

Meeting: Legal Services Board

Date: 27 February 2024

Item: Paper (24) 07

Title: Technology for access – final guidance for approval

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Status: Official

Introduction: purpose of the paper

1. This paper presents our final statutory guidance on promoting technology and innovation to improve access to legal services (the Guidance) and our consultation response document.

Recommendation(s)

2. The Board is invited to **approve** the final Guidance and consultation response document for issue and publication, and **delegate** to the Chief Executive approval of final minor 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, which is one of the statutory regulatory objectives we share with the regulators we oversee. In addition, this work supports the regulatory objectives to protect and promote the public interest and the interests of consumers, and promoting competition in the provision of services.
4. Our evidence base shows that there are high levels of unmet legal need in the legal services sector and highlights the transformative potential of technology in increasing access to justice, as well as the role for regulation in unlocking the benefits of technology and innovation for users and providers of legal services.²
5. In view of this, the LSB identified in its strategy, '*Reshaping Legal Services*', priorities for all regulators to support responsible use of technology that commands public trust and foster innovation that designs services around consumer needs.³ We also set out in our Regulatory Performance Framework Sourcebook that a characteristic of a

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

² A full summary and explanation of our research is set out in the consultation paper on "[Draft guidance on promoting technology and innovation to improve access to legal services](#)": see paragraphs 22 to 41.

³ https://legalservicesboard.org.uk/wp-content/uploads/2021/03/Strategy_FINAfL-For-Web2.pdf

good regulator is one that *‘Actively encourages innovation and innovators in the interests of improving access to services; identified and mitigates risks appropriately without allowing them to become obstacles’*.⁴

6. In order to clearly set out our expectation of regulators, in January 2023⁵ the Board approved the development of new statutory guidance on promoting the use of technology and innovation in the public interest and with a view to improving access to legal services. Our draft proposed outcomes that regulators should meet were:

- **Technology and innovation are used to support consumers to better access legal services and address unmet need.** This outcome was 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.
- **Regulation balances the benefits and risks, and the opportunities and costs, of technology and innovation for the greater benefit of consumers.** This outcome focused 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.
- **The legal services sector is open to technology providers and innovators and barriers to entry are lowered.** This outcome was 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.

Consultation and responses

7. Following the Board’s approval, the LSB launched a consultation⁶ on the proposed Guidance, which ran from 10 July 2023 to 2 October 2023.
8. We received 13 responses from a variety of stakeholders. The responses were generally supportive of our proposals. Two respondents were critical of the proposals and questioned whether, in publishing the Guidance, the LSB is (a) acting beyond the scope of its statutory remit and (b) seeking to act as a sector-wide regulator for both those who are regulated through the Legal Services Act (the Act), and those who are not.
9. In the consultation response document, we set out our analysis of the responses we received, and our response and conclusions, including where and why we have made changes to the Guidance in view of the feedback we received. This, including the proposed final Guidance, is available at Annex A.

⁴ <https://legalservicesboard.org.uk/wp-content/uploads/2022/10/Regulatory-Performance-Assessment-Framework-Sourcebook.pdf>

⁵ <https://legalservicesboard.org.uk/wp-content/uploads/2023/01/07.-Paper-23-04-Technology-and-Innovation-Principles-for-regulators-.pdf>

⁶ <https://legalservicesboard.org.uk/wp-content/uploads/2023/08/Consultation-paper-Draft-guidance-on-promoting-technology-and-innovation-to-improve-access-to-legal-services.pdf>

Changes to the Guidance

10. We have made changes to the Guidance in the following areas:

- **Clarifying that the supporting considerations for each outcome in the Guidance are not prescribed requirements:** To ensure that individual regulators understand we expect them to determine how they should meet each outcome in the Guidance, we have added wording⁷ to underline that the potential considerations in the Guidance in support of each of its outcomes are not a prescribed or exhaustive list of requirements.
- **Aligning the language of the outcomes to reflect characteristic 13⁸; and emphasising that the Guidance is relevant to regulated legal services only:** We have amended the wording of outcome 3⁹ to remove the references to:
 - (a) 'barriers to entry' for innovators: it was asserted that some barriers may be necessary to protect consumers whilst others may be outside of the direct control of regulators. The wording of the outcome is now more closely aligned with characteristic 13, however our expectation that regulators will work to reduce barriers to entry continues to be set out in the Guidance as part of the considerations related to outcome 3¹⁰.
 - (b) 'the legal sector': to underline that the scope of the Guidance is limited to the regulated legal services sector under the Legal Services Act 2007.
- **Clarifying how regulators should consider the impact of certain technology on vulnerable groups (i.e. equality, diversity and inclusion impact of such technology):** We have added additional wording to the Guidance to clarify that regulators could assess and mitigate the equality impacts of the use of technology and innovation as part of their overall risk-based approach under outcome 2.

Implementation

11. The Guidance will be implemented on the day it is published. Following implementation, the new Guidance will be included in the Regulatory Performance Assessment Framework Sourcebook for Characteristic 13. Compliance with the Guidance by regulatory bodies will be assessed as part of the LSB's annual regulatory performance assessment process.

12. The reasons for using this existing process for implementation are two-fold. Firstly, it is a process which regulators are familiar with and already provide information/assurance related to their performance to the LSB each year. Secondly,

⁷ Final guidance, paragraph 15

⁸ 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 Final guidance, paragraph 14

¹⁰ This includes specific references to addressing barriers to entry in the final guidance paragraphs 24, 25b and 25c.

the use of an existing process is efficient, and should not therefore result in any significant additional reporting requirements or burdens on regulators.

Next steps

13. Following consideration by the Board, we aim to issue the Guidance in March 2024 and publish it alongside the consultation response document.

Risks and mitigations	
Financial:	N/A.
Legal:	Legal advisory support has and will continue to be provided throughout this project to ensure that the LSB works within its statutory remit when producing and finalising the Guidance.
Communications and engagement:	We have engaged with the sector and other stakeholders during the consultation process. We have set out a summary of feedback on the consultation proposals and our response in the consultation response document. We will notify regulators of the publication of the new Guidance via a sourcebook update.
Equality and diversity:	We have set out our equality impact assessment in our response document.
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, ie, reduced reliance on paper-based working practices and increased hybrid and remote working.

Annexes

Annex A – Statutory guidance on promoting technology and innovation to improve access to legal services and LSB consultation response document.

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