

# LEGAL INNOVATION

## 03 TIME FOR LAW FIRMS TO EMBRACE CHANGE

UK lawyers face uncertain times as legal aid and fees are squeezed

## 04 ROBOT LAWYERS AND VIRTUAL ASSISTANTS

Artificial intelligence offers law firms a business opportunity

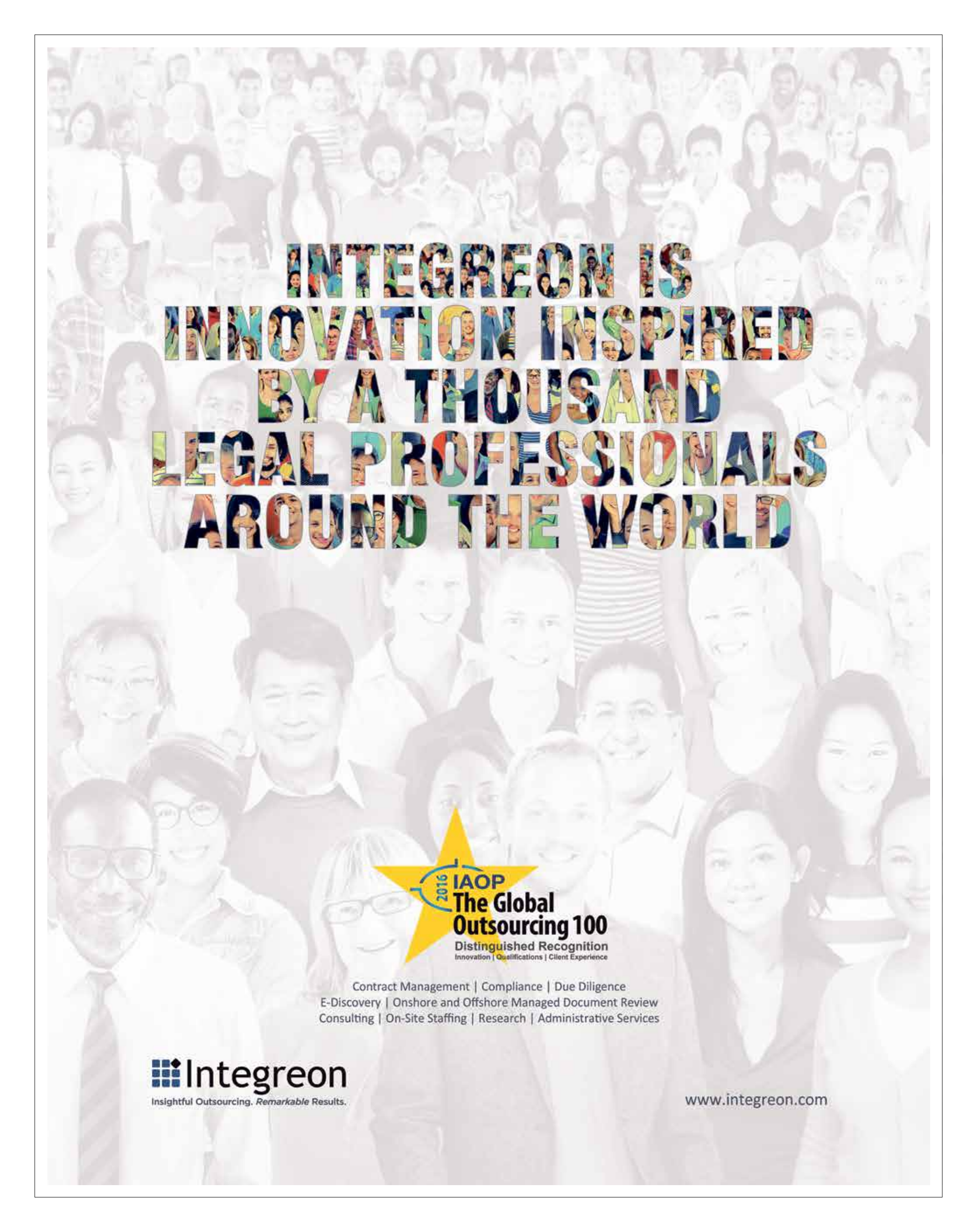
## 10 LAW FIRMS MUST GET DOWN TO BUSINESS

Management efficiencies for a more professional approach

## 18 LITIGATION HAS VALUE WORTH INVESTMENT

There's a new source of finance to fund law suits and justice





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# LEGAL INNOVATION

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## It's time for law firms to embrace change

Despite increasing numbers, lawyers in the UK face uncertain times as legal aid and fees are squeezed, and alternative firms owned by non-lawyers provide competition

**OVERVIEW**

JONATHAN AMES

Never has there been a starker contrast between the "haves" and the "have-nots" in the legal profession than over the last year.

On the one hand, public law practitioners felt so frustrated at the scale of government cuts to legal aid eligibility and fees that they manned the braziers in strike action. On the other, parliament's public accounts watchdog expressed indignant outrage that at least one of the City of London's elite "magic circle" law firms was billing out its partners at £1,000 an hour when working for the government.

The irony that taxpayers have to fork out in both instances has not been lost on some. Yet despite these grumbles, on the surface the UK legal profession seems to be in rude health.

The number of practising solicitors in England and Wales – the biggest branch of the legal profession in the UK's biggest jurisdiction – continues to grow at a pace that would make a mother elephant proud.

According to the profession's regulator, at December 2009, in the aftermath of the global financial crisis, there were nearly 112,600 practising solicitors and as of April this year that figure had rocketed to nearly 135,000 – an increase of about 20 per cent.

The Bar is also growing, albeit, far more sedately. In 2010 there were 14,900 practising barristers and four years later (the most recent figure available), there were slightly more than 15,700.

Of that group of 150,000 lawyers, it is the commercial practitioners in and around the City of London who are the most struttingly confident, casting themselves as a significant national asset. *The 2015 Legal Services* report from TheCityUK, a lobbying group promoting businesses in the Square Mile, claimed the contribution of large law firms to the UK economy is growing at more than 9 per cent annually. The most recent figure is a contribution of £22.6 billion, equating to 1.6 per cent of the country's gross domestic product.

The evidence is clear, then – students still want to be lawyers, the market is still growing and top-flight commercial lawyers are bringing home the bacon for UK plc.

But for how much longer? Is the legal profession a bubble in search of a pin prick?

The problems on the high street are arguably easier to identify. General practice law firms are being buffeted by ever-shrinking legal aid eligibility and tightening fee rates, as well as reforms to personal injury claims, and encroachment by so-called market disrupters in the form of high-volume alternative business structures owned by non-lawyers.

But those "masters of the universe" in the City are hardly exempt from the tides of change. Outsour-

ing – whether to offshore providers in India, South Africa or the Philippines, or nearshore in Manchester, Glasgow and Belfast – is already hitting them.

Next, argue many, will come automation in the shape of artificial intelligence. In ten years' time, runs the argument, one robot lawyer will handle the grinding job of document review that formally required ten young human associates. And the robot won't go for constant tea breaks, waste time on social media or have anything resembling partnership aspirations.

And then there are the accountants. Three of the global big four – PwC, EY and KPMG – have been granted alternative business structure licences, which means that in England and Wales they are law firms. PwC and EY

have launched significant recruitment drives in London, poaching lawyers from traditional Square Mile law firms.

And even if you believe the public statements from the accountancy practices – that they are not targeting the clients of the top ten City law firms – they will at least eat into the profit margins of the mid-tier solicitor players. Mass consolidation in that market has been forecast before; now it looks inevitable.

So will it all burst with a loud bang for the UK's legal profession? "It is clear that the world – and the markets that we operate in – is changing rapidly," acknowledges Gideon Moore, the lawyer elected last November to take over the managing partner role at Linklaters, one of London's five magic circle law firms.

"Firms need to be brave and embrace change, looking for the many opportunities it presents rather than the threats it poses," he adds, flirting with the jargon trap that snares so many in the City. But then he gives a clear nod to the importance of evolving structures, if not an outright welcome to the robots. "Firms need to keep close to their clients," says Mr Moore, "establishing long-term relationships, and delivering their service effectively and efficiently."

James Burns, senior partner at Clyde & Co, a fellow City law firm, expands on this theme, narrowing down success to ever-greater moves towards specialisation.

"The days when a firm could afford to be all things to all people are long gone," Mr Burns says. "If you are going to succeed, you need to be clear on who your clients are, what they need from you and how you can best deliver those solutions. Those answers are never static so you need to be nimble too. Our experience is that one way to do that is to focus on a handful of sectors in which we can truly live and breathe our client's business."

“Students still want to be lawyers, the market is still growing and top-flight commercial lawyers are bringing home the bacon for UK plc”

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# Meet the robot lawyers and virtual assistants

Robot lawyers or artificially intelligent software offer law firms an opportunity to enhance and expand their practice while allowing the legal experts to concentrate on their core business

## ARTIFICIAL INTELLIGENCE

JOANNA GOODMAN

Plenty of media attention has been devoted to robots replacing lawyers. Conversely, some industry players claim that artificial intelligence (AI) is simply a buzzword used to sell software to law firms.

“Are many AI-badged products just rule-based decision-making tools?” asks Alex Smith, platform innovation lead at LexisNexis UK. “What counts as AI?”

AI in business has moved beyond process automation to include natural language processing and machine-learning, whereby computers are trained to interpret information and adjust their processes to user feedback. Rather than searching for keywords or strings of words, the software reads and understands information, so its findings and recommendations are based on contextual elements.

Gerard Frith, chief executive of AI consultancy Matter, explains how AI adds value by modelling and reapplying expert knowledge in a fast, scalable way. AI enables law firms to complete repetitive tasks that involve legal precedents and specific know-how dramatically faster, freeing up lawyers to concentrate on more complicated tasks.

Applications that combine natural language processing and machine-learning are conducting legal research that was previously undertaken by junior associates. Other AI-powered tools handle administrative and management tasks such as work intake and allocation.

US firm BakerHostetler recently employed “artificially intelligent attorney” ROSS in its bankruptcy practice. Some 20 firms are also trialling ROSS.

LONald, Berwin Leighton Paisner’s “robotic contract lawyer”, powered by RAVN’s applied cognitive engine supports the law firm’s real estate practice, handling due diligence on property transactions. It connects with the Land Registry site to verify property details and collates the results in a spreadsheet.

So should lawyers worry about being replaced by robots? Bob Craig, chief information officer at BakerHostetler, does not think so. “ROSS is not a way to replace our attorneys – it is a supplemental tool to help them move faster, learn faster and continually improve,” says Mr Craig.



IBM’s cognitive computing platform Watson powers legal research tool ROSS, which can cut law firms’ time spent on research and data analysis

Although legal work typically involves extracting information from contracts and other documents, as ROSS chief executive and co-founder Andrew Arruda and others say, lawyers’ core skills are around interpreting that information into legal advice.

Kira Systems’ due diligence and contract analysis software facilitates mergers and acquisitions (M&A) by analysing documents relating to the target company to identify clauses that could affect the deal.

Co-founder Noah Waisberg explains that due diligence represents 30 to 60 per cent of the work in many transactions. In addition to producing 20 to 90 per cent time-saving on contract reviews, because Kira’s system is trained by experienced practitioners, it helps to “institutionalise a firm’s knowledge advantage” by allowing junior lawyers to benefit from the skills of their senior colleagues, he says.

Firms developing in-house AI-powered tools include Linklaters’ Verifi, which checks client names for banks, and Pinsent Masons’ TermFrame, which analyses loan agreements and guides lawyers through transactions.

Legal AI is currently pointed at specific tasks. This is because the AI engine is trained to identify specific data points and learn from user feedback. As Mr Waisberg explains, it took more than two years to develop Kira’s due diligence software.

The growth of AI in legal is fuelled by client demand. “AI is happening now and firms that act quickly will reap the benefits,” says legal

futurist and author Chrissie Lightfoot. “But most firms don’t want to break the business model so they won’t change until they are told to by their clients.”

Riverview Law chief executive and founder Karl Chapman agrees that client companies are driving AI adoption. Riverview Law’s Kim – knowledge, information, meaning – is an AI platform powering a range of virtual assistants that support corporate legal departments.

Based on the IBM Watson platform, Kim assimilates documents and uses the information to build workflows, reflecting the reference by Professor Harrick Vin, vice president and global head of Digitate, at the AI Summit in London, to AI representing service-as-software as opposed to software-as-a-service. “Kim has been described as virtual software development AI,” explains Mr Chapman.

Kim’s triage capability manages a legal team’s workload, allocating cases to the appropriate in-house or external adviser and generating real-time management information about the department’s work in progress.

At enterprise level, Kim supports decision-making. “For example, Kim can manage IT supplier contracts, interrogating all contracts and work in progress, and flagging up any discrepancies, conflicts or potential issues,” Mr Chapman adds.

Kim helps lawyers work effectively by delivering relevant information and suggesting solutions in real time. Like ROSS, LONald and Kira, Kim is generally accessed online, although it can be installed on-premise.

Ms Lightfoot emphasises that AI is moving up the legal vertical. It is not just about back-office administration, legal research and know-how – it is also front-end, client-facing services and business development.

According to Neota Logic chief executive Richard Seabrook, the “last mile” to wholesale AI adoption is “to include expertise in software”. Neota’s smart apps tackle exactly that, encapsulating legal knowledge, reasoning and judgment to provide self-service real-time legal advice.

Greg Wildisen, Neota’s international managing director, offers an example. Taylor Wessing used Neota to develop an interactive app that clients can use to find out whether they are subject

to the People with Significant Control rules.

“Clients can click on a link and answer ten questions to find out immediately whether they are affected,” says Mr Wildisen. This application of AI is infinitely scalable. “Each app offers the ability to solve a particular problem for an unlimited number of parties concurrently,” he says, adding that AI has the potential to extend legal services to people who have been failed by the justice system.

London’s first LegalTech Hackathon, which was organised by Legal Geek to help Hackney Community Law Centre deliver more cost-effective legal advice, was won by FreshIn-

“  
AI adds value by modelling and reapplying expert knowledge in a fast, scalable way

novate, a team from magic circle firm Freshfields Bruckhaus Deringer. The Hackathon produced AI-powered tools including a triage service for incoming queries and a comprehensive case management solution built on the Neota Logic platform.

AI is impacting every part of the industry. Last year, Stanford University computer science student Joshua Browder from north London developed DoNotPay.co.uk, a free online chatbot that handles parking ticket appeals instead of a lawyer. It is based on English law, but there are plans to expand the service to the United States.

Key benefits of AI include enhanced competitive advantage as firms that invest in AI can take on more work at competitive rates while maintaining their margins.

As legal AI is generally cloud-based, the barriers to adoption are low. Virtual assistants RAVN, ROSS and Kira could enable smaller firms to extend their services when necessary without employing additional support staff.

AI’s scalability supports business development. Once clients realise that a firm can turn around large volumes of documents extremely quickly, they are likely to make use of this capability.

## CASE STUDY: ROSS AT BAKERHOSTETLER



On May 11, US law firm BakerHostetler announced that it had hired artificially intelligent attorney ROSS for its bankruptcy practice. “We believe that emerging technologies like cognitive computing and other forms of machine-learning can help enhance the services we deliver to our clients,” says chief information officer Bob Craig.

ROSS, developed by ROSS Intelligence, fulfils a professional

support lawyer role, undertaking legal research to support BakerHostetler’s attorneys by finding appropriate precedents and other documents, and answering legal questions that relate to the matters they handle.

ROSS is built on the IBM Watson AI platform. As Andrew Arruda, chief executive and co-founder explains, rather than typing in a word or phrase, you can ask ROSS a natural language question in the same way as a junior lawyer might consult an experienced colleague. ROSS then reads through the law and legal precedence, gathers evidence, draws inferences and returns an evidence-based answer.

Although ROSS can be programmed to include voice

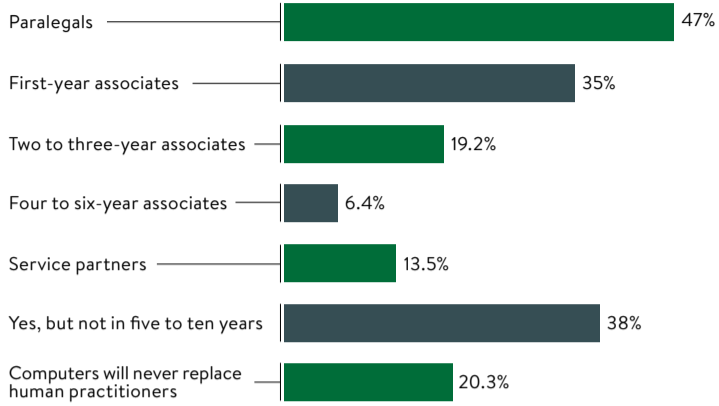
recognition and voice-to-text capability, lawyers prefer to type their queries rather than speaking to the computer.

ROSS incorporates supervised and unsupervised machine-learning. “Our legal specialists have trained ROSS and helped to point it towards appropriate answers to various questions,” explains Mr Arruda. “We also encourage users to up-vote and down-vote passages to confirm or deny ROSS’s interpretation of the question. Every time a user interacts with ROSS, it becomes smarter.” ROSS is accessed as an online subscription service.

ROSS Intelligence was the first company backed by NextLaw Labs, the innovation arm of international law firm Dentons.

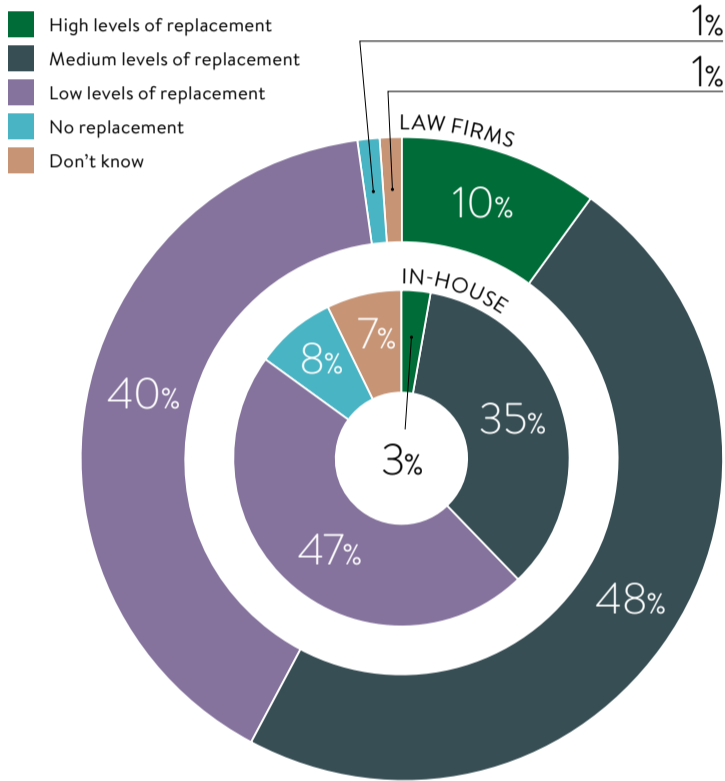
**LAW FIRMS AND AUTOMATION**

CAN YOU ENVISION A LAW-FOCUSED ARTIFICIAL INTELLIGENCE REPLACING ANY OF THE FOLLOWING IN THE NEXT FIVE TO TEN YEARS?



Source: Altman Weil 2015

**EXPECTED IMPACT OF TECHNOLOGY AND INNOVATION**



Source: Winmark/Mayer Brown/Thomson Reuters 2015

Legal innovation is one of 2016's big stories and this includes larger firms investing in innovative technology. Dentons' NextLaw Labs was an early investor in ROSS. Big legal publishers are following suit, perhaps reacting to AI-powered legal research assistants. Last year LexisNexis acquired Lex Machina, an AI-powered engine that applies natural language processing to public court documents to predict outcomes in intellectual property litigation.

Entrusting tasks to AI will impact on the structure of law firms and the industry. Milos Kresojevic, enterprise architect at Freshfields, envisages legal AI leading to profound changes in roles and training.

"There will be a shift in the skills required to leverage the productivity potential of new, smart technologies, with an increased emphasis on cross-disciplinary engineering and scientific skills and the ability to adapt to a workplace that is staffed by people and machines," says Mr Kresojevic, who is looking at how AI can bring end-to-end efficiencies while considering the impact on IT governance of task-specific quick-win solutions.

David Halliwell, director of knowledge, risk and legal services at Pinsent Masons, agrees. "The requirements of data and system integration mean that firms will need in-house capability to develop, exploit and integrate AI and other systems to rapidly deploy solutions for specific deal and client needs. Clients will get used to seeing data scientists on deal team sheets as AI skills move from back office to front office, and end up leading and driving deals."

RAVN chief executive Peter Wallqvist is looking to lower the barriers to legal AI. "The next step is to integrate AI into the fabric of the business by creating more interfaces with firms' IT systems so people don't have to understand AI to benefit from it," he says.

AI in the legal sector is incrementally disruptive and its impact should not be underestimated. "Law firms sticking to a traditional model may find themselves disrupted if they do not leverage the technology," concludes Alexander Duisberg, partner at Bird & Bird.



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## COMMERCIAL FEATURE

# NOT-SO NEW KID ON THE BLOCK IS ABOUT TO COME OF AGE

*Blockchain – a global digital ledger – is set to disrupt the digital scene*

From artificial intelligence and robotics to 3D printing and blockchain, technology is fundamentally changing the way we do business. Blockchain, initially associated as being the technology that enabled the online currency bitcoin, has suddenly become the latest buzzword in the growing tech lexicon. Though the technology has been around for a while, the now not-so-new kid on the block is growing up and looks set to disrupt the digital scene.

Blockchain started as technology that was looking for a use, but now sectors ranging from financial services to the media, from betting to mining are showing a keen interest in the distributed digital ledger. The technology is still a relatively novel concept, and the legal and regulatory environment in which it is destined to operate is, as yet, uncharted. Richard Goold, head of tech law at EY, surveys the scene and answers some key questions:

#### What is blockchain?

The blockchain is a distributed, global digital ledger that records and tracks transactions. Put simply, it is a method of recording data. You could think of it as the rails on which the train of data or payment runs. The data is encrypted and stored in blocks, in a chronological chain using algorithms. The ledger is not stored in one place, but in a distributed, open-source network of users' computers worldwide, which makes it impossible to hack and alter – at least for now.

#### Who is using it?

Use of blockchain technology remains in its early stages, but many businesses, led by the financial services sector, are experimenting with it. According to Blockchain Angels, a network of blockchain angel investors and venture capitalists, which has just launched a Blockchain Startup Tracker, there are already more than 760 startups looking at innovative uses. It is likely that traditional corporate organisations will seek to partner

with fintech startups to discover how best to exploit blockchain. EY is seeking to foster such co-operation through its Startup Challenge, matching potential partners.

#### TheDAO

An example of how the technology is currently being used is TheDAO. In contrast to a traditional corporate entity, a DAO is a decentralised autonomous organisation in which software acts according to a set of rules encoded on a blockchain. TheDAO is an open-source computer programme that works like an investment club or funding platform. It exists on ethereum, a decentralised computer platform, with a built-in cryptocurrency – ether – which has a real-world value and can be traded on exchanges.

#### What are the legal issues?

Disruptive technologies, such as blockchain, are creating new ways of doing business. As with many emerging technologies, the law around it is playing catch-up. While you can easily and nimbly create a new piece of software, international law-making is not so nimble. But anyone looking at using this type of technology needs to consider the legal elements from the outset of the design process. You will need to consider three broad categories – general commercial law considerations, tax implications and regulatory issues. At the moment there are no definitive answers to questions of compliance in this evolving space. Businesses will need to address the issues, such as ownership, trust and security and contract law that are thrown up, and seek advice on how to manage their risks.

**Ownership:** While most data is owned or controlled by an individual, an institution or a regulator, which can enforce its ownership rights, the information contained on the blockchain is shared and the issue of ownership remains moot. Who is responsible for the information contained on the ledger, its use and security?

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**Privacy and cyber security:** At the moment the security of the blockchain relies on the assumption that the encrypted information is impossible to hack. But, as technology develops, this may not remain the case. Many clients are looking at a walled-garden solution to cyber security, in which access to the software system is limited and controlled by the carrier or service provider. But, if security is breached and the identities of parties involved in transactions are revealed, it could create problems over privacy breaches.

**Smart contracts:** Blockchain will enable “smart contracts” to be executed. But what would be their status in law and how could their validity be challenged or enforced?

#### Regulation

The regulators in almost all sectors will undoubtedly assess how businesses using blockchain are operating and take a view. Businesses too, even those that are unregulated, may need to turn their mind to the regulatory implications of what they are doing on the blockchain. Given the global, public nature of the technology, the question of who regulates it is difficult. It is likely that the issue will require cross-border and cross-sector co-operation. The UK government has signalled its determination to drive the digital agenda and to make the UK a global hub of the digital economy of which blockchain will play an increasingly



Anyone looking at using this type of technology needs to consider the legal elements from the outset of the design process

large role. And the UK financial regulator, the Financial Conduct Authority, is proving to be one of the most progressive regulators in the fintech space. Its Regulatory Sandbox initiative created a “safe

## COMMERCIAL FEATURE



# LEGAL SERVICES AT EY TO COMPLEMENT OTHER SERVICES

*EY is harnessing innovative technology to deliver legal services working side by side with its other business offerings*

In the 18 months since EY was granted an ABS (alternative business structure) licence by the Solicitors Regulation Authority, its legal practice in the UK has grown rapidly. As a new practice, it is looking to be at the forefront of the technology revolution and to continue building on the strengths of the wider EY business.

Already the team has grown to more than 50 people in the UK and has made some key lateral hires from City and US firms.

“We have done what we set out to do, which is to build a really strong platform from which we can now grow. We have recruited a great team of people already, many of whom are leading industry names within their area,” says Phil Goodstone, head of law in the UK. “Over the next five years we want to build a sizeable UK business focused on some very specific areas of the market.”

EY plans to add significant scale to the UK business by 2020, although EY emphasises that the numbers and time frame are of secondary importance.

“We have a very clear strategy. We have focused on building a multi-disciplinary practice, integrating law with the wider services EY offers, and on some key sectors and markets. Our absolute commitment is to find and develop the right people, and to embrace new and emerging technologies as we grow our business,” says Mr Goodstone.



The ambition is to achieve continual, sustainable growth by a relentless focus on clients and people – and at the heart of this will be technology and innovation

One of the sectors upon which EY has focused is financial services. As Matthew Kellett, head of law for financial services, explains: “Everything starts with building a client-centred, distinctive and differentiated offering.”

The business, says Mr Kellett, seeks to “build on the deep sector understanding and relationships that the firm has, layering legal on to it, to create an integrated, multi-disciplinary practice.”

So how is EY’s offering different and distinctive? As Mr Kellett explains: “We are multi-disciplinary in the widest sense in that what we offer is a team of lawyers working on a truly integrated basis with other sector-focused professionals at EY, be they accountants, consultants or programmers.”

“The firm already has an outstanding reputation in financial services. The ambition of my team is to further enhance that reputation by building the leading financial regulatory practice, offering both traditional risk and compliance, together with a more ‘holistic’ legal risk offering.”

Mr Kellett has made a number of significant hires to accelerate the growth of the financial services practice, including Matt Whalley from BLP, Steven Francis from Baker & McKenzie and James Gee from Weil Gotshal & Manges.

As well as financial services, EY has also launched its legal technology practice, appointing Richard Goold, formerly co-chairman of tech at Gowling WLG, to lead the team. EY has also launched a mergers and acquisitions legal team focused on the North West and UK more widely, following the appointment of Paul Devitt and Richard Thomas in Manchester.

Where the business focuses next, says Mr Goodstone, will depend on getting the right talent to lead in other areas where EY is strong and looking to build.

“We started by building out some core capabilities in areas such as corporate, employment and commercial law. But we’ve been clear from the outset that we aren’t looking to build a separate law firm within EY,” says Mr Goodstone. “Our focus has always been to have law work side by side with other areas of the business. It’s about developing legal services that complement EY’s existing services and sector teams, so clients ultimately have a single point of contact for all their professional services.”

He is also clear that technology will be at the heart of the development of the business. “There is a huge focus across the whole of EY on the opportunities that existing and emerging technologies present for our clients, and how we deliver services to our clients. The sense of energy from the team to ensure law is at the heart of this has been incredible.”

Mr Kellett adds: “EY has a great reputation for using tech solutions. There’s a wealth of knowledge within



**1,700**  
lawyers already in the practice globally in 73 jurisdictions

Source: EY



**760**  
startups are looking at innovative uses of blockchain technology

Source: Blockchain Angels

the business that we already tap into, and we are determined to develop further our culture of innovation in the team and embrace new technology.”

So what impact are technologies having on the development of the practice? “While in many ways we are still only at the beginning of this, we are already seeing how technology can enhance both our offerings to our clients and also to our people in terms of how and where they work, whether it is the ability to offer truly flexible working to all of our teams, document automation to speed up delivery to clients, electronic document review software or contract management systems,” says Mr Goodstone.

“But this is only scratching the surface. What really excites us is to work out how we develop our services for the benefit of clients and our teams by embracing new technologies.”

With the legal services market going through a period of change, EY clearly aims to be a positive part of that change. Globally the practice already has more than 1,700 lawyers in 73 jurisdictions and emerging technologies will only enhance the abilities of the firm to offer a truly global service.

As for what lies ahead for EY’s UK legal team, Mr Goodstone concludes: “The ambition is to achieve continual, sustainable growth by a relentless focus on clients and people – and at the heart of this will be technology and innovation.”

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space” for startups and businesses with new offerings to engage with it in order to ensure compliance.

#### EYX and the EY Startup Challenge

EYX is EY’s new internal cross-service line innovation initiative, based at Second Home in London’s Shoreditch. It is a “workspace and cultural venue for thinkers, makers, artists and entrepreneurs”. The aim is to help EY and its clients navigate and take advantage of disruption, to support innovation and realise the business value of key emerging technologies. EYX is also responsible for the next iteration of the EY Startup Challenge – an intensive ten-week innovation programme designed to bring

together EY’s clients with technology startups in order to address today’s business challenges in an exploratory and collaborative way. Following two programmes in 2014 and 2015, and one earlier this year in Berlin, it returns to London in September. The EY Startup Challenge will provide a studio environment for clients to connect and collaborate with blockchain startups, to explore blockchain technology and its potential to transform businesses, and make innovations real and tangible.

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## COMMERCIAL FEATURE



## MANAGING MARKETING

*With competition for market share in the legal industry intensifying, law firms need to look beyond word-of-mouth and positive referrals to become the obvious choice for new clients. Karla Alexander at Propero Partners, a leading London-based digital marketing consultancy, looks at what steps should be taken to generate new business inquiries and future-proof profitability*

Propero  
partners

First movers in traditional sectors like law have been using the last decade to rewrite the rule books. Where reputation and relationships were once enough to attract and retain new business, they alone can no longer guarantee long-term success.

This tipping point has been felt across the industry, with *The Lawyer* noting that as much as 75 per cent of UK 200 law firms could disappear within five years if they fail to make their processes more efficient. That suggests a reluctance to move with the times could have a fatal impact on the future of smaller firms.

It is a scenario that James Noble, partner at digital marketing consultancy Propero Partners, has already envisioned. He says: "Digital transformation is happening in the legal sector, there is no escaping it, and having resisted change, these firms are now recognising they need to up their game in order to remain competitive. Reputation used to be enough, but not any longer."

Founded by a team of professionals with a wealth of industry experience, Propero Partners specialises in providing end-to-end strategic marketing campaigns that give firms,

including those in the legal industry, a leading edge. A lot of their work is with large local high street firms and smaller regional firms that have fallen behind in the digital stakes and are starting to feel the pressure.

Mr Noble says: "Some of these firms don't even have a web presence, which means they're not showing up where potential clients are looking for them. This puts them at a huge disadvantage."

"Our first fix is to create an online brand impression that resonates with their target audience. From there we can help them implement and manage their wider communication platforms, such as social media, to ultimately equip them with the tools they need to provide a service that is in tune with the modern digital age."

"Where we see the real, measurable results, however, is in proactively finding and engaging customers for these firms. We attract good-quality leads, we initiate conversations and we hand the firms the inquiries we've generated to close into sales."

What Propero Partners has been quick to recognise is that, in many of these firms, their key focus has been on providing high-quality legal services,

"We know that a lot of partners in law firms do not want to be salespeople, so our role is to act as a sales function for them, freeing them up to do what they do best – the law," says Mr Noble.

In the last year since Propero Partners was launched, the feedback from clients has been very positive and for good reason. Significant outcomes for clients have included a halving of their general costs of dealing with inquiries, a doubling of revenue and, in some cases, their net profits.

Resisting the change that is sweeping the legal sector is the surest way for a law firm to fail because the changes are being driven by the customers.

"Even if you are given a referral for a good law firm, the chances are you will still Google them to find out more about them," says Mr Noble. "And we also know that digital communication channels – social media and instant messaging – are increasingly becoming the channels of choice for customers."

If they are to remain competitive, law firms must find a way to keep up with the ongoing change and it is specialists such as Propero Partners that can support them along the way.

Mr Noble concludes: "Marketing is a sector with a lot of players, but what differentiates us is the extent of our industry knowledge and experience that enables us to help firms with business growth and development, and the fact that everything we do is end-to-end and, most importantly, tied to the strategic objective of our client."

"With our help they will generate a steady stream of new clients, achieve consistent business growth and be seen as a leader in their niche, who stands out from the competition."

For more information please visit [www.properopartners.com](http://www.properopartners.com)

# Lawyers must deliver better client service

Tech-savvy clients in a fast-moving digital age are becoming increasingly discerning of their legal advisers, but will pay for quality if it is delivered in a way they can understand

### FUTURE CLIENT

ALISON COLEMAN

As a profession, the law has never been the fastest to embrace change, but with technology shaking up this last bastion of convention, even the most traditional practices recognise they have to move with the times.

Behind this transformation is a new breed of client, more tech savvy, more discerning and far more demanding of their law firms. Accustomed to high levels of customer satisfaction in other sectors, they are forcing a change in legal services, and regardless of their ability to practise the law, firms that fail to respond and deliver on customer experience risk losing their business.

The sector has made its intentions clear. According to PwC's *2015 Annual Law Firms' Survey*, 95 per cent

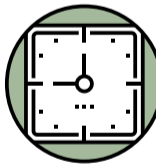
of firms plan to invest in IT in 2016 to improve their efficiency and competitive edge.

However, in embracing this customer-driven transformation, they face many challenges, largely concerning their decision-making processes, says Lauren Riley, founder and chief executive of The Link App, a tool that helps UK law firms improve customer service, efficiency and productivity.

She says: "Decisions tend to be made by those who have been practising the same way for many years and can be resistant to change or, worst-case scenario, unaware of the needs of their clients when it comes to technology."

A key area of change lies in communications, with clients increasingly expecting to be able to contact partners whenever and wherever they are, on the device of their choice.

### CLIENT FEEDBACK



34%

of law firm inquirers who left a message did not receive a call back within 24 hours



25%

would not contact the firm again



44%

felt they would not be encouraged to contact the business again



65%

of solicitors took the contact details of the potential customer from a walk-in inquiry



15.6%

of firms followed up that inquiry

Source: Peppermint Technology 2016

75% of law firms could disappear within five years if they fail to make their processes more efficient.

Source: *The Lawyer*



75% of UK 200 Law Firms





“It is all about providing a choice,” says Jonathan Sharp, partner at law firm Royds. “Rather than telephoning, it may be easier to talk to someone via instant messaging or web chat.”

The use of social media to communicate and promote legal services has also risen. He adds: “We have seen an increase in the number of prospective clients communicating to us via LinkedIn. As a cutting-edge law firm, we use social media to communicate with our clients, for example, promoting newsletters and blogs over Twitter.”

Innovation is not just about implementing the latest technology. True transformation comes from how technology is used to deliver an efficient service that meets clients’ needs. According to David Pester, managing partner at law firm TLT, the starting point for law firms is to be systematic in the way they listen and respond to the challenges their clients face

He says: “Today’s clients are in the driving seat when it comes to relationships with their lawyers, which is as it should be. They expect much more than traditional legal advice, and they look to their lawyers as true partners and consultants, able to bring a wide range of expertise to the table to deliver a successful outcome. This can cover everything from how the work is

best resourced, to how technology can help deliver.”

Clients are also more discerning about cost and what they will pay a premium for based on the risk or value to their business. Price is no longer aligned to the time or complexity of work, which are the factors that lawyers have traditionally used to price work. They also expect greater flexibility around supplying ad hoc advice without charge.



The process of delivering work should be as much part of the law firm psyche today as the law itself

Mr Pester says: “They expect legal advice to be delivered in the most effective way. Good lawyers must build multi-disciplinary teams and draw on expertise in areas such as project management, technology and resourcing to deliver the best outcome for the client. The process of delivering work should be as much part of the law firm psyche today as the law itself.”

And it is important to keep in mind that technology will never replace the skills of a good lawyer. Cases need to be handled by the right person and, for the client, this needs to be at the right price.

Patrick Allen, senior partner at Hodge Jones & Allen, says: “Clients appreciate clear cost estimates in advance and monthly billing. However, sensible clients don’t want the cheapest service, they want the best service. They appreciate quality and will pay your fees happily if you are the right person for the job. That’s why reputation and referral are vital for winning new clients.”

Another driver of legal innovation, both from the client’s and law firm’s perspective, is the fact that the millennial generation of employees, those born between 1980 and 2000, is coming of age.

“Older millennials are now holding senior positions within the legal and corporate worlds,” says Rob Jones, managing legal consultant at e-discovery provider Kroll Ontrack. “Having grown up with exposure to a tremendous amount of dynamic change, particularly in the technology arena, these young power brokers are not only open to technological solutions, but expect the most modern, most innovative and slick solutions to achieve the best advantages possible and to conclude matters as swiftly as possible.”

Collaboration is also emerging as a feature of legal innovation and delivering successful outcomes for clients, with the more progressive law firms developing stronger collaboration relationships with other law firms and alternative legal service providers as a means of being more effective and efficient in their approach.

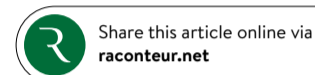
“Law firms are innovating in the way they resource work, including using their own captives, legal process outsourcing and flexible resourcing models. They are developing complimentary non-legal services in areas like risk, project management and resourcing. They are also developing pricing models and methods that provide certainty or at least predictability,” says Mr Pester.

Virtually every business sector is being disrupted by digital technology and law is no exception. However, most experts agree that

any innovation in the legal sector needs to revolve around improving client service.

Francis George, managing director of Francis George Solicitor-Advocate, says: “Free legal resources on the internet inevitably mean that clients will have ‘Googled’ you and formed their own view of the advice you will give before you have even given it.

“They will shop around. Those who focus on and emphasise quality can maintain profitability if they provide excellent customer satisfaction. In this ultra-competitive market, superlative customer service and satisfaction can be a unique selling point. Those whose prime focus is customer satisfaction, having managed client expectations, will survive. Those who do not will fail.”

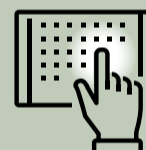


### FIVE WAYS TO IMPROVE CLIENT RELATIONSHIPS

**01** “Law firms should go paperless as soon as possible and as much as possible,” says The Link App’s Lauren Riley. “Think how much you dislike having piles of paper around your office and multiply that by a factor of ten for a client in their home.”



**02** “Introducing a bring-your-own-device policy will enable law firms to support devices of choice for both employees and clients, and deliver a consistent user experience via home phone, office phone or mobile device,” says Royds’ Jonathan Sharp.



**03** Billing by the hour is at odds with the notion that technology drives efficiency. “If it takes a partner in a law firm seven hours to type a legal document that can be processed in minutes by intelligent software, the challenge is for the firm to adapt its business model,” says Darren Saunders, legal client director at technology firm Trustmarque.



**04** Clients must be able to rely on their law firms’ information security practices. Recent headlines involving law firms, including the Panama Papers data breach, have dented confidence, but also created an opportunity for law firms to market their security credentials.



**05** “Listen more,” says Paul Lewis, innovation partner at Linklaters. “If technology can help us organise this better or provide different ways of feeding back, then that would be of great benefit to client and law firm relationships. But the key point is to listen, to assimilate and to learn.”



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# Now law firms must adapt and

Implementing management efficiencies may seem daunting, but law firms have much to gain, not least growth

**BUSINESS OF LAW**  
CHARLES ORTON-JONES

Lawyers are good at law. It's what they study, practise and love. But it's not enough. To run a successful practice lawyers need to be great at marketing, management and financial planning as well as technology. Here is where the profession struggles.

So what are the best ways law firms can rethink how they run their operation? Surely even the slickest outfit could find something new to implement.

Mobile apps are becoming mainstream for time-logging and communications. But how about a client app? A new product called The Link App aims to change the way lawyers communicate with clients.

Designed by Lauren Riley, a solicitor who had a moment of fame appearing on TV's *The Apprentice*, the app gives clients a quick way to show progress made on a case. Notifications appear when a case is updated. If a client wants to talk to a lawyer, they enter a request via the app.

The concept is designed to minimise annoying e-mails and phone calls out of the blue for both parties. The Link App is focused on basic consumer services, such as property, wills and family law. IWC Probate Services has signed up, stating that customers do indeed appreciate the app.

For internal case management there is a huge variety of tools on offer. Wright Hassall emphatically recommends Visualfiles produced by LexisNexis. Martyn Wells, IT director at Wright Hassall, explains: "It works like this. Every business process has a number of stages and each stage can be represented by a milestone.

"Through the management reporting functionality within Visualfiles, the system is able to offer clear visibility of the exact stage of every matter by milestone and, therefore, the billing value commensurate for every single piece of work at that point in time."

The benefits? Mr Wells continues: "Monthly billing estimates then become a 'matter of fact' rather than 'finger-in-the-air estimates' and the practice leaders of departments have good insight into the pinch-points in the departmental throughput. This approach is also a great aid to ensuring clients are invoiced in a timely manner and that they pay their bills on time."

Another snazzy bit of technology is making document-signing easier. Linklaters has adopted DocuSign to speed up the process. The technology means lawyers and clients no longer need to stay late

in offices for a signing ceremony on paper. Instead, participants use a mobile, laptop or tablet to authenticate documents.

Mark Nuttall, a finance partner at Linklaters in London, says: "Completing a signing in the traditional way can be a lengthy process, whereas through mobile technology, with the click of a mouse or the tap of a tablet or smartphone, it can be reduced to minutes, while maintaining the formality and security of signing.

"We hit upon the idea of observing how electronic signatures are commonly used for thousands of transactions in the rental market. It was clearly applicable to our work and our business services team quickly turned the idea into a reality."

Other electronic signature apps exist. For example, Brabners, based in north-west England, favours E-Sign, which uses QR codes rather than handwritten signatures.

Management is one of the big debates in law. Do firms want lawyers or managers?

Intellectual property specialist Wynne-Jones IP has remodelled itself on a managerial structure.

Jayne Nation, Wynne-Jones' business director, says most law firms hire project managers and marketing directors, but fail to give them authority to make decisions.

"At Wynne-Jones IP there are two non-technical directors, both employees, who sit on the board and have authority for operations, HR, marketing, business development and customer care. This frees up the fee earners to do strategically focused business development for the firm and fee-earning. This is one of the main reasons that Wynne-Jones IP has seen double-digit growth in recent years."

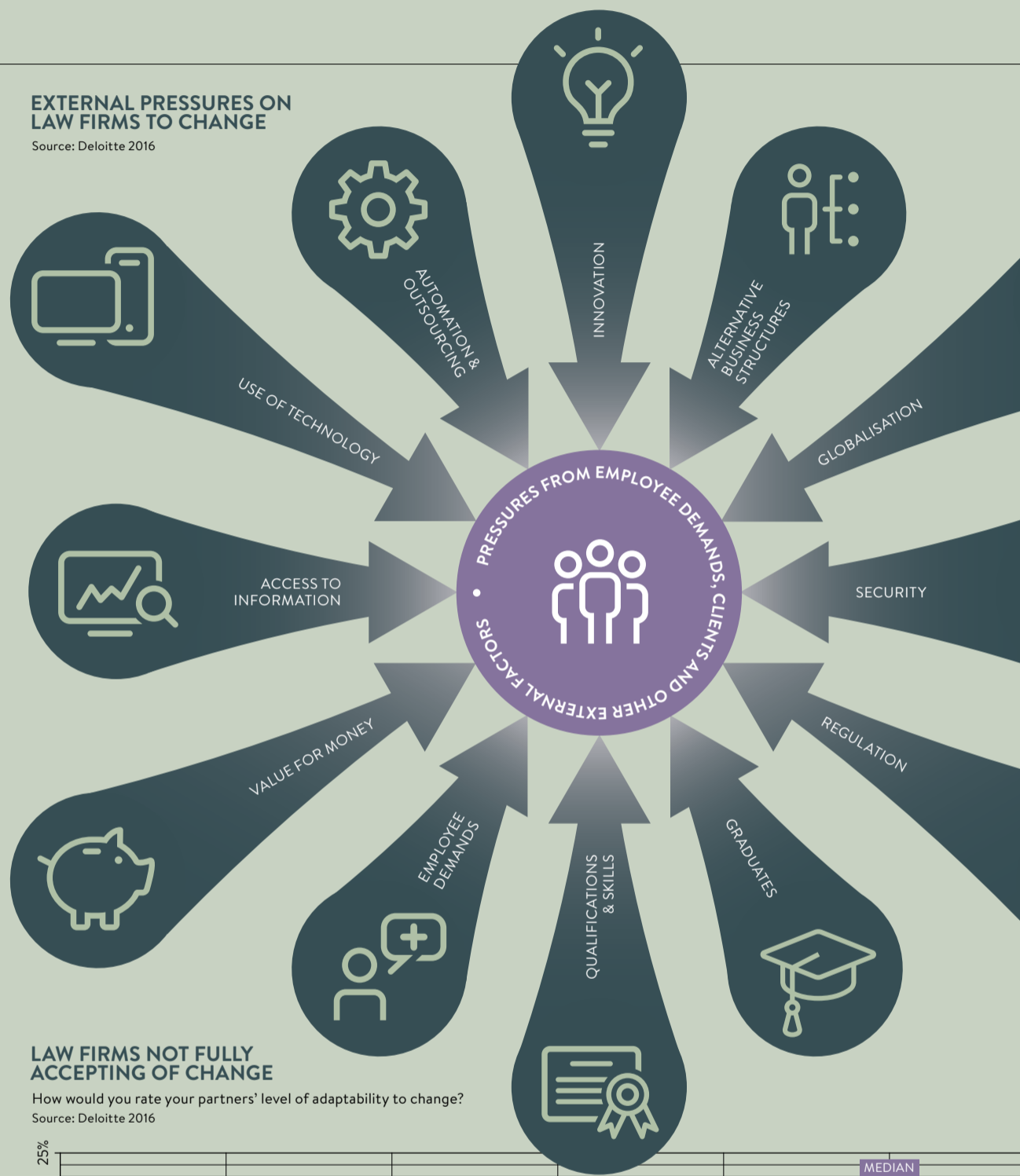
The extreme version of this is an alternative business structure (ABS). Introduced in 2007, the ABS allows non-lawyers to invest in and run law firms. Traditional firms will find much to learn from the operation of these innovative practices.

For example, Fletchers Solicitors gained approval as an ABS in 2015, with Nigel Savage, the former chief executive of the University of Law, as a director. Chief executive Ed Fletcher says: "Bringing in the expertise of an 'outsider' helps to increase diversity and gives a real boost to the collective intelligence of the company.

"Professionals brought in from other industries often approach situations in a different way and can offer knowledge to help grow a firm that is beyond the training or skillsets of a lawyer. For example, they could provide expert assistance with strategic direction and growth or give skilled insight

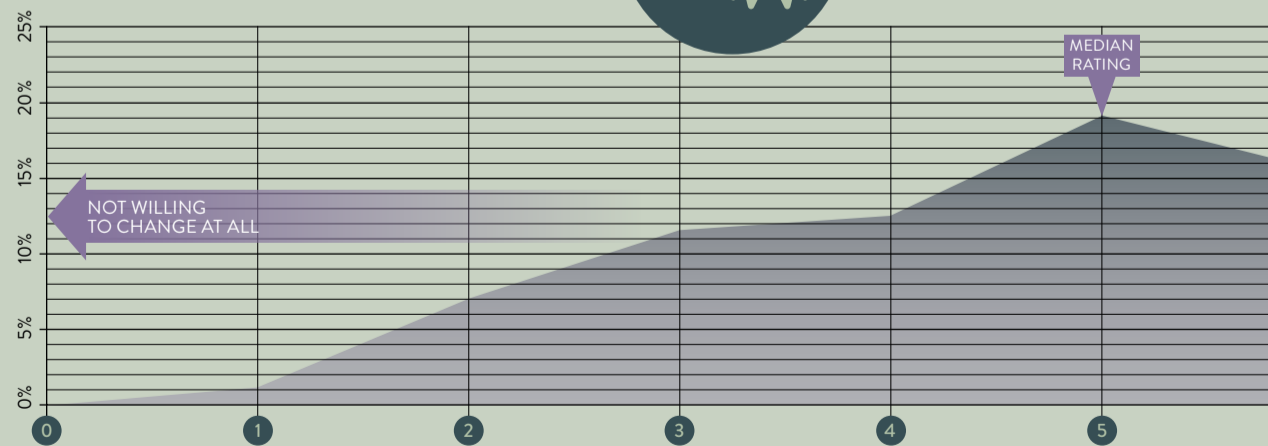
## EXTERNAL PRESSURES ON LAW FIRMS TO CHANGE

Source: Deloitte 2016



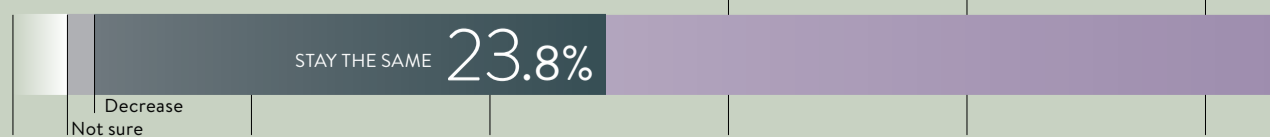
## LAW FIRMS NOT FULLY ACCEPTING OF CHANGE

How would you rate your partners' level of adaptability to change?  
Source: Deloitte 2016



## LAW FIRMS IN TRANSITION

Do you think the pace of change in the legal profession will...

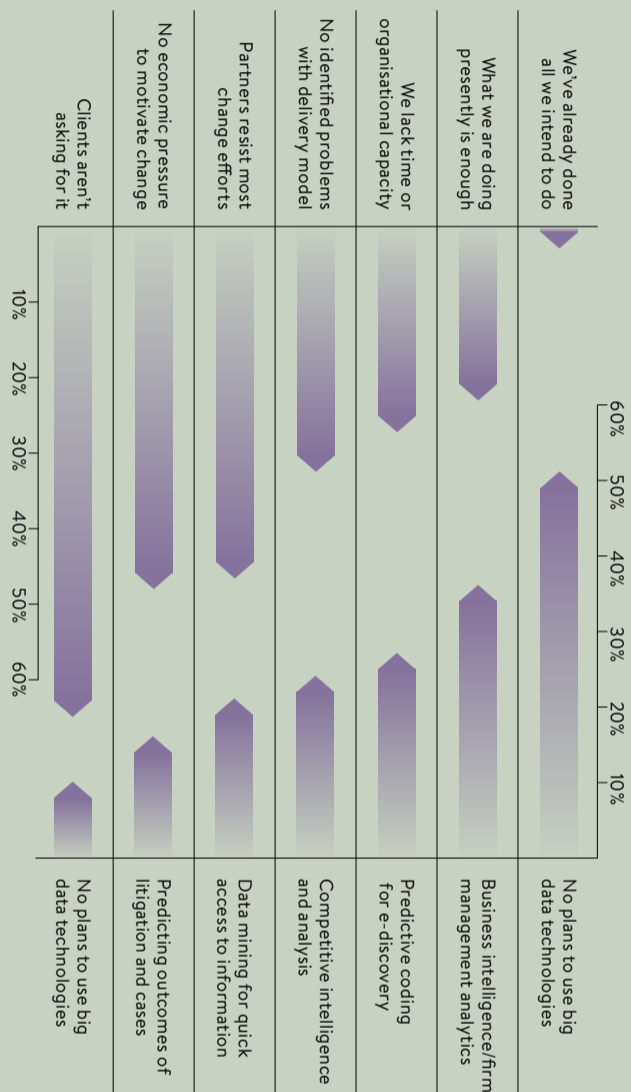


# And get down to real business

with and profits, from a more “professional” approach to business

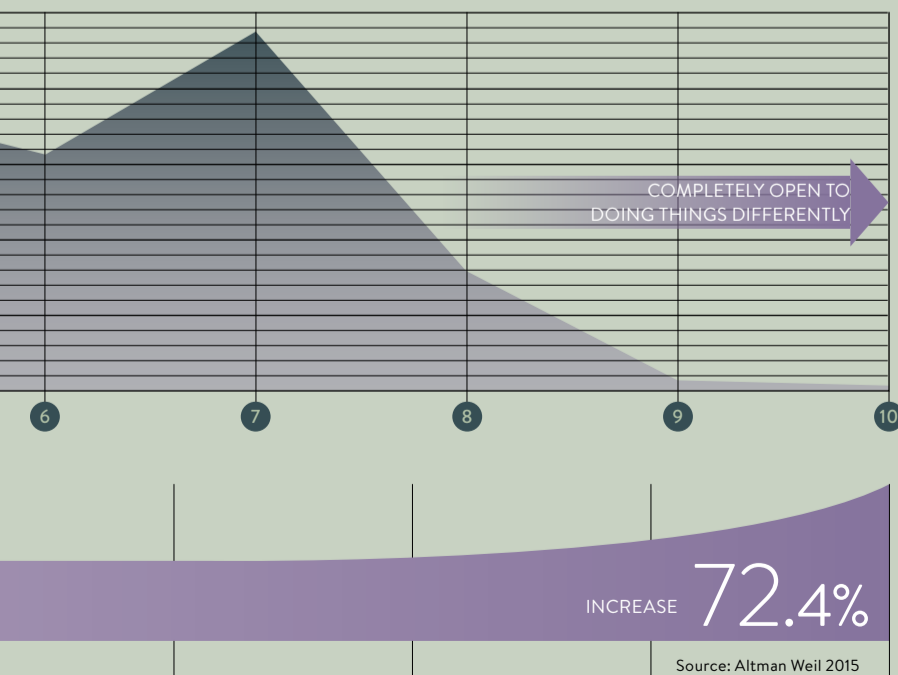
## WHY ISN'T YOUR LAW FIRM DOING MORE TO CHANGE THE WAY IT DELIVERS SERVICES?

Source: Altman Weil 2015



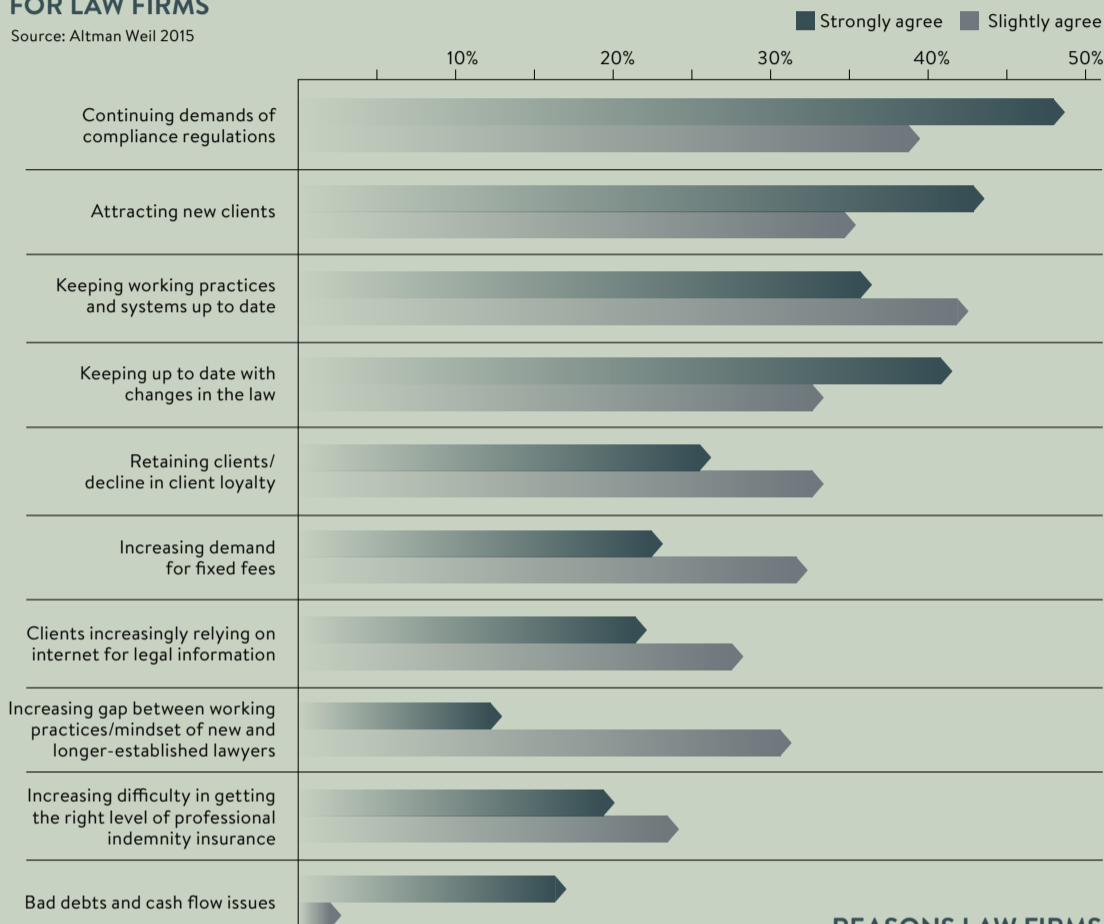
## TECHNOLOGY PURCHASES PLANNED IN THE SHORT TERM

Source: International Legal Technologies 2015



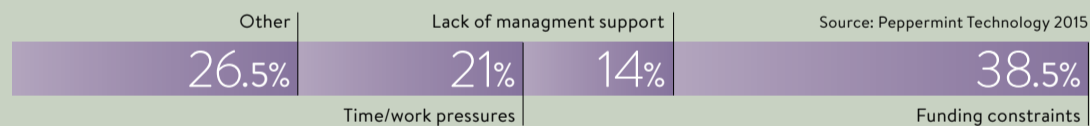
## SIGNIFICANT CHALLENGES FOR LAW FIRMS

Source: Altman Weil 2015



## REASONS LAW FIRMS DON'T INNOVATE

Source: Peppermint Technology 2015



into areas such as marketing to increase brand awareness.” Flexible working, in particular, is a forte at Fletchers. So much so the firm is one of the few law firms on *The Sunday Times 100 Best Companies to Work For* list.

Without a traditional equity partnership approach new thinking can be brought to issues such as profit-sharing. Signature Litigation is a new firm created with a company-wide profit share in mind. Founder Graham Huntley says: “The traditional partnership reserves all of the upside in good years for the owners of the firm, the partners. The Signature model is better because it starts from the proposition that everybody has a direct financial interest in making every year ‘good’. This generates high levels of productivity in the right way.”

A profit-sharing model may also induce non-legal specialists to stay with a firm. When artificial intelligence algorithms dominate case management what model will attract top talent from Silicon Valley? Equity partnerships will need to reflect on that question.

Marketing offers light relief from the rigours of the law, especially public relations. Lawyers often enjoy giving their opinion on issues of the day, for legal journals or newspaper supplements in *The Times*. And yet many firms are pretty terrible at PR, says Melissa Davis, former head of media at the Law Society and now managing director of MD Communications.

The problem? She identifies two major flaws. “Lawyers will spend time honing the perfect statement, only to find that the story has moved on and a quicker competitor was quoted,” she says. “Lawyers can also be held back by an unwillingness to express a clear opinion on one side of an argument, like the famous two-handed economist.” Speed and clarity can give partners the edge when seeking press coverage.

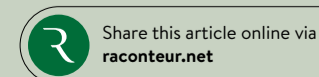
And a final word for law firms hoping to change the way they work. It takes time and effort. Just look at Farrer & Co, which after more than 300 years of paper-based work opted to shift to a digital document management system known as eFile.

The transition was like a military operation. Neil Davison, Farrer’s director of IT, says: “We put a project team together of 11 people that included partners, solicitors and secretaries, who undertook a comprehensive review of document management and ultimately choosing the technology they thought was the right fit for the firm – and that was NetDocuments.”

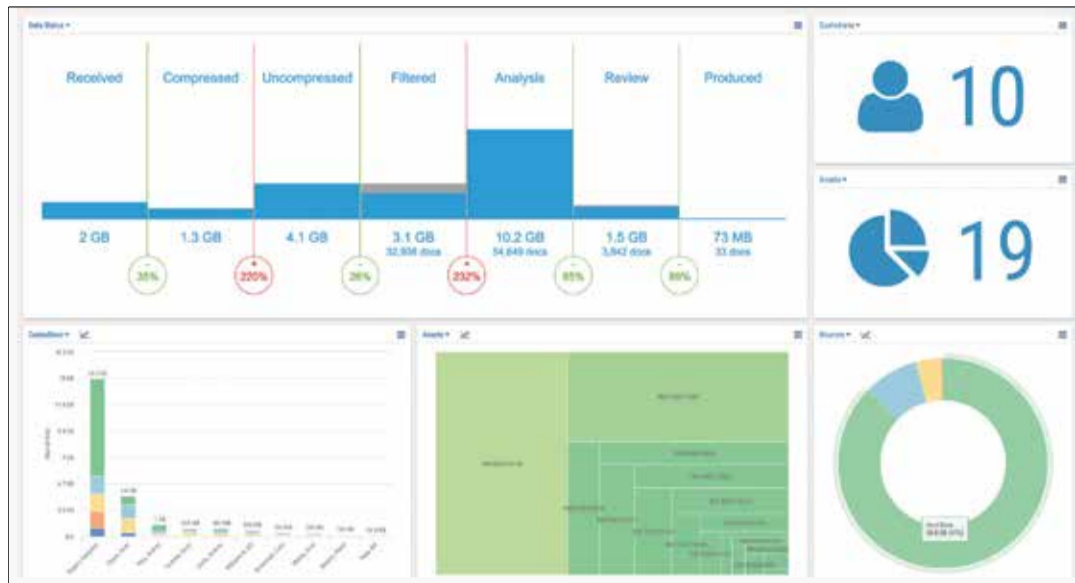
The project took nine months to complete, with a four-month change-management programme kicking in after four months. Around 400 staff were given training at formal workshops, backed up by intensive sessions on the floor.

The results mean Farrer’s staff can access documents from any device in any location. Paper usage has plummeted. Security is up and productivity has risen too.

Making changes to the way a firm is run won’t be easy. But when the rewards are so great and the penalties for falling behind so severe, it’s worth taking the plunge.



## COMMERCIAL FEATURE



## 'E-DISCLOSURE IS LIKE OXYGEN FOR BUSINESS'

*Epiq Systems' eDisclosure dashboard DMX gives organisations the power to draw much greater insight from legal cases*



The use of business intelligence is now widespread in many areas of corporate life. A marketing team will use information such as click-through rates to gauge the success or otherwise of campaigns, while sales teams can assess the impact of individual people or promotions on takings.

The legal sector, though, has been slow to make use of this kind of information. Yet the capability to do this exists, particularly in the area of eDisclosure. Adi Elliott, vice president, market planning, at Epiq Systems, gives the example of a corporation using an in-house legal team or hiring a law firm to help with its litigation, and deploying the services of an external organisation to assist with the data and process management.

"Part of the disclosure process is to figure out how to limit the corporation's data to certain people within particular periods of time so legal teams can look at those documents and decide if they are relevant or privileged, before being given to the other side," he says. "Currently each one of those projects is treated as a separate and distinct task, even though a corporation might be involved in very similar projects hundreds of times a year."

There are often good reasons for this, he adds, including the fact that different people from the client organisation or law firm may work on particular cases, but the end result is that businesses are unable to identify any trends across cases or compare the services and efficiency of different providers.

"If a business is sued 20 times a year around labour and employment

issues, it will benefit from knowing what the wider trends are," says Mr Elliott. "It needs to know which organisations these claims regularly come from, how many people are typically involved and how many documents they typically have to give to the other side."

"It might hire three different law firms to represent it across 20 different cases, so which one is the most efficient with that data? Which collects the least data and which has the highest responsiveness rate in terms of that data being relevant?"



**We're the first organisation that is really injecting business intelligence into eDisclosure, but we want to promote this because it's a valuable process**

Having this kind of information can help identify the most efficient and cost-effective law firms, he says, as well as help organisations get a better idea of how much such cases should cost them, and identify any potential underlying issues in the business which could reduce the number of cases in the first place.

Using a system such as Epiq Systems' eDisclosure dashboard DMX gives organisations the power to draw much greater insight, both within individual cases and more generally. "It allows

you to collect the data and normalise the spreadsheets, PowerPoints and pdfs, and make it into one cohesive package that a lawyer can make sense of," says Mr Elliott.

"You can start with what you handed over to the other side and see trends within the case, backwards and forward, which is not usually possible. But the real potential is in picking up trends across cases so you can be more accurate with your budget and make strategic changes to be more efficient."

Currently, the legal sector is right at the beginning of deploying such innovation, says Mr Elliott, but he believes deployment will pick up pace once awareness of the potential of eDisclosure gets out. "It takes a really specific series of skillsets to do this and you have to have a few pieces in place to properly solve this problem," he says. "We're the first organisation that is really injecting business intelligence into eDisclosure, but we want to promote this because it's a valuable process."

In the longer term, Mr Elliott believes this kind of process will become standard practice for legal teams, in the same way that business intelligence is used by other parts of organisations. "No marketing person today would advertise for a campaign and not want to see A/B testing and click-through rates, or to create three different campaigns that are all radically different and not want to know which one is best," he says. "It's like oxygen for businesspeople and this will be the same for eDisclosure too."

**For more information about how Epiq Systems can help your business, visit [www.epiqsystems.co.uk](http://www.epiqsystems.co.uk)**

# Countering

The revelation that a Russian hacker targeted Panama Papers scandal, has put law firms'

**CYBER SECURITY**  
GRANIA LANGDON-DOWN

Targeting the "trusted adviser" is becoming an increasingly common tactic among the hacking community, which is waking up to the fact that many law firms do not yet have good cyber defences despite the value of the information they hold, and the extent of their client and office accounts.

Given the scale of attacks – cyber crime was included in the Office for National Statistics figures for the first time last year and is now officially the UK's most common criminal offence – it is not surprising that clients are increasingly checking that their law firms aren't the weak link in their security chain.

Mark Jones, Allen & Overy's chief information and security officer (CISO), has seen a 300 per cent increase in requests from clients for assurances about the firm's controls. "Major clients will send in their own IT people to audit our systems, with some even carrying out their own penetration testing," he says. "The number of questions clients are putting to us has also gone up by a third on top of the hundreds they are already asking."

At the same time, the personal data protection landscape is changing. The Information Commissioner's Office (ICO) maximum fines of £500,000 will pale in comparison with the new European Union data security regulations, which come into force in 2018, with fines of up to 2 per cent of global turnover or €10 million.

So do law firms need a wake-up call? PwC's *Annual Law Firms' Survey* last year found 62 per cent had suffered from a security incident, up from 45 per cent in 2014. However, only 32 per cent felt very confident of their IT disaster recovery capabilities and only 49 per cent of senior management had participated in relevant training.

Attacks can come from any quarter so it is vital, says Mr Jones, to know "where your vulnerabilities are before your enemy does and identify your main risks so you can work out who your adversaries may be so you can prioritise your response".

Recent attacks show how hackers can blindside their targets. The self-styled "John Doe", who exploited weaknesses in the computer system at Panamanian law firm Mossack



Fonseca to leak the largest-ever cache of 11.5 million documents, wanted to trigger worldwide political and business repercussions.

Sony was left embarrassed by the content of leaked e-mails, while an extortion hack demanding the infidelity website Ashley Madison close down resulted in the exposure of millions of e-mail addresses. Big corporates are mined for personal data to be sold to criminal gangs.

New York security analysts at Flashpoint, who revealed the Russian M&A hacking attempts, describe a dark web where hackers are recruited and forums exchange counter-intelligence to outfox law enforcers.

But what all hackers want, whether they are state-backed, highly organised criminals or opportunists who have learnt how to spoof an e-mail via a YouTube clip, is to find the easiest route in and law firms make attractive targets because their unique selling point is their people.

Benedict Hamilton, who leads Kroll's Europe, Middle East and Africa business and cyber investigations team, says about 90 per cent of losses of confidential information are, deliberately or inadvertently, by insiders – recently departed employees, people in the "circle of trust" such as sub-contractors or disaffected partners.

But many attacks succeed because a partner or employee has been tricked into clicking on a com-

“  
Cyber crime is now officially the UK's most common criminal offence

# hackers after clients' secrets

elite UK and US law firms to steal mergers and acquisitions information for insider trading, coupled with the data security under the magnifying glass



Panamanian law firm Mossack Fonseca was hacked in May, leaking 11.5 million documents

promised link or is foolish enough to log on to sensitive work systems on insecure wi-fi or personal devices, he says.

And he warns that the hackers' tradecraft is becoming increasingly clever. "Hacking is all about getting a fingerhold and then escalating your privileges so you can hack into the computer at will," says Mr Hamilton. Phishing e-mails remain a favourite, but increasingly hackers will research a target's digital profile for a way in. They may impersonate a partner's e-mail and send a colleague a link to a draft marketing brochure wrapped around malware.

"You click on the link and I am in your machine," he says. One defence is to have a very good detection and response system with competent staff looking out for warning signs. "Simple as that sounds, we spend a lot of time helping people develop that capacity because, on some of the most destructive hacks we have investigated, the alarms

were there, but no one was paying attention," he says.

One of the most common ways into a firm is via its suppliers, so it is critical to secure the supply chain. "We have tried to investigate breaches where clients haven't had the right contracts in place and the third party won't let us access their system," says Mr Hamilton. "That would be very embarrassing for a law firm to get wrong."

Allen & Overy's Mr Jones says ideally firms should have a perfect map between all the people who work for them and everyone who is on their network. "But in large global organisations there are lots of joiners, movers, collaborators, temporary contractors and leavers so you need to work closely with human resources to make sure access is tightly monitored."

There is certainly no silver bullet to mitigate cyber security threats, says Simon Viney, cyber resilience director with risk management specialists Stroz Friedberg.

While predictive technology and people analytics are increasingly helping organisations understand employee behaviour and identify insider risks, firms need to build a culture of cyber resilience from the top down because absolute security is unattainable.

The scale of the risk means cyber security can no longer just be managed as part of the IT function; it needs leadership with real clout across the firm and there is a move among bigger firms to take on dedicated risk professionals.

Mr Jones, who took over the newly created role in February, previously worked as CISO for BAA Group Heathrow and as a provider of security services including at the London 2012 Olympics.

"We want the very best, but there is a shortfall of fully qualified people," he says. "What I am pleased to do here is help our people develop by sponsoring them through PhDs in cyber security."

Keeping on top of the challenges is critical because it will help limit

any potential fallout. On the regulatory front, the Solicitors Regulation Authority expects firms to contact the authority if there is a breach of the code of conduct, such as not keeping a client's information confidential, and it will want evidence that the breach has been dealt with and systems improved to stop it happening again.

At the ICO, Garreth Cameron, group manager for business and industry, says there is currently no legal requirement to self-report a security breach involving personal data, though this will change in 2018 with the EU regulations which make reporting mandatory within 72 hours.

Once a breach is reported, he says the ICO will want to know any aggravating or mitigating factors. It has a team of technical experts who know what to ask and any degree of recklessness or negligence will be reflected in the fine which it will publicise widely. "In a competitive market, if your clients cannot trust you, you are lost," he warns.

But, however resilient you are, some attacks will succeed, so it is crucial to have a well-rehearsed crisis plan.

"If you are attacked, the first thing is to assess how bad the damage is and then get information out to those clients who are affected," advises Alex Cochrane, senior associate with Collyer Bristow's media and privacy team, "Be upfront about what has happened, what you are doing and how you will prevent it happening again – and apologise."

Firms' professional indemnity (PI) insurers will also want to be kept informed, given the potential for legal and regulatory action.

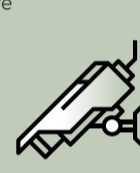
Costs can escalate dramatically. While PI policies provide some cover for third-party losses arising from cyber attacks, they do not typically cover first-party losses. There is dedicated cyber insurance on the market, but it is still uncharted

## FIVE TOP CYBER SECURITY TIPS

**01** Assume you may be targeted at some point so identify the greatest risks and likely attack points. Understand what sensitive client data you hold, encrypt when in transit across unprotected networks and minimise the volume retained when it's no longer required, says Simon Viney of Stroz Friedberg.



**02** Raising awareness across the firm is probably the cheapest and most important step because so many breaches involve people being caught out by scams. If you are attacked, investigate aggressively so you don't get a reputation for being a soft target, says Benedict Hamilton of Kroll.



**03** Have a well-rehearsed plan so you can quickly assess and contain the problem. Then put out an informative message to clients before considering a general press release. Handle it well and you can limit reputational fallout, says Alex Cochrane of Collyer Bristow.



**04** Firms should consider joining the Cyber Security Information Sharing Partnership, following GCHQ's *Ten Steps to Cyber Security* and acquiring Cyber Essentials or Cyber Essentials Plus certification, says Catherine Dixon of the Law Society.



**05** You can know your vulnerabilities, identify potential adversaries, have the most gobsmackingly pure, cohesive strategy and great relationships with the senior team, but you won't perform to your best capability if you don't have sufficient resources, says Mark Jones of Allen & Overy.



waters for insurers so premiums tend to be high. Anecdotal evidence indicates only a minority of larger firms have taken it out so far.

Against such a fast-moving background, there is no one-response-fits-all option, but firms don't have to fight this alone.

The Law Society's dedicated cyber security site has been viewed more than 4,300 times already this year, while forums, such as the govern-

ment's confidential Cyber Security Information Sharing Partnership, are increasingly recognised as an important line of defence.

What is clear in today's information world is that it is dangerous to underestimate the magnitude of the risk law firms face.



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# Roll over Rumpole and dig that digital

Sentenced to spending cuts, the criminal justice system is creaking under the strain despite attempts to leap forward into the digital age

## EFFICIENCY

CATHERINE BAKSI

The caricature of elderly Rumpole-style duffers grappling with bundles of papers tied with yards of pink ribbon is the picture that many have of the criminal courts. But that image is rapidly being consigned to the history books.

Squeezed by funding cuts and increasing caseloads, economic necessity has compelled the criminal justice system to embrace the IT revolution in a bid to speed up cases and reduce waste.

In the 21st-century criminal court, iPads replace paper, pop-up venues replace courtrooms and defendants will be able to enter pleas online without setting foot in the dock.

Last year the government spent £2 billion on the criminal justice system, which dealt with 1.7 million offences in the courts. But a parliamentary watchdog warned last month that the system is close to breaking point and failing victims, who face a postcode lottery in getting justice.

The Public Accounts Committee (PAC) said the “overstretched and disjointed” system was “bedevilled by long-standing poor performance, including delays and inefficiencies”.

It found that only a third of crown court trials proceed on schedule or at all, which in 2014/15 cost the Crown Prosecution Ser-

vice (CPS) £21.5 million on cases that did not go ahead.

With 26 per cent funding cuts forced on the criminal justice system since 2010/11, coupled with a rise in the number of longer, more complex cases, it is little wonder that it is feeling the strain.

But the inefficiencies existed long before the cuts. Lord Justice Jackson noted in his 2014 review of efficiency in criminal proceedings that the system relies on “a combination of long-standing manual processes and ageing computer systems that have evolved in a piecemeal fashion over many decades”.

Back in 2013, Damian Green, then a justice minister, stressed the need to end the “out-dated” reliance on paper, announcing plans for a fully digital court room by 2016.

“Every year the courts and Crown Prosecution Service use roughly 160 million sheets of paper. Stacked up this would be the same as 15 Mount Snowdons – literally mountains of paper,” he said.

Over the years, the criminal justice agencies have introduced a panoply of initiatives designed to tackle inefficiency, by reducing reliance on paper, enabling digital working and cutting court hearings, to the extent that Lord Justice Jackson reported “transformation exhaustion” in a system “crowded with plans for future development”.

The Treasury has committed more than £700 million to modernise the

“Government IT projects do not have a great track record and glitches are already causing headaches



Old Bailey, Central Criminal Court in London

courts and tribunals, in what the PAC describes as an ambitious reform programme.

The plan is now to have a fully connected digital courtroom by 2020, which Her Majesty’s Courts and Tribunals Service (HMCTS) says it is on track to deliver and it estimates will save £200 million a year from 2019/20.

A joint report by the CPS and HMCTS inspectors, *Delivering Justice in a Digital Age*, notes that progress has been made. More than 90 per cent of cases are transferred to the CPS from the police electronically and nearly all magistrates’ courts are able to receive digitally from the CPS the initial details of the prosecution case.

All criminal courts have wi-fi, widescreens and click-share technology, enabling the prosecution and defence to present evidence digitally.

The crown court digital case system, a web-based digital document tool, has been rolled out for the service and receipt of disclosure and evidence. In addition, HMCTS says progress is being made on the common platform programme, an online case-management system covering the entire process from pre-charge to disposal, giving all parties access to one digital case file.

The first paperless trial, in which jurors used iPads rather than files of evidence, took place in Birmingham in 2013. A handful of others have occurred since, including a large fraud trial last year at London’s Southwark Crown Court.

HMCTS is piloting other initiatives, including “digital mark-up” which immediately records case outcomes and triggers notifications and documents to support or enforce decisions.

Defendants will be able to enter guilty pleas online for traffic offences following completion of the scheme’s national rollout this month.

The use of video links has been expanded to save the cost of trans-

Shutterstock

porting defendants from police stations or prisons to court, and upgraded systems have been installed in 130 courts. In 2014 Judge John Tanzer appeared via Skype at Croydon Crown Court to hear a jury deliver its verdict in a case of a teacher acquitted of sexual offences.

As austerity cutbacks force the sale of court buildings, proposals from law reform group Justice, in its *What is a court?* report, mooted pop-up courts in public buildings.

All this sounds impressive, but government IT projects do not have a great track record and glitches are already causing headaches.

The *Delivering Justice in a Digital Age* report, published in April, found that computer systems used by criminal justice agencies did not talk to each other and some parties still relied on paper and manual processes, which lead to duplication of work and an increased risk of error.

It expressed concern that the lack of a reliable method to share information, including CCTV, 999 and interview records, resulted in lost data and concluded the vision of a digital end-to-end system is still some way from becoming reality. The report also questioned how the digital age embraces the unrepresented defendant.

Zoe Gascoyne, chairwoman of representative group, the Criminal Law Solicitors’ Association, highlights annoying bug-bears when the technology fails.

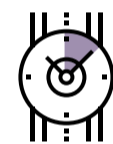
She says wi-fi problems make disclosure at court impossible, magistrates are asked to make bail and sentencing decisions without seeing a copy of the defendant’s record because prosecutors only have it on their laptop, and in some courts prosecutors are unable to send anything directly to lawyers, which means relying on a remotely located third party to monitor e-mails and deal with urgent requests.

In addition, says Ms Gascoyne, prisons often refuse to allow lawyers to use their laptops notwithstanding that the evidence is served in digital format.

Implementation of many schemes, she says, tends only to paper over cracks without putting the basic structure of the system right.

Ms Gascoyne concludes: “The problem with the concept of being fully digital is that the criminal justice system deals with real people.

“It is easy for those outside the system to conjure up exciting plans, but the bottom line is that the criminal justice system is about the victim, the defendant and achieving justice – none of which will ever be digitised and all of which requires a human touch.”



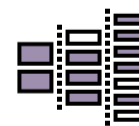
33%

of trials in the Crown Court between 2014 and 2015 went ahead as planned on the day they were due to start



£21.5m

estimated cost to the Crown Prosecution Service for cases that do not go on to trial



34%

increase in the backlog of cases in the Crown Court since March 2013



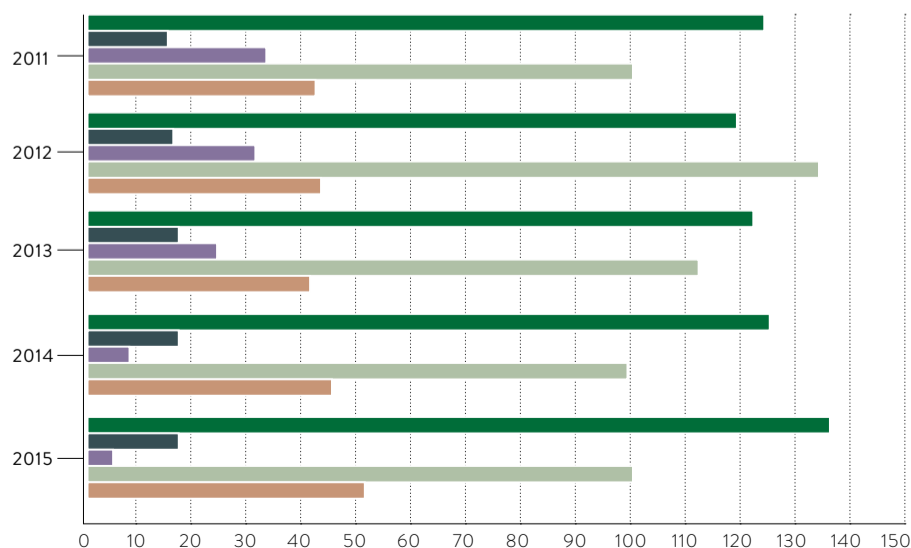
£44m

additional costs due to the increasing length of Crown Court trials between 2010 and 2015

## CROWN COURT CASES ARE TAKING LONGER TO PROCESS THROUGH THE SYSTEM

AVERAGE WAITING TIMES IN DAYS FROM ALLEGED OFFENCE TO COMPLETION

■ Incident to charge ■ Listing to magistrates’ court completion ■ Crown Court hearing to completion  
■ Change to listing ■ Waiting time for Crown Court hearing



Source: National Audit Office/Ministry of Justice 2016

Source: National Audit Office 2016

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COMMERCIAL FEATURE

# A SIGN OF LEGAL SOPHISTICATION, SECURITY AND CERTAINTY

*DocuSign's global eSignature and DTM platform are consigning pen and paper to the past*



**B**y their very nature, lawyers are a cautious bunch. So when a topic hits the radar of the sector's professional bodies, it is taken a little more seriously.

Electronic signatures have become one such topic, as the profession awaits guidance expected from the Law Society and City of London Law Society endorsing the use of electronic signatures.

The general rule under English law is that a contract may be made informally, with nothing required in writing for the contract to be legally binding. Although there are some types of contract where there is a statutory requirement for writing or a signature.

We live in a digital age. Yet the law often lags behind technology and lawyers have wondered whether an electronic transaction could fulfil these statutory requirements.

Fortunately, English courts have given a clear signal that an electronic transaction can satisfy the statutory requirement for writing or signature just as effectively as a paper transaction (*Golden Ocean Group Ltd v Salgaocar Mining Industries PVT Ltd and another 2012*).

Some electronic transactions are concluded via e-mail or by clicking an "I accept" button on a website. But these signatures provide a low level of security and authentication, therefore the more digitally mature enterprises are turning to companies such as DocuSign for something a little more sophisticated.

DocuSign runs a digital transaction management platform enabling its customers to eliminate paper, and transact their business more quickly, efficiently and securely.

"DocuSign is much more than an e-signing platform – it allows you to

prepare, execute and manage the life cycle of business transactions in a fully digitised environment," says Richard Oliphant, Europe, Middle East and Africa general counsel at DocuSign.

"You have access to a real-time audit trail, tracking every step of the transaction, who signed, when they signed and, in some cases, where they signed. It generates the 'proof' of signature that you can rely on in court to establish the authenticity and integrity of the electronic transaction."

In a world where accountability, transparency and legal certainty are key, that has to be reassuring.

And this can only be reinforced by upcoming changes in European Union law. Notwithstanding the Brexit bombshell, a new eIDAS (electronic identification and trust services) Regulation will come into force on July 1 across the EU including, initially at least, the UK.

eIDAS aims to build more trust in electronic transactions across the EU member states and create a more predictable regulatory framework for "trust services" including electronic signatures.

The move is very welcome. It will replace the eSignature Directive, in place since 1999 and the subject of much criticism, having been implemented inconsistently across the EU.

The European Commission believes this fragmentation has made it far harder to conduct cross-border electronic transactions. Cross-border e-commerce is the focus of the commission's flagship Digital Single Market programme. Introduction of eIDAS will boost this initiative, encouraging the

wider adoption of platforms such as DocuSign to make the digital transformation to conduct business transactions 100 per cent digital.

When assessing whether to use electronic signatures, for Mr Oliphant, risk analysis is a critical factor.

"Lawyers are often too cautious and overstate the risk of using an electronic signature. But, in actual fact, you can use an electronic signature to create a legally enforceable contract unless that contract is one of the very limited categories of contracts under English law that should not be signed electronically, such as transfers of land," he says.

"Customers are always surprised when I tell them that there has not been a single case in which the English courts have ruled on whether a document was validly signed via an electronic signature platform."

That offers some genuine reassurance; not only are contracts rarely challenged over the signature, but in the event of a challenge, the audit trail that comes with an e-signature lends it significant evidential weight, making any challenge, unless fraud-related, difficult to pursue.

Notwithstanding that legal certainty, however, for many enterprises across a multitude of sectors, the conversation is far simpler.

"Digitising your workflow is integral to a successful business model these days. For the more agile enterprises, operating in different hemispheres or time zones, they can authorise and sign contracts without the need for a power of attorney, for example," says Mr Oliphant.

"And there's the efficiency and cost-savings through going paperless – you remove the need for printing, faxing, scanning and mailing. These outdated services not only eat up money, they don't belong in the digital era."

With added certainty, speed, efficiency, security and backed by a comprehensive digital audit trail, the quality of the user experience will skyrocket.

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administered through DocuSign were completed in under an hour, project turnaround time was reduced by almost two weeks and, unsurprisingly for a global leader, return on investment increased by 300 per cent.

The term no-brainer is often overused in the corporate world, yet for those digitally mature businesses, the ones with the confidence to embrace the use of electronic signatures, the numbers speak for themselves.

Digital leaders can improve their profitability by more than 50 per cent. Their market capitalisation can rise by a fifth. The ability to generate more revenue increases significantly.

While the perception of electronic signatures might be they offer a lower degree of authenticity and integrity than a handwritten signature, it seems that for electronic signatures produced by a secure, reputable platform, the opposite is true.

In an increasingly globalised world, the level of cross-border, cross-time zone, cross-cultural business being conducted has never been greater. Standards are crucial and DocuSign's platform runs in adherence with ISO 27001, the international best-practice framework for an information security management system.

As Mr Oliphant says: "Trust in the cloud today is absolutely paramount. Our reputation hinges on our ability to keep our customers' business information and data confidential. We therefore invest heavily to ensure we comply with the best-in-class IT security standards."

DocuSign has 225,000 corporate customers and 85 million users. On the back of the Law Society's guidance and the new EU regime for trust services under eIDAS, this is set to rise. More and more enterprises will trust DocuSign's platform to prepare, execute and manage their electronic transactions – and consign pen and paper to the past.

For more information please visit [www.docusign.com](http://www.docusign.com)

## DOCUSIGN IN NUMBERS



**62%**

of documents completed in less than 1 hour on the DocuSign global trust network



**85m+**

users in 188 countries



**300%**

average return on investment



**85k**

new users join the network every day



**61%**

improvement in productivity



**368m**

sheets of paper saved



**£25.80**

savings per document



**722m**

trees protected

Sources: Aragon Research/EDF/EPA/Forrester/IDC/Intellipap



DocuSign is much more than an e-signing platform – it allows you to prepare, execute and manage the life cycle of business transactions in a fully digitised environment

# Sending out for help is judged

Once mainly a cost-cutting exercise, legal process outsourcing is now an innovative business model which law firms and

**OUTSOURCING**  
EDWARD FENNELL

Within the past decade, legal process outsourcing has had a major impact on the way top law firms operate – except, you might say, on the things that really matter most about being a lawyer.

By applying the latest technology and harnessing the skills of legal process experts, outsourcing companies have relieved the burden on law firms from processing the vast amounts of due diligence, search and similar routine work.

This has allowed firms to focus on what they do best – applying their creative, analytical legal minds to the problems and priorities of the client.

The result has been transformational in the way law firms operate. Clients have become more focused on driving value from their law firms and will often not tolerate anything less than the optimal (or at least creative) way of delivering services.

As Nicola Stott, global managing director of Exigent, an outsourcing provider, points out: “The financial crisis and other economic pressures have meant that lawyers across the board – whether in firms or in-house corporate – are expected to do more for less.”

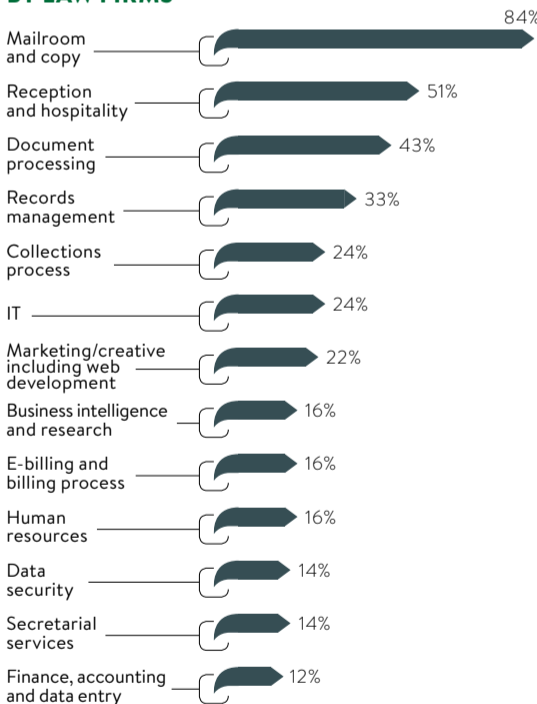
But this can raise deep questions about what it means to be lawyer and where the distinctive character of a firm is to be found. After all, the topic of the moment – thanks to Richard and Daniel Susskind’s book *The Future of the Professions* – is how far machines and artificial intelligence are going to take over. If lots of firms are using the same back-office services provided by outsourcing companies, where is the character of the firm to be found?

“It really comes down to a question of attitude and outlook,” says Ms Stott. “Firms can differentiate themselves by the way they adopt more



Head office of legal process outsourcing provider Exigent in Cape Town, South Africa, a popular location for outsourcing legal services

**TOP FUNCTIONS OUTSOURCED BY LAW FIRMS**



Source: Williams Lea/Sandpiper Partners 2015

innovative, flexible and cost-effective ways of working through alternative delivery models. Corporate clients want value; it’s all they talk about. Aligning legal tasks and activities with appropriately skilled and experienced people for a fair and reasonable price – without jeopardising the outcome for the client – speaks to value.”

So it is clear that the discussion about how far outsourcing services can go has still a long way to run. Bob Gogel, chief executive of outsourcing provider Integreon, draws comparisons with what has been happening in the financial services industry. As he points out, there is fierce rivalry between the banks over, for example, the provision of credit cards. Nonetheless, behind the scenes there is an enormous amount of co-operation through co-ownership of the agency which processes the transactions.

This prompts the challenge that Mr Gogel now lays down to law firms. In a nutshell, he is saying, put aside your rivalry over things that do not matter, such as your

billing systems for clients, and collaborate in developing a common interest structure which can act on behalf of a group.

“I would love to get together with, say, five of the big firms to develop something along these lines,” he says. Of course there are issues of security and confidentiality, but “Chinese walls”, restricting information flow, are already part and parcel of how legal outsourcers operate. The participating firms could then enjoy the benefits of scale or pass the price savings on to clients. But either way it would be a cheaper, more efficient way to act, says Mr Gogel. Indeed, it would be the logical conclusion of how to exploit optimally what legal outsourcing has to offer.

Whether the large law firms will pick up on this prospect remains to

be seen. But in the meantime there are still plenty of firms, especially medium-sized outfits, for whom the penny still has not dropped about the benefits of outsourcing.

“We know firms who are missing out on work because they are being slow to innovate in this area,” says Ms Stott. “General counsel are becoming increasingly assertive and saying to their legal providers, ‘You really have to consider these alternatives because the benefits are so clear – if you don’t, then we won’t be using you.’”

Ms Stott concedes that it is a “bit of a head scratch” for some law firms to take on board that these are the new rules of the game. “But that’s life. Things cannot go on as they have in the past. Those who don’t move with the times and the technology will just be left behind,” she warns.

A good example of this is the fulfilment of due diligence in a mergers and acquisitions (M&A) transaction. “We can confidently say that utilising alternative delivery models that combine smart technology with appropriately skilled people would save at least 50 per cent on due diligence costs without jeopardising quality,” says Ms Stott.

“Those who don’t move with the times and the technology will just be left behind”

One of the key reasons for this is that outsource providers are free of many of the financial obligations and overheads which hang heavy on law firms, elements such as the need for expensive offices, large public relations teams and very expensive staff. They are lean and highly focused with no need for the fancy trimmings.

What is remarkable, moreover, is the way a growing number of services are being added to the list. With its roots in activities such as



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# a success

in-house corporate teams should embrace

litigation support, document review and e-discovery, the offer now made by leading outsourcing providers extends to cover fields such as contract strategy and review, M&A transaction support, information governance, corporate compliance, as well as a range of other consultancy services.

Part of the reason for this is that in-house counsel, just as much as law firms, are now coming for their services. The reasons why are well exemplified by the growth in the appetite for a well-designed contract strategy.

“Contracts are negotiated with great care and enormous attention to detail, but once signed they are often simply put to one side and forgotten about,” says Ms Stott. It’s crazy really because an organisation’s contract portfolio is a very valuable asset; a potential gold mine in some cases with overlooked details such as price increase triggers. Where a large company has hundreds, maybe thousands, of contracts with a range of clients or providers, it can easily lose sight of critical details and dates.


“Visibility of and accessibility to key terms is essential for any kind of meaningful obligation management, not to mention the hidden

value or ticking bomb that could otherwise be missed. The technology is there to automate this process, but a contract strategy that includes a risk-based assessment to deal with the legacy contract portfolio is important. With all this key data at their fingertips, in-house counsel can deliver meaningful commercial metrics to their board,” she says.

From a general counsel’s perspective, this is manna from heaven. Nobody likes being caught out by nasty surprises and the possibility of generating additional income from existing contracts is very welcome at a time when in-house legal departments are expected to be profit producers, not just cost centres.

“Heads of legal now need to be able to show to their chief financial officers that they are contributing to the profitability of the business, not draining resources,” says Ms Stott.

Through the clever use of legal outsourcing, they can now achieve this either directly themselves or through the law firms they appoint. Legal outsourcing is not rocket science – in fact, it could be a no-brainer.

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## CASE STUDY: INTEGREGON AND RECOMMIND



When law firm Ashurst LLP acted for a financial services business in alleging that there had been negligence by an auditing company, it faced a demanding deadline to identify key documents from an enormous volume of material.

It turned for assistance to Integreon to provide as many as 80 legal reviewers for a process of linear review. It also brought in technology company Recommend to provide an e-discovery platform to apply advanced analytics and, in particular, predictive coding to ensure the deadline and disclosure requirements could be met.

Two workflows were then followed. The Integreon team, supervised by Ashurst’s lawyers, started reviewing documents and

the results of that review were then used to “train” the predictive coding technology to initiate a concurrent, analytics-driven, prioritised review.

With each iteration, the results of human review were used to refine the predictive coding engine’s training to improve the relevance of the next suggested document set and thereby increasing reviewer efficiency. In due course, as the presence of relevant documents in the unreviewed set fell to near zero, it became apparent that human review of the remaining documents was not worth the effort.

Throughout the review there was good co-operation between the law firm and its legal outsourcing suppliers. Recommend and Integreon’s data science and project management experts guided the Ashurst legal team with regard to technology, best practices and defensibility. Subsequently when the other side posed specific challenges, Recommend’s consultants supported the solicitors and barristers in their presentations to the court.

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# Litigation now has value worth investment

Large corporates are waking up to a new source of finance when there's no other money to fund a law suit

## LITIGATION FINANCE

RACHEL ROTHWELL

In the chrome and glass office of every general counsel in every major corporate, there will be two stacks of paper.

On the left is a pile of all the legal claims the company is defending – a mounting, teetering tower that must be constantly attended to, for fear that it will collapse and engulf the hapless lawyer.

On the right, another tall stack, but this one wears a layer of dust and only rarely is the GC's eye cast towards it. These are the potential claims that the company could be bringing against others; for breach of contract, copyright infringement and so forth.

But the claims are not without risk and require upfront cash from the legal budget already being drained by the defence litigation. The potential claims may be strong, but in their current state they have absolutely no value on the company's balance sheet.

Whether those towers of paper exist as a physical reality or simply in the mind's eye of the GC, the tension between the two types of claim is the same in every large business. Even where the head of legal actively wants to pursue claims, the barriers to doing so can be high.

Susan Dunn, head of litigation funding at Harbour, explains: "GCs often recount having the same conversation with their finance director. The GC tells the FD, 'I've got a great claim and we ought to bring it'. The FD has two questions, 'Can you guarantee that it will win and can you

guarantee that it will be within budget?' And of course the GC can't do either."

This is where litigation funding comes in. If the claim is a good one, a litigation funder will give a company the cash it needs upfront to bring it. If the case fails, the funder gets nothing. If it succeeds, the funder is paid handsomely from the damages.

Funding is not cheap because the funder has taken on all of the risk. But even where the funder claims a large slice of the pie, the client will still have realised some value from a case that it would not otherwise have brought.



It is recognising that the litigation has value – this is the next big mental shift

Ms Dunn continues: "When you get funders involved, you still can't guarantee that you'll win, although I do think that we are quite good at picking cases. But what you can guarantee is that if you lose, it will cost the client nothing."

"The client will still need to spend a lot of time on the case – even with funding, you can't avoid that. But it will avoid the uncomfortable conversation with the FD where he is saying, 'You told me this would only cost x amount'."

Litigation funding started out by providing a service for smaller companies that had strong claims, but



Burford Capital

no money to bring them. However, according to Ms Dunn, the dynamics have now shifted considerably. Whereas Harbour's first fund, set up in 2007, mainly financed claims for insolvent clients, she estimates that nearly a third of the clients of its third, most recent fund are "names that you would recognise" – banks, wealth funds and large listed entities.

"The GCs are really starting to get it now," she says. "It is a bit of a club, with GCs who will know each other, and once they start talking [about using litigation funding] they begin to think, perhaps we

Christopher Bogart, chief executive of funding giant Burford Capital, which has litigation finance commitments of around \$1 billion

should be doing that too. It is a real snowball effect."

Traditional funding involves funders closely weighing the merits of a particular case and deciding whether to invest in it. But the industry is both growing and evolving.

In April, funding giant Burford raised £100 million from a bonds issue on the London Stock Exchange – an example of the extent to which money is flowing into the sector. Burford, which now has litigation finance commitments of around \$1 billion, has largely moved away from the single case funding model. Indeed, in 2015, only 13 per cent of its new commitments related to single cases, while 63 per cent were portfolio deals, whereby it invests in a range of a firm's litigation.

Burford's managing director Nick Rowles-Davies explains that by funding a book of litigation, you can start to bring down the high costs the funding industry is often criticised for.

He says: "If you are funding a portfolio, the risk is lower because you are spreading that risk and you are unlikely to get it wrong on all of the cases. If you lose the first case, you will hopefully get it back on the next one. But if you start losing six or seven, then you are probably in the wrong business."

While portfolio funding has been around for a few years, 2016 has seen the concept taken a step further with some funders providing cash that can be used not just to bring litigation, but also to defend it or indeed to use for something else entirely.

Burford announced in January that it had provided \$45 million to a FTSE 20 company that could be used "either to relieve legal expense budget pressure or for corporate purposes unrelated to the litigation matters". The company in receipt of the investment has been widely reported as BT, though this is unconfirmed, and the deal gained considerable press interest.

Neil Purslow, chief investment officer at funder Therium, says reporting of the FTSE 20 deal has put litigation finance on the radar of GCs and finance directors.

"Last year we did a deal in which we provided financing for a company against a claim that it had. It did not use any of the money we gave it for that; it used it to do another transaction. So we provided it with venture capital," he says.

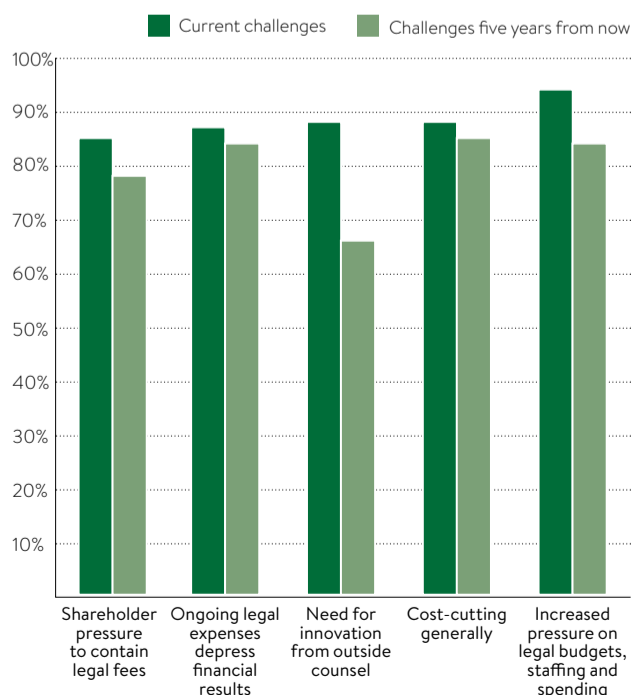
Mr Purslow explains that the firm in question was still under an obligation to bring the claim, so that the funder could be paid from the proceeds, but it carried the cost of the litigation itself.

"This is a more flexible way of funding. It breaks the link between the money funded and the costs of the litigation," he adds.

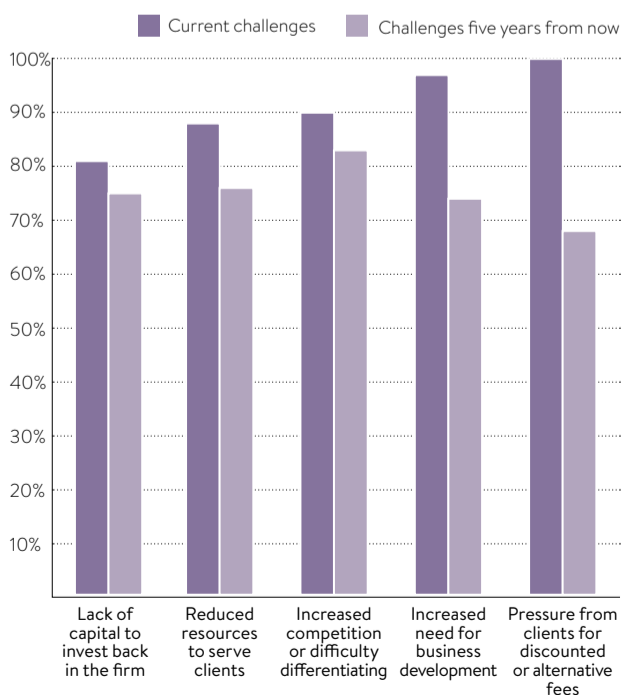
So the neglected pile of potential claims becomes an asset and one against which money can be raised.

"It is recognising that the litigation has value and it's about what you as a funder can give to the company against that value," Mr Purslow concludes. "This is the next big mental shift."

## CLIENTS' BIGGEST BUSINESS CHALLENGES



## FIRMS' BIGGEST BUSINESS CHALLENGES



Source: Burford Capital 2016

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COMMERCIAL FEATURE

# FUNDING ACCESS TO JUSTICE

*Litigation funding is opening the way for worthy claimants to seek legal redress where justice would otherwise be denied*

## WOODSFORD LITIGATION FUNDING

The decision to litigate or not can be a tough one. The merits of a case form only part of the deliberation. A potential claimant may lack the funds and thus be denied justice. Or they may possess the necessary resources, but regard the risk as too great.

Losing can be costly. High-profile cases, such as the action against RBS in which Herbert Smith Freehills increased its estimated fees from £42 million to more than £91 million, can provoke doubts in even the most confident claimants.

But now litigation funding is a recent development in English law, hailed as a solution to the obstacles facing worthy claimants.

Third-party investors fund the case on behalf of the claimant, either in whole or in part. If the claim is upheld, the funders take a share in the success. If the claim fails, the funders lose their investment and may be liable to pay a share of the defendant's costs. The model offers a route to justice for claimants too poorly funded or risk averse to pursue a claim.

The impact has been significant. Lord Neuberger, president of the Supreme Court, cites third-

party funding as one of the three revolutionary forces in law in the last decade, along with conditional fee arrangements and damage based agreements. In 2013, he stressed his support for the model, stating bluntly: "Where significant groups of citizens are financially unable to gain such access [to justice], one of the most important means by which inclusive societies prosper is missing or at best weakened."

It's not just the UK which is benefiting from the innovation. Multiple international jurisdictions are opening up to third-party funding and the results have been extremely encouraging. Australia led the way, and France, the Netherlands, Jersey and the United States are promoting the model as a vital route to dispute resolution.

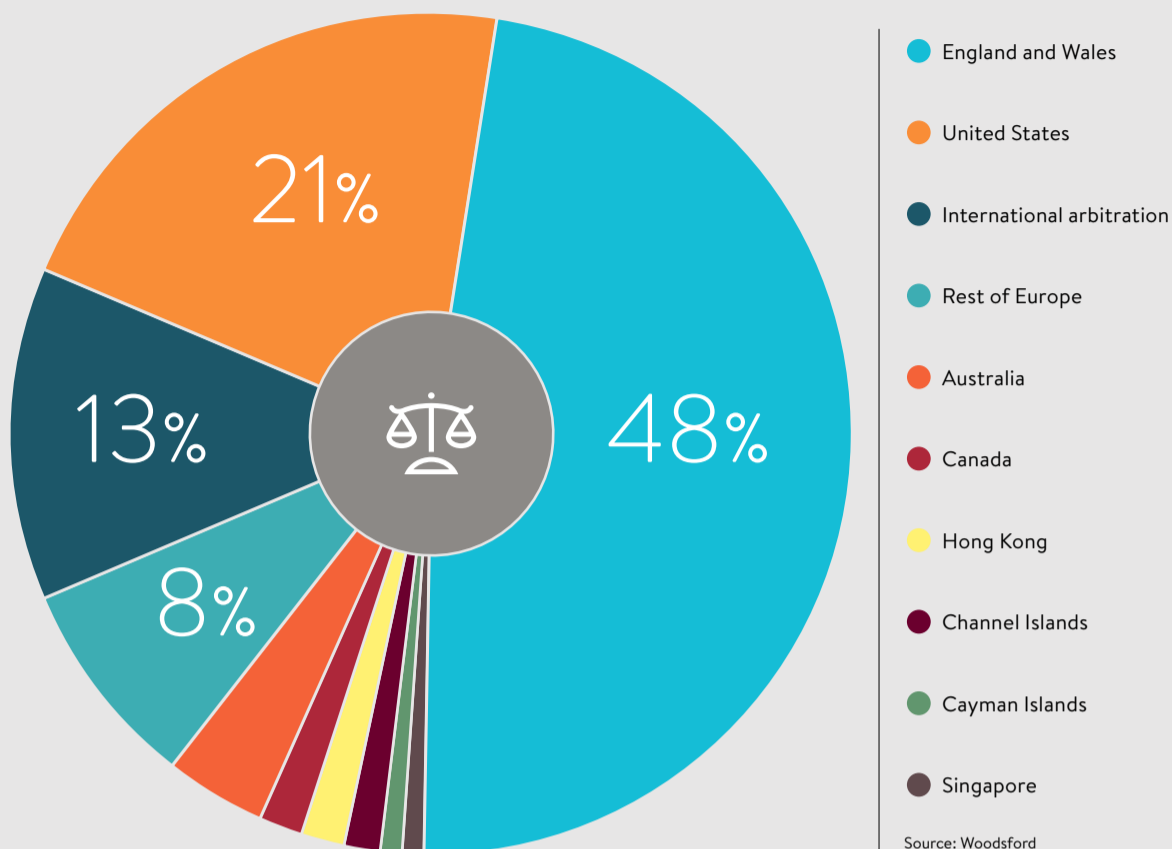
In just a few years the sector has gone from new to normal. A report by Freshfields on international arbitration remarked: "Alternative funding is here to stay and not just for small or cash-strapped claimants. Already this year we have seen news of an arrangement to provide litigation funding to a FTSE 20 company. This reflects our own experience of handling funded

claims – even large corporations are looking to third-party funding as a form of cash flow management. In 2016 we expect third-party funding to continue to move into the mainstream."

Part of the reason is the versatility of the model. Woodsford Litigation Funding, a pioneer in the sector and founder member of the Association of Litigation Funders, offers a basic access to justice model covering lawyers' fees and disbursements.

“We are a profit-making enterprise, but access to justice sits at the bedrock of what we do and is a principle ingrained in our business

TOP 10 JURISDICTIONS BY NUMBER OF FUNDING INQUIRIES



But it also offers nine other funding products. These include adverse costs risks protection, which gives claimants a contractual indemnity for costs in the event of an unsuccessful claim, or funding for an after-the-event insurance premium.

The merits of a case can be assessed as a standalone service from Woodsford. Its team of lawyers with many years of high-value litigation and arbitration experience, plus extensive network of contacts among lawyers, financial consultants, expert witnesses and arbitrators, can shed light on the most complex cases. If needed, Woodsford can introduce claimants to the right professionals to handle the case.

Class actions can be undertaken. Claimants and their lawyers can access funding in a variety of ways, including cash-flow funding and financing for portfolios of cases. Even traditional loans are negotiable.

Steven Friel, chief investment officer of Woodsford, says: "We are only six years old, but already we are well established in several domestic and international markets, funding cases across the UK, continental Europe, the US, Australia and beyond. We fund any type of high-value litigation or arbitration."

Woodsford can produce a long list of worthy victories, including helping a divorcing wife gain her rightful share of marital assets from a husband keen to shift assets away from her, a case against trustees mismanaging funds on behalf of the beneficiaries and support for a small European energy consultant with a \$12-million claim hit with a \$80-million tactical counterclaim. In each case the claimant would have been unable or unwilling to proceed

and would therefore have lost out without third-party help.

Crucially, the ethos of many investors is more than purely financial. As Mr Friel comments: "We are a profit-making enterprise, but access to justice sits at the bedrock of what we do and is a principle ingrained in our business by our chairman Yves Bonavero, who pursues access to justice and human rights interests in other ventures."

He refers to the Bonavero Institute of Human Rights at Oxford University, an initiative founded by Woodsford's Mr Bonavero and led by Baroness Helena Kennedy, a well-known champion of civil liberties and human rights. The institute aims to produce and deploy academic research to support the pursuit of justice worldwide.

This attitude has won over doubters. Certainly the fears that third-party funding would provoke a rash of spurious claims have proven false. Funders have no desire to back poor causes, not when their cash is at stake. As Lady Justice Gloster remarked when dismissing such concerns in 2014: "After all, the aim of professional litigation funders is to make a profit out of the litigation, not a loss; they don't want to lose their money, let alone be saddled with a third-party costs order against them."

Claimants deserve justice no matter what their ability to pay or their appetite for litigation risk. Third-party funding has proved itself a critical tool for wronged parties to take action. It is easy to see why claimants, lawyers and judges are so enthusiastic in their support for it.

To find out more visit [woodsfordlitigationfunding.com](http://woodsfordlitigationfunding.com)

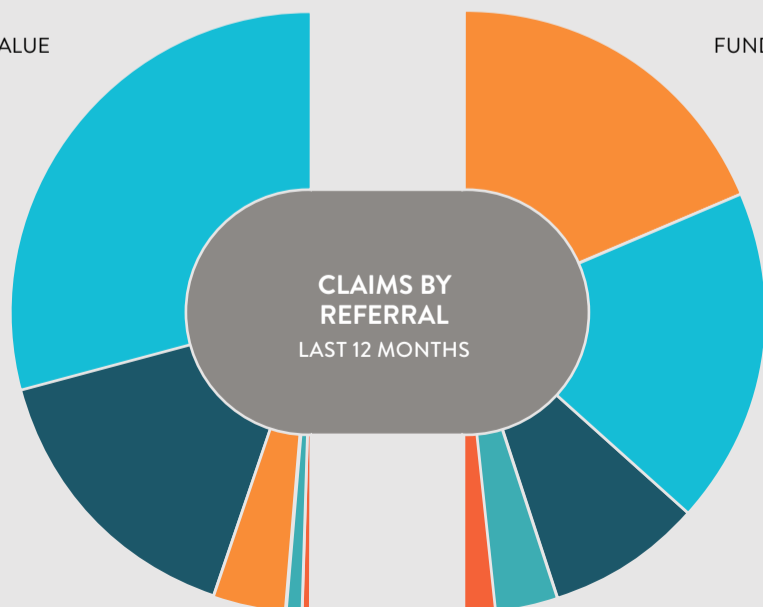
ESTIMATED CLAIM VALUE



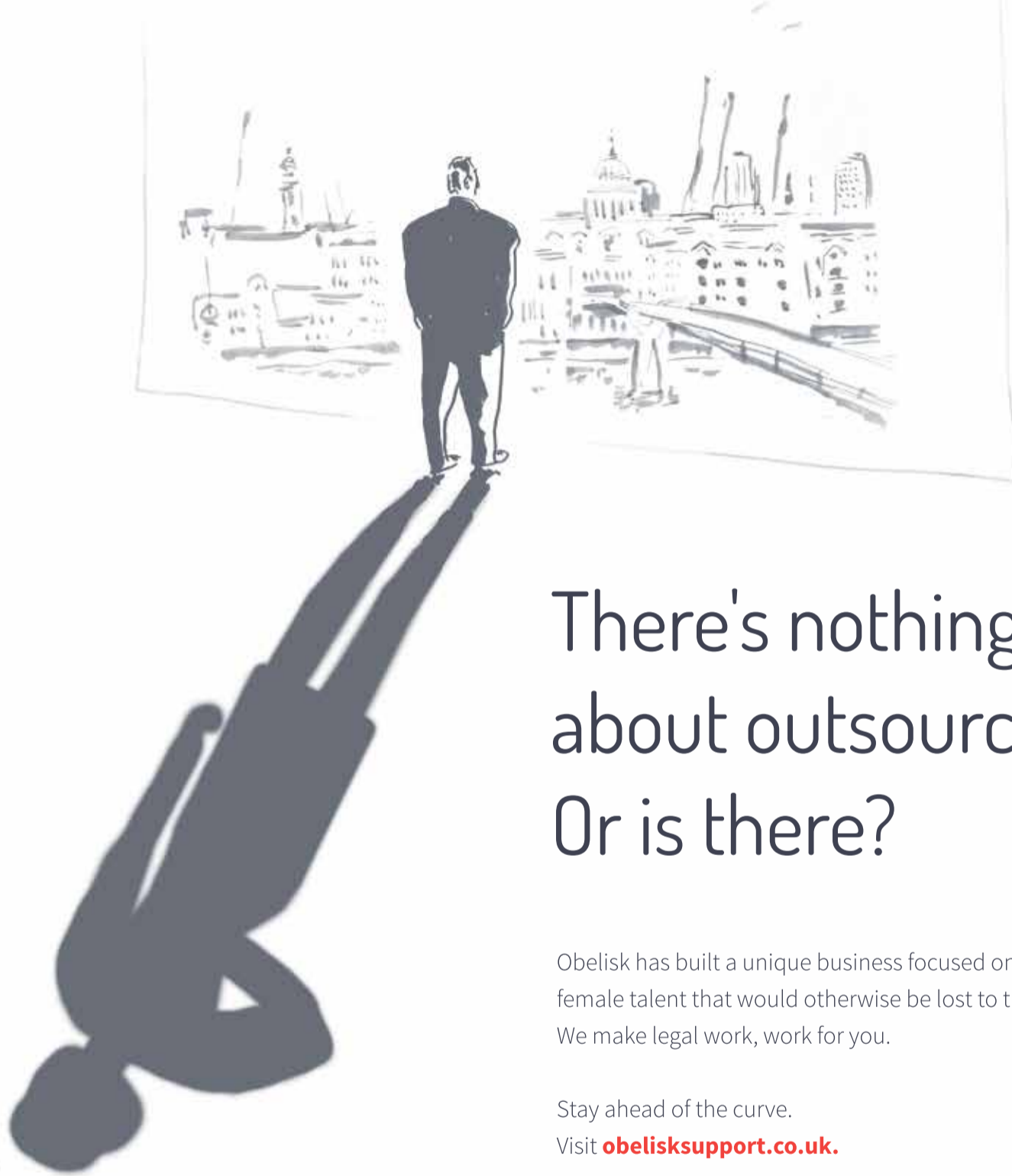
FUNDING REQUIREMENT



CLAIMS BY REFERRAL  
LAST 12 MONTHS



Source: Woodsford



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