

Meeting: Legal Services Board

Date: 25 January 2022

Item: Paper (22) 02

Title: Technology and Innovation Project: Regulatory Levers

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Status: Official

Purpose of the paper

1. This paper outlines how we propose to use our regulatory levers to foster technological innovation that increases access to legal services.

Recommendation(s)

2. The Board is invited to:
 - **Note** our progress in delivering practical benefits through our technology and innovation work (paragraph 7)
 - **Discuss and agree** on the proposed next steps for how we utilise our regulatory levers to foster responsible innovation (paragraphs 10 to 12).

Background

3. We began our technology and innovation project in 2019, with our initial focus on building an evidence base to understand the range of issues relevant to regulating the use of technology in legal services. We distilled the key lessons from this first phase, and our priorities for 2021-24, in our report 'Striking the balance: How legal services regulation can foster responsible technological innovation' (published April 2021).¹
4. In June 2021, Board discussed our approach to fostering an open-by-default data ecosystem within the legal services sector. Enabling the availability of more, and better, open data across the legal sector is a priority for our technology and innovation project in 2021-24, and our immediate work centres on developing proposals for a 'regulatory information service' (which is how we conceive of the

¹ 'Striking the Balance: How legal services regulation can foster responsible technological innovation' (April 2021) https://legalservicesboard.org.uk/wp-content/uploads/2021/04/Striking_the_Balance_FINAL_for_web.pdf

‘single digital register’ of authorised persons and entities as recommended by the CMA). This work will go some way to helping ensure that good quality regulatory information is available to consumers, and the wider market. Board discussed this work at its October 2021 meeting, and we will provide a further update on the progress of this work in 2022.

5. More broadly, Board have asked the Executive to consider how we ensure that we are effectively using our regulatory levers to foster technological innovation that widens access to legal services. Our proposed approach is outlined at paragraphs 10 to 12.

Utilising our regulatory levers to foster responsible innovation

6. It is important that any use of our regulatory levers appropriately balances the need to foster the conditions that enable innovation to flourish and help reduce unmet legal needs, and the ability to adapt to evolving opportunities, and risks, as they emerge. This need for a balanced approach is reflected in the priorities we set-out in the ‘Striking the balance’ report, published in April 2021.
7. We are making good progress on the priorities we set-out in our ‘Striking the balance’ report, and helping to deliver practical benefits for the sector, including:
 - Fostering an open-by-default data ecosystem by understanding how emerging uses of technology align with standards of trust and ‘social acceptability’. Trust in technology is an important enabler to its increased use– but what is ‘socially acceptable’² to the public, and professionals, is not clear. We are carrying out research with our Public Panel that will help us identify how regulators, legal professionals and legal technology providers can increase public trust, and where the ‘red lines’ for the public may lie.
 - Working with regulators on scoping the development of a cross-sector tool that enables consumers, and others, to access regulatory information. This could support a range of end-products, including third-party comparison tools. Ultimately, this will benefit the public, and professionals, by helping to make good quality regulatory information accessible.
 - Actively collaborating with others to foster responsible innovation, including supporting existing initiatives. While the current regulatory framework is conducive to innovation, innovators struggle to understand what exactly falls within the remit of the reserved legal activities, and whether they need to engage with a legal services regulator. The Regulatory Response Unit (RRU), which is part of the

² We use the term “socially acceptable” to mean that the proposed use of a technology is broadly acceptable to legal professionals and consumers, as well as being compatible with general societal interests. We adopt this term from ‘The Regulation of New Technologies in Professional Service Sectors in the United Kingdom: Key Issues and Comparative Lessons’ by Professor Roger Brownsword. <https://www.legalservicesboard.org.uk/wp-content/uploads/2019/07/Professions-RB-Report-VfP-4-Jul-2019.pdf>

LawtechUK Sandbox³ and which we are a member of, supported the LawtechUK team in producing a 'Regulatory Navigation Tool'⁴. This Tool is aimed at helping innovators understand the intricacies of the regulatory landscape, and who they can engage with. Early feedback suggests that this tool is useful to innovators. The RRU is now supporting the LawtechUK team to produce joint guidance to help build confidence amongst legal professionals that Digital ID tools are permitted within the current regulatory framework. More broadly, our scope of regulation work will help us to understand the extent to which the risks associated with technological innovation can be adequately managed within the current regulatory framework.

8. Legal services regulators are already actively taking steps to foster responsible innovation. For example, all legal services regulators are part of the RRU, which involves providing direct support to those participating in the LawtechUK Sandbox. The SRA, for example, has a number of projects underway to support innovation, including exploring how legal technology can be used to address regional inequalities, and a pilot study on the potential benefits to law firms and clients of unbundled services. The CLSB secured funding from the Regulators Pioneer Fund to explore how regulation or legislation might help, or hinder, the emergence of innovative services provided by advisors specialising in legal costs.
9. It is important that each legal services regulator actively engages with technology and innovation, and the evolving opportunities, and risks, for their regulated community and consumers. In the 'Striking the Balance' report, we set-out practical actions that regulators can take to foster innovation that opens-up access to legal services. This includes: actively growing their knowledge about the opportunities and risks that technology, and innovation, presents to consumers and legal professionals; providing clear rules and guidance to their regulated community; and working collaboratively with other regulators and with innovators. We can build upon these practical actions to develop principles that make clearer how legal services regulators can foster innovation. In addition, our review of the regulatory performance framework will provide an opportunity to reinforce and strengthen our expectations of regulators, including how regulators adapt to wider changes, such as those related to technology and innovation. We intend to consult on a revised framework from March to May 2022, with a view to implementing a revised framework from 1 January 2023.
10. We propose focusing our immediate efforts on the following regulatory levers:
 - Utilise our convening powers in bringing regulators, and others, together to collaborate. Regulators are already working together in support of technological innovation, as clear from the work of the RRU. Building on this momentum in 2022/23 will be important, including continuing to work with regulators and through existing initiatives to produce joint statements, and guidance, on technological applications, so that legal professionals,

³ <https://technation.io/lawtech-sandbox/>

⁴ 'Regulatory Navigation Tool' (30 April 2021) <https://35z8e83m1ih83drye280o9d1-wpengine.netdna-ssl.com/wp-content/uploads/2021/05/Regulatory-Navigation-Tool.pdf>

consumers and wider society have confidence that particular application of technology are permissible within the current regulatory framework. One area that is ripe for joint collaboration is the use of client data and AI. We can take this work forward through existing cross-sector initiatives, or through groups that we convene specifically for such purposes.

- Ensuring that we have an up-to-date evidence base on the enablers, and barriers, to the use of technology and innovation in the legal sector. We are planning a third phase of our technology and innovation survey in 2022/23 business plan year. This will help to identify how different legal professionals utilise technology, and what the regulatory barriers (both real and perceived) are to such use. We are also planning on commissioning a 'proof of concept' study as part of our work on a regulatory information service (i.e., 'single digital register').

11. As we are making good progress on our priorities, we do not propose setting formal expectations of legal services regulators through a statutory statement of policy at this stage. We believe that we can achieve more immediate benefits by continuing to work collaboratively with regulators to foster responsible innovation. We can build upon the practical actions that we set-out in our 'Striking the Balance' report to make clearer how regulators can foster innovation that opens-up access to legal services.

12. More broadly, our work on the scope of regulation, which is due to conclude in 2022, and our proposed work on financial protection arrangements in 2022/23, will also help us to identify where there are barriers to innovation, and whether the current regulatory framework is well-suited to addressing these barriers.

Next steps

13. Subject to Board discussion and agreement, our next steps will be:

- Continue to utilise our convening powers to bring regulators together in support of technological innovation. Our immediate focus will be on supporting the development of joint statements/ guidance in collaboration with regulators and others that build confidence in the use of particular technologies. We will also explore the feasibility of a joint statement/ guidance on AI to support their increased use, such as through existing cross-sector initiatives like the RRU.
- Building upon the practical actions that we set-out in the 'Striking the Balance' report, develop principles that make clear our expectations on how regulators can foster innovation that opens-up access to legal services.
- Continue to keep the need for a statutory statement of policy on technology and innovation under review. If, for example, we become concerned about the extent to which regulators' arrangements foster innovation, we can consider whether a statutory statement of policy is needed.

Risks and mitigations	
Financial:	N/A
Legal:	N/A
Communications and engagement:	Communication and engagement are an important part of our technology and innovation project. We regularly engage with innovators, regulators and stakeholders.
Equality and diversity:	Technology has the potential to enhance equality and diversity, but it also has the potential to entrench existing inequalities. How regulators can mitigate against the potentially harmful consequences of AI will be a feature of our future work.
Resource:	Resource for the technology and innovation project has already been accounted for in resource planning.

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
N/A		