

Board Paper (23) 04

Meeting: Legal Services Board

Date: 24 January 2023

Item: Paper (23) 04

Title: Technology for access: principles for regulators

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Status: Official

Introduction: Purpose of the paper

1. This paper sets out our intention to develop new statutory guidance¹ for regulators on promoting the use of technology for access. This guidance will ensure consumers can access a broader range legal services that better meet their diverse needs, improve access to justice and help to address unmet legal need.

Recommendation(s)

2. The Board is asked to:
 - a) **note** the outcomes proposed as set out in paragraphs 8 to 15; and
 - b) **agree** that new draft guidance should be developed on this basis for consideration by the Board in mid-2023, with a view to public consultation commencing shortly thereafter.

Background

3. The LSB has a long-running and well-developed programme of work centred on technology and innovation. It is relevant to the Regulatory Objectives of improving access to justice, protecting and promoting the public interest and the interests of consumers, and promoting competition in the provision of services. It is also central to our Reshaping Legal Services strategy and its challenges to:
 - foster innovation that designs services around consumer needs; and
 - support responsible use of technology that commands public trust.
4. Since 2019, we have built a strong evidence base that recognises the transformative potential of technology for access and the role that regulation has in unlocking its benefits for the users and providers of legal services. May 2022 research with members of the public and the profession into the social

¹ Section 162 of the Legal Services Act 2007 (the Act) allows the LSB to provide guidance to approved regulators. Guidance under s162 may consist of such information and advice as the LSB considers is appropriate. When exercising its functions, the LSB may refer to the extent to which an approved regulator has complied with any s162 guidance which is applicable to it.

acceptability of technology² showed that consumers have an appetite to use technology and that legal professionals believe it can improve services, drive efficiency and productivity, and make services more accessible.

5. Our latest use of technology and innovation survey, due to be published soon, highlights technologies for access that the profession has adopted, at a greater rate due to the Covid-19 pandemic, for example, custom-built applications, live chat functions and video-conferencing. The LSCP's 2022 tracker survey showed that consumers are increasingly using online services such as these, however, there are indications the level of service provided online is not yet equivalent to that provided face-to-face.³
6. Our 'Striking the Balance' report⁴, published in 2021, was designed to be an information resource for regulators setting out potential opportunities, risks and challenges to consider in developing their own approaches to regulating technology. Current approaches present a varied picture however: some regulators are more proactive than others in creating a regulatory environment that is open to technology and service innovation, including removing barriers to entry and competition and taking a risk-based, consumer-centric approach.
7. Given the level of unmet legal need in the market, which is evidenced by our individual and small business legal needs surveys⁵, we know there is more scope for technology for access as a solution. Further, the tracker survey indicates there is room to improve the provision of online services to consumers. New statutory guidance that includes good practice examples will make clear the importance of, and support regulators to make, further progress in this area with appropriate ambition and pace.

Proposal

8. The LSB's 2022/23 business plan includes plans to set out our expectations of regulators with regards to technology for access, as well as identify examples of good practice from regulators in doing so. To do achieve this, we intend to set out outcomes that draw on our research and evidence gathered to-date in new guidance, which will be included in the Regulatory Performance Framework Sourcebook against Characteristic 13, 'Actively encourages innovation and innovators in the interests of improving access to services; identifies and mitigates risks appropriately without allowing them to become obstacles.'
9. The guidance will be based on pro-innovation principles and clarify that innovation encapsulates a wide range of activities and goes beyond developing specific technologies/products. We do not intend to be prescriptive in our approach: regulators and their boards will be responsible for providing assurance that they are meeting the outcomes. As noted at paragraph 6, some regulators have activities underway that support the provision of technology for access that

² <https://legalservicesboard.org.uk/wp-content/uploads/2022/05/Acceptability-of-technology-in-legal-services-research-report-FINAL-March-2022.pdf>.

³ <https://www.legalservicesconsumerpanel.org.uk/wp-content/uploads/2022/07/22.07.19-How-consumers-are-using-legal-services-report-FINAL.pdf>

⁴ https://legalservicesboard.org.uk/wp-content/uploads/2021/04/Striking_the_Balance_FINAL_for_web.pdf.

⁵ <https://legalservicesboard.org.uk/wp-content/uploads/2020/01/Legal-Needs-of-Individuals-Summary-Report-Final-January-2020.pdf>; <https://legalservicesboard.org.uk/wp-content/uploads/2022/05/20220406-Small-business-legal-needs-FINAL.pdf>.

can be shared with others as good practice examples. There will also be opportunities to learn from progress made in other sectors.

10. Our proposal is that the new guidance should cover three key outcomes as follows:

- **Outcome 1:** Regulators should be proactive in removing barriers to entry and competition to ensure the sector is open to technology and innovation.
- **Outcome 2:** Regulators should have a consumer-centric approach to technology and innovation and understand, and work to address, barriers that consumers face in accessing service innovations and technology.
- **Outcome 3:** Regulators should understand the opportunities and risks relating to the use of technology and respond to risks in a manner that does not have a dampening effect.

Outcome 1

11. This outcome underlines our expectation that regulators are committed to creating a regulatory environment that is open to innovators entering the market and developing products that benefit consumers. Regulators should be creating that environment by proactively engaging with, and being receptive to, new and existing technology providers and innovators. Collaboration will be crucial and should be pursued to support technology for access. Examples of assurance in relation to this outcome could include:

- evidence of regulator driven pilot schemes for technologies/services or innovative approaches to service delivery;
- sharing data and providing open access to it, where appropriate; and
- regulator development/participation in regulatory sandboxes to actively encourage collaboration with providers on new services.

Outcome 2

12. The legal profession should be a trusted interface between the public and the technology/innovation that can help them meet their legal needs. This includes helping consumers find the information they need to understand their legal problems as well as assisting them in gaining access to legal service providers who can help (which is relevant to our work to empower consumers and explore the feasibility of a regulatory information service with the functionality of a single digital register).

13. In pursuing a consumer-centric approach to technology, regulators should be proactive and collaborate to understand the barriers that may prevent or limit consumers using technology or other innovative service solutions – and they should work not just to protect consumers from harm, but enable consumer choice in how they access and interact with legal service providers. This means providers being encouraged to do what they can to make services more accessible, convenient and cheaper for consumers.

14. Ultimately, building public trust and confidence in the use of legal technology will help foster the aim of creating a virtuous circle of innovation and improved access. Examples of assurance in relation to this outcome could include:

- evidence of direct engagement between regulators and consumers with consumer testing/pilots of new products or services with a pro-active approach to obtaining and acting on consumer feedback; and
- the use of technological solutions to improve consumer empowerment by providing consumers with information about choice, price, quality and routes for redress.

Outcome 3

15. Our expectation is that regulators should adopt a risk-based approach to regulating technology and innovation that balances assessment of the benefits and risks to consumers, without being overly risk averse. When making assessments, regulators should be focussed on technology for access and be open minded to technology and innovative solutions that can benefit consumers. They should also ask how they can promote regulatory certainty, including being clear on what should happen when things go wrong. Examples of assurance in relation to this outcome could include:

- evidence of regulator collaboration with developers and innovators on risk assessments for new and existing products; and
- development and adoption of regulator risk mitigation strategies for technology.

Conclusion/Next steps

16. The Board is asked to:

- a) **note** the key outcomes proposed to be covered in the new guidance as set out in paragraphs 12 to 18; and
- b) **agree** that new draft guidance should be developed for consideration by the Board in mid-2023, with a view to public consultation commencing shortly thereafter.

Risks and mitigations	
Financial:	N/A.
Legal:	The development of the proposed principles and guidance are within the remit of the LSB's powers. Any consultation on those proposals needs to be in accordance with public law requirements and consultation principles.
Communications and engagement:	Our intention is to carry out a public consultation exercise on the new guidance in mid-2023.
Equality and diversity:	Outcome 2 (regulators should have a consumer-centric approach to technology) has the potential to improve outcomes for consumers with protected characteristics.
Resource:	The project is accounted for in the 2022-23 business plan and the draft business plan for 2023-24.

Environmental:	Increased use of technology and other innovative solutions in the provision of legal services has the potential to have a positive wider environmental impact, i.e. reduced reliance on paper-based working practices and increased hybrid working.
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Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
	N/A	N/A