

## **Westminster Legal Policy Forum: *Next steps for regulating technology and innovation in Legal Services, 27 February 2019***

### **The “size of the prize”**

Thank you for inviting me to give the final presentation of today’s conference.

There have been some excellent and inspiring presentations this morning. For me, these have underlined the ‘size of the prize’ that is within our grasp if we can succeed in fostering a climate that promotes greater levels of innovation in legal services.

- The huge unmet need gap, among both individuals and small and medium sized businesses, is well-known. Both groups are far more likely to do nothing in response to a legal problem, or try to handle it alone, than seek advice. While there has been progress in lots of areas since the Legal Services Act this remains the key challenge that we must collectively address.
- As we prepare to leave the European Union there is increased attention on the international competitiveness of our legal jurisdiction. It is rightly admired across the world, but it’s fair to say that we lag behind the best in the use of technology. If we are to remain world-leading, we will need to up our game here.
- Consumers spent over £32bn on legal services last year, but the economic and social benefits go much wider because the legal system enables commerce to function properly and efficiently, and it underpins respect in the rule of law. Conversely, when businesses and individuals do not get the legal help they need, then the costs and risks for business are increased and society functions less well. So, helping the legal sector to become the best it can be is crucial to meeting the ambition in the Industrial Strategy to be the most innovative economy in the world as well as to underpin a well-functioning society.

## **The current picture**

In November, the Legal Services Board published the findings of a major survey on technology and innovation in legal services, based on interviews with 1,502 providers.

The survey findings paint a mixed picture of innovation in the sector. Overall, levels of innovation were unchanged since the first wave of the survey three years' ago and fell on some measures. While the sector makes use of a variety of technologies, use of potentially transformative technologies was low, as was appetite to adopt these in the next few years.

But there was good news too. I would pick out three points:

- Alternative Business Structures were three times as likely to use technology and had amongst the highest levels of service innovation. ABS's are now truly mainstream – there are over 1,200 of them. All types of law firm can innovate, of course, but multi-disciplinary teams, scale and the possibility of external investment help to explain the difference that the ABS model is making.
- Use of technology is not the exclusive preserve of Big Law, in fact there was above average uptake of technology by firms primarily serving individual clients. Whether it is chatbots, automated document assembly or other interactive tools there are lots of examples of high-street law firms embracing technology.
- Providers reported that technology had improved the quality of services they provide. This is in the context of the Legal Services Consumer Panel's tracker survey showing that levels of service satisfaction among clients are the highest they have ever been.

The survey also found that competition is a much stronger influence on providers' appetite to deliver new services than three years ago. In the end, regulators do not design products and services, providers do. But active and demanding consumers who are able to compare price and quality should prompt providers to deliver services that are better tailored to their needs. And regulators can help to create these market conditions. The transparency reforms introduced following the CMA's legal services market study can, therefore, help to increase

levels of innovation in the sector. As these reforms kick in, we should expect the influence of consumer power to be an ever stronger factor in future.

## **Momentum**

My sense is that a real momentum is building and it's important that we seize this.

- Exciting market developments are reported in the trade press almost every day.
- It was a real fillip for the sector that the Solicitors Regulation Authority obtained a major grant from the Regulators' Pioneer Fund to support business innovations that will use artificial intelligence to better serve the market for small businesses and consumers. A fortnight ago another round of government grants were issued to LawTech businesses partnering with academia, law firms, charities and others
- Initiatives such as the LawTech Delivery Panel and the Law Society's policy commission on algorithms, among others, are helping to tackle the policy and practical issues that face the legal sector.

Although our research highlights the scale of the journey that the sector needs to go on, there is a real sense of momentum that should accelerate our progress in getting there.

## **Role of regulators**

As the sector's oversight regulator we don't want to stall this momentum by maintaining, or introducing, unnecessary regulatory obstacles that stifle innovation.

I think we can claim a track record that providers and investors should take confidence from. In our survey, providers told us that legal services regulation is much less of a constraint on innovation than it was three years' ago: two-thirds reported regulation to be no constraint at all compared to half in the 2015 survey. Over this period the frontline regulators have removed restrictions on practice and slimmed down rulebooks, offering firms greater freedoms and lowering the regulatory burden. And they have introduced mechanisms, such as sandboxes and waivers, which offer a safe space for responsible innovation to take place.

Earlier this month a report by a United Nations task force praised the Legal Services Act as “an inspirational model that deserves to be followed and developed further” in an effort to tackle the global access to justice gap. This focused on the flexibility of our regulatory system to accommodate a variety of business models.

So, while regulation is often seem as a brake on innovation, in fact it can accelerate it.

When considering proposals by the regulators to change their rulebooks we need to make sure that consumers will remain properly protected. This is, of course, a judgement call and we appreciate that some of these decisions can be contentious.

It is often said that there is an access/innovation dilemma, in other words that trade-offs need to be made between policies that encourage risk-taking in the name of widening access to services against reducing protections and/or compromising professional ethics. However, while trade-offs sometimes do need to be made, this can also be a false choice. In our survey, providers told us that the main factors preventing them from taking up technology were the risks involved in using unproven technology, the potential for greater ethical problems and a lack of IT expertise.

So, innovation and ethics can also be seen to exist in a symbiotic relationship: unless lawyers are reassured that new ways of working are ethically sound, they will be reluctant to adopt technology. And the same is true for the public, who are more likely to try new types of services if they are confident that their rights will be protected and they have routes to redress. This virtuous circle was noted in the consultation on setting up the Centre for Data Ethics and Innovation, which said that by ensuring technology is used ethically, public trust will be promoted and this will help increase responsible innovation.

### **The need for leadership and debate**

At the Legal Services Board, we are excited about the potential for technology to widen access to services. However, we recognise it is not a silver bullet that is suitable in every

situation and we don't subscribe to the view that "if it's digital it must be good". And we recognise the challenges that adoption of technology brings for smaller firms in particular.

We also recognise that technological advances can pose new ethical and practical risks which can deter providers from using them and require regulators to develop responses.

Some of the issues that new technologies are said to raise are ones that regulators are very familiar with. Sharp practices in e-commerce are old problems dressed up in new clothing, although they still need to be tackled. But some of the issues are genuinely novel, or take on different implications in an online context. The implications of technology are still being understood and they involve conflicting interests and values which society needs to resolve. It can only do this by gathering evidence and hearing views from a variety of perspectives. As oversight regulator we think it important for us to show leadership and use our convening role to instigate informed debate, to support the frontline regulators respond appropriately.

### **Our project**

So, as well as carrying out the research I have described, our draft business plan includes a new five-year policy objective to increase access to legal services through the promotion of responsible technological innovation that carries public trust. At the core of this objective is a new project to explore the regulatory implications of developments in technology. We have only just got started, so it is too soon to speculate on what its conclusions might be, but I hope it will be interesting for you if I briefly outline our plans.

Our project will create a resource of information and advice that the regulators can use to develop their own approaches to technology regulation that meet the needs of their respective professions and consumers. It will consider what lessons can be learned from how new technologies have been regulated in a variety of sectors as well as how other jurisdictions are currently approaching legal services technology regulation. We will examine the ethical issues that technology raises for legal services, its potential impact on the regulatory framework created by the Legal Services Act 2007 and how it will affect legal

education. We will also look at the impact of particular technologies, including artificial intelligence applications and blockchain, from the perspectives of consumers, providers, developers and regulators, among others.

We will do this by commissioning a series of papers from academics, legal professionals, technology experts and others examining a range of topics. The papers will be supported by a series of recorded interviews and discussion events. Following the publication of these papers and interviews, and the live events, we will prepare a report summarising the issues and the approaches legal services regulators may wish to use in addressing them.

We intend to publish an initial set of papers and supporting materials in the spring, so please keep an eye on our website and please do get in touch if you would like to participate.

### **Wrap up**

To wrap up, this is a time of change in legal services. Change is unsettling, and I recognise that it poses challenges to law firms, particularly smaller high-street practices. But 'the only constant is change' and there are opportunities for those willing to innovate. High street law firms can flourish but they will need to adapt to tap into the pool of unmet legal need and to compete successfully with alternative providers.

As oversight regulator, our role is to help foster a regulatory climate that supports innovation with the aim of increasing access to legal services while maintaining high standards. In going about this work we know that innovation and ethics go hand in hand. This aim will only be achieved in a proportionate regulatory framework that addresses the ethical implications of technology; innovation will be blunted unless the ethics are properly addressed.

Thank you.

[ENDS].