



REGULATING BARRISTERS

By Email

**Office for Artificial Intelligence
Department for Science, Innovation and Technology
100 Parliament Street
London
SW1A 2BQ**

21 June 2023

Subject: Consultation response: A pro-innovation approach to AI regulation

Thank you for providing us with the opportunity to respond to this consultation. We welcome this consultation on pro innovation approach to regulating Artificial Intelligence and support your commitment to it.

Our approach to technology and innovation

1. The Bar Standards Board (BSB)¹ is one of ten legal service regulators in the United Kingdom, including our oversight regulator, 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 we have 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
 - the legal sector needs to harness the benefits of technology.
3. In line with our 2022-25 Strategic Plan, we have recruited two policy professionals to focus on this area of work. We will commission detailed research this summer 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.
4. The take up of technology at the Bar depends on adoption of it, including that of Artificial Intelligence based technology, by individual barristers and chambers. Artificial Intelligence technologies used at the Bar could span commonplace, benign tools like recommendation engines in Microsoft Office, legal technologies like eDiscovery and document analysis

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

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

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technologies, and riskier, more uncertain emerging technologies like Large Language Models and Generative AI, particularly GPT-4. In absolute terms, use of technology and innovation at the Bar remains limited, particularly among technologies that use Artificial intelligence. The 2022 Legal Services Board survey 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 at solicitors' firms, so use among barristers is likely below the reported average.

Regulatory Remit

5. Our work is governed by The Legal Services Act 2007 (the Act) as well as a number of other statutes. The regulatory framework within which we operate was designed prior to the development of Artificial Intelligence. Therefore, our remit has not been established with Artificial Intelligence in mind. Those who develop Artificial Intelligence technologies do not necessarily fall within the remit of our regulatory framework. For example, most recently we have encouraged the Bar to consider how they could better protect themselves against cyber related incidents³. Your consultation mentions that there are companies providing cyber security services and these are increasingly using AI to analyse large amounts of data about malware and respond to vulnerabilities in network security at faster-than-human speeds. If a barrister or a chambers procures Artificial Intelligence based protection service (in addition to insurance against such incidents) and something were to go wrong with the underlying Artificial Intelligence mechanism – the BSB cannot take action against the provider of cyber security service and nor are we set up to do so. We can encourage the barrister or chambers to be mindful of the risks when procuring such service by doing due diligence through our Handbook rules for barristers. Even then, the question of where the liability for wrong-doing lies may not be clear.

Pro Innovation Principles

6. We support the five proposed pro-innovation principles. The principles based approach aligns with our principles, outcomes and risk based approach to regulation. The principles also provide a helpful starting point to align regulators, particularly smaller organisations with limited resources to allocate to Artificial Intelligence regulation, more closely around best practice regulatory approaches in Artificial Intelligence.
7. However, we are also one of nine front-line regulators of legal services. Although at present Artificial Intelligence is most likely used by solicitors, it could in due course also be used by barristers. Despite the guiding principles the framework offers, there is scope for each regulator to apply regulation differently to the same underlying technology and create a barrier to entry for the underlying technology.

³ Para 18,19 of BSB [Consultation to amend minimum PII terms and conditions](#).

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Proposed Statutory Duty

8. We note that the Government would like to first implement this framework of regulation on a non- statutory basis and monitor its success. We do think that both the non-statutory and statutory route to implementing this framework could create an unintended regulatory gap. While the White Paper would require regulators to consider contraventions of the five principles along the full value chain of development and use, the BSB only has statutory oversight over barristers, and primarily with regard to their provision of legal services. We do not have regulatory oversight of Artificial Intelligence developers or marketers (see para 5 under remit). We therefore would only be able to regulate *uses* of AI technologies that contravene the principles. We do not have a remit to regulate the wider AI sector upstream in the value chain including *design, development, and deployment*. A statutory duty to have due regard to the principles, without a complementary change to our remit to include oversight over developers and providers of Artificial Intelligence technologies used at the Bar – which itself would be undesirable and unworkable in practice – would not have the intended effect of governing AI and may place a disproportionate burden on users of Artificial Intelligence technologies.

Next steps

9. We would welcome an opportunity to engage with the Office for AI and Department for Science, Innovation, and Technology. We would also encourage you to meet with all ten legal services regulators together (including our oversight regulator) to discuss this consultation and its implications for the legal sector before reaching conclusions on implementation.

Please do not hesitate to get in touch with my colleague Henry Fingerhut (hfingerhut@barstandardsboard.org.uk) if you have any further questions regarding our response.

Best wishes



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