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Subject: Draft guidance on promoting technology and innovation to improve access to legal services

Thank you for this opportunity to comment on the proposed guidance on promoting technology and innovation to improve access to legal services. We welcome this clarity on the Legal Services Board's regulatory initiatives on technology and innovation and support your focus on this important area.

Our approach to technology and innovation

1. The Bar Standards Board (BSB)¹ is one of nine legal services regulators in the United Kingdom subject to regulatory oversight by the Legal Services Board. We are authorised to regulate practising barristers, pupils, unregistered barristers, certain specialised legal services businesses (known as BSB entities) and certain overseas lawyers registered with us.
2. We recognise the importance of technology and innovation and the role it can play in delivery of legal services. In our 2022-25 Strategic Plan², under our Strategic Aim of Access, we stated that:
 - Technology and innovation have an important role in helping to deliver legal services for consumers, especially around improving access to justice, and in helping to deliver transparency for consumers to navigate legal services and
 - We need to ensure the Bar is equipped to adapt to such technological changes and meets the expectations of future clients.

¹ <https://www.barstandardsboard.org.uk/>

² [Bar Standards Board Strategic Plan 2022-25.](#)

3. In line with our 2022-25 Strategic Plan, we have recruited two policy professionals to focus full time on technology and innovation. We are currently gathering evidence on the use and impacts of technology at the Bar to inform any future regulatory initiatives in this area. In particular, we have commissioned detailed research to understand the use of technology at the Bar and the opportunities and risks it poses, as well as the barriers faced by technology companies developing legal technologies at the Bar. We expect this research to be completed in early 2024. We are also engaging closely with and learning from our peer legal service regulators and the lawtech industry, for example via the LawtechUK Regulatory Response Unit.
4. In absolute terms, use of technology and innovation at the Bar remains limited. The 2022 Legal Services Board survey³ finds that use of the class of technologies most likely to incorporate AI is very low across the legal services sector at 5% of chambers/firms or less. We do not have a specific figure for barristers' chambers but note that these technologies are most often targeted to solicitors' firms, so use among barristers is likely below the reported average.
5. A significant focus of our technology & innovation policy work is therefore on identifying opportunities for technology adoption at the Bar where it furthers access to justice, quality of legal services, and the public interest generally.

Q1: Do you agree with our approach of using the guidance to set outcomes for regulators?

6. We note the LSB already measures frontline regulators against an expectation to support innovation in the public interest, through Characteristic 13 of the Regulatory Performance Assessment Framework, namely that the regulator "Actively encourages innovation and innovators in the interests of improving access to services; identifies and mitigates risks appropriately without allowing them to become obstacles."
7. We therefore welcome the additional clarity this proposed guidance provides—to frontline regulators, regulated legal service providers, and the general public—on the rationale for regulators to take an active role promoting technology and innovation, and on how we are expected to discharge this regulatory standard. When we consulted on our 2022-25 Strategic Plan, it was suggested by some that the regulator should not be engaging in technology at the Bar⁴. This proposed guidance and the LSB's considerable supporting research are therefore helpful to clarify the LSB's expectations of frontline regulators' involvement in this important area.

³ <https://legalservicesboard.org.uk/news/lwb-survey-reveals-pandemic-driven-tech-innovation-in-law-firms-and-consumer-benefits>

⁴ <https://www.barcouncil.org.uk/uploads/assets/3c089cec-83ca-41bc-b9c698da835f5bda/Bar-Council-response-to-BSB-consultation-Our-proposed-strategy-for-the-next-three-years-2022-23-to-2025-26.pdf>

8. Finally, we agree a non-prescriptive, outcomes-oriented approach is most appropriate for guidance of this nature, given the differences in how technology impacts the different regulated legal services, and the potential for unanticipated future uses of technology in the sector. We welcome the flexible approach you propose. Frontline regulators should be able to tailor regulatory policy in technology to the characteristics of each regulated community.

Q2: Do you know of any case study examples that would be useful to share?

9. The example of Digital Comparison Tools (DCTs) highlights the value of a flexible, outcomes-based approach, as the different legal service regulators are taking steps to identify issues specific to their regulated community, in order to tailor regulation to each market segment. We are currently exploring how DCTs operate at the Bar and how this service impacts customer access to legal services through our ongoing DCT Market Study⁵.
10. Our market study built on prior DCT pilot activity from the Solicitors Regulation Authority, CILEx Regulation, and Council for Licensed Conveyancers⁶ and was also notable for the level of inter-regulator cooperation. We engaged extensively with the SRA, CLC and CILEx during their study of the DCT market, and our evaluation of the DCT market for barristers builds on, and moves forward, these findings. Our research into the DCT market is also helping us to better understand the circumstances in which BSB regulation may impact the development of this market, and the specific regulatory steps we might take for the benefit of consumers. As we improve our understanding of the ways in which DCTs facilitate transparency, and consumers' ability to "shop around", this is directly feeding into our future plans for what regulatory actions we may – or may not – need to take. We appreciate that there may be multiple methods for achieving the same policy outcome, underscoring the importance of an outcomes-oriented oversight approach.

Q3: Do you agree with the proposed outcome to ensure that technology and innovation are used to support improved access to legal services and to address unmet need?

11. We agree broadly with this outcome. However, whilst we agree with the aspiration to use technology and innovation to support improved access to legal services, we may need to balance this against other priorities and regulatory objectives, in terms of the resources allocated at any given time. We also may take action to promote technology and innovation where they support regulatory objectives in the public interest other than access, such as the quality of legal services or public legal education, and it should be clear these initiatives would fulfil the "Effective approach to regulation" standard under this characteristic.

⁵ <https://www.barstandardsboard.org.uk/for-barristers/compliance-with-your-obligations/digital-comparison-tool-dct-market-study.html>

⁶ <https://www.sra.org.uk/sra/research-publications/quality-indicators-legal-services-report/>

12. When measuring our performance against this outcome, we note that the actual adoption of new technology may be influenced—even dominated—by factors outside our direct control. It would be helpful for the implementation section to acknowledge this.

Q4: Do you agree with the proposed outcome for regulatory frameworks to balance benefits and risks, and the opportunities and costs, of the use of technology and innovation in the interests of the public and consumers?

13. We broadly agree with this outcome. As a risk-based regulator, we aim to take a balanced approach to benefit and risk in all our regulatory decisions, including on technology and innovation⁷. With respect to technology and innovation specifically, we recognise the importance of this area to the Bar and have incorporated measures into the risk index we regularly track. These measures cover not only the potential harms of technology, but also the adverse impact on client and public interests of the Bar or our regulation not sufficiently adapting to realise the benefits of technology⁸.
14. When measuring our performance relative to this outcome, it is important to recognise that regulators may strike a different balance between benefits and risks, and opportunities and costs of the use of technology and innovation. We therefore hope the LSB will focus on ensuring the frontline regulators have demonstrated due regard to the risks and benefits of technology in setting an appropriate balance for their regulated community.

Q5: Do you agree with the proposed outcome on ensuring the legal sector is open to technology providers and innovators?

15. We agree this is an important outcome. We are actively involved in programmes to support provision of legaltech and lawtech to the Bar, alongside the LSB and other legal services regulators, for example through the LawtechUK Regulatory Response Unit.
16. However, while we specifically address legaltech and lawtech adoption in our risk index, even general purpose technologies or process innovations offer significant benefits, which may not require regulators to proactively engage with technology providers. We therefore agree with your emphasis on innovation in the widest sense (paragraph 11 of the draft guidance).
17. Further, demonstrating the differences across the legal services sector, the Bar is often not a target market for specialised technologies due to its size and specialism – legal technologies are most often developed for the solicitor market due to its size and the types of services solicitors provide. We believe this is an important natural barrier to entry and should be taken into account in evaluating our performance against this outcome, as our regulatory initiatives to facilitate entry may be affected by the forces that make the Bar a less attractive

⁷ <https://www.barstandardsboard.org.uk/about-us/how-we-regulate/our-risk-based-approach.html>

⁸ <https://www.barstandardsboard.org.uk/about-us/how-we-regulate/our-risk-based-approach/risk-index.html>

market for technology providers. As noted above, the implementation section should take account of this.

Q6: Do you agree with our proposed plan for implementation?

18. We agree with your approach (at paragraph 88) in the first instance to focus on regulators' plans to meet these outcomes. It is important to note that the delivery of these outcomes may take time, particularly in establishing a robust evidence base for regulatory action, and as noted above, regulators may have limited control over the actual uptake of technology in practice.

19. Further, as we indicate above, "success" (paragraph 86) in achieving these outcomes is difficult to define and subjective, given the potentially conflicting metrics and policy priorities along which access and regulators' contributions to this end could be measured. As we note above, we hope the LSB will focus on frontline regulators' due regard to the impacts of technology on access and other regulatory priorities.

Q7: Do you have any comments or concerns about the equality impacts of our proposed guidance? Do you have any evidence relating to the potential impact of our proposals on groups with protected characteristics and any associated mitigating measures you think we should consider? Are there any wider equality issues and interventions that we should take into account?

20. It may be difficult to determine whether technology outcomes are 'successful' due to the potentially conflicting metrics and priorities different stakeholders may have. This is particularly important to consider in the context of the equality impacts of this guidance. In addition to the impact on consumer access, it is essential to consider the equality impacts of technology on legal service providers, both in terms of ability to take up technologies and the impacts of those technologies on their practice and relationship with clients. For example, our DCT market study has led some to suggest that barristers with certain protected characteristics may face discriminatory or disproportionately negative reviews (we will be looking for evidence of this in our evaluation). Similarly, our evidence shows that members of small chambers and sole practitioner barristers are more likely to be from minoritised ethnic backgrounds⁹, so we must consider these equality impacts of any new regulatory initiatives in technology and innovation.

21. We must also consider how technologies alter the landscape for legal services over the long term, for example ensuring the specific technologies used do not create biased outcomes when applied in practice (e.g. sentencing algorithms used in certain US courts¹⁰), or decrease the availability of legal services for the digitally excluded.

⁹ <https://www.barstandardsboard.org.uk/uploads/assets/8e1b9093-b2f7-474f-b5faa3f205d26570/BSB-Report-on-Diversity-at-the-Bar-2022-FinalVersionv2.pdf>

¹⁰ <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>

Q8: Do you have any comments on the potential impact of the draft guidance, including the likely costs and anticipated benefits?

22. Again, we believe this guidance and the underlying research clarify the important role of technology in improving access to legal services and the support regulators can provide to this end in the public interest. Paragraph 95 is a particularly clear statement about the proactive measures frontline regulators are expected to undertake under this guidance to identify, guide, and support good practices in technology use among our regulated communities.
23. However, it is critical that evaluation against this guidance be proportionate to the resources that are available, in light of the fact technology is only one lever we have to improve access and of the various other regulatory functions we carry out.

Again, we thank you for this opportunity to comment on this important initiative, and we look forward to working with you to advance technology and innovation across the legal services market. Please do not hesitate to contact Henry Fingerhut, Policy Manager for Technology & Innovation, at hfingerhut@barstandardsboard.org.uk if you have any further questions regarding our response.

Best wishes



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