

LSB STRATEGY AND BUSINESS PLAN 2018 - 2021

Response to Legal Services Board Consultation

Authors:

Hook Tangaza

Date:

February 2017

Who we are

Hook Tangaza is a UK-based research and advisory firm working with firms, institutions and governments to build more competitive businesses, stronger institutions and better functioning markets in the legal services sector.

Our extensive experience of working with the full range of operators in the legal services sector both in the UK, Europe and beyond and specifically on trade in legal services, has given us a unique perspective and understanding of the complimentary relationship between economic growth and greater functioning and availability of legal services.

Our response

We are responding to this consultation with a specific focus on the topic of technology and innovation. We believe that our broad-based involvement with regulators, technology companies, law firms, universities and other legal education providers gives us unique insights into the world of legaltech and how it might apply to the LSB.

We are therefore only addressing those questions which we think are relevant to the issue of technology and legal services.

Question 1 – Are there are any additional significant market trends or drivers for change that you are aware of that we should also take into account?

In addition to the potential importance of technology in the areas mentioned by the LSB in its consultation document, we would also highlight:

Robotic process automation (RPA) – a relatively low cost and very deployable tech solution. It is already being used by some firms to replace repetitive tasks that would previously have used administrators, paralegals or trainees. Whilst RPA may not reverse the trend towards the creation of law firm regional ‘service centres’ handling lower value work outside London, it will reduce the demand for human labour in these centres. This in turn will make it harder for new entrants to the sector to obtain work experience prior to qualification, which will in turn have a knock-on impact on diversity in the profession. This underlines the importance of regulatory flexibility in routes to qualification.

Chatbots – The expanding role and sophistication of these tools will make them increasingly powerful mechanisms to help people understand their legal problems and find further sources of advice, or even to solutions¹.

Initial coin offerings (ICOs) – The use of ICOs in the funding of litigation is a possibility that has been noticed though not yet exploited². There are also other fintech applications which could be used in litigation funding and which are worth keeping an eye on (e.g. various types of crowdfunding and P2P lending).

Blockchain – Applications of blockchain in the property sector, which could reduce the need for solicitors or licensed conveyancers to be involved in the process³.

Smart Contracts – The use of smart contracts executed on a blockchain could also remove the solicitor’s role in handling client money in conveyancing, which in turn has implications for regulation and indemnity insurance.

¹ [Donotpay \(2018\)](#).

² DACbeachcroft (2017). “[Crypto Currencies, Crowdfunding and Litigation Funders: costs recovery against non-party funders](#)”

³ Coindesk (2017). “[UK Land Registry Plans to Test Blockchain in Digital Push](#)”

Whilst the technologies mentioned above are already in use, their deployment and application within the legal sectors has yet to be fully developed.

Nonetheless, the pace of innovation is such that new technologies, previously perceived as the stuff of science fiction, such as quantum computing, now have a commercial timescale and even foreseeable applications in the legal sector. Many of these early stage technologies are expected to become mainstream⁴ within the lifetime of the LSB's strategic plan. Some of the more relevant ones include:

Augmented reality – predicted to shape how we will all shop online in future. Such technology could have a use in training or testing environments, or even in courtrooms as a tool for litigants-in-person.

Voice Search – Gartner also predicts⁵ that around a third of our interaction with the internet will be driven by voice search by 2020 - people will be asking Alexa or Siri for help with their problems, whether they have identified them as legal or not. Voice activated technology, coupled with ever-improving AI, has the potential to improve how consumers find legal solutions or assistance.

Behavioural algorithms – expected to be used to influence behaviour and could, for example, be used to encourage more people to make wills.

Additionally, there are more general trends at work, which will come more centre stage over the lifetime of the LSB's strategic plan.

The first is demography. Whilst the LSB rightly highlights the potential concerns of the digital divide, this schism is narrowing rapidly. Over the last decade the proportion of the adult population in the UK using the internet daily has risen from 35% to 80%⁶, with regional discrepancies reducing. Most of the 9% of adults who have never used the internet are now in the 75+ age bracket.

There is slightly lower internet usage than the average amongst disabled adults, although this figure is distorted by the weighting of the elderly in this category. This highlights the potential relevance of regulatory intervention to ensure accessibility in vulnerable groups such as these.

A further important trend, is the rise of the smartphone, which significantly reduces the barriers to accessing information over the internet. ONS figures⁷ also show that the variety of tasks that people undertake on the internet, and on their smartphones in particular, has diversified over the past decade. They are increasingly relying on online services for tasks that require high levels of trust, such as online banking, or as a source of advice about problems that require expert knowledge (e.g. health issues).

⁴ Thibodeau, ComputerWorld (2016). [“Gartner's top 10 near-term predictions for tech”](#)

⁵ Ibid (2016).

⁶ Office for National Statistics (2017). [“Internet access 2017: households and individuals”](#)

⁷ Office for National Statistics (2016). [“Internet access 2016: households and individuals”](#)

It is also worth noting the striking prediction made by Gartner, that by 2020, a fifth of all our activities (e.g. working, shopping, banking, obtaining information and entertainment, managing our households, interacting with government, being educated, obtaining healthcare etc) will involve one of seven companies who provide the digital platforms and will increasingly own many of the subsidiary companies on which we will rely⁸.

This suggests that society will increasingly expect, if not demand, that legal solutions are online, with all the assumptions that come with this e.g. transparency, accessibility etc. This fact also points to the relevance of engaging with the key platform providers on access to legal services issues.

CONCLUSIONS TO BE DRAWN FROM THIS:

- The LSB should be mindful of the fact that technology offers the potential to crack seemingly intractable problems in the legal sector. This coupled with the development of an increasing range of tools, underlines the need for regulators to keep an open mind on technology. What this means in terms of technologically neutral regulation will be explored in more depth later in this response.
- Technological advances, even in the more limited forms currently being rolled out, will pose great challenges for existing players in the market. Legaltech will remove the need for some areas of legal work and create new areas of legal demand, in areas such as privacy law. However, the timelines for this are hard to predict, for reasons explored below.
- Demographic and societal changes could be the key that unlocks the true potential of technology to improve access to legal services. The demand side of the equation has been one of the blockages to the deployment of technology in the sector, but this is changing as trust in online solutions grows.
- There are some key players who ought to be brought into the conversation about technology and legal services who might not be immediately obvious. These include the companies who hold much of the data that could be used to develop new solutions to legal problems.

All of this suggests that the impact of technology on the legal sector ought to be significant, but whilst there are many interesting applications being developed⁹, these are not bringing the results that we might desire. For example, most start-up activity in the legal sector (46%) is currently focused on helping law firms better manage their processes, or deal with problems like cybersecurity¹⁰. This is understandable as this is where start-ups can see a potentially realisable market for their products. However, this does not help the LSB with its agenda, so it is worth exploring what the barriers to tech applications might be in the legal sector, because they point to action that the LSB could usefully take.

⁸ Google, Apple, Facebook, Amazon, as well as Chinese firms Baidu, Alibaba and Tencent

⁹ LegalGeek (2017). "[LegalGeek Startup Map](#)"

¹⁰ LegalGeek & Thomson Reuters. "[Movers and Shakers: UK LawTech Start-Ups](#)"

The following are our observations on this topic:

- First and foremost, the relatively slow rollout of technology in the legal sector is not unexpected. As a regulated sector, it is conservative and off-putting for non-incumbents and slow to attract outsiders. LegalGeek surveys suggest that the current crop of legal tech innovation is being led by former lawyers, rather than technologists. Whilst this means that applications are designed by people who understand the problems at hand, it also means that such businesses are less likely to challenge the fundamental premises on which the sector is built. This is where the LSB could help – by encouraging legaltech to think beyond the constraints imposed by ‘reserved activities’ and by taking positive action to encourage new entrants.
- Second, developments in legaltech are held back by the absence of data. The LSB should promote a dialogue on this topic, and use its influence with government agencies, courts and others, to harvest and make accessible sectoral data. It could also engage with players outside the sector to encourage supportive action that might lead to the generation of relevant data.
- Third, the sector will be held back in its use of technology by skills’ shortages. This does not mean that there should be a model curriculum for lawyers to study technology, as some have suggested in the US¹¹; but it does mean that incentives should be created (or at least blockages removed) to cross-fertilisation between law and other disciplines. ABS and MDPs are an important step in this direction, but more could be done to break down barriers.
- These general observations lead us to make some more specific points on the LSB’s proposed strategic objectives.

Question 2 – Do you have any comments on our proposed strategic objectives?

The LSB’s role as an ‘agent of change’ in the legal sector runs through its proposed strategic objectives. Technology has a similar cross-cutting role to play and we would recommend that it is seen as a mainstream driver within the LSB’s strategy, rather than merely as a subset of the LSB’s innovation objective.

In terms of how technology might impact or serve the LSB’s various strategic objectives we would make the following suggestions:

(1) PROMOTING THE PUBLIC INTEREST THROUGH ENSURING INDEPENDENT, EFFECTIVE AND PROPORTIONATE REGULATION

Technology Neutral Regulation

In its consultation document, the LSB suggests that technology neutral regulation is a concept worth exploring. This is a useful starting point, since regulators should be

¹¹ Khelani Clay (2017). [“Lawyer ≠ Luddite”](#)

encouraged to ensure that their rules do not hinder the development of technologically driven solutions. There is much to be learnt on this topic from other sectors, notably the financial services sector, which has addressed the risks of regulatory neutrality, inter alia, through the use of sandboxes.

However, the sandbox approach only deals with circumstances in which innovators have a proposition which needs to be tested against the existing rulebook. It doesn't help regulators positively encourage innovation at a conceptual stage. There are even risks in a 'neutral' approach, in that it can promote inaction as an antidote to making the wrong choices.

The LSB therefore has a role to play in working with regulators to set positive innovation challenges for the sector, which would encourage more radical thinking over a longer period of time than permitted by, for example, the current vogue for legal hackathons. This is explained in more detail below.

Regtech dialogue

Technology also has a role to play both in terms of how it is used by front line regulators and how it is used by actors in the sector to meet their compliance requirements. There is a strand of technology which has emerged in recent years, known as Regtech, which is designed to deal with these issues. Whilst law firms are themselves incubating tech solutions that will help them in this regard (e.g. with AML compliance), there are existing sector-neutral solutions that could be useful for regulators to explore (e.g. RPA) as they could help to remove cost from regulation.

The LSB could also help regulators to share thinking about other areas of technology which could impact on their internal functions, such as enforcement, credentialing etc. Whilst some technologies are already being experimented with by regulators (e.g. the SRA's experiments with neural networks), others may not yet have appeared on the horizon (e.g. quantum key distribution) but may offer significant long-term potential for regulatory activity¹².

There are also applications which could promote the take-up of technology in the legal sector once they are further developed (e.g. the use of explanation nets in AI neural networks¹³), because they could potentially overcome a regulatory/insurance concern (who is liable for AI advice?). It would therefore be helpful if the LSB could encourage more research on these topics both by universities and practical research organisations, although again, there is much to be learnt from other sectors on these topics.

¹² For example, allowing regulators access to client files for investigative purposes under certain conditions.

¹³ Ariel Bleicher, Scientific American (2017). ["Demystifying the Black Box that is AI"](#)

Rethinking the regulatory model

Technology could also be a useful factor in ongoing reflections on whether or not the model of regulation currently operating in E&W is ripe for a major overhaul.

Technology will increasingly illustrate the limitations of the reserved activities silos, on the demand side; as changing consumer preferences for obtaining information and advice take hold. Whilst on the supply side, tech is likely to drive a growing need for partial admission or different types of legal professionals, which are able to accommodate the need for new STEM related skills in the legal sector.

Since legislative change is clearly not imminent, following recent government announcements, the space exists to contemplate how technology will drive the need for more radical change in the regulatory model, when it does eventually come. The LSB could give consideration to these issues in its research and thinking.

(2) MAKING IT EASIER FOR ALL CONSUMERS TO ACCESS THE SERVICES THEY NEED AND GET REDRESS

There is scope for more LSB activism in this area. It could help to speed up the pace with which technology addresses problems by turning consumer access and redress problems into tech challenges for innovators to address.

Although these problems ought to be well known, the dots are not currently being joined by the market. One illustration of this is, for example, the fact that the issues identified by the CAB in its 2015 report *“Standing Alone – Going to the Family Court without a Lawyer”*¹⁴, have still not been addressed through online solutions, despite the fact they are ready-made for such an intervention.

The Legal Choices website is good as a starting point but could be developed further with appropriate tech partnerships from outside the sector.

The drive for greater transparency in the market is also helpful but price transparency and comparison are only one dimension of the problem facing consumers. As the LSB itself has recognised in its own previous research, consumers may not be able to articulate that their problem or issue is legal. It may therefore be worth exploring whether there is something the LSB could do to help galvanise action on this front through the creative use of new technologies. There may be lessons to be gleaned from other sectors, or even from search engines, about the way in which consumers are seeking solutions and articulating their issues.

¹⁴ Citizens Advice (2015). [“Standing alone: Going to the family court without a lawyer”](#)

(3) INCREASING INNOVATION, GROWTH AND THE DIVERSITY OF SERVICES AND PROVIDERS

The following are some legaltech considerations for the LSB to bear in mind in addressing the innovation strand of its strategy:

Monitoring

The LSB should cast its net widely when looking to draw inspiration from other sectors about innovation. However, in order to make this manageable, the problems for which lessons and/or solutions could be sought, should be tightly defined. These could for example, look specifically at questions such as: Understanding the proxies for quality used by consumers in online procurement of services; or drawing inspiration from a wide range of other sectors on how machine learning, biometrics and distributed ledgers, for example, could reduce regulatory costs.

Beyond monitoring

There are also a number of useful actions which the LSB could take which go beyond mere monitoring of the impact of regulation on technology. It could, for example, actively catalyse new entrants into the legal tech sector in the following ways:

- i) By re-envisioning the legal sector in new ways, in order to avoid the traps presented by the current siloed “reserved activities” regulatory environment. This could work along the lines of what has been done in the financial services sector through the creation of “functional frameworks”¹⁵. Such frameworks allow a sector to remove the artificial limits of existing institutional relationships and focus on the underlying needs that it is serving. In effect, this could help to break down what people are after when they purchase legal services (e.g. certainty, redress etc), allowing fresh thinking to be applied to finding solutions.
- ii) By providing a gateway to problems that need to be solved (e.g. though possible development of the Legal Choices website). This could also involve calling for proposals and forming partnerships with other bodies or institutions to stimulate innovation where it is needed (see for example, <https://www.gov.uk/government/news/award-winning-geovation-programme-seeks-new-geotech-and-proptech-disruptors>).
- iii) By actively seeking out ways to create and disseminate the data that is essential to innovation in the legal sector. We would recommend that the partnerships which the LSB is seeking to develop or extend in relation to its market intelligence objective, should make data generation a priority. It is not enough to rely on the data gathered by

¹⁵ Crane, et.al., (1995). “The Global Financial System: A Functional Perspective” Boston: Harvard Business School Press.

front line regulators, since this is inevitably limited by the current regulatory model. The market cannot work effectively until there is more available information about what is happening within it. This could involve persuading the courts, or similar agencies, to make a wider range of data available, or considering advocacy with the CMA on potential intervention in the market for legal information, as it has done in the retail banking sector.

In other words, the LSB could have a role in helping to create a space for new entrants into the sector at a much earlier stage than those who are actively seeking authorisation to provide legal services in reserved areas. An analogy could be made to the InsurTech Gateway¹⁶ which encourages early stage thinking in the insurance tech space.

The model for the legal sector might need to be different but the a space which highlights real world consumer legal problems, and offers sectoral data/knowledge as tools to be used to solve them, might help to galvanise new entrants, and in particular those who might not think about approaching the LSB, or frontline regulators directly.

International thought leadership

The UK is in a strong position to use legal tech to retain its pre-eminence in international legal services markets, given its strengths in legal services and technology, coupled with the innovation imperative created by Brexit. Whilst restricting technological applications in the legal sector does not appear to be a risk in this country, other jurisdictions are more actively considering regulating the application of technologies such as AI in legal services.

There is therefore a role for the LSB to act, not only as a thought leader internationally, but also to promote the merits of an open and flexible approach to innovation. Although having a more open approach to technology is a competitive advantage for the UK, technology solutions will be more likely to be developed if they have the potential for multi-jurisdictional applicability, with little adaptation.

The LSB might even give consideration to championing a project which ‘crowdfunds’ research into technology and access to legal services issues alongside regulatory bodies from other jurisdictions. The topic is one that transcends borders, even if any eventual solutions might need to be delivered in different ways.

¹⁶ Insurtech Gateway (2018). [“Welcome to the Insurtech Gateway by Hambro Perks”](#)

Question 4 – Do you have any comments on our proposed approach to market intelligence within our strategy?

In its consultation document, the LSB lays out a broad approach to market intelligence, which includes undertaking:

- Ongoing periodic quantitative surveys supplemented with qualitative research, published in ways that allow it to be mined by others
- Partnering with other organisations, in legal services and related sectors
- Deeper mining of existing research,
- Preparation for the next triennial market evaluation in 2019.

OUR COMMENTS

In the light of the above comments on the potential impact of technology on the sector, we would suggest that the LSB casts its net widely when looking at other sectors which may offer insights for the legal market. There are a wide range of other sectors which are heavily influenced by regulation, so we would recommend tracking developments in regtech, insurtech, healthtech¹⁷ and proptech, as well as fintech, as these verticals may well offer lessons in how legaltech can be supported and propagated appropriately by an oversight regulator.

In a similar vein, we would also suggest that the LSB seeks to draw lessons for the sector from more general research on the impact of technology; e.g. the changing attitudes of consumers in relation to searching for services, their expectations about those services - how they will be delivered and how their quality could be judged.

There is no doubt that the LSB's research programme has been extremely useful, but it is not widely known outside fairly confined, more academic circles. The Board might like to consider improving its visibility and potential use by innovators. One possibility could be for the Board to co-host an innovation portal for the legal sector, along the lines of Legal Choices website, but instead targeted on opportunities to innovate in the legal sector, picking up on some of the ideas explored above. This could help businesses which are interested in the sector but unsure of the possible impact of regulation on their proposed business model.

Finally, in terms of the next phase of the Board's research into innovation in the legal sector, we would encourage the research to take a more rigorous definition of innovation. A formal innovation framework such as that used e.g. by Deloitte¹⁸ would allow for a more comprehensive and structured exploration of where the innovation is and isn't happening in

¹⁷ Examples: [HealthStandards \(2017\)](#); [CoinTelegraph \(2017\)](#); [The Lancet: Global Health Blog \(2017\)](#).

¹⁸ Keeley, et al., (2013). Ten Types of Innovation – the Discipline of Building Breakthroughs. Princeton: Wiley.

the sector. This, in turn, would help to indicate what might need to be done to overcome any blockages.

Question 7 – Please identify any elements of our strategy or business plan that you think present an opportunity for more detailed dialogue and/or joint working between your organisation and the LSB.

We are particularly interested in the potential applications of technology in the legal sector and we would be keen to work with the LSB in undertaking further research in this area. We believe that we could be of assistance in the following ways:

- By undertaking in-depth research and formulating more detailed proposals in relation to the ideas explored above.
- By catalysing international regulators to participate in shared technology research.
- By assisting the LSB to formulate relevant partnerships with organisations beyond its traditional stakeholder group.

We look forward to seeing how the LSB's strategic plans unfold over the coming period and to jointly exploring any opportunities for collaboration that may arise.

Hook Tangaza
19 February 2018