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Dear Matthew

## **LSB Consultation – Draft guidance technology and innovation**

IPReg welcomes the opportunity to respond to the LSB's consultation on promoting technology and innovation to improve access to legal services. IPReg shares the LSB's view that there are clear benefits to consumers from the adoption of innovative legal technologies and that these may go some way to improving access to legal services and addressing unmet legal need.

We will continue to participate actively in the LawTech UK [Regulatory Response Unit](#). This brings together UK legal services regulators and other bodies to create a unified approach to using technology in the delivery of legal services. It provides quick and clear regulatory guidance to innovators to drive confident adoption of technology in the legal sector.

IPReg agrees that legal regulators have an important role to play in ensuring that where legal services providers use technology within their practices, the interests of consumers are protected. When implemented and used appropriately, such technological advances can contribute to an independent, strong, diverse and effective legal profession and help to promote and maintain adherence to the professional principles. IPReg has recently consulted on its 2024 budget and business plan and intends to allocate an initial £10,000 from its reserves to support work in relation to assessing AI and legal technologies and their impact on the IP sector.

We find the collaborative approach taken by the Department for Science Innovation and Technology (DSIT) and the Ministry of Justice to be very helpful and will continue to participate in these events. For example, at its roundtable on 1 August 2023 (which was attended by the LSB and the legal regulators) the DSIT spoke about a risk assessment framework which regulators and others could contribute to and learn from. We consider this could be a very valuable collaborative tool for all the legal services regulators. We encourage the LSB to use its convening powers to establish a panel of expert advisers on innovation and technology (including Artificial Intelligence (AI)) which would foster effective collaboration between regulators and be a source of expertise as they develop their own understanding of the impact of technology on the delivery of legal services.

Although the LSB's consultation is "technology neutral" it seems likely that significant innovation in the provision of legal advice using technology will come from the use of AI and our response therefore focuses on that and the approach that other bodies are taking to it.

## Summary

- Whilst the LSB's consultation does not reference other bodies' work, the LSB and the frontline legal regulators must have regard to principles that appear to represent best regulatory practice.<sup>1</sup> In our view, this is likely to include the significant amount of work being published by Government, Select Committees and the CMA.
- We consider that there could be real efficiencies from having a consistent, targeted and proportionate approach to promoting innovation and all forms of technology in the regulated legal sector. This could be achieved by having one set of regulatory/statutory requirements for legal services regulators to consider when deciding how to promote innovation and technology.
- To meet that aim, in our view there would be merit in considering whether the principles and guidance set out in the Government's [White Paper](#) on a pro-innovation approach to AI regulation (*which will apply to the regulated legal sector*) could be applied more widely to other forms of technology in the regulated legal markets without the need for the additional statutory guidance and regulatory outcomes proposed by the LSB.
- Depending on the Government's response (due on 31 October) the 12 challenges of AI governance identified by the House of Commons Science, Innovation and Technology Committee in its recent [interim report](#) could form the basis for the LSB's own guidance on promoting technology and innovation to improve access to legal services.
- In the event that the LSB has evidence that the additional regulation that it has proposed is the most appropriate way to meet the regulatory objectives, we have raised some issues of clarification on its proposed statutory guidance.

Our more detailed consideration of these suggestions is set out below.

## Government White Paper: A pro-innovation approach to AI regulation

IPReg considers that the LSB's aim to "set out harmonised outcomes for regulatory bodies to promote the use of innovation and technology to promote access to legal services" could be achieved by adopting the Government's 5 cross-sector principles (which are themselves derived from the OECD's principles). The principles are: safety, security and robustness; appropriate transparency and explainability; fairness; accountability and governance; contestability and redress.

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<sup>1</sup> Legal Services Act (LSA) s3(3)(b) and s28(3)(b)

The White Paper states: the principles set out the key elements of responsible AI design, development and use and will help guide businesses. It envisages that regulators will lead the implementation of the framework, for example by issuing guidance on best practice for adherence to these principles.

Each principle is defined and explained and there is a rationale for its inclusion in the regulatory framework. For each principle, the White Paper sets out a detailed suite of factors that regulators may wish to consider when providing guidance/implementing each principle. The Government's intent is to take a non-statutory approach in the first instance with the possibility that the requirements will become statutory in due course (i.e. a statutory duty to have regard to the 5 principles). However, the Government does not currently intend to introduce a statutory duty if its monitoring shows that implementation is effective without the need to legislate. The Government plans to work with regulators to develop guidance that helps them implement the principles in a way that aligns with the Government's expectations for how the framework should operate.

We encourage the LSB to consider whether the regulatory framework that the government has set out for the regulation of AI (which will apply to the legal sector) could be used to achieve the LSB's aim of promoting technology and innovation more widely in the sector (i.e. extended beyond AI). Adopting the government's 5 principles would result in a consistent, targeted and proportionate approach to all forms of technology. It would also mean that there would only be one set of regulatory/statutory requirements for legal services regulators to consider when deciding how to promote innovation and technology.

It would be open to the LSB at a later date to propose additional arrangements for the regulated legal sector if evidence develops to show that the Government's principles are, for some reason, not appropriate for our markets. Under this approach we envisage that the LSB would use its convening powers to work collaboratively with stakeholders across the sector (and with Government departments) to establish best practice for implementing the principles.

#### Science, Innovation and Technology Committee

The House of Commons Science, Innovation and Technology Committee issued an [interim report](#) on 31 August on the governance of artificial intelligence. The report identifies 12 challenges of AI governance that policymakers and the frameworks they design must meet; it asks the Government to set out how it will address each of the challenges. The challenges that the Committee has identified are: bias; privacy; misrepresentation; access to data; access to compute; black box; open source; intellectual property and copyright; liability; employment; international coordination; and existential. The Committee's view is that there should be a "tightly focused" AI Bill in the next King's speech. A Government response is due by 31 October.

We encourage the LSB to consider whether the challenges that the Committee has identified could form the basis for its own guidance on promoting technology and innovation to improve access to legal services.

#### Competition and Markets Authority (CMA)

The CMA recently published a [report](#) which proposes guiding principles that aim to ensure consumer protection and healthy competition are at the heart of responsible development and use of AI Foundation Models (FM). The report sets out six competition and consumer protection principles including one on transparency: consumers and businesses are given information about the risks and limitations of FM-generated content so they can make informed choices. The principles were developed by considering the key drivers for positive outcomes and outcomes that could cause concern from a competition and

consumer protection standpoint. The principles aim to guide the development of the market towards more positive outcomes for people, businesses and the economy.

The CMA report emphasises that it is important not to look at competition and consumer protection in isolation because they interact with other policy objectives. It notes that while those other policy objectives will be the focus of other regulatory authorities “it is important that these different policy areas develop in a joined up way”.<sup>2</sup> The CMA is also considering how the principles set out in the White Paper might apply to its current and future remit.<sup>3</sup> The CMA’s paper also sets out helpful information about which provisions of consumer law might apply when FMs are deployed in consumer facing applications.<sup>4</sup>

## National Audit Office

The NAO is undertaking a [study](#) into how effectively government is maximising the opportunities and mitigating the risks of using AI in the provision of public services. Although the study will not consider the regulation of AI across the wider economy, it may provide useful information that is transferrable to the legal sector. We encourage the LSB to consider this once the NAO publishes its findings.

## LSB consultation

In the event that the LSB decides that the most appropriate way to meet the regulatory objectives is to issue sector-specific statutory guidance, we have identified the following factors that we would like the LSB to consider:

- The statutory duty under LSA s28 is that regulators must, so far as is reasonably practicable, act in a way that is compatible with the regulatory objectives and which regulators consider most appropriate for the purpose of meeting those objectives. The current draft guidance (paragraph 16) incorrectly expresses this statutory duty as one to “promote” the regulatory objectives and should be changed to reflect the actual wording in the LSA;
- It would be helpful to understand how the LSB takes into account other best regulatory practice (such as those set out above) in developing its proposed guidance, given the statutory duty to have regard to best regulatory practice. This would help us to understand how the LSB’s required Outcomes fit with the framework set out in the White Paper (which applies to all the legal regulators), the Select Committee’s challenges and the CMA’s principles;
- The guidance should make clear that it is regulated legal services providers who should determine what legal technological innovation they wish to use and to offer to their particular client base to meet their clients’ requirements, preferences and expectations;
- In considering how to achieve Outcome 1 (Technology and innovation are used to support improved access to legal services) the LSB’s draft guidance states that regulators should adopt an approach “that puts the public interest and the interests of consumers first”. While those represent two of the regulatory objectives, our view is that decisions about the appropriate approach to take must consider all the regulatory objectives and achieve a balance between

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<sup>2</sup> CMA AI Foundation Models: Short Version paragraph 1.89

<sup>3</sup> CMA AI Foundation Models: Full Report paragraph 6.24

<sup>4</sup> CMA AI Foundation Models: Full Report paragraphs 6.7 - 6.12

them. It would be helpful if the LSB explained why it appears to suggest that only two of the regulatory objectives should be considered;

- The guidance suggests that regulators could consult with the public to understand better their needs and obtain and act on feedback related to using technology and innovation to access legal services. It also suggests that regulators could consider the barriers to certain types of consumers using technology. Given the LSB's significant research budget, we would find it helpful if the LSB conducted this research across the regulated legal markets. This would give the regulators, practitioners and developers of technology valuable insight into this important issue from what could be quite a large survey. It is also likely to be a more efficient use of resources than each regulator conducting its own research, particularly in sectors such as intellectual property where "the public" do not tend to need legal advice. Alternatively, this might be something that regulators could work on collaboratively through the Legal Regulators Research Forum;
- While the aim of "promoting the use of technological solutions to share information with consumers about price, quality and redress" is clear, we are not clear what "including that consumers are aware of the redress mechanisms for legal services provided by technological solutions or services innovations" means. Does the reference to "redress mechanisms" mean first tier complaints processes and/or the Legal Ombudsman? One of the issues that the CMA is considering is whether consumers will have clear routes to redress if things go wrong and it would be helpful to understand the LSB's requirements in that context as well;
- We are concerned that the proposed requirement to "promote the use of technological solutions to share information with consumers about price, quality and routes for redress" may inadvertently miss the wider benefits that technological solutions may bring and which innovators want to develop (i.e. because it is confined only to price, quality and redress). A wider application might therefore be more helpful: to promote the use of technological solutions to provide legal services to consumers;
- Similarly, a requirement to provide information to the public "to explain the benefits of using technology and innovation" should also include providing information about the risks - a key concern for the CMA, the Science, Innovation and Technology Committee and others;
- The LSB suggests that regulators should be "open to experimentation when considering new technology and innovative solutions [...] 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". Our experience with our own PII Sandbox and in the RRU is that sandboxes are generally used where a firm or innovator needs a waiver from certain regulatory requirements in order to test/develop a solution to a problem that they have identified. IPReg's approach to regulation is to take a principles-based approach which is technology neutral but includes targeted and proportionate consumer protection requirements. So there are requirements to act within one's competency, put clients' needs first, etc. but no specific rules around what types of technology can be used by those on our registers. It seems that the LSB's approach would require us to agree (or not) that certain technological solutions are (or are not) appropriate for use by those we regulate. We note that the government has provided finance for

a sandbox to help businesses test AI rules before going to market. The RRU also provides for the use of sandboxes for innovators to test solutions and we will continue to participate in that. It would therefore be helpful if the LSB could set out in more detail how it sees sandboxes being used by individual legal regulators without straying into the regulation of AI itself (which, as we understand it, is the remit of the Office for Artificial Intelligence).

We would be happy to discuss this response with the LSB.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Fran Gillon', with a horizontal line underneath.

Fran Gillon

**Chief Executive**