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A pro-innovation approach to AI regulation – white paper

Response by the Legal Services Board

Thank you for the opportunity to respond to the white paper, and for our continued engagement with the Office for AI. Our response below draws on information previously shared with the Office for AI. We would be happy to discuss any of this further with you.

About the Legal Services Board

1. The Legal Services Board (LSB) oversees the regulation of legal services in England and Wales. We are an independent body created by the Legal Services Act 2007 (the Act). Our functions include overseeing the performance of the eight regulatory bodies who carry out the day-to-day, direct regulation of legal services. In all our work, we have a duty to promote the eight statutory regulatory objectives set out in the Act, such as improving access to justice.

Technology and innovation in the legal sector

2. The LSB has a well-developed workstream focused on the use of technology and innovation in the legal services sector. We recognise the increasing role of technology across the legal sector, with its significant potential to improve access to justice for consumers. We know from our own research that there are significant levels of unmet legal need in the legal services market, and we believe that the increased adoption of technology and innovation, including AI, can help to reduce this.

3. The LSB, and the regulators we oversee, operate within a statutory framework set by Parliament. The regulatory framework created by the Act was designed prior to developments in technology. For example, the focus of the Act on reserved legal activities and professional titles means that specific technologies and products, such as AI applications, may be excluded from its remit. Unregulated providers of legal services (and their use of technology, including AI) is outside the scope of the existing regulatory framework. This means that those who develop AI technologies and applications do not necessarily fall within the legal services' regulatory framework. That being the case, our focus as oversight regulator is outcomes-based rather than technology-specific.

4. In our sector-wide strategy, [Reshaping Legal Services](#), we identify two challenges facing the legal sector that are directly relevant to the growth and development of technology, including AI: the need to 'foster innovation that designs services around consumer needs'; and 'support the responsible use of technology that commands public trust'. To help overcome these challenges, and to ensure that legal services can better meet society's needs, [we are in the process of drafting new statutory guidance](#) for the regulators we oversee. This guidance will set three outcomes that we expect regulators to pursue when developing their own regulatory approaches to technology and innovation, including AI. This will help to address the barriers that consumers, technology providers and legal services providers currently face, as well as helping to promote the use of technology and innovation that increases access to justice. The three draft outcomes are:

   - **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, and the opportunities and costs, 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.

5. This outcomes-based approach is intended to provide a flexible framework so that the regulatory approaches adopted by legal services regulators can continue to develop, including in relation to AI. We know, for example, from [our research on technology and innovation](#) that the use of AI technologies in the regulated legal sector is still relatively immature and that AI technologies are likely to be used variably to provide legal services; but that their use seems likely to increase, possibly quite substantially, over the next three years. This means there is scope for the ethical use of AI to benefit the users of legal services and wider society, and for regulation to enable and support that use.

General comments on the proposals

6. We broadly support the pro-innovation, principles-based approach set out in the white paper which seeks to empower regulators to implement the principles within their existing remit. Technological developments, including the growth of AI, are fast moving, and often at a faster pace than the debate around the role of regulation. The

non-statutory, principles-based approach proposed in the white paper recognises the expertise and knowledge that sectoral regulators have of the markets they regulate. We see a very strong case for this. Furthermore, it is consistent with our own principles-based and outcomes-focused approach to regulation that recognises that legal services regulators are best placed to determine how to meet our expectations (for example, see our proposed statutory guidance above). It is essential that regulators seek to keep pace with technological developments, particularly in relation to AI.

7. One of the five principles outlined in the white paper is accountability and governance. This states that governance measures should be in place to ensure effective oversight of the supply and use of AI systems, with clear lines of accountability established across the AI lifecycle. The ability of consumers to seek redress when something goes wrong is fundamental to professional regulation. **In any regulatory system there needs to be clarity on who is accountable if something goes wrong**. In the legal sector, for example, consumers of unregulated legal services do not have the same access to redress as consumers of regulated legal services. This is particularly relevant in the context of AI where those who develop AI-enabled products and services are unlikely to fall within the remit of the legal services regulatory framework (although those who deploy them to provide legal services may).

8. Another principle in the white paper is transparency and explainability. This principle means that appropriate information should be communicated to relevant people about an AI system so that it is clear how, when, and for what purpose such a system is used. In legal services, this may mean a regulatory requirement to be clear with consumers when AI has been used to generate advice (which may also create downward pressures on costs). It also refers to the importance of people being able to access, understand and interpret the decision-making process of an AI system. We know from our [own research on the social acceptability of technology](#) that members of the public, and legal professionals, have concerns about fully automated systems and processes that would have the capability of making decisions without any human oversight.

9. We welcome the recognition that different sectors, and regulators, will need different approaches to the regulation of AI to align with their evidence and assessment of the risks and the benefits that AI can bring to their sectors/consumers. This is true for the legal sector where there is a wide range of regulated professionals and entities who offer services. It will be important for legal services regulators to continue to build their evidence base on the impact of technology, including AI.

10. It is important that the proposed framework for the regulation of AI remains flexible and proportionate to allow for differences in regulated communities. It is also important that Government recognises that the regulation of AI extends beyond the regulation of AI-driven technologies and may also encompass deployment and use. For example, in the legal sector, AI has the potential to change the very nature of what it means to be a legal professional and will therefore be directly relevant to the training of regulated legal professionals and how they meet their professional and ethical obligations. Legal services regulators are best placed to determine how their

own regulatory arrangements may be impacted by an increased use of technology, including AI, and where specific guidance may be needed.

11. The white paper sets out an expectation that regulators publish guidance on how the cross-sectoral AI principles apply within their regulatory remits. We broadly support an approach where the decision to provide guidance rests with regulators based on their expertise and knowledge of the market they regulate. For example, it may not be necessary for regulators to issue AI-specific guidance if they can provide assurance that the regulation of AI is already accounted for in their regulatory approach. As referenced above, we are already in the process of developing new statutory guidance about the use of technology in the legal services sector that is intended to be technological neutral, and therefore capable of capturing developments in AI. However, as oversight regulator for legal services in England and Wales we are prepared to take further action, if there is evidence that the regulators we oversee are not taking proper action in relation to the risks, and benefits, of AI.

12. We note that the white paper highlights that the non-statutory approach to the regulation of AI may be reconsidered in the future. It will be important for the Government to be clear on when the non-statutory approach may warrant reconsideration.

13. We welcome the Government's commitment to work to understand the capability of individual regulators and how it can best support them to implement the proposed framework. Legal services regulators are diverse – they vary in terms of the number of legal professionals they regulate, the scope of regulated services they oversee, and in their size and the resources available to them. Consequently, the current capabilities of regulators to meet the requirements of the proposed framework will vary significantly. This means that some of the requirements of the proposed framework, such as the publication of guidance or ongoing engagement with the central risk/monitoring and evaluation function, would be best developed on a collaborative basis.

How the LSB can assist

14. Given the breadth of services that legal regulators oversee, and the varied use of AI within each part of the regulated legal sector, we would be happy to facilitate discussions with the legal services regulators to explore the practical implementation of the cross-sectoral principles in further detail. We are pleased to already be exploring opportunities for collaboration like this. We can also assist the Government in the implementation of the non-statutory approach by signposting legal services regulators to any centrally issued guidance, and other information related to the AI regulatory framework issued by the Office for AI.