

Meeting: Legal Services Board

Date: 19 January 2021

Item: Paper (21) 05

Title: Technology: A Regulatory Agenda for Change

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Status: Official

Purpose of the paper

1. To update the Board on the proposed next phase of LSB’s work on technology and innovation in 2021-24.

Recommendation:

2. The Board is invited to:
 - **Consider** the technology paper included at Annex A which distils the learning from our first phase of work on technology and innovation.
 - **Note** the next phase of our work on technology and innovation, detailed at paragraph 9, and dependent on our draft strategy and business plan consultation.

Background

3. Technology has the potential to enhance, or conversely, be detrimental to the achievement of our regulatory objectives. Technology is increasingly a feature of how legal services are delivered. It can help to improve access to justice by enabling new ways to access legal services. Equally, new and emerging technologies carry risks that could impact on the protection and promotion of consumer interests.
4. In 2019, we began a project to establish an evidence base to help regulatory bodies in developing their approaches to regulating the use of technology in legal services. To do this, we commissioned a series of articles and podcasts from a range of experts in technology, regulation, and legal services. In April 2020, we published an additional collection of 11 articles titled ‘Perspectives on

LawTech and Regulation' with contributions from legal professionals, regulators, and technology developers.

5. Since April 2020, we have stepped up our engagement on technology and innovation. This has included hosting a dedicated evidence session on technology and innovation as part of our strategy development work and supporting the Tech Nation Sandbox Pilot.
6. We have been considering our next steps on technology and innovation as part of our strategy and business planning work, which we are now consulting on.

Proposal

7. The overarching lesson from the first phase of our work is that technology and innovation offer opportunities that the legal services sector should embrace, but the associated risks need to be considered and managed. Technology can improve access to legal services by making services more widely available and reducing costs, for professionals and for the public. It can also help to reduce common errors and enable services to be designed around consumer needs.

Key challenges

8. We distil the key learning points from the first phase of our work and set out our next steps in the attached report (**Annex A**). In this, we identify several key challenges and questions that regulators should consider in striking a balance between supporting technological innovation and protecting consumers and the overall legal system from potential harm:
 - Technology can help to increase access to legal services, but there is a risk of excluding those with low digital capability
 - Technological innovation can only happen if the underlying digital infrastructure is in place
 - There needs to be clear and transparent data accessible to all
 - Technology can help open-up the legal profession to a more diverse range of individuals
 - Legal professionals may need to build and develop their own technological skills
 - Advanced technologies, such as AI, pose ethical and regulatory challenges, as well as opportunities
 - How technology is used is influenced by what is “socially acceptable”
 - Regulators have a role in fostering innovation
 - The current regulatory framework is conducive to innovation, but it may not be flexible enough to protect consumers from the risks that technology pose.
9. We also identify several practical steps that regulators can take in developing approaches that foster innovation and protect consumers from undue risk, including:

- Being proactive in engaging with legal services technology
- Listening to consumers, their representatives, and the regulated community
- Staying knowledgeable about technologies including: the issues they present, how their regulated community uses or could use them, how technology developers operate, and the issues technology presents,
- Being open-minded and willing to learn from a wide range of sources including other legal regulators, legal stakeholders, legal regulators in other jurisdictions, regulators in other professions and industries, general technology regulators, government, and other public bodies
- Cooperating and collaborating with other bodies and complementing other regulatory initiatives, where possible. Cooperation and collaboration are particularly important for smaller regulators to help them mitigate against their lack of scale
- Being accessible to the unregulated sector and technology developers
- Developing a clear technology regulation strategy that addresses the needs of its profession and manages risks to consumers
- Providing clear rules and guidance to its regulated community while, where possible, providing advice to unregulated legal providers and technology developers to encourage innovation.

Next steps for the LSB

10. Technology and innovation have an important role in delivering fairer outcomes, stronger confidence and better services that meet society's needs. Our proposed next phase of work on technology and innovation (2021-24) will help deliver the draft Strategy for the Legal Services Sector.
11. Subject to the draft strategy and business plan consultation, our next phase of work on technology and innovation (2021-24) will focus on:
 - Enabling cross-sector collaboration to help address the ethical and regulatory challenges posed by technology
 - Exploring how more and better open data can be made available in the legal services sector
 - Generating insights into whether the emerging uses of technology are ethical and "socially acceptable"
 - Considering whether the current regulatory framework adequately protects consumers from the risks posed by technology.
12. Cross-sector collaboration and cooperation will be a key feature of our work on technology and innovation. We will continue to support existing initiatives, such as the Lawtech Sandbox Pilot, and engage with stakeholders wherever relevant.

Conclusion and next steps

13. Subject to Board approval, we will publish the attached technology report. We also plan to record an accompanying podcast as part of our 'Talking Tech' series on what we have learnt and our next phase of work.
14. We will begin our next phase of work, including conducting research using the Public Panel and considering the implications of technology as part of our planned work on the scope of regulation. We will also use our convening powers to consider how to develop cross-sector open data standards and approaches.
15. When the Lawtech Sandbox Pilot concludes, we will consider how cross-regulator collaboration and partnership working can continue.

Annexes

Annex A – Draft report

| Risks and mitigations | |
|--------------------------------|--|
| Financial: | N/A |
| Legal: | N/A |
| Comms and engagement: | Technological innovation is an area of focus for many others in the legal sector and there is a risk of duplication. Regular engagement with stakeholders in the next phase of our work will help to reduce duplication and identify areas of collaboration and cooperation. |
| Equality and diversity: | Technology can help open-up the legal profession to a more diverse range of individuals, but it could also entrench existing inequalities. We pose key questions that regulators and other should have regard to in considering the impact of technology on diversity and inclusion. |
| Resource: | Policy manager resource is factored into our business planning assumptions for 2021-22. |

| Freedom of Information Act 2000 (Fol) | | |
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| Para ref | Fol exemption and summary | Expires |
| Annex A | Section 22 – future publication. | N/A |