

Meeting: Legal Services Board

Date: 6 June 2023

Item: Paper (23) 34

Title: Guidance: technology for access – proposals for consultation

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Status: Official

Introduction: purpose of the paper

1. This paper presents draft statutory guidance on promoting technology and innovation to improve access to legal services. The guidance aims to ensure consumers can access a broader range of services, improve access to justice and help to address unmet legal need.

Recommendation(s)

2. The Board is asked to:
 - a) **Discuss** the draft guidance and draft consultation paper,
 - b) **Approve** these documents as the basis for consultation, and **delegate** to the Chief Executive approval of final changes prior to publication.

Background

3. The LSB has a long-running and well-developed programme of work centred on technology and innovation¹ and its role in the provision of legal services to improve access to justice (one of the regulatory objectives we share with the regulators we oversee). In addition, this work supports the LSB's sector-wide strategy, 'Reshaping Legal Services'², where we identify that technology and innovation can help to provide services that better meet society's needs.
4. As set out in our Board paper³ for the January 2023 Board meeting, evidence from our research⁴ tells us that there are significant levels of unmet legal need in the legal services market which we believe could be reduced by the increased adoption of technology and innovation. For example, we know that consumers are open to, and would use, technology and service innovations to address their legal

¹ <https://legalservicesboard.org.uk/our-work/ongoing-work/technology-and-innovation>

² https://legalservicesboard.org.uk/wp-content/uploads/2021/03/Strategy_FINAL-For-Web2.pdf

³ <https://legalservicesboard.org.uk/wp-content/uploads/2023/01/07.-Paper-23-04-Technology-and-Innovation-Principles-for-regulators-.pdf>

⁴ <https://legalservicesboard.org.uk/wp-content/uploads/2020/01/Legal-Needs-of-Individuals-Summary-Report-Final-January-2020.pdf> and <https://legalservicesboard.org.uk/wp-content/uploads/2022/05/20220406-Small-business-legal-needs-FINAL.pdf>

needs, and that they understand the benefits that the use of such tools bring⁵. Legal professionals and legal firms are also driven to provide services enabled by technology and innovation to their consumers, and they can see how the use of such tools can help them to provide a better and more diverse range of services⁶.

5. We also know⁷ there is scope for greater use of technology and innovation in the legal services sector, the adoption of which can be hampered by barriers faced by:
 - consumers in using and accessing legal technologies and service innovations,
 - technology providers and innovators in bringing new products and services to the sector, and
 - legal services providers in adopting technologies and delivering innovative services.
6. In addition, we know that current regulatory approaches to technology and innovation in the legal services sector present a varied picture - some regulators are more proactive than others in creating a regulatory environment that is open to technology and innovation.
7. As well as addressing barriers, it is clear that there is space for regulation to act as positive, enabling driver for change, providing a regulatory environment that is permissive, open and promotes the development of innovative new services and the take up of legal technology. This recognises that innovation encapsulates a wide range of activities beyond developing specific technologies and products.
8. We propose that providing new statutory guidance for regulators will make clear our expectations and provide regulators with clarity and certainty to encourage them to develop regulatory approaches centred around three proposed outcomes (set out below) that will promote the use of technology and innovation to improve access to justice for consumers.

Proposal – draft statutory guidance on promoting technology and innovation to improve access to legal services

9. Drawing on the evidence and research, we have prepared draft statutory guidance for consultation that sets out three outcomes we expect regulators to pursue when developing their regulatory approaches. In drafting the guidance, we have engaged with the Board leads for technology and innovation, and the Legal Services Consumer Panel (LSCP).

⁵ <https://legalservicesboard.org.uk/wp-content/uploads/2021/10/Lawtech-and-SMEs-report-October-2021.pdf>, <https://legalservicesboard.org.uk/wp-content/uploads/2022/05/Technology-in-legal-services-what-is-socially-acceptable.pdf>, <https://www.legalservicesconsumerpanel.org.uk/wp-content/uploads/2022/07/22.07.19-How-consumers-are-using-legal-services-report-FINAL.pdf>.

⁶ Forthcoming LSB Use of Technology and Innovation Survey, 2023 and <https://legalservicesboard.org.uk/wp-content/uploads/2022/05/Technology-in-legal-services-what-is-socially-acceptable.pdf>

⁷ Various sources including those already referenced in prior footnotes, and also: <https://legalservicesboard.org.uk/wp-content/uploads/2022/05/Acceptability-of-technology-in-legal-services-research-report-FINAL-March-2022.pdf>; <https://legalservicesboard.org.uk/wp-content/uploads/2020/04/LSB-Technical-Perspectives-FINAL.pdf>; <https://www.sra.org.uk/globalassets/documents/sra/research/legal-access-challenge-report.pdf?version=49d9b9>; <https://cms.lawtechuk.io/uploads/A2J-Report.pdf>, and https://legalservicesboard.org.uk/wp-content/uploads/2021/04/Striking_the_Balance_FINAL_for_web.pdf

10. The outcomes-based approach is intended to provide a flexible framework for regulators, which we believe is an appropriate approach given the diversity of the sector. This approach also facilitates the adaptation of regulatory approaches to the promotion of technology and service innovations which are still developing, have not yet been developed or are not yet required by consumers. An example of this is current debate about the role of generative Artificial Intelligence (AI) and its potential to improve the diversity and reach of legal services, and how AI should be regulated to balance benefits and risks to consumers.

- **Outcome 1: Technology and innovation is used to support consumers to better access legal services and address unmet need.** This outcome is driven by evidence that the adoption of technology and innovation based around the needs of consumers is already having a positive impact in the legal services sector, and that the promotion of technology and innovation could further enable consumers to better access legal services now and in the future.
- **Outcome 2: Regulation balances the benefits and risks of technology and innovation for the greater benefit of consumers.** This outcome focuses on the need for regulators to understand, and balance, the benefits and risks to consumers related to the use of technology and innovation in the provision of legal services, without being excessively risk averse.
- **Outcome 3: The legal services sector is open to technology providers and innovators and barriers to entry are lowered.** This outcome is driven by evidence about the barriers faced by technology providers and innovators who wish to enter the legal services sector and the need for ongoing, proactive collaboration to help reduce barriers to entry and promote consumer choice.

11. To meet the outcomes, we have set out a range of examples of activities regulators could consider, such as consumer testing, developing technological competencies, sharing data, and conducting pilots to test new technologies and services.

12. Alongside the guidance - to further support regulators to develop their regulatory approaches and assist with collaboration in line with the outcomes set out in the guidance - we propose to explore ways to facilitate regulators providing and sharing case-studies/other information with each other that relates to regulatory activities undertaken to promote technology and innovation and which has benefited consumers or improved access to legal services.

13. The new guidance will be included in the Regulatory Performance Assessment 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.'*

Next steps

14. Subject to Board's approval, we intend to consult on Annexes A and B starting over the summer. There are a range of stakeholders that we will seek to engage with during this period, including lawtech providers and innovators and consumer groups.

Risks and mitigations	
Financial:	N/A.
Legal:	The development of the proposed principles and guidance are within the remit of the LSB's powers. While the express duty to consult under section 205 of the Act does not extend to guidance, the LSB is advised to consult to ensure that the process for producing the guidance is compliant with the general duties for the LSB under section 3 of the Act. Moreover, legal advisory support is provided throughout to ensure that the consultation follows the consultation principles.
Communications and engagement:	We will carry out a public consultation exercise on the new guidance in summer 2023.
Equality and diversity:	Outcome 1 has the potential to improve outcomes for consumers with protected characteristics. We have set out our equality impact assessment in Annex B (paragraphs 90-97)
Resource:	This work is accounted for in the 2023-24 business plan
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.

Annexes

Annex A – draft statutory guidance on promoting technology and innovation to improve access to legal services.

Annex B – draft consultation paper for the statutory guidance on promoting technology and innovation to improve access to legal services.

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
Annex A and Annex B	s.22 - information intended for future publication	N/A.