



Consultation response

Legal Services Board consultation on draft guidance on promoting technology and innovation to improve access to legal services

25 September 2023

Introduction

The Costs Lawyer Standards Board (“CLSB”) is the regulator of Costs Lawyers in England and Wales. We exist to serve the public interest by setting and maintaining the standards of professional conduct by which Costs Lawyers must abide. Our mission is to “provide effective, proportionate regulation of Costs Lawyers in a way that promotes consumer choice and understanding, and engenders justified public trust”.

The CLSB is pleased to respond to the LSB’s consultation on draft guidance on promoting technology and innovation to improve access to legal services.

In 2021 the CLSB secured funding from the Regulators’ Pioneer Fund for a project that asked: [How could Costs Lawyers reduce the costs of legal services?](#) This project looked at how regulation or legislation might help, or hinder, the emergence of innovative services provided by lawyers specialising in legal costs. The findings from the project’s final report have informed this consultation response.

The CLSB is broadly supportive of the LSB’s proposed guidance. Our answers to the consultation questions are set out below.

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

The CLSB agrees with the LSB’s approach of using the guidance to set outcomes for regulators. Each regulated community is different, and an outcomes-focussed approach will enable each regulator to develop guidance that is appropriate and sensible for its own regulated community. This approach also empowers regulators to design frameworks that meet the existing needs, challenges and opportunities of their own regulated communities, but which are also flexible enough to encompass potential future developments. This flexibility is important in a field of rapid and continuing change, such as technology and innovation.

Setting harmonised outcomes also enables regulators to develop guidance that is consistent across the sector. This is particularly important for regulated communities that work closely with, or within, other regulated communities, such as Costs Lawyers (who are individually regulated by the CLSB but often work in firms that are regulated by the Solicitors Regulation Authority or another approved regulator).

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

The CLSB’s 2021 Regulators’ Pioneer Fund [report](#) found that there was no evidence of any groundbreaking use of technology in the costs market, but widespread use of costs software, such as CostsMaster. Costs Lawyers who took part in the research were asked how they use technology in

their work. Of those who responded, 60% said they used costs-specific software, 25% used firm case management technology, 13% used technology in relation to automation of the courts, and 2% were using AI-driven case outcome prediction software.

The report also identified that Costs Lawyers who are involved in innovative activities are often employed in larger organisations alongside other professionals. It gave the specific examples of Acumension and Bottomline Technologies, as follows:

“Where Costs Lawyers are engaged in more innovative activities, these are most often in larger organisations, usually with a mixture of professionals involved. Acumension, for example, is a company comprising insurance experts, legal project managers and a costs lawyer. It focuses on providing legal costs services to the insurance industry (inter alia) and highlights on its website the paperless nature of the firm’s work and its adoption of ISO standards, especially around data handling. Bottomline Technologies is an online Software as a Service (SaaS) provider which employs Costs Lawyers and which includes a module for business clients on managing legal spend.”

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?

The CLSB agrees with this proposed outcome. In our [policy statement on good consumer outcomes](#), we identified innovation as one of seven key categories of consumer outcomes that are important to us. The outcomes we want to see are that consumers benefit from innovative ways to supply services, and that innovation reduces prices and drives up quality and accessibility. This aligns with the LSB’s proposed outcome of ensuring that technology and innovation are used to support improved access to legal services and address unmet need.

The CLSB’s 2021 research [project](#) found that, if the services of Costs Lawyers were to be used by the more innovative ends of the legal services market, then innovation would be more likely to take root in the costs market itself. That report also found that if “Costs Lawyers were better known beyond the specialised costs law market, their contribution to the development of innovation in the sector could be increased.”

Whilst greater use of technology and innovation could support improved access to legal services and address unmet legal need for consumers, not all regulated communities have the same opportunities for innovation. Costs Lawyers are dependent on other regulated communities, such as solicitors. As a result, the demand for innovative services that Costs Lawyers could provide, and the manner and extent of such services, is dependent on the needs - and risk and innovation appetite - of those other regulated communities. Demand for innovative services from Costs Lawyers may be increased or constrained by these varied environments and the regulation that governs them. The CLSB is therefore pleased to see explicit recognition in paragraph 15 of the draft guidance that all regulated communities are different and that, when it comes to increasing use of technology and innovation, varied regulatory approaches will be necessary and welcomed.

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?

The CLSB agrees that there is a role for regulation to play in ensuring that legal professionals feel able to use technology and innovation to improve their offering to consumers, whilst ensuring that the risks are appropriately identified and mitigated. As the LSB’s consultation paper sets out, increased adoption of technology and innovation in the legal sector has several potential benefits for

consumers and legal professionals. For that reason, it is important that regulation does not discourage the use of technology and innovation in the legal sector.

Evidence from [research](#) carried out by the CLSB suggests that Costs Lawyers are constrained in their ability to engage in innovation by aspects of the current regulatory framework. The research found that “these limitations are both statutory and sometimes also arising from the regulatory arrangements currently in place”, however, it also found no evidence that the CLSB’s regulation has a negative impact on innovation. Clear guidance from regulators on the use of technology and innovation that addresses the benefits, risks, opportunities and costs, whilst enabling legal professionals to be flexible and agile in their approach, may help to reduce some of these actual and perceived constraints.

Our [2023 Annual Risk Outlook](#) identified several trends relating to the use of technology that are likely to have an impact on Costs Lawyers. These include:

- Accelerated technological change in the justice system as the Ministry of Justice and HMCTS have ambitious agendas for adopting technological solutions, particularly automated dispute resolution platforms and improved systems for legal aid providers and applicants.
- Technology-driven new entrants, such as Persuit, are attempting to persuade the legal market to use fixed fees and smarter legal pricing across the board, including in litigation.
- Increased adoption of blockchain technology in smart contracts is likely to reduce the need for litigation over contractual terms, although we may see more complex litigation relating to the technology itself emerge in its place.
- The move to remote and hybrid working following the pandemic has made many businesses, including law firms, more dependent than ever on IT systems. With increased dependence comes increasingly sophisticated threats that must be predicted and managed. Cyber scams (such as phishing attempts and email modification frauds), ransomware used to steal information and block system access, and attacks spreading between legal providers who work together (such as instructing solicitors, barristers and Costs Lawyers) have all been experienced recently in the legal sector, often with very serious consequences.

To meet these challenges, all regulatory bodies and legal professionals will need to ensure that they have an understanding of how to use new technologies and systems, and that they understand the risks associated with them. They will also need to understand the changing needs of clients, how new regulatory and ethical obligations may apply to specific practising arrangements, and have sufficient technical knowledge of emerging areas in order to be able to identify potential issues and advise accordingly. Keeping on top of these varied requirements is a significant challenge in an era where technology and innovations are developing and changing rapidly.

Paragraph 19 of the draft guidance states that, “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”. Paragraph 76 of the consultation paper states that the LSB considers that regulators “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.”

The CLSB agrees that regulators have a responsibility to proactively understand, assess and balance the risks, opportunities and costs of technology and innovation.

To achieve this, we welcome the LSB's willingness 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". We would suggest that the LSB uses its convening power as the oversight regulator to commission relevant research and develop knowledge repositories to avoid regulators working in silos. This is particularly important as many of the challenges identified by the LSB in its consultation paper are common to all approved regulators and regulated communities.

The LSB could also develop a forum for regulators to meet to share best practice, discuss issues and hear from experts in the field (similarly to the Legal Regulators' EDI Forum that currently exists). The CLSB considers that, as the benefits, opportunities and challenges of technology and innovation are relevant across all legal professions and approved regulators, this presents an excellent opportunity for the LSB and regulators to work collaboratively to ensure that those benefits are realised, and risks mitigated, across the sector.

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

The CLSB understands that this outcome intends to address the need and scope for more ongoing collaboration to promote new solutions coming into the legal services sector. The consultation paper refers to the Lawtech Sandbox as a positive example of a collaborative venture that supports technology pioneers to bring their products to market. The CLSB is pleased to have joined with other regulators such as the Financial Conduct Authority, Information Commissioner's Office and Solicitors Regulation Authority as part of this initiative. The CLSB considers that initiatives like this which provide a safe space for start-ups, technology providers and innovators to work collaboratively with regulators and legal professionals to develop and test their ideas - without the risk of breaching regulatory rules - should be encouraged.

As set out in our answer to question 4 of this consultation, the CLSB considers that the LSB could use its convening power as the oversight regulator to develop fora for regulators to meet periodically to share best practice, discuss issues and hear from experts in the field (similarly to the Legal Regulators' EDI Forum that currently exists). This could include fora for hearing directly from tech providers and innovators who wish to bring new products to the legal market. Such fora would provide a space for the increased cross-collaborative activities between a wide range of stakeholders that the LSB wishes to encourage, and enable regulators to meet paragraphs 23 (a), 25 (a) and 25 (e) of the proposed guidance.

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

The CLSB agrees with the LSB's proposal to monitor and assess use of the guidance via characteristic 13 of the annual LSB Regulatory Performance Assessment Framework in the first instance.

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?

The CLSB agrees that the proposed guidance has potential to improve legal services provision for consumers, including those who may face barriers in accessing legal services currently. The CLSB

notes that the LSB's [Technology and Innovation in Legal Services survey](#) shows increased use of 'technologies for access' across the sector, which suggests that regulated communities are already alive to the need for, and benefits of, more accessible legal services for consumers.

It is important that increased use of technology and innovation does not inadvertently lead to the exclusion or detriment of consumers who are less confident at engaging with technology. Research from the ONS shows that, in 2020, 6.3% of UK adults had never used the internet and Ofcom research found that 1.5 million homes do not have internet access. Ofcom data shows that the groups least likely to have internet access are those aged 65 and over, lower income households and financially vulnerable adults. Technological and innovative legal solutions also need to take into account accessibility and compatibility for clients with disabilities who may use screen reading, speech recognition, reading solution or other accessibility-related software.

Paragraph 20 (d) of the draft guidance states that regulators "could consider 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." The CLSB agrees that understanding the needs of different consumer groups and segments is important for meeting Regulatory Objective 3 (improving access to justice) and Regulatory Objective 4 (protecting and promoting the interests of consumers). Given that understanding consumer need in this way is central to the regulatory objectives, we consider that it is a sector-wide challenge that should be addressed on a collective and consistent basis, rather than being considered by individual regulators. The CLSB therefore considers that the LSB would be ideally placed, as the oversight regulator, to commission research into this area that regulators could then use to inform their individual approaches. This would reduce the risk of individual regulators duplicating research, and empower the sector to take a consistent, informed approach to addressing any identified issues.

The equality impact section of the consultation paper states that, "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 diverse range of entrants into the profession and assist with retention and progression." However, the consultation does not give further detail about how greater use of technology would achieve this. The equality impact section also makes no mention of existing research into how existing recruitment and hiring technology may replicate inherent biases, particularly AI-based technology. For example, research by [Cambridge University](#) has shown that AI hiring tools do not reduce bias or improve diversity. Discovery of bias replication in AI recruitment tools has led to some organisations ceasing to use it for recruitment altogether. In a high profile 2018 instance, [Amazon](#) stopped using an AI recruitment tool after it was found to be discriminating against female candidates. More recently, the Information Commissioner's Office (ICO) has announced that it is carrying out an [investigation](#) into whether automated recruitment software has been unfairly ruling out candidates who are members of minority groups.

Given the concerns outlined above, the CLSB is surprised that the consultation paper states that, "overall, we do not consider there is anything in the proposed guidance which will negatively impact groups with protected characteristics." The CLSB would like to see the LSB carry out more detailed and thorough investigation of the potential equality, diversity and inclusion ('EDI') impacts of greater use of technology and innovation in the legal sector. The CLSB would also like to see the LSB commit to ongoing monitoring of any EDI impact – positive or negative – of increased use of technology and innovation on the legal profession, entrants and consumers. Finally, the CLSB considers that there is scope for the LSB to work with the ICO, which has identified fairness in AI as a

key priority, to consider and address any potential EDI risks arising from increased use of technology and AI in the legal sector.

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

The CLSB welcomes the recognition in the consultation paper that introducing new outcomes for regulators may result in an increased burden on authorised persons. Whilst it is difficult to quantify a particular cost at the present stage, in the event that the requirements of the new guidance result in regulators needing to hire additional staff or external advisors with specific expertise in technology and innovation, this will inevitably have a direct financial impact on authorised persons in the form of higher practising fees.

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

The CLSB considers that the proposed guidance, as drafted, is clear and accessible. Our comments and concerns about particular aspects of the proposed guidance are set out above.