sector from 2019. Information available from the Centre for Data Ethics and Innovation (CDEI) is also useful and points to the opportunities, risks and governance challenges associated with AI.

### 2. To what extent are you ensuring that you are equipped to deal with the regulatory challenges posed by AI technology? How are you adapting your practices accordingly?

2. We have undertaken a programme of work on technology and innovation. This first phase of this work focused on establishing an evidence base whereby we commissioned a series of papers and podcasts from experts in technology, regulation and legal services.<sup>1</sup> We also sought views of technology developers, legal services providers, technology-based legal businesses, and consumers. Our evidence points to a number of challenges and questions regarding AI in the legal services sector, including:
  - The potential for AI to increase the power imbalances that lawyers mediate and the need for legal professionals to understand AI decision-making tools in order to do the best for their clients and ensure fundamental values and principles are protected.
  - The potential for the use of AI technology in legal services to raise regulatory issues around human accountability and respect, with any potential over-reliance on AI undermining people’s ability to take responsibility.
  - The need to consider the issues posed by specific AI-based technologies and their use, and the extent of regulation required to address these issues. For example, should there be greater regulation when AI is used to provide services directly to consumers? Is it sensible to expect the legal services providers who use AI-based applications to understand how they work and are trained in their

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<sup>1</sup> Legal Services Board, Technology and Regulation Project <https://www.legalservicesboard.org.uk/our-work/ongoing-work/technology-and-innovation/developing-the-next-phase-of-our-work-on-technology-and-innovation>

use and implications? If the answer is no, then should regulators be setting standards for AI and its use?

3. Emerging technology, including AI, will be considered as part of the next phase of our technology and innovation work. We plan to carry out research on the social acceptability of developments in technology. As part of our work on the scope of regulation, we will also consider how a risk-based approach to regulation could better enable innovation and the use of technology.

**3. To what extent are you ensuring that the bodies for which you have responsibility have in place robust controls and mechanisms for mitigating potential risks associated with AI?**

4. The LSB operates within a statutory framework set through Parliament – the Legal Services Act 2007 – which describes our functions and gives us our powers. The Act sets out eight regulatory objectives<sup>2</sup> that we share with the organisations we oversee. The regulation of legal professionals is carried out by 15 approved regulators and regulatory bodies and the LSB holds these bodies to account in meeting their obligations under the Act.
5. Our core functions include overseeing the regulators’ performance, setting the annual fees that practitioners pay them and approving changes to their rules and other arrangements. We ensure that regulation of legal services is carried out independently of the organisations that represent providers. We also collect evidence on legal needs and the operation of the market.
6. Certain rules specify that some legal activities (known as the ‘reserved’ legal activities) can only be carried out by individuals or firms authorised by one of the regulators we oversee.<sup>3</sup> There are other activities, including providing legal advice, representing a person in a mediation or negotiations, and drafting documents, such as wills and contracts, which are not included as ‘reserved’ legal activities. This means that a person does not have to be legally qualified to carry them out, and if they only perform these activities, they are not covered by the legal regulatory framework. In effect this means that in England and Wales it is possible to be an ‘unregulated’ legal services provider, though unregulated providers must still comply with general consumer privacy and data protection laws and regulations.
7. The Legal Services Act 2007 reflects the historical title-based approach to legal services regulation and was written prior to developments in technology. We know that technology is an increasing feature of how legal services are delivered, and that Covid-19 has likely cemented its role in the sector. Our research indicates that unregulated providers tend to be more innovative and bigger users of technology.

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<sup>2</sup> The eight regulatory objectives are: protecting and promoting the public interest; supporting the constitutional principle of the rule of law; improving access to justice; protecting and promoting the interests of consumers; promoting competition in the provision of services; encouraging an independent, strong, diverse and effective legal profession; increasing public understanding of the citizen’s legal rights and duties; and promoting and maintaining adherence to the professional principles.

<sup>3</sup> The reserved legal activities are: the exercise of a right of audience; the conduct of litigation; reserved instrument activities; probate activities; notarial activities; and the administration of oaths.

This gives rise to questions on whether there is a widening consumer protection gap between users of regulated and unregulated legal services. It also raises questions on whether the current scope of regulation is limiting technological innovation in the sector.

8. We plan to continue our work on technology and innovation, including research on the social acceptability of emerging technologies such as AI. This will help ensure that regulatory approaches to technology are broadly acceptable to both legal services consumers and providers, and compatible with wider public interest. Our work on technology has pointed to specific concerns about AI that we will explore in our research, including:
  - Autonomous automated decision-making (e.g. humans out of the loop)
  - Possible discrimination (e.g. underlying biases in data used to educate AIs)
  - Transparency of decision-making
  - Unsecure data and record-keeping
  - Individual fairness being less important than general utility
9. Our ongoing work on technology and innovation will align with our strategy for the sector and support the responsible use of technology that commands public trust. The role of AI, and other emerging technologies, will be considered as part of our wider policy work. Other planned work, including our regulatory performance framework review, may also consider the role of technology where relevant.