BAR STANDARDS BOARD

Room G07
1 Horse Guards Road
London
SW1A 2HQ
public@public-standards.gov.uk
By email

28 September 2023

Re: Artificial Intelligence and Public Standards Report Follow Up

Dear Lord Evans,

Thank you for your letter of 4th July, in which you invited the BSB to provide a brief progress update on how we are adapting to the challenges posed by AI three years on from your previous report.

Since then, we have published our 2022-2025 strategic plan, which emphasises the importance of technology and innovation. We stated that:

- Technology and innovation have an important role in helping to deliver legal services for consumers, especially around improving access to justice, and in helping to deliver transparency for consumers to navigate legal services.
- We need to ensure the Bar is equipped to adapt to technological changes and meet the expectations of future clients.

1. How have you adapted your regulatory practices to deal with the challenges posed by AI in your sectors?

In line with our 2022-25 Strategic Plan, we have recruited two policy professionals in technology & innovation to focus specifically on the opportunities and risks that new technologies (including AI) present to the Bar. This policy workstream will develop regulatory practices to support safe and effective use of technology within the sector that advances the public interest. We are already progressing this workstream, beginning with horizon scanning, stakeholder mapping and research. This will help to develop a dedicated policy framework for regulating technology and innovation at the Bar. We have commissioned research this summer to understand the use of technology at the Bar and the opportunities and risks it poses, as well as the barriers faced by technology companies developing legal technologies for the Bar.

Regarding AI specifically, we are working closely with our counterparts at the other UK legal regulators, as well as in wider regulatory forums such as the Turing Institute AI Standards Hub Regulators Forum, to identify the impacts of AI in the legal services sector. We recently submitted our consultation response to the UK Government (Department for Science, Innovation and Technology and Office for AI) white paper on AI Regulation. We actively participate in the LawtechUK Regulatory Response Unit,

including contributing to the recent discussion paper on the risks and opportunities posed by AI and Machine Learning in legal services[1].

As a risk-based regulator, we have embedded indicators for technology-related risks, including those related to AI, into our BSB regulatory risk framework and review these monthly to unpack the current state of play in the market. For example, we recently carried out a deep dive analysis into the case of ChatGPT misuse in legal proceedings in New York[2] to review the risks posed and our ability to respond appropriately were a similar case to occur in our jurisdiction.

We are also gathering evidence on legal service professionals' training and competence in technology and AI use, including horizon scanning on legaltech training programmes within England and Wales, a review of technology competency requirements at the Bar, and participation in an Essex Law School workshop on the future of technology in legal education.

2. To what extent can or do you place controls on the bodies you regulate to ensure they are using AI safely and ethically. For example, to ensure they are using AI in ways that are legal and legitimate.

Our 2022-25 Strategic Plan aligns with the strategic themes set by the Legal Services Board, including to "support responsible use of technology that commands public trust". AI technologies, used safely, ethically, and effectively at the Bar, could help improve access to justice, transparency for consumers navigating legal services markets, and quality of legal services, in line with our regulatory objectives. However, the adoption of AI- based technologies in the UK legal services sector, including at the Bar, remain limited. The Legal Services Board's recent survey of technology use by legal service providers indicates less than 5% uptake of the class of legal technologies most likely to incorporate AI.

Since we are still very much in the early stages, we are yet to define or place specific controls on AI usage; we believe our general professional conduct rules and guidance are sufficient to cover existing risks arising from AI use at the Bar. For example, in our recent risk analysis of the New York ChatGPT case, we considered the degree to which our existing controls would cover a similar case arising within our jurisdiction, including testing various alternative scenarios. We were satisfied our professional conduct rules would cover the risks posed in this case, particularly those governing barristers' duty to the court (Core Duty 1), to act in the best interests of each client (Core Duty 2), and duty to act with honesty and integrity (Core Duty 3), including requirements not to knowingly or recklessly mislead (rC9). We continue to monitor potential harms that may arise from use of AI in our sector via our Risk and Technology & Innovation functions. As part of a general review of our professional competence standards, we are also evaluating technology competence needs at the Bar. This review includes considering what actions we may need take to ensure those we regulate are able to use AI and other technologies safely and ethically.

In our response to the AI Regulation White Paper, we expressed general support for the proposed pro-innovation principles and sector-specific regulatory architecture. However, we also raised concerns that our remit from the Legal Services Act 2007 only enables regulatory oversight of barristers and authorised legal services entities and not technology developers or providers. We are therefore only able to regulate the use of AI in service provision, and not the upstream design, development, marketing, or delivery of AI technologies used in our sector. We believe this may create a regulatory

---

[1] https://lawtechuk.io/our-reports/
[2] https://www.nytimes.com/2023/06/22/nyregion/lawyers-chatgpt-schwartz-loduca.html

gap for harms caused by technologies which are not directly attributable to the legal professional's misuse of the technology. Similarly, given the Government's position that existing regulators would maintain oversight for AI applications in their regulated industry, without a dedicated AI regulator or oversight body, we are concerned that potential differences in how each legal regulator might regulate the same underlying technology could create regulatory gaps and/or barriers for entry to the various UK legal services markets for AI technologies. We therefore recommend a more comprehensive approach to AI regulation involving collaboration with other regulatory bodies and stakeholders to address the entire development cycle chain of AI.

3. Do you have access to sufficient advice and guidance on AI to help you regulate AI effectively within your sectors and remits? From which bodies do you get that support? Could more be done to help you regulate AI effectively in your sectors and remits?

Yes, with the establishment of our dedicated Technology & Innovation Policy team, we are developing good working relationships with technology and AI policy and research teams, including within peer legal services regulators, other regulatory bodies, academic institutions, the Turing Institute, and the private sector. We are aware of the Office for Artificial Intelligence, with whom we and other legal service regulators recently held a dedicated roundtable to discuss implications of the Government AI regulation white paper for the legal services sector.

We actively participate in the LawtechUK Regulatory Response Unit, Turing Institute AI Standards Hub Regulator Forum, and Information Commisioner's Office (ICO) Regulators and AI Working Group, where we jointly address emerging regulatory issues, and share best practice in regulatory approaches to AI and subject matter expertise. We also have a strategic collaboration with the other UK legal regulators, in particular the LSB, SRA and ICAEW, in sharing knowledge about how we approach AI regulation and evidence gathering.

Nevertheless, under the proposed AI regulation framework, we are concerned we may not have sufficient AI-specific expertise or resource to carry out the proposed statutory duty to consider the AI principles in each regulatory action we carry out, nor might that be effective in the vast amount of regulatory work we carry out given the low rates of AI use we currently observe in our sector.

4. Do you have any other comments you would like to make?

We would like to highlight that AI is one part of a wider range of technology and innovation opportunities, and our existing evidence shows adoption at the Bar is quite low for the time being. Technology and innovation, including AI, could have a significant impact on access to justice and quality of service. It is therefore a priority for us to support its safe and effective adoption at the Bar, while monitoring and mitigating its potential risks in line with our regulatory objectives and within the wider public interest.