

# **Draft guidance on promoting technology and innovation to improve access to legal services – consultation paper**

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**A consultation on our proposed guidance.**

10 July 2023

This consultation will close on 2 October 2023

**This Consultation Paper will be of interest to:**

Approved Legal Regulators

Providers of Legal Services

Legal Representative Bodies

Legal Advisory Organisations

Other Third Sector Organisations

Non Departmental Public Bodies

Consumer Groups

Law Schools/universities

Lawtech providers and innovators

Members of the Legal Profession

Potential new entrants to the Alternative Business Structures market

Think tanks

Political parties

Government departments

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## Executive Summary

1. The Legal Services Board (LSB) is the oversight regulator for legal services in England and Wales. We oversee nine approved regulators, some of which have delegated their regulatory functions to independent regulatory bodies. The LSB was established by the Legal Services Act 2007<sup>1</sup> (the Act), which provides that in discharging its functions, the LSB has a duty to promote the regulatory objectives<sup>2</sup>.
2. LSB research shows that there are high levels of unmet legal need in the legal services sector, which we consider could be addressed by increased promotion and adoption of technology and innovation. This assessment is based on evidence, as set out in this paper, of the desire on the part of both consumers and legal professionals to use such tools to meet legal needs. There is also potential for much greater use of legal technologies and innovations in the sector, as shown by evidence around technological up-take and service offer.
3. Regulation has a clear role to play to unlock the benefits of technology and innovation for the users and providers of legal services, thereby benefitting consumers by improving access to legal services.
4. Hand in hand with access to justice, use of technology and innovation also has the capacity to promote the Act's other regulatory objectives<sup>3</sup> to protect and promote the interests of consumers in achieving a broader and potentially more cost-effective legal services market, as well as promote competition in the provision of services through diversified service models. This is further explained in paragraphs 28-41 below.
5. In view of the above, we intend to publish statutory guidance under section 162<sup>4</sup> of the Act regarding the promotion of the use of technology and innovation to improve access to legal services, and to focus on the above regulatory objectives. We propose to have regard to the extent to which the guidance has been complied with in discharging our oversight function when assessing regulatory bodies under the Regulatory Performance Assessment Framework, and we propose to include the guidance in the Regulatory Performance Assessment Framework Sourcebook of Standards and Characteristics (the Sourcebook<sup>5</sup>).

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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/2007/29/contents>

<sup>2</sup> <https://www.legislation.gov.uk/ukpga/2007/29/section/3>

<sup>3</sup> <https://www.legislation.gov.uk/ukpga/2007/29/part/1>

<sup>4</sup> <https://www.legislation.gov.uk/ukpga/2007/29/section/162>

<sup>5</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2022/10/Regulatory-Performance-Assessment-Framework-Sourcebook.pdf>

6. The guidance aims to promote:
  - greater access for consumers to a broader range of legal services that better meet their diverse needs;
  - a legal services market that is open to technology providers and legal services innovators who wish to enter the market and deliver services to consumers; and
  - improved access to justice and a reduction to unmet legal need.
7. This consultation seeks views on the draft guidance in which we have set out proposals that regulatory bodies should pursue the following three outcomes:
  - Outcome 1: Technology and innovation are used to support improved access to legal services and to address unmet need.
  - Outcome 2: Regulation balances the benefits and risks, and the opportunities and costs, of technology and innovation in the interests of the public and consumers.
  - Outcome 3: The legal services sector is open to technology providers and innovators and barriers to entry are lowered.
8. As well as an emphasis on technology specifically, the guidance will support the promotion of service innovations that could benefit consumers and will clarify that innovation encapsulates a wide range of activities beyond developing specific technologies and products. It will also make clear that in actively encouraging innovation in the interests of improving access to services, legal services regulators should identify and mitigate risks appropriately without allowing them to become obstacles. Mitigating such risks is particularly important in circumstances where it may be less obvious to the consumer that technology has been deployed in the provision of a legal services, such as with the use of artificial intelligence (AI).
9. We have built an evidence base that recognises the potential for the promotion of technology and innovation to improve access to justice and address unmet legal need, and the role that regulation has in unlocking its benefits for the users and providers of legal services. In developing our proposals, we have drawn on that evidence via the body of work of our technology and innovation project<sup>6</sup>, which has included both qualitative and quantitative research, consultation with a wide range of stakeholders and

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<sup>6</sup> <https://legalservicesboard.org.uk/our-work/ongoing-work/technology-and-innovation>

support of cross-sector initiatives such as the Regulatory Response Unit (RRU<sup>7</sup>).

10. We welcome responses to this consultation on the proposed new statutory guidance for regulatory bodies on promoting technology and innovation to improve access to legal services.
11. The consultation period begins on 10 July 2023 and runs for 12 weeks until 2 October 2023.

## Introduction and background

### ***About the Legal Services Board***

12. The LSB is the independent body that oversees the regulation of legal services in England and Wales. The LSB's remit and powers are conferred on it by the Act. The Act provides that, in discharging its functions, the LSB has a duty to promote the regulatory objectives<sup>8</sup>.

### ***The provision of statutory guidance***

13. In its oversight role, the LSB has at its disposal a range of tools, one of which is to issue guidance under section 162 of the Act<sup>9</sup>.
14. Statutory guidance provides a clear and transparent way to set out the LSB's views and the outcomes we encourage regulatory bodies to pursue when developing their regulatory frameworks.
15. The proposed guidance supports in particular, the following regulatory objectives:
  - RO3 improving access to justice,
  - RO4 protecting and promoting the interests of consumers,
  - RO5 promoting competition in the provision of services.
16. In developing this guidance, the LSB has had regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is

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<sup>7</sup> <https://lawtechuk.io/rru>

<sup>8</sup> <https://www.legislation.gov.uk/ukpga/2007/29/section/3>

<sup>9</sup> Section 162(1) of the Act allows the Legal Services Board (the LSB) to give guidance: About the operation of the Act and any order made under it; About the operation of any rules made by the Board under this Act; About any matter relating to the Board's functions; For the purpose of meeting the regulatory objectives; about the content of licensing rules; about any other matters about which it appears to the Board to be desirable to give guidance.

needed, and other principles appearing to it to represent the best regulatory practice<sup>10</sup>.

17. In this regard, the evidence in paragraphs 28-41 below sets out our view that the responsible adoption of technology and innovation in the legal services market has a positive role to play in meeting consumer legal needs, but that current regulatory frameworks across the regulatory bodies are not consistently facilitating an environment where this can occur. This has led to our proposal to produce statutory guidance for regulatory bodies which will encourage them to develop regulatory approaches (centred around the three proposed outcomes set out above) that we believe create the conditions for promoting technology and innovation with the intention of improving access to justice. We explain this in more detail at paragraphs 42-58 below.

### ***Regulatory context***

18. The LSB's aim is that the regulatory environment should be one in which improving access to legal services via the use of technology creates the impetus for providers to continue to innovate and design services that better meet consumer needs.
19. We do not intend to be prescriptive in our regulatory approach to technology and innovation for access to legal services. Instead, we aim to set harmonised outcomes for regulatory bodies to promote the use of innovation and technology to improve access to legal services.
20. In addition to considering the guidance published by the LSB, our expectation is that regulatory bodies will also keep abreast of wider work on the regulation of technology and innovation – for example, the government's Office for AI<sup>11</sup> work and its development of a principles-based approach to the regulation of AI<sup>12</sup>. They should also be aware of good practice in the regulation of technology – for example, lessons from the LawtechUK regulatory sandbox<sup>13</sup> and the LawtechUK/RRU joint statement on digital identity verification<sup>14</sup>.
21. Regulatory bodies should also have regard to other regulatory regimes which also apply to the regulated legal services sector, be they related specifically to technology<sup>15</sup> or to other cross-sector regulatory issues (for example anti-money laundering). Regulatory bodies should be aware of

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<sup>10</sup> Section 3(3) of the Act: <https://www.legislation.gov.uk/ukpga/2007/29/section/3>

<sup>11</sup> <https://www.gov.uk/government/organisations/office-for-artificial-intelligence>

<sup>12</sup> <https://www.gov.uk/government/publications/ai-regulation-a-pro-innovation-approach/white-paper#executive-summary>

<sup>13</sup> <https://technation.io/lawtech-sandbox/>

<sup>14</sup> <https://lawtechuk.io/explore/legal-services-regulators-issue-joint-statement-in-support-of-digital-identity-technology>

<sup>15</sup> eg regulatory regimes specifically related to technology for example requirements issued by central government via the Office for Artificial Intelligence <https://www.gov.uk/government/organisations/office-for-artificial-intelligence>

how the requirements of those regulatory regimes interface with legal services regulation and the impact they may have on the adoption of technology in the regulated legal services market.

## **Statutory guidance on promoting technology and innovation to improve access to legal services**

### ***LSB work on technology and innovation***

22. The LSB has a long-running and well-developed programme of work centred on technology and innovation<sup>16</sup> and its role in the provision of legal services. This work also supports the LSB's sector-wide strategy, '*Reshaping Legal Services*' where we identify technology and innovation as playing a key role in meeting the challenge of providing services that better meet society's needs<sup>17</sup>.
23. We recognise the increasing role that technology plays in society – for example the current debate about the role of generative 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.
24. Understanding and encouraging the benefits of developing regulatory frameworks to promote the use of technology and innovation is not limited to the legal services sector. Other regulated sectors recognise the role that regulation has to play in promoting the adoption of technology and innovation to bring products to market that better meet the needs of consumers. For example, in the financial services sector, the use of regulatory sandboxes to respond to demands from innovators for speed and certainty in regulatory decision making were introduced by the Financial Conduct Authority (FCA) as early as 2016<sup>18</sup>.
25. Since 2019, the LSB has built an evidence base that recognises the transformative potential of technology for access to justice and the role that regulation can play to unlock its benefits for users and providers in the legal services sector - this includes:
  - Ongoing iterations of our extensive '*Use of Technology and Innovation Survey*', the latest version of which was undertaken in 2022 and published

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<sup>16</sup> <https://legalservicesboard.org.uk/our-work/ongoing-work/technology-and-innovation>

<sup>17</sup> [https://legalservicesboard.org.uk/wp-content/uploads/2021/03/Strategy\\_FINAL-For-Web2.pdf](https://legalservicesboard.org.uk/wp-content/uploads/2021/03/Strategy_FINAL-For-Web2.pdf)

<sup>18</sup> <https://www.fca.org.uk/firms/innovation/regulatory-sandbox>



in 2023<sup>19</sup>, following previous surveys that were carried out in 2018 and 2015<sup>20</sup>;

- Research and a report into the ‘*Social Acceptability of Technology in Legal Services*’<sup>21</sup> from March 2022, which was jointly commissioned by the LSB and the Solicitors Regulation Authority (SRA);
- Qualitative research into the legal needs of small and medium-sized enterprises (SMEs) and adoption of lawtech by SMEs<sup>22</sup> from October 2021, jointly commissioned by the LSB and LawtechUK;
- Our ‘*Striking the Balance*’ report<sup>23</sup> from April 2021, which undertook a detailed look at how regulation can help foster the responsible adoption of technology in the legal services market; and
- Commissioning of a set of articles published in our, ‘*Perspectives on lawtech and regulation report*’<sup>24</sup> in April 2020, which brought together some of the key leaders in the legal services sector to offer their different perspectives on how legal services regulation can support the fostering of technology and innovation to improve access to justice.

26. We have also used our wider research programme, including research into the legal needs of individuals in 2020<sup>25</sup> and small businesses in 2021<sup>26</sup>, to underpin our technology and innovation work and how it can contribute to improving access to legal services that better meet society’s needs.

27. In addition, we have kept abreast of wider developments on the adoption of technology and innovation in the legal services market, for example, (i) in our support of the RRU (including contributing to the RRU joint statement on digital identification tools<sup>27</sup> and the discussion paper on the adoption of AI<sup>28</sup>), and (ii) via our engagement with a broad set of stakeholders including: academics<sup>29</sup>; the lawtech community (i.e. via our membership of the RRU<sup>30</sup>); and, Government stakeholders, such as the Office for AI.

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<sup>19</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2023/06/20230425-Tech-and-Innov-survey-2022-Designed.pdf>

<sup>20</sup> <https://legalservicesboard.org.uk/research/technology-and-innovation-in-legal-services-2018> and

<https://legalservicesboard.org.uk/research/innovation-in-legal-services>

<sup>21</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2022/05/Acceptability-of-technology-in-legal-services-research-report-FINAL-March-2022.pdf>

<sup>22</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2021/10/Lawtech-and-SMEs-report-October-2021.pdf>

<sup>23</sup> [https://legalservicesboard.org.uk/wp-content/uploads/2021/04/Striking\\_the\\_Balance\\_FINAL\\_for\\_web.pdf](https://legalservicesboard.org.uk/wp-content/uploads/2021/04/Striking_the_Balance_FINAL_for_web.pdf)

<sup>24</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2020/04/LSB-Technical-Perspectives-FINAL.pdf>

<sup>25</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2020/01/Legal-Needs-of-Individuals-Summary-Report-Final-January-2020.pdf>

<sup>26</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2022/05/20220406-Small-business-legal-needs-FINAL.pdf>

<sup>27</sup> <https://lawtechuk.io/insights/legal-services-regulators-issue-joint-statement-in-support-of-digital-identity-technology>

<sup>28</sup> <https://lawtechuk.io/insights/adoption-of-ai>

<sup>29</sup> We commissioned a set of six papers and related podcasts: <https://legalservicesboard.org.uk/our-work/ongoing-work/technology-and-innovation/developing-the-next-phase-of-our-work-on-technology-and-innovation/papers> and <https://legalservicesboard.org.uk/our-work/ongoing-work/technology-and-innovation/developing-the-next-phase-of-our-work-on-technology-and-innovation/talking-tech-podcasts>

<sup>30</sup> <https://lawtechuk.io/rru>

## ***The need to promote technology and innovation for improved access to legal services***

28. LSB research shows that there are significant levels of unmet legal need in the market both for consumers and small businesses.
29. The LSB survey of individual legal needs in 2019<sup>31</sup> showed that of those consumers surveyed, almost a third (31%) had an unmet legal need for a contentious legal issue, where they either did not receive any help, or wanted more help to resolve their issue<sup>32</sup>. This equates to an estimated 3.6 million individuals with an unmet legal need in England and Wales each year<sup>33</sup>.
30. In relation to small businesses, the LSB's research in 2021<sup>34</sup> shows that of those SMEs surveyed, an estimated 399 of the 479 SMEs who had a legal need<sup>35</sup> had an unmet legal need. This equates to 83%, which is a very large majority.
31. This high level of unmet legal need is compelling evidence of a problem in accessing legal services currently.
32. We consider that the development of regulatory frameworks to promote the adoption of technology and innovation can have a positive role to play in addressing known levels of unmet legal need and improve access to justice because evidence shows us that:

### **a) consumers are open to using technology to meet their legal needs and they understand the benefits it can bring them:**

- in qualitative research more than three-quarters of 40 SMEs (who had not previously used lawtech) said they would be interested in using lawtech solutions for their business needs, particularly when it came to simple or straightforward legal needs<sup>36</sup>;

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<sup>31</sup> <https://legalservicesboard.org.uk/online-survey-of-individuals-handling-of-legal-issues-in-england-and-wales-2019>

<sup>32</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2020/01/Legal-Needs-of-Individuals-Summary-Report-Final-January-2020.pdf> pg 8

<sup>33</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2020/11/The-State-of-Legal-Services-Evidence-Compendium-FINAL.pdf> pg 19

<sup>34</sup> <https://legalservicesboard.org.uk/research/small-business-legal-needs> and <https://legalservicesboard.org.uk/wp-content/uploads/2022/05/20220406-Small-business-legal-needs-FINAL.pdf> pg 60 and 61

<sup>35</sup> A legal need is defined as when a small business needs support to deal with a legal issue, this broadly means that the business has an issue that they cannot solve themselves, but would be helped by seeking professional assistance – see <https://legalservicesboard.org.uk/wp-content/uploads/2022/05/20220406-Small-business-legal-needs-FINAL.pdf> pg i

<sup>36</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2021/10/Lawtech-and-SMEs-report-October-2021.pdf> pg3

- most members of the public are willing to use a variety of technology when accessing legal services, particularly where this has a beneficial impact on the affordability of legal service provision<sup>37</sup>; and
- consumers are open to new service solutions (such as unbundling) when accessing legal services, and they are aware of the potential benefits (such as improved affordability) that they could realise by using them (see more detail in paragraph 62).

**b) legal professionals and firms also support the use of technology and innovation to provide legal services – they are already driven to provide services using these tools by the demand of their consumers, and can see how the use of such tools can help them to provide better and more diverse services to their clients:**

- six in ten firms agree that their clients expect them to use technology to deliver legal services and nearly half of firms (49%) agree that using technology makes the delivery of legal services more cost effective<sup>38</sup>;
- legal professionals are willing to use a variety of technological tools and see most benefit in providing a speedier service and more convenient means of communication<sup>39</sup>;
- becoming more responsive to client needs is the most important driver for firms deciding to implement new technologies and the most observed impact of implementing new technology (reported by 94% and 95% of firms respectively)<sup>40</sup>;
- in relation to investing in new or improved services, the second most reported driver by firms, after the impact of the Covid-19 pandemic, has been the influence of increasing or changing demand from consumers<sup>41</sup>;
- the intensity of competition was also reported by firms as the fourth most significant driver which influenced them to adopt new or improved services<sup>42</sup>;

<sup>37</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2022/05/Technology-in-legal-services-what-is-socially-acceptable.pdf>

<sup>38</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2023/06/20230425-Tech-and-Innov-survey-2022-Designed.pdf> – para 25

<sup>39</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2022/05/Technology-in-legal-services-what-is-socially-acceptable.pdf>

<sup>40</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2023/06/20230425-Tech-and-Innov-survey-2022-Designed.pdf> – figure 16

<sup>41</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2023/06/20230425-Tech-and-Innov-survey-2022-Designed.pdf> – paras 6, 158 and figure 11

<sup>42</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2023/06/20230425-Tech-and-Innov-survey-2022-Designed.pdf> – para 158 and figure 11

- survey data shows that firm adoption of ‘technologies for access’ (those which make it easier for consumers to use legal services) has increased over the last three years with 58% of firms implementing at least one of the six technologies for access that were featured in the survey (video conferencing, electronic signatures, identification checking tools, websites with interactive features, live chat or virtual assistants and custom-built smart apps)<sup>43</sup>; and
- firms can identify specific benefits to consumers when observing the impacts of the implementation of new technologies, including becoming more responsive to client needs, better quality and more reliable services, reduction in costs, and an improved diversity of service provision.<sup>44</sup>

33. Despite the willingness of consumers and professionals to use technology to meet their legal needs, and the recognition of the benefits that adopting technology and innovation can impart, **evidence shows that there is potential for greater adoption and use of technology and innovation in the legal services market:**

- fewer firms (1 in 5 of those surveyed) have developed or invested in new or improved services in the three years since 2018. This represents a reduction of 6% compared to the previous survey<sup>45</sup>;
- firms say that the biggest constraints on introducing new technology are the risks of using unproven technology, lack of IT expertise and lack of finance<sup>46</sup>;
- the Legal Services Consumer Panel’s (LSCP) 2022 tracker survey showed that consumers are increasingly using online services over the decade, however there are indications that the level of service provided online is not yet equivalent to that provided face-to-face, thereby suggesting that there is scope to improve the provision of online services to consumers<sup>47</sup>; and
- this is supported by survey data from firms which shows that only 32% of firms surveyed offered online services to their clients (over and above using online means to communicate with clients) with only a further 9%

<sup>43</sup><https://legalservicesboard.org.uk/wp-content/uploads/2023/06/20230425-Tech-and-Innov-survey-2022-Designed.pdf> – paras 14-15

<sup>44</sup><https://legalservicesboard.org.uk/wp-content/uploads/2023/06/20230425-Tech-and-Innov-survey-2022-Designed.pdf> - figure 16

<sup>45</sup><https://legalservicesboard.org.uk/wp-content/uploads/2023/06/20230425-Tech-and-Innov-survey-2022-Designed.pdf> - paras 9-10

<sup>46</sup><https://legalservicesboard.org.uk/wp-content/uploads/2023/06/20230425-Tech-and-Innov-survey-2022-Designed.pdf> - figure 23

<sup>47</sup><https://www.legalservicesconsumerpanel.org.uk/wp-content/uploads/2022/07/22.07.19-How-consumers-are-using-legal-services-report-FINAL.pdf> pgs 2 and 10

planning to offer them in the next year and 56% of firms not offering online services at all<sup>48</sup>.

34. A key issue affecting the uptake of technology and innovation in the regulated legal services sector is **evidence of barriers facing technology providers, service innovators and consumers, which are slowing the adoption of technology and innovation:**
- providers face a variety of barriers, including understanding and navigating regulatory regimes, lack of access to legal data, understanding data privacy requirements, and difficulty identifying which regulator or regulators they need to approach to assist with bringing their product or service to market (see paragraph 81);
  - consumers are also impacted by barriers and concerns which can impact whether and how they use technology to meet their legal needs. These include concerns about data security/confidentiality and cybercrime, and whether technology can offer an equivalent quality service to human providers of legal services. Consumers believe that certain safeguards, such as quality checks and formal systems for making complaints and receiving redress, could help support them in using technology to access legal services. There is also evidence of a lack of consumer awareness of the availability of technology and service innovations and how they could apply to their specific legal needs. These and other barriers facing consumers are further detailed in paragraph 64-65; and
  - additionally, both consumers and legal professionals have concerns about some cohorts of consumers not having the ability and/or means to use technology, which may cause them to be disadvantaged (see paragraph 66).
35. Our earlier work to explore how regulation and regulators can help foster the responsible adoption of technology and innovation in the legal services market<sup>49</sup> points to **collaboration as a key tool that regulatory bodies can use to help innovators navigate the legal services regulatory framework.**
36. Evidence from the legal services market shows that collaboration and co-operation between a wide range of stakeholders (including regulators, technology providers, firms and others), for example via the use of regulatory sandboxes, is already having a positive impact on the adoption

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<sup>48</sup><https://legalservicesboard.org.uk/wp-content/uploads/2023/06/20230425-Tech-and-Innov-survey-2022-Designed.pdf> – para 115

<sup>49</sup> [https://legalservicesboard.org.uk/wp-content/uploads/2021/04/Striking\\_the\\_Balance\\_FINAL\\_for\\_web.pdf](https://legalservicesboard.org.uk/wp-content/uploads/2021/04/Striking_the_Balance_FINAL_for_web.pdf)

of technology and innovation and the realisation of new legal technology products and services coming to market (see paragraph 83).

37. Conversely, there is also evidence<sup>50</sup> that cross-collaborative activities in the interests of innovation in the legal services sector appear to be limited. Just under half of all firms collaborate with external partners and just over a quarter carry out in-house research into new or existing service developments. Developing partnerships, or making investments in lawtech companies, is also rare, with only 9% of firms having developed partnerships or made investments in technology providers in the last three years, and a further 15% having made future plans to do so. Most firms (61%) reported not having developed any partnerships with, or investments in, technology companies.
38. This evidence suggests that there is scope for more collaboration and co-operation in the legal services sector for the adoption of technological and new service innovations in the interests of providing better services to consumers.
39. **Evidence also shows that regulatory factors can have an impact on the adoption of technology in the legal services market:**
- despite a reduction since the previous LSB survey into the use of technology and innovation, regulatory factors were reported as the most significant constraint to the implementation of new or improved services, with 35% of firms reporting them as a significant or small constraint<sup>51</sup>;
  - changing regulation related to legal services was also cited as a driver for developing new or improved services, with 49% of firms saying it had some influence and 12% saying it had significant influence on their decision<sup>52</sup>;
  - a University of Oxford Report for the SRA had similar findings whereby 44% of firms who had adopted new legal technologies, and 35% who hadn't, reported that regulatory barriers, including concerns about regulatory compliance, were a factor in their decisions<sup>53</sup>; and
  - evidence from technology providers shows that regulatory issues, including navigating regulatory regimes, and lack of regulatory clarity and

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<sup>50</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2023/06/20230425-Tech-and-Innov-survey-2022-Designed.pdf> – paras 26 and 239

<sup>51</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2023/06/20230425-Tech-and-Innov-survey-2022-Designed.pdf> – figure 17

<sup>52</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2023/06/20230425-Tech-and-Innov-survey-2022-Designed.pdf> – para 159 and figure 11

<sup>53</sup> <https://www.sra.org.uk/globalassets/documents/sra/research/full-report-technology-and-innovation-in-legal-services.pdf?version=4a1bfe> pg7

guidance, are factors which impede them bringing new technological products to market (see paragraph 81).

40. In summary, there are high levels of unmet legal need in the sector which could be addressed by increased adoption of technology and service innovation based on evidence of the desire on the part of both consumers and legal professionals to use such tools to meet legal needs. There is also potential for much greater use of legal technologies and innovations in the sector shown by data around technological up-take and service offering.
41. The adoption of such solutions is constrained by: (i) barriers to the development and use of technology, faced by both technology providers and consumers; (ii) regulatory factors; and (iii) notwithstanding some good examples of collaborative endeavours, a limited amount of collaboration and co-operation between regulators and other stakeholders in bringing new solutions to market.

***Purpose and aims of the new statutory guidance – encouraging regulatory frameworks that support the promotion and adoption of technology and innovation to improve access to legal services***

42. Current regulatory approaches to technology and innovation in the legal services sector present a varied picture. Some regulatory bodies are more proactive than others in creating a regulatory environment that is open to technology and service innovation.
43. There is evidence of regulatory approaches supporting technology and innovation. For example:
  - the participation of regulators in the RRU and the Lawtech sandbox, and the implementation of specific initiatives to collaborate with, and offer regulatory support to, innovators in the use and development of their products;
  - the use of regulatory tools such as technology accreditation schemes and waivers/exemptions, to help address barriers faced by providers and help them bring their products to market;
  - regulators working on understanding the needs of, and risks faced by, consumers in using technology and service innovations to access services, including the use of pilots and the provision of consumer guidance on the use of technology.
44. However, regulatory approaches such as these are not consistent across the sector, and this potentially limits future adoption of technology and innovation that could benefit access to justice as previously set out.



45. This inconsistency of regulatory approaches towards promoting technology and innovation, despite evidence of the benefits they can bring, shows that there are opportunities for regulatory bodies to further develop their regulatory frameworks to address the issues which are constraining the adoption of technology and innovation in the sector.
46. The LSB considers that the provision of statutory guidance will harmonise the approaches taken by regulators and assist them to develop regulatory frameworks that are working towards outcomes (as set out in paragraphs 52-58 below) which are aimed at promoting the adoption and use of technology and innovation to best meet the needs of their regulated communities and consumers.
47. The provision of statutory guidance will provide a signal to regulators of the importance of developing their regulatory approaches in a more consistent way, so that the entire regulated community and consumers can benefit.
48. The use of statutory guidance will also provide a clear and transparent way of setting out the LSB's expectations and will clarify the outcomes we are encouraging regulators to pursue. The provision of guidance is intended to be an enabling measure - our aim is to provide clarity and certainty for regulators in order to support them to develop regulatory approaches to technology and innovation that work for their regulated communities and consumers.
49. As well as an emphasis on technology specifically, the guidance will also support the promotion of service innovations that could benefit consumers. It will clarify that innovation encapsulates a wide range of activities that can improve service provision for consumers – including new ways of providing legal services, new ways of working, improving efficiency and productivity, and new business models.
50. Once it is published, we will include the new guidance, and any other supporting information in the Regulatory Performance Assessment Framework Sourcebook and link specifically to 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.'*<sup>54</sup>
51. The proposed statutory guidance is set out in Annex A.

### ***Proposed outcomes***

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<sup>54</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2022/10/Regulatory-Performance-Assessment-Framework-Sourcebook.pdf> pg 11



52. Based on the evidence set out previously regarding the positive impact that the promotion of technology and innovation could have on access to legal services and unmet legal need, the challenges and barriers which are limiting their adoption and the inconsistencies in regulatory approaches to technology in the sector, the LSB has structured the draft guidance around a set of proposed outcomes for regulators to consider when developing their regulatory approaches related to the promotion of technology and innovation for access to legal services.
53. The proposed outcomes are:
- **Outcome 1: Technology and innovation are used to support improved access to legal services and to 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 market, 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 in the interests of the public and consumers.** This outcome focuses on the need for regulators to understand and balance the benefits and risks, and the opportunities and costs, related to the use of technology and innovation in the provision of legal services, without being unduly 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 market and the need for ongoing, proactive collaboration to help reduce barriers to entry and promote consumer choice.
54. Each outcome is supplemented by examples of measures that regulators could consider when determining how to meet them.
55. This approach is intended to provide a flexible framework for regulators to consider when developing their regulatory approaches to technology and innovation. In seeking to meet the outcomes, we recognise that regulators might need to pursue different approaches and adopt different measures.
56. We consider that a flexible and outcomes-based approach is appropriate given the diversity of the regulated legal services market, the extent to which some regulators have already developed their regulatory approaches to technology and innovation, and the need for regulators to develop regulatory frameworks which meet the needs of their regulated communities and the consumers they serve.

57. In addition, a flexible regulatory approach is appropriate to facilitate the adaptation of regulatory approaches to the promotion of legal technology and service innovations, which have not yet been developed or are not yet required by consumers. By adopting a flexible and outcomes-based approach, we are seeking to create the regulatory conditions which will allow these solutions to be developed and adopted in the future as and when they are needed.
58. 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 sharing case-studies/other information with each other which relate to regulatory activities undertaken to promote technology and innovation that have benefited consumers or improved access to legal services. This could also include sharing case studies/regulatory approaches which were unsuccessful as lessons can be also be learned from their analysis.

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

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

***Outcome 1 – Technology and innovation are used to support improved access to legal services and to address unmet need.***

59. This outcome is focussed on consumers, how they interact with legal services provided by technology and service innovations, and how technology and innovation can support consumers to better access the legal services that they need.
60. It is driven by the evidence set out previously (see paragraph 32) and below that the adoption of technology and innovation based around the needs of consumers is already having a positive impact in the legal services market, and that the promotion of technology and innovation could further enable better access to legal services.
61. Data from our recent 'Use of Technology and Innovation Survey' shows that consumer demands are already shaping the adoption of technology and service innovations in the legal services market and that this is having a positive impact. It shows consumer willingness to use technology to access legal services and there are positive responses from the sector in meeting consumer needs, which should continue to be encouraged and improved under the new guidance. Results from the survey show:

- becoming more responsive to client needs is the most important consideration for firms (94%)<sup>55</sup> when implementing new technologies, and it is also the most observed impact of that implementation (95%)<sup>56</sup>;
- other observed impacts of the implementation of technologies that benefit consumers including: a reduction in the time to deliver services (84%); increasing the quality or reliability of services delivered (78%); reduction of the costs of service delivery (73%) and increasing the diversity or range of services offered to clients (64%)<sup>57</sup>; and
- the adoption of ‘technologies for access’, i.e. those technologies which can make it easier for consumers to use legal services, has increased: 58% of firms have implemented at least one of the six technologies for access<sup>58</sup> in the last three years<sup>59</sup>.

62. Evidence also shows that consumers are open to using technology and new service solutions when accessing legal services, and that the provision of services in this way has the potential to improve access to justice:

- research with members of the public and the profession into the social acceptability of technology<sup>60</sup> showed that consumers have an appetite to use legal technology (although the extent of this varied, depending on the type of tool used<sup>61</sup>);
- it also showed that consumers are aware of some of the potential benefits of using technology to access legal services, citing affordability as the top benefit, followed by improved accuracy and speedier service provision<sup>62</sup>;
- evidence from the LSCP’s 2022 tracker survey<sup>63</sup>, shows that unbundling of services - as a new/alternative way of providing legal services to consumers - is growing in popularity, with the proportion of consumers that

<sup>55</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2023/06/20230425-Tech-and-Innov-survey-2022-Designed.pdf> – figure 16

<sup>56</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2023/06/20230425-Tech-and-Innov-survey-2022-Designed.pdf> – figure 16

<sup>57</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2023/06/20230425-Tech-and-Innov-survey-2022-Designed.pdf> – figure 16

<sup>58</sup> video conferencing, electronic signatures, identification checking tools, websites with interactive features, live chat or virtual assistants and custom-built smart apps

<sup>59</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2023/06/20230425-Tech-and-Innov-survey-2022-Designed.pdf> – para 14

<sup>60</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2022/05/Acceptability-of-technology-in-legal-services-research-report-FINAL-March-2022.pdf>.

<sup>61</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2022/05/Acceptability-of-technology-in-legal-services-research-report-FINAL-March-2022.pdf> pg 17 figure 3

<sup>62</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2022/05/Acceptability-of-technology-in-legal-services-research-report-FINAL-March-2022.pdf> pg 4

<sup>63</sup> <https://www.legalservicesconsumerpanel.org.uk/wp-content/uploads/2022/07/22.07.19-How-consumers-are-using-legal-services-report-FINAL.pdf>

used services in this way rising from 13% in 2018 to 18% in 2022 (following a peak of 19% in 2019)<sup>64</sup>;

- the same survey reported that young consumers, and consumers from ethnic minorities (Asian, Mixed Ethnicity, and Black) were more likely to use unbundling, than older or white consumers<sup>65</sup>;
- results from an unbundled services pilot in family law run by the SRA in collaboration with the LSCP and the Law Society, and supported by the Bar Standards Board (BSB)<sup>66</sup> reported that 25% of consumers said that unbundling could help make legal services more affordable for them where they were otherwise unaffordable. The pilot also found that there was no significant difference in consumer satisfaction when using unbundled services<sup>67</sup>;
- in relation to AI, the LSCP's tracker survey found that the proportion of consumers that stated that they did not consider AI a barrier to using services rose from 7% in 2019 to 19% in 2022. Further, concerns over lack of trust, data security, and lack of user friendliness in using AI to access services had fallen in the same time period <sup>68</sup>;
- most members of the public are willing to use a variety of technology when accessing legal services, particularly where this has a beneficial impact on the affordability of legal service provision<sup>69</sup>.

63. Additionally, research<sup>70</sup> specifically focussed on how SMEs access legal services and their views on the use of legal technologies, provides evidence that they are also open to using legal technology to meet their legal needs; and that focussing the promotion and adoption of technology and innovation around small business needs could have a significant effect on meeting them:

- most SMEs can see a role for lawtech solutions, particularly for their most common and straightforward legal needs, such as finding a legal service provider in the marketplace and preparing legal documents<sup>71</sup>; and

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<sup>64</sup> <https://www.legalservicesconsumerpanel.org.uk/wp-content/uploads/2022/07/22.07.19-How-consumers-are-using-legal-services-report-FINAL.pdf> pg 2

<sup>65</sup> <https://www.legalservicesconsumerpanel.org.uk/wp-content/uploads/2022/07/22.07.19-How-consumers-are-using-legal-services-report-FINAL.pdf> pg 16

<sup>66</sup> <https://www.sra.org.uk/sra/news/sra-update-97-unbundling/>

<sup>67</sup> <https://www.sra.org.uk/globalassets/documents/sra/news/events/2022/unbundled-services--findings-from-our-law-firm-pilot.pdf?version=4a62fb>

<sup>68</sup> <https://www.legalservicesconsumerpanel.org.uk/wp-content/uploads/2022/07/22.07.19-How-consumers-are-using-legal-services-report-FINAL.pdf> pg 27

<sup>69</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2022/05/Technology-in-legal-services-what-is-socially-acceptable.pdf>

<sup>70</sup> <https://legalservicesboard.org.uk/news/research-reveals-market-opportunity-for-lawtech-firms-to-address-smes-unmet-legal-need> and <https://legalservicesboard.org.uk/wp-content/uploads/2021/10/Lawtech-and-SMEs-report-October-2021.pdf>

<sup>71</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2021/10/Lawtech-and-SMEs-report-October-2021.pdf> pg18

- more than three quarters of SMEs (23 out of 30) who had not used lawtech previously, said they would be interested in using lawtech solutions for their business needs<sup>72</sup>.

*Evidence of concerns around the greater use of technology and innovation*

64. Conversely there is evidence that consumers face barriers and concerns when using and accessing legal technology to access legal services, which need to be considered and addressed if the promotion of technology and innovation is to help improve access to justice:

- while consumers are increasingly accessing legal services using the internet, there is room to improve the level of service provided via these means. Of those surveyed, 28% of consumers using an email/online service would have preferred to talk directly to a legal professional more than they did. This suggests that email/online services do not yet provide an equivalent level of service to that provided face-to-face<sup>73</sup>, and the percentage of those that would have preferred to speak to a legal professional more than they did was higher for ethnic minority consumers (39%), relative to white consumers (25%)<sup>74</sup>;
- regarding the use of AI to access services, a significant proportion of consumers still had concerns about lack of trust, data security, confidence in use and lack of user friendliness (38%, 35%, 33%, and 28% respectively). There were also still concerns over the availability of AI services overall. This suggests there are still challenges facing consumer use of AI technology<sup>75</sup>;
- SMEs have a number of concerns in relation to using legal technology solutions and would be further encouraged to try legal technology solutions if they were reassured that they could be tailored to their unique needs, data security/confidentiality issues were addressed, and direct access to legal professionals remained available<sup>76</sup>;
- consumers have concerns about data security and cybercrime when using legal technology. They also worry about whether technology can offer the empathy and decision-making skills that human legal professionals can. Consumers accordingly prefer for technology to be used to support the

<sup>72</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2021/10/Lawtech-and-SMEs-report-October-2021.pdf> pg3

<sup>73</sup> <https://www.legalservicesconsumerpanel.org.uk/wp-content/uploads/2022/07/22.07.19-How-consumers-are-using-legal-services-report-FINAL.pdf> pg10

<sup>74</sup> <https://www.legalservicesconsumerpanel.org.uk/wp-content/uploads/2022/07/22.07.19-How-consumers-are-using-legal-services-report-FINAL.pdf> pg 11

<sup>75</sup> <https://www.legalservicesconsumerpanel.org.uk/wp-content/uploads/2022/07/22.07.19-How-consumers-are-using-legal-services-report-FINAL.pdf> pg 27

<sup>76</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2021/10/Lawtech-and-SMEs-report-October-2021.pdf> pg 3,16 and 17

delivery of legal services by legal professionals, rather than be a direct replacement<sup>77</sup>;

- research shows that consumers believe having certain precautions in place would provide reassurance to those using technology to access legal services, the most common of which was maintaining the availability of offline services alongside the technology, followed by independent quality checks of cases which had used technology, and systems for making complaints and receiving redress<sup>78</sup>;
- evidence suggests that consumers believe it is more acceptable to use technology for simple legal issues rather than for issues that are complex or 'high stakes'<sup>79</sup>, which may limit their use of technology overall.

65. There is also some evidence that the public and consumers may not be aware of legal technologies and service innovations<sup>80</sup> - for example, of the consumers taking part in an unbundling pilot<sup>81</sup>, 80% of those who did not use unbundling services were unaware of them<sup>82</sup>- and that building awareness of legal technology solutions and demonstrating relevance via case-studies/success stories could encourage greater up-take of lawtech in the SME community<sup>83</sup>. This suggests that the provision of information and guidance to the public to explain the benefits of using technology and innovation to access legal services could improve public trust and further increase access to legal services.

66. In addition, some specific groups of consumers do not have the means or the skills to use technology. In 2020, 2.6 million adults in the UK were 'digitally excluded' (without access to the internet)<sup>84</sup>, and a significant proportion of the UK population are considered to have no digital skills whatsoever (9%), with a further 21% lacking basic digital skills<sup>85</sup>. Research shows that both legal professionals and consumers have concerns that these cohorts of consumers, and other vulnerable consumers, or those with less confidence using technology (such as the elderly), could be disadvantaged by their lack of access to legal technology<sup>86</sup>. This indicates that it is crucial to understand the needs and barriers facing different

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<sup>77</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2022/05/Acceptability-of-technology-in-legal-services-research-report-FINAL-March-2022.pdf> pg 4

<sup>78</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2022/05/Acceptability-of-technology-in-legal-services-research-report-FINAL-March-2022.pdf> pg 45, 46, 47 and 49, figure 19

<sup>79</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2022/05/Acceptability-of-technology-in-legal-services-research-report-FINAL-March-2022.pdf> pg 5

<sup>80</sup> <https://cms.lawtechuk.io/uploads/A2J-Report.pdf> pg22

<sup>81</sup> <https://www.sra.org.uk/sra/news/sra-update-97-unbundling/>

<sup>82</sup> <https://www.sra.org.uk/globalassets/documents/sra/news/events/2022/unbundled-services--findings-from-our-law-firm-pilot.pdf?version=4a62fb>

<sup>83</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2021/10/Lawtech-and-SMEs-report-October-2021.pdf> pg 25 and 62

<sup>84</sup> [https://digit-research.org/data\\_commentaries/measuring-digital-exclusion/](https://digit-research.org/data_commentaries/measuring-digital-exclusion/)

<sup>85</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2020/04/LSB-Technical-Perspectives-FINAL.pdf> pg6

<sup>86</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2022/05/Acceptability-of-technology-in-legal-services-research-report-FINAL-March-2022.pdf> pgs 4, 27 and 40

segments and cohorts of consumers if regulatory approaches to technology and innovation are to be successful in meeting the needs of all consumers, including those who may wish to continue to access legal services via more traditional means.

67. An increased focus on the promotion of technology and innovation to improve consumer access to legal services could lead to the development of service solutions which are more accessible for groups of consumers who may face difficulties in accessing legal services generally, and who may also struggle with using technology specifically. It could also lead to regulators and technology providers/service innovators working to develop targeted technology solutions or service innovations designed to meet the specific legal needs or access consumers who may not have otherwise been served. This is explained further in our equality impact assessment in paragraphs 90-97.

**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?**

***Outcome 2 – Regulation balances the benefits and risks, and the opportunities and costs, of technology and innovation in the interests of the public and consumers.***

68. This outcome focuses on the need for regulators to understand and balance the benefits, risks, opportunities and costs, related to the use of technology and innovation in the provision of legal services in the interests of the public and consumers, if the promotion of technology and innovation is to be successful in providing services that benefit consumers and improve access to justice.
69. In pursuing a risk-based approach, we believe that regulatory frameworks should facilitate the adoption of any technologies or innovative solutions that provide, or improve access to legal services, that can benefit consumers.
70. Evidence collated from the first phase of our work on technology and innovation<sup>87</sup>, which undertook to understand how regulation can help promote the responsible adoption of technology and innovation in the legal services sector, concluded that ‘...*technology and innovation can widen access to legal services, but the associated risks need to be considered and managed.*’ Additionally, survey evidence from firms shows that they consider that the risks associated with unproven technology are the biggest

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<sup>87</sup> [https://legalservicesboard.org.uk/wp-content/uploads/2021/04/Striking\\_the\\_Balance\\_FINAL\\_for\\_web.pdf](https://legalservicesboard.org.uk/wp-content/uploads/2021/04/Striking_the_Balance_FINAL_for_web.pdf) pg 5



constraining factor that prevents them from adopting new technologies<sup>88</sup>. This supports the need for an outcome which focusses on balancing risks/costs and benefits/opportunities.

71. This outcome is also based on evidence that regulatory factors can be a constraint on the adoption of technological and innovative solutions to meet legal needs (see paragraph 39). This suggests that risk mitigation approaches undertaken by regulators in relation to the promotion of technology and innovation need to be balanced to ensure that innovation is not stifled or discouraged.
72. Being open to new technology and innovations, for example by carrying out pilots or using regulatory sandboxes to facilitate new products being trialled with users, is useful to learn how technology works in the provision of legal services, and to understand the impacts on, and the potential benefits to, consumers. It is crucial that outcomes from research and pilots are built upon with successes adopted and lessons learned from less successful trials.
73. Research by the University of Oxford in 2021 commissioned by the SRA<sup>89</sup> found that half of firms surveyed (who were adopters of, or were planning to adopt, legal technology) said that a lack of staff expertise to assess and implement the technology was a barrier to the adoption of legal technology<sup>90</sup>. This suggests that regulators may want to consider how to encourage legal professionals to stay up to date with developments in technology and other innovations in the sector, so that consumers are able to benefit from their adoption.
74. It is clear from the evidence we have set out (see paragraphs 61-63) that there are real benefits and opportunities associated with the increased adoption of technology and innovation in providing legal services, such as addressing gaps in legal need and meeting consumer demands for more diverse and affordable services.
75. It is also clear that with benefits and opportunities come risks and costs associated with technology and service innovation, including issues relating to data-security and cybercrime, which may cause consumer harm. These risks may be accentuated in circumstances where consumers are not aware that technology such as AI has been deployed in the legal services they are receiving. As adoption of technology increases,

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<sup>88</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2023/06/20230425-Tech-and-Innov-survey-2022-Designed.pdf> – figure 23

<sup>89</sup> <https://www.sra.org.uk/globalassets/documents/sra/research/full-report-technology-and-innovation-in-legal-services.pdf?version=4a1bfe>

<sup>90</sup> <https://www.sra.org.uk/globalassets/documents/sra/research/full-report-technology-and-innovation-in-legal-services.pdf?version=4a1bfe> pg 6



particularly technology that creates the perception of human interaction, the need for transparency about its deployment arguably becomes greater. There is also the potential risk of excluding certain consumers who do not have digital skills, or do not understand the benefits and risks associated with using legal service innovations such as unbundling (see paragraphs 64-67).

76. We consider that regulators should adopt a balanced, risk-based approach to the promotion of technology and innovation for access. They should proactively aim to understand, assess, and balance the benefits, risks, opportunities and costs of using technology and innovation to provide legal services, without being unduly risk averse (and thereby potentially creating further barriers for providers and innovators looking to bring products to market to meet consumer needs). They should also consider whether greater transparency about the use of advanced technologies such as AI in the provision of legal services is necessary to build and maintain consumer trust.

**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?**

***Outcome 3 – The legal services sector is open to technology providers and innovators and barriers to entry are lowered.***

77. This outcome sets out our view that regulators should be committed to creating a regulatory environment that is open to innovators entering the market and developing products or innovations that can benefit consumers and the public by improving access to legal services. Regulators should be creating that environment by proactively engaging with, and being receptive to, new and existing technology providers and innovators. It also underlines the benefits of collaborating to pursue the successful adoption of technology and innovation for access to services.
78. This outcome is based on evidence that there is scope for, and capacity to, implement technological and innovative solutions to meeting consumer demand in the legal services market.
79. It is also a response to evidence about the barriers faced by technology providers and innovators who wish to enter the legal services market, and the need and scope for more ongoing collaboration to help reduce barriers and promote choice.

80. As previously set out in paragraph 33, evidence shows that there is potential for much greater adoption and use of technology and innovation in the legal services market, thereby underlining the need for regulatory approaches to be open to encourage new providers into the market.
81. There is also evidence about the barriers that technology providers and innovators face when trying to bring their products to market, including:
- understanding the boundary between legal advice and providing guidance<sup>91</sup>;
  - knowing which regulator or regulators they may need to approach about their product or service<sup>92</sup>;
  - consideration of risks and legal requirements related to holding client data and privacy when adopting new technology, including AI<sup>93</sup>;
  - lack of access to data and the asymmetry of data availability in the legal services sector<sup>94 95</sup>;
  - challenges navigating overlapping regulatory regimes<sup>96</sup>;
  - lack of guidance and clarity from regulatory bodies<sup>97</sup>; and
  - the existence of multiple regulatory bodies in the sector which can create difficulties in understanding what exactly is regulated and how to comply with regulatory guidance and rules<sup>98</sup>.
82. This supports the view that providing advice to providers which addresses the barriers they face, as well as guidance where appropriate, could improve the adoption of technological and service innovations overall.
83. This outcome is also a response to the need and scope for more ongoing collaboration to promote new solutions coming into the legal services sector. In our view, collaboration and co-operation is crucial to providing an open market for technology providers and innovators. This is because evidence from the sector shows that collaborative initiatives can support the promotion of technological and innovative solutions and help bring new products to market. Examples of collaborative ventures include:

<sup>91</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2020/04/LSB-Technical-Perspectives-FINAL.pdf> pg 12

<sup>92</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2020/04/LSB-Technical-Perspectives-FINAL.pdf> pg12

<sup>93</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2020/04/LSB-Technical-Perspectives-FINAL.pdf> pg12

<sup>94</sup> <https://www.sra.org.uk/globalassets/documents/sra/research/legal-access-challenge-report.pdf?version=49d9b9> pg24

<sup>95</sup> <https://cms.lawtechuk.io/uploads/A2J-Report.pdf>pg 27

<sup>96</sup> <https://www.sra.org.uk/globalassets/documents/sra/research/legal-access-challenge-report.pdf?version=49d9b9> pg 6

<sup>97</sup> <https://cms.lawtechuk.io/uploads/A2J-Report.pdf>pg25

<sup>98</sup> [https://legalservicesboard.org.uk/wp-content/uploads/2021/04/Striking\\_the\\_Balance\\_FINAL\\_for\\_web.pdf](https://legalservicesboard.org.uk/wp-content/uploads/2021/04/Striking_the_Balance_FINAL_for_web.pdf) pg 7

- the Lawtech Sandbox<sup>99</sup>, which is an initiative that supports technology pioneers to test and bring their products to market. It provides pioneers with regulatory support and advice (via the RRU) and joins up a cross section of stakeholders, giving innovators the support they need.
- the Nesta Legal Access Challenge<sup>100</sup>, which was a competition to find entrants who had technological solutions for legal issues for individuals and SMEs. The challenge provided competition finalists with a collaborative support package from a range of stakeholders (including regulatory, data, legal advice and technological support) to assist them with the development of their product/solution.

84. There is however evidence<sup>101</sup> that cross-collaborative activities in the legal services sector in the interests of innovation appear to be limited:

- just under half (46%) of firms collaborate with external partners and just over a quarter (27%) carry out in-house research into new or existing service developments;
- collaboration and partnerships between legal firms and technology firms is also rare, with only 9% of firms having developed partnerships or made investments in legal technology providers in the last three years; and
- a majority of firms (61%) reported not having developed any partnerships with, or investments in, legal technology firms.

85. Increased collaboration with a wide range of stakeholders, including learning from best practice in other jurisdictions and sectors is likely to have a positive impact on new technology solutions and service innovations, which can increase access to legal services coming to market.

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

## Implementation and monitoring

<sup>99</sup> <https://lawtechuk.io/sandbox>

<sup>100</sup> <https://www.sra.org.uk/globalassets/documents/sra/research/sra-legal-access-challenge.pdf?version=49dad5>

<sup>101</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2023/06/20230425-Tech-and-Innov-survey-2022-Designed.pdf> – para 26 and 239

86. Regulators that are successful in promoting technology and innovation for access to legal services will be able to provide us with assurance that they meet the outcomes in the guidance.
87. Once the guidance is published it will take effect immediately. It will be included in the Sourcebook<sup>102</sup> to make it clear that regulators should have regard to this guidance when meeting the standard and characteristic related to innovation and technology.
88. In the first instance, we will monitor and assess the use of the guidance by seeking assurances that regulators are implementing plans to meet the outcomes set out in this guidance via the annual LSB Regulatory Performance Assessment Framework<sup>103</sup> under 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’*.

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

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<sup>102</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2022/10/Regulatory-Performance-Assessment-Framework-Sourcebook.pdf>

<sup>103</sup> <https://legalservicesboard.org.uk/our-work/assessment-framework>

## Equality Impact Assessment

90. Advancing equality, diversity and inclusion in the legal sector is a key strategic priority for the LSB. Accordingly, the LSB has taken account of its obligations under the Equality Act 2010, including the Public Sector Equality Duty.<sup>104</sup>
91. Outcome 1 - *‘Technology and innovation are used to support improved access to legal services and to address unmet need’* - includes measures for regulators to consider and encourage them to understand and respond to the needs of different consumer groups/segments when using legal technology and service innovations to access legal services.
92. Within this, the guidance makes specific reference to consumers who, due to lack of skill, confidence, or means, struggle to access technology and benefit from its adoption.
93. We believe the guidance has the potential to improve outcomes for all consumers by encouraging regulators to understand and take account of the needs of, and barriers facing, different consumer groups and segments in accessing technological solutions or service innovations when developing their regulatory approaches to the promotion of technology and innovation.
94. This could lead to the development of service solutions which are more accessible for groups of consumers who may face difficulties in accessing legal services generally, and who may also struggle with using technology specifically (including the cohorts set out in paragraph 92 above) and other protected groups such as the elderly, those with learning difficulties or disabilities, or those who do not have English as a first language.
95. It could also, via an increased focus on consumers and consumer needs, lead to regulators and technology providers/service innovators working to develop targeted technology solutions or service innovations designed to meet the specific legal needs or access needs of consumers who may not have otherwise been served. It should also ensure that consumers are able to continue to access legal services in a more traditional way if that best suits their needs.
96. Increased use of technology in the sector could also potentially improve diversity in the legal profession by enabling more flexible entry routes, training routes and different ways of working. This could encourage a more

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<sup>104</sup> <https://www.gov.uk/government/publications/public-sector-equality-duty>

diverse range of entrants into the profession and assist with retention and progression.

97. Overall, we do not consider there is anything in the proposed guidance which will negatively impact groups with protected characteristics, but we welcome evidence and comments from respondents related to any equality issues they believe arise from our proposed guidance.

**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?**

## Impact Assessment

98. The LSB has considered the likely impact of the draft guidance on the approved regulators, regulatory bodies, their regulated communities, and consumers.
99. Our approach is intended to ensure that the principle of promotion of technology and innovation to improve access to legal services is established within the LSB's regulatory framework. Regulatory bodies will be clearer about what is expected of them in terms of promoting the adoption of technology and innovative service provision for the benefits of consumers and the public, and the wider sector.
100. We recognise that introducing new outcomes for regulators in relation to promoting technology and innovation for access may result in an increased burden on authorised persons, including regulated entities. Individual regulators are best placed to assess and quantify these impacts based on the activities they decide to pursue.
101. Our view is that these potential increased burdens would likely be outweighed by the benefits to consumers, including the potential for the outcomes in the guidance to:
- increase trust in technology by building in consumer feedback loops into strategies to promote technology and innovation;
  - promote the use of technological solutions to improve consumer empowerment by providing consumers with information about choice, price, quality and routes for redress;

- contribute to a legal services sector best placed to understand and meet the needs of consumers and provide services that benefit them; and
- improve access to legal services and reduce the levels of unmet legal need.

102. There is also potential for the outcomes in the guidance to reduce costs and increase flexibility for legal professionals and firms via the increased adoption of technology and innovation to provide services.

103. We welcome comments on the potential impact of the draft guidance and any quantification of the likely costs and anticipated benefits, to further inform the LSB's assessment of the regulatory impact of the proposed guidance.

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

**Q9: Do you have any other comments about the proposed guidance?**

## Responding to the consultation

104. The consultation questions in this document are reproduced below for ease of reference.

### **Consultation questions:**

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

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

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?

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?

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

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

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?

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

Q9: Do you have any other comments about the proposed guidance?

105. Any representations should be made to the LSB by 5pm on 2 October 2023. Please ensure that responses reach us by the closing date and time as we cannot guarantee that responses received after this date will be considered.

106. We would prefer to receive responses electronically but hard copy responses by post are also welcome. Responses should indicate who is responding, or on whose behalf the response is made. Responses should be sent to:



- Email: [consultations@legalservicesboard.org.uk](mailto:consultations@legalservicesboard.org.uk)
- Post: Legal Services Board, 3rd floor, The Rookery, 2 Dyott Street, London, WC1A 1DE

107. We intend to publish all responses to this consultation on our website, with personal data redacted. We may also refer to a response within our consultation response document. If a respondent explicitly requests that a specific part of the response, or its entirety, should be kept confidential we will not publish the response. We will record the identity of the respondent and the fact that they have submitted a confidential response in our summary of responses.

108. Notwithstanding the above, please note that the LSB is a public body and is therefore obliged to comply with requests for information under the Freedom of Information Act 2000 and other information access legislation. Therefore, while we will not publish personal data on our website, and while we will seek to adhere to any request to keep a response confidential, we cannot guarantee that we will be able to withhold such information under information access legislation. For further information about our handling of personal data please refer to our Privacy Notice<sup>105</sup>. Information about our handling of personal data that is sent to us in response to consultations can be found, under “Regulatory Work”<sup>106</sup> and “Stakeholder Engagement”<sup>107</sup>.

## Next steps

109. This consultation closes on 2 October 2023. Once the consultation has closed, we will consider all feedback received and make any resulting changes, as appropriate, to the guidance before publication.

## Complaints

110. Complaints or queries about the LSB’s consultation process should be directed to the Consultation Co-ordinator, at the following address:

Consultation Co-ordinator  
Legal Services Board  
3<sup>rd</sup> Floor, The Rookery  
2 Dyott Street  
London

<sup>105</sup> <https://legalservicesboard.org.uk/privacy-notice>

<sup>106</sup> [https://legalservicesboard.org.uk/privacy-notice#privacy\\_section\\_7](https://legalservicesboard.org.uk/privacy-notice#privacy_section_7)

<sup>107</sup> [https://legalservicesboard.org.uk/privacy-notice#privacy\\_section\\_10](https://legalservicesboard.org.uk/privacy-notice#privacy_section_10)

WC1A 1DE

Or by e-mail to: [consultations@legalservicesboard.org.uk](mailto:consultations@legalservicesboard.org.uk)

## Annex A: Draft Statutory Guidance

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

Issued under s162 of the Legal Services Act 2007<sup>108</sup>

10 July 2023

#### Purpose of this document

1. The purpose of this guidance is to set outcomes for approved regulators and the regulatory bodies (regulators) to whom some have delegated their regulatory functions in the interests of the public and consumers. These outcomes relate to promoting the use of innovation and technology with the aim of improving access to legal services.

#### The provision of statutory guidance

2. Section 162 of the Legal Services Act 2007 (the Act) allows the Legal Services Board (the LSB) to give guidance:
  - a. about the operation of the Act and any order made under it;
  - b. about the operation of any rules made by the LSB under the Act;
  - c. about any matter relating to the LSB's functions;
  - d. for the purpose of meeting the regulatory objectives;
  - e. about the content of licensing rules;
  - f. about any other matters about which it appears to the LSB to be desirable to give guidance.
3. The guidance may consist of such information and advice as the LSB considers appropriate. When exercising its functions, the LSB may refer to the extent to which an approved regulator has complied with any guidance which is applicable to it. In discharging its functions, the LSB has a duty to promote the regulatory objectives and must, as far as is reasonably practicable, act in a way which is compatible with the regulatory objectives, and which it considers most appropriate for the purpose of meeting those objectives<sup>109</sup>.
4. This guidance is relevant to all the regulatory objectives, and in particular the following:
  - a. RO3 improving access to justice;

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<sup>108</sup> <https://www.legislation.gov.uk/ukpga/2007/29/part/7/crossheading/guidance>

<sup>109</sup> <https://www.legislation.gov.uk/ukpga/2007/29/section/1>

- b. RO4 protecting and promoting the interests of consumers;
  - c. RO5 promoting competition in the provision of services.
5. In developing this guidance, the LSB has also had regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent, and targeted only at cases in which action is needed as per s3(3)(a) of the Act and it has considered other principles appearing to it to represent the best regulatory practice.
  6. As specified under section 162(5)<sup>110</sup> of the Act, when carrying out our functions (including via the Regulatory Performance Assessment Framework<sup>111</sup> under which we hold regulators to account for their performance) we may have regard to the extent to which regulators have complied with the outcomes in this guidance, and we may seek further information from regulators as part of our consideration.
  7. We will include this guidance, and any other supporting information, in the Regulatory Performance Assessment Framework Sourcebook of Standards and Characteristics<sup>112</sup> linked to 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.'*
  8. The LSB may decide to review this guidance and issue a revised version if considered appropriate to do so.

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<sup>110</sup> Legal Services Act, 2007, s162(5) states 'When exercising its functions, the Board may have regard to the extent to which an approved regulator has complied with any guidance issued under this section which is applicable to the approved regulator.'

<sup>111</sup> <https://legalservicesboard.org.uk/our-work/assessment-framework>

<sup>112</sup> <https://legalservicesboard.org.uk/wp-content/uploads/2022/10/Regulatory-Performance-Assessment-Framework-Sourcebook.pdf>

## **LSB guidance on promoting technology and innovation to improve access to legal services.**

9. The LSB's aim is for regulators to promote the use of technology and innovation to improve access to legal services by helping to address unmet legal need and to ensure a broader array of legal services is delivered in the public interest.
10. The provision of this statutory guidance clarifies the LSB's view that regulators should be proactively engaged in fostering a regulatory environment that encourages technological and innovative solutions to meeting consumer need. Our intention is for regulators to use this guidance to support them to make progress in this area with appropriate pace and ambition in the interests of improving access to legal services for all consumers.
11. When developing their regulatory approaches to promoting technology and innovation, regulators should consider innovation in its widest sense. Innovation encapsulates a wide range of developments that can improve service provision for consumers. It can include new ways of providing legal services and can encompass new ways of working, improving efficiency and productivity and new business models. Innovation goes beyond developing specific products and may not necessarily be consumer facing. For example, the support of innovation may also require that ongoing competence requirements encourage legal professionals to stay abreast of developments in technology and other innovations in the sector.
12. Regulators that are successful in promoting technology and innovation for access to justice will be able to provide us with assurance that they have considered the outcomes in the guidance, including identifying progress in the adoption of technology and innovation in their regulated communities.
13. The LSB will have regard to the three outcomes set out below in discharging its functions.

### **Outcomes**

14. In developing regulatory frameworks to promote technology and innovation to improve access to justice, regulators should ensure that:

  - Outcome 1: Technology and innovation are used to support improved access to legal services and to address unmet need.
  - Outcome 2: Regulation balances the benefits and risks, and the opportunities and costs, of technology and innovation in the interests of the public and consumers.
  - Outcome 3: The legal services sector is open to technology providers and innovators and barriers to entry are lowered.

15. The LSB recognises that regulators regulate different professions, reserved legal activities and authorised persons (including both individuals and entities), and therefore may adopt different approaches when considering the outcomes.
16. When pursuing the outcomes set out in paragraph 14, regulators should have regard to their duty under section 28 of the Act to promote the regulatory objectives. This includes the requirement for regulators to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent, and targeted only at cases in which action is needed, and any other principle appearing to them to represent the best regulatory practice.
17. In addition, regulators should also have regard to other regulatory regimes which apply to the regulated legal services sector, be they related specifically to technology<sup>113</sup> or to other cross-sector regulatory issues that are likely to cross over with this guidance. Regulators should be aware of how the requirements of those regulatory regimes, and their future development, interface with legal services regulation and the impact they may have on the adoption of technology and innovation in the regulated legal services market.

***Outcome 1: Technology and innovation are used to support improved access to legal services and to address unmet need.***

18. Regulators should adopt an approach to the promotion of technology and innovation for improving access to justice and addressing unmet legal need that puts the public interest and the interests of consumers first.
19. In pursuing outcome 1, regulators should be proactive about understanding how the adoption and use of technology and innovation in the provision of legal services can benefit consumers and help them access legal services.
20. Regulators could consider:
- a. consulting with the public to better understand their needs and obtain and act on feedback related to using technology and innovation to access legal services. This could include carrying out consumer research to better understand how technology and innovation can benefit consumers/address barriers to access.
  - b. promoting the use of technological solutions to share information with consumers about price, quality, and routes for redress - including ensuring that consumers are aware of the redress mechanisms for legal services provided by technological solutions or service innovations.

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<sup>113</sup> For example, regulatory regimes specifically related to technology, such as requirements issued by central government via the Office for Artificial Intelligence <https://www.gov.uk/government/organisations/office-for-artificial-intelligence>

- c. providing information to the public to explain the benefits of using technology and innovation to access legal services in order to build and enhance public trust.
- d. understanding the needs of different consumer groups/segments and the barriers they may face in accessing legal services provided by technology and innovation, and how these barriers can be addressed. Regulators should pay particular attention to those consumers who, due to a lack of skill, confidence, or means, may struggle to access technology and benefit from its adoption, and therefore may require legal services to be provided via alternative means.

***Outcome 2: Regulation balances the benefits and risks, and the opportunities and costs, of technology and innovation in the interests of the public and consumers.***

- 21. Regulatory frameworks should facilitate the adoption of technologies or innovative solutions that can provide, or improve access to, legal services that benefit consumers and the public.
- 22. In pursuing outcome 2, regulators should adopt a risk-based approach to the promotion of technology and innovation to improve access to legal services. These approaches should balance the assessment of the benefits, risks, opportunities and costs of the use of technology and innovation, without being unduly risk averse and thus inhibiting innovation. When making such assessments, regulators should be focussed on technology for access and be open to any technology and innovative solutions that can benefit consumers.
- 23. Regulators could consider:
  - a. proactively growing their knowledge of technology and innovation and the potential benefits and risks to consumers related to their use in the provision of legal services. This could include: collaborating with stakeholders such as technology providers, innovators, other regulators, and their regulated communities on risk assessments for new and existing products or services; and horizon-scanning to keep up with evolving benefits over time.
  - b. undertaking an approach which includes consideration of how the risks to consumers related to the use of technology and innovation in the provision of legal services will be assessed, monitored and mitigated, and how the impact of mitigations will be evaluated. In doing so, regulators should consider what steps may be necessary for legal service providers to take to ensure consumers are aware of how technology, such as artificial intelligence, has been deployed in the provision of a legal service.
  - c. using ongoing competence requirements to encourage legal professionals to stay abreast of developments in technology and other innovations in the sector and how they might be used to improve access to services.

- d. monitoring the impact of the use of technology and innovation on consumers and their ability to access legal services, including assessing consumer complaints to identify and track complaints related to the use of technology or innovation in the provision of legal services.
- e. being open to experimentation when considering new technology and innovative solutions that can provide services for the benefit of consumers, for example, by running pilots/using regulatory sandboxes to facilitate new products being trialled with users, and being willing to proceed with, adapt, or halt plans based on what is learned.
- f. being aware of, and using, where relevant, wider available guidance relating to current and emerging risks related to the use of technology, for example: on cyber threats and data protection regulations, as well as the use of artificial intelligence.

***Outcome 3: The legal services sector is open to technology providers and innovators and barriers to entry are lowered.***

24. In pursuing outcome 3, regulators should be able to demonstrate a strong commitment to fostering a regulatory environment that is open to innovators entering the market and developing products or innovations that benefit consumers and improve access to legal services. Regulators should be creating that environment by proactively engaging with, and being receptive to, new and existing technology providers and innovators.

25. Regulators could consider:

- a. ongoing collaboration and co-operation, as appropriate, with a wide range of relevant stakeholders, including, but not limited to, technology providers, innovators, other regulators, legal professionals, unregulated providers, and consumer representative organisations.
- b. providing those exploring innovative approaches to legal services delivery with advice and information that helps identify and address both real and perceived barriers to entry, as well as providing guidance for relevant stakeholders (including legal professionals, technology providers, and innovators) related to using technology and innovation to improve access to legal services.
- c. reviewing their regulatory arrangements to identify potential barriers and working to address these where possible.
- d. providing technology providers and innovators with access to relevant data where appropriate.
- e. learning from best practice in other jurisdictions and sectors related to the promotion and use of technology and innovation for the benefit of consumers and the public.