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A world without lawyers



People enjoy imagining a world without lawyers. The best-read story in the five-year history of *Legal Futures* was based on a report which predicted that the spread of artificial intelligence (AI) could trigger the "structural collapse" of law firms by 2030. Workplace robots, Jomati Consultants predicted, would do the work of a "dozen low-level associates" and would not get tired or ask for pay rises.

So what is happening now? In this issue Dan Bindman investigates how advanced data processing and contract analysis have delivered some spectacular results. Matthew Whalley, who runs the legal risk and transformation group at Berwin Leighton Paisner, is using an AI tool in the real estate department to process "unbelievable volumes of legal data". Meanwhile a 'contract analysis platform' called Kira is reported to have saved 5,000 human work hours in one multi-national transaction.

Another area of Al is the development of virtual assistants, which Karl Chapman, chief executive of Riverview Law, believes could lead to a new breed of 'knowledge worker', who will not be a lawyer or accountant. Mr Chapman argues that as Western societies "cannot afford the professional services that are out there any more", so the conventional supply chain has to change.

Money was certainly one of the factors which led the Dutch government to set up Europe's first online dispute resolution (ODR) service for divorce. The first results of the Rechtwijzer project are coming through, as we explore in this issue. Experience so far shows that the majority of cases are being settled online, without the need for either mediation or adjudication.

Meanwhile, on this side of the Channel, the Lord Chief Justice, Lord Thomas has been arguing, in the wake of the Susskind report on ODR, that many of our local courts may no longer be needed. This must be music to the ears of the Ministry of Justice, which is determined to shut as many as possible. However, Professor Roger Smith questions how realistic the predictions are, given the very limited progress made in this jurisdiction in improving court IT. "We're in the Stone Age and we want to be catapulted into the future," he says.

One man with his eye on the future more than most is the aforementioned Professor Richard Susskind. Neil Rose evaluates the radical predictions he and his son make about the advance of technology in their new book, *The Future of the Professions*.

Nonetheless, we are a long way from a world without lawyers, both in the gleaming towers of the City and in the high streets of our inner cities and towns. However, developments in technology could potentially liberate lawyers from much of the routine slog in commercial work while virtual assistants could theoretically help those who cannot currently afford a lawyer.

The race has already started to be the law firm that makes best use of new Al-based technology. As humans retreat from more routine legal processes, rather than becoming extinct, lawyers may even become more popular.

Nick Hilborne Deputy Editor, *Legal Futures*

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Al: the truth behind the hype

Do the latest developments in Al spell "universal doom and gloom" for lawyers or could they be liberated to focus on tactics and strategy? **Dan Bindman** investigates

Whether in Star Wars or Star Trek, or the books of Arthur C Clarke and Philip K Dick, the notion of artificial intelligence (AI) has long captivated science fiction fans. Yet if we are to believe the hype, AI has arrived, and its application to the practice of law is an unstoppable force, paving the way for a world where the roles of lawyers in many cases shrink to nothing.

One view of the profession is that lawyers have sat back and enjoyed their monopoly for centuries, and are only now being dragged kicking and screaming to a point where a convergence of market, political, and technological forces make it impossible to continue as they were.

While litigation might be the last bastion to fall, the argument goes, everything short of it is up for grabs. In the long run, even litigation could be rendered obsolete by tools which can accurately predict the winners and losers in advance, making settlement the only smart option.

Augmented intelligence

That AI is now here is partially true. What is actually happening is complex and involves parallel developments where law firms are adopting existing technologies and innovating under pressure from clients and market competition, and at the same time, the capabilities of new 'game changer' IT-based solutions are moving apace, their development spurred on by the growth in take-up across the legal and other professional services industries.

One thing increasingly questioned is the use of the terminology 'Al' to cover the range of advanced IT applications available, which while 'smart', cannot really be called 'artificially intelligent'. According to Kyla Moran, senior consultant on IBM's Watson Industry Leadership team, instead 'augmented intelligence' can be used to describe cognitive computing, where the technology is guided by human experts. Conveniently, the acronym Al can be applied in both instances.

Legal IT commentator Charles Christian, who has written on the subject for more than 35 years, agrees that the phrase 'artificial intelligence' is "stretching it a bit. It's really taking automation on to the next step. If you like, it's smart document processing on a grand scale".

In this sense, today's legal AI, based on machine learning and techniques such as 'predictive big data analytics', is a long way from the sort of intelligent, self-aware machines that Bill Gates and Professor Stephen Hawking have warned could present a threat to humanity. Known as 'strong AI', or 'full AI', its emergence is currently estimated to be anything from five years to 100 years away.

In terms of legal market changes, since the 1990s Professor Richard Susskind has been anticipating the rise of the 'legal knowledge worker', whose skills are as much IT-based as law-based. There is every reason to believe this is happening and that the trend will continue.

Meeting legal need

The good news is that AI and associated technologies do not necessarily spell universal doom and gloom for the legal profession, since although they will likely lead to redundancies in some sectors, they might also assist lawyers to expand their services, supply them more cheaply, and create new, different kinds of employment for legal professionals.

Al could help bring legal services to a far wider market, meeting proven legal need and improving access to justice, even for segments of the population that have been excluded up continued on page 4



Karl Chapman



Noah Waisberg

to now. If this Al-driven expansion does occur, it might help mitigate the impact of the "structural revolution, some might say a structural collapse" in the economic model of law firms that was last year predicted in a report by Jomati Consultants.

There is little doubt that the use of legal AI is on the rise among large and growing law firms. Among other developments, global law firm Dentons has invested in the IBM Watson-based start-up ROSS Intelligence; Riverview Law has partnered with Liverpool University to benefit from its computing department's AI expertise and bought a US knowledge automation business, CliXLEX; and Clifford Chance is reportedly evaluating a range of AI technologies.

The benefits of existing AI tools in document-heavy areas of law, such as e-disclosure and contract analysis, are obvious. Matthew Whalley, Berwin Leighton Paisner's head of legal risk consultancy, has brought technology developed by unstructured data processing expert RAVN Systems into the real estate department and expects AI to be rolled out across other areas of the City firm's work within the next three years. He says the technology can "process unbelievable volumes of legal data" and "perform legal analytics in excess of 10 million times faster than a human being".

But he cautions that "the technology, and our ability to harness its potential, is in its infancy", adding that its application is "limited currently to specific tranches of work within a broader legal process. It will take time and commitment for firms to understand how to apply the technology to good effect, and integrate it into their DNA".

Further insight into real world applications of Al comes from a case study of California law firm Elevate's use of Kira – machine-learning Al known as a 'contract analysis platform', developed by the company formerly known as Diligence Engine. Elevate, a 250-lawyer firm with offices in the US, the UK, Australia and the Philippines, deployed Kira for a multilingual contract review in a multibillion dollar transaction for a Fortune 500 company.

Elevate reported that Kira saved at least \$500,000 (£326,000) and 5,000 work hours from the client's bill. First it identified documents that were not contracts, and which contracts were in foreign languages, reducing the total number of PDFs by 85%. Ultimately, it shrank the required human review time from 45 minutes to 20 minutes per document, a reduction of 55.5%.

Making sense of data

The AI products currently generating most headlines are either these purpose-built tools to help lawyers focus their efforts only where they are needed out of big pools of documents; expert systems such as that built by Neota Logic, aimed at helping non-programmers to automate their business processes; and general purpose cross-industry products, principally based on Watson, which allow users to ask natural-language questions and rank the answers by confidence level.

Noah Waisberg, co-founder and chief executive of Kira Systems, says that no single legal Al product has so far emerged that can successfully meet all needs. He forecasts the situation "will continue... until a general purpose AI is developed that can match or beat narrower AIs on their specific optimal tasks, it will be more powerful to use AIs tailored to their specific tasks".

An area of AI related to the natural language capabilities of Watson is virtual assistants, which has the potential to transform areas of law by enabling non-qualified staff to perform complex legal tasks. In the non-legal world, digital assistants such as Apple's Siri and Microsoft's Cortana, along with Google Now and Alexa, are joined by legal research assistant Judicata, which claims to be "turning unstructured case law into highly structured data", so helping lawyers "make sense of massive amounts of information, enabling better legal decision-making".

According to Riverview Law, which has invested heavily in developing virtual assistants, the technology will "improve the quality and speed of lawyers' and paralegal work while freeing them to focus on key tactical and strategic matters". Users with basic word processing skills and given only limited training will be able "to create, automate, maintain and evolve complex end-to-end workflows and processes for all areas of legal, compliance, risk and related activity".

Riverview's CEO, Karl Chapman, says: "The race is on to create virtual assistants for the knowledge worker. The knowledge worker is anyone who can use these tools effectively but they won't be a qualified lawyer, they won't be a qualified accountant".

While major developers of the technology have focused on the global healthcare market, which presents universal problems to be solved – "prostate cancer is the same disease everywhere" – with legal matters there are jurisdictional and other complexities. However, he predicts "these things will get solved and when they do, the existing professions will have to restructure dramatically".

The impact of technology

Key to affordable justice

One thing that will benefit greatly from AI and virtual assistants technology, says Mr Chapman, is access to justice. The costs savings involved in either personal digital assistants providing direct access to sophisticated legal advice, or perhaps non-qualified advisers supported by technology acting as a "gateway" to that advice, will make legal services accessible to a far wider cross-section of the population.

He reveals that as part of Riverview's community projects, the firm has made its virtual assistants technology available to several access to justice organisations. "Quite frankly, we as Western societies cannot afford the professional services that are out there anymore... we've got to try and find a way of changing the supply chain because actually we can't afford it", he says.

Another evangelist for AI providing a low-cost solution to high-cost lawyering is Jean O'Grady, director of research services and libraries of the US arm of DLA Piper. She identifies, as an "urgent" priority, the development of "tools which close the justice gap by helping the poor and lower middle-class citizens by providing diagnostic tools to help them avoid common legal problems, as well as tools which enable self-service legal advocacy. Al applied to court systems could speed the flow of justice".



Matthew Whalley

Fewer staff, more law

The adoption of AI will inevitably mean job losses in some sectors currently occupied by legal professionals. "I think where you will see a squeeze in the traditional law firm structure is that you'll need fewer support staff doing fairly menial tasks, and in many firms you'll also see the middle-ranking fee-earners getting squeezed out", says Mr Christian, observing changes in the insurance industry in which specialist brokers have been replaced by clerical staff backed by technology.

But AI might also enable lawyers to do more law, says Mr Waisberg. Anomaly detection software could help them uncover risks currently lurking in the bulk of company contracts that go unreviewed in current due diligence projects "so that they can cover more ground – not necessarily spending less time overall, but focusing more where they can make an impact". All could also equip firms to offer clients, for instance, new contract and risk management solutions, he suggests.

Ms O'Grady agrees that AI tools will help boost the capacity of lawyers to "raise the professional bar and work at a higher level of insight and effectiveness", and perhaps "expose new insights and then make it possible for lawyers to ask new questions".

Andrew Arruda, co-founder of Watson-based ROSS, technology it dubs the "world's first artificially intelligent attorney", argues that AI is liberating for lawyers, relieving them of the mind-numbing aspects of their work: "With machine learning, computers are learning to understand our language, enabling them to do routine tasks like legal research or document review that require reading comprehension, that clients hate paying a junior lawyer to do.

"Freed from such humdrum activities, lawyers have the opportunity to be more creative and value add, using their empathy and intellect to come up with the best solutions for their client's unique problem."

Where legal AI could go in future, and how fast, is the multi-billion pound question. Understandably, nobody wants to put a timeline on how quickly the technology will develop, but most agree that its growing adoption by law firms will serve to accelerate its evolution, perhaps leading to a 'critical mass' being reached where no law firm will contemplate even its short-term future without incorporating intelligent technology of some sort.

Karl Chapman envisages that future uses for AI could include "self-populating and self-contracting contracts", through to tools for general counsel that estimate with accuracy "should I contest this?", allowing them to make a recommendation on litigation long before engaging a law firm.

Another idea comes from DLA's Ms O'Grady: "A great AI application would be for AI to expose when data has been tampered with – self diagnosing data corruption – so changes have signatures and time-stamps."

The application of cutting-edge technologies to the law is exciting, not least because law firms have been so slow to relinquish lucrative, but ultimately inefficient, ways of delivering legal services. Structural changes, such as the alternative business structures brought about by the Legal Services Act, accompanied by rising client demands and expectations, and the presence of advanced technologies throughout people's lives, are combining to make change irresistible.

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Online and in court

Online dispute resolution has plenty of friends, but can it fill the gap left by legal aid cuts and court closures?

Nick Hilborne investigates

Everyone likes the idea of online dispute resolution (ODR). Earlier this year one of the most senior judges in the land, Master of the Rolls Lord Dyson, went so far as praising a French ODR website and saying he wished there was something similar here.

He described how Demanderjustice.com provided an e-filing service for litigants-in-person, enabling people to resolve their disputes through ODR, but if that did not succeed, it could create and file electronically the court documents necessary to start a claim.

Earlier in the year, Lord Dyson had given a warm welcome to a report by a Civil Justice Council advisory group, chaired by Professor Richard Susskind, IT adviser to the Lord Chief Justice, which said ODR would increase access to justice and streamline the court process. The report recommended the setting-up of a new HM Online Court for claims under £25,000 and a three-step process of dispute avoidance through online self-help, dispute containment with the help of experienced facilitators, and dispute resolution with the involvement of professional judges.

The Lord Chief Justice, Lord Thomas, referred to the report in a speech on the legacy of Magna Carta made in Auckland, New Zealand, in September. He said the judiciary was "considering the introduction of ODR through an online court" and although initial development had centred on small civil claims, "many take the view that such a system can work for most family disputes and many types of civil case".

Lord Thomas said the use of online facilitators, rather than judges, was "entirely consistent" with Magna Carta, and that insisting on the "very high level of qualification, skill and experience which our current judiciary provides for all the tasks it currently performs comes at a cost that impedes access to justice."

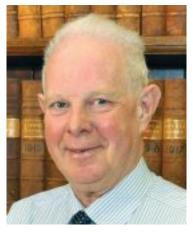
He added that work had started on the creation of a system which would "remove certain judicial work from judges altogether and enable many cases to be dealt with by procedures which can function well, even if the parties do not have lawyers."

Spur of interest

The Dutch have led the way in Europe in the practical application of ODR, with the Rechtwijzer dispute resolution platform. Rechtwijzer describes itself as "the first ODR platform for difficult problems such as divorce and separation, landlord-tenant disputes and employment disputes". The platform was designed and built by Modria. Based in California and India, Modria was set up by Colin Rule and Chittu Nagarajan, who developed ODR systems for eBay and PayPal.

Michael Lind, a former managing director of family and commercial mediation service the ADR Group, is general manager of Modria.com for Europe and Africa. He says that along with the Dutch platform, Modria has designed and built another for British Columbia in Canada. Mr Lind believes that although the ODR space had "evolved very slowly over the last few years", now, partly because of the Susskind report, there is "a spur of interest and momentum".

On Rechtwijzer, he says: "The rationale behind it was very interesting. With shrinking legal aid budgets around the world, the Dutch wanted a modern, first-class service with less cost." He says some lawyers are still afraid of ODR. "It's not career or life-threatening. ODR can help by sifting out cases that shouldn't be in the court system. If you can settle a case online, isn't that good for everyone? ODR is not just about e-commerce and transactional disputes. There are opportunities for continued on page 8



Lord Thomas



Andrea Coomber

expansion into core legal processes.

"Personal injury cases are already processed through an online platform. The case management system runs everything – what it doesn't do is have resolution processes built into it. The next stage is to say: 'What does the future look like for ODR?' There is a degree of scepticism, with lawyers suggesting that technology is going to take away their jobs. At the moment all ODR is saying to lawyers is 'how can we use your excellent skills in a changing environment?'"

Professor Roger Smith, a former director of both the Legal Action Group and JUSTICE, now carries out international research on the future of legal services, human rights and access to justice. "We are still at the very beginnings of ODR," he says. "I am, broadly speaking, a supporter if it's sensitively developed. If we are closing court buildings, as we are, ODR provides a way some people at least can obtain access to justice.

"It is right that the judiciary should be bending their minds to how it could be delivered. We are in a situation where we can't even file electronically at the moment. The introduction of this on its own would be a handy development for lawyers and litigants in person."

Professor Smith says step two would involve taking some of the "intermediate" measures that have already been taken in criminal litigation. "Use of video would be massive step for clients, though a rather small one for mankind. Prisoners in criminal cases can appear by Skype in hearings related to bail. Because of the financial savings, criminal courts are ahead in video."

Step three, the professor says, would "potentially be ODR", with the big jump being from informal mediations to the formal resolution structure. Asked whether the Susskind report would be a 'game changer', he replies: "Is it likely to be a game changer by itself? No. It depends on the underlying circumstances. The future of Richard's report is to be seen. I think it will be the way forward. Whether the government is prepared to put the money into it remains to be seen.

"We're in the Stone Age and we want to be catapulted into the future. You could argue just for electronic filing. It is important not to be too ambitious. There is a question too over finality. You could offer ODR or a physical hearing, with a right to appeal. I am cautious about moving directly to ODR. It would be difficult if there were disputes over the credibility of evidence. It's a big step to move to a binding jurisdiction."

Early results

Professor Smith is working on a long-term project the Legal Education Foundation on the digital delivery of legal services to people on low incomes. He says England and Wales would be well advised to learn lessons from Canada.

In a summer update for the professor's project, Shannon Salter, chair of the Civil Resolution Tribunal (CRT), based in Victoria, said that when it opens in January 2016, the CRT will be "the first online tribunal in Canada and one of the first in the world". The CRT will deal with small claims and what the Canadians call 'strata disputes' – disputes over the common parts in shared blocks of flats. Ms Salter said that in May this year, the Civil Resolution Tribunal Amendment Act received Royal Assent, allowing the CRT to become mandatory for these claims.

The front-end of the CRT is a 'Solution Explorer', described as "the tool that will deliver expert justice and dispute resolution guidance" directly to the public. PwC is building both the Explorer and the CRT dispute resolution software. Since the CRT's website was launched last year, it has generated close to 17,000 hits and hundreds of email queries.

An update on the progress of the Rechtwijzer divorce and separation platform said that, as of July this year, 148 people had "initiated negotiations", with 53 cases "finalised" and a further 16 finalised through the court process where this is mandatory, for example where children are involved. The average time taken for the full process on Rechtwijzer, from the moment the initiator invited their partner to join the system until the reviewer approved all the agreements made by the parties, was 45 days.

Very few cases have gone through to mediation or adjudication – four and one respectively. Corry van Zeeland, head of the Justice Innovation Lab at The Hague Institute for the Internationalisation of Law, suggested in the review that this could either be because users needed to pay extra for these services or because their expectations of reviewers extended beyond the roles of "checking finished agreements on legal validity, balance and sustainability".

Ms van Zeeland went on: "Users are very satisfied with Rechtwijzer when it comes to working together in their own time and pace; they are less satisfied with the time it takes to have their case

The impact of technology

reviewed. Users tend to postpone decisions on agreements to the review phase, expecting more substantive advice from reviewers. This apparent mismatch in service expectations and service delivery, and the under-use of mediation and adjudication services, have prompted us to reconsider the package of services, with a likely addition of early neutral advice."

Lagging behind

Andrea Coomber, director of JUSTICE, points to another scheme as an example of good practice, Law Access New South Wales, which she describes as "a one-stop shop for legal services", all designed around an accessible website. The site provides information and dispute avoidance, but not resolution.

Ms Coomber says she was "very pleased" that the Lord Chief Justice has recognised that the situation in England and Wales needed to change, and the status quo was no longer acceptable. "We're lagging horribly behind," she says. "There has been a lack of investment, not just by this government, in court IT. They have not recognised the potential and put their hands in their pockets to pay for it."

Ms Coomber says she anticipated that the JUSTICE report Delivering Justice in an Age of Austerity, and its plan for the introduction of new primary dispute officers to be referred to as 'registrars', would be met with criticism and concern. "I had expected shrieks of horror from the profession and the district judges, but there weren't any," she says.

"They recognised we have a problem and our system is too complicated to navigate around without a lawyer. It's not just about LASPO, but about ordinary people of moderate means. Litigation is a difficult, stressful and unpleasant thing. The system of registrars would dispense with lots of cases. The first people many litigants speak to is a district judge, who often tells them there is nothing in their case. They could have been told this much earlier."

Referring to the government's recent consultation on court closures, Ms Coomber says: "If we proceed with ODR, the requirements of the court estate are changed." She adds that JUSTICE is currently working on another report, for publication in March next year, looking more broadly at the future of the court estate.

Graham Ross is a solicitor and mediator, who specialises in resolving shareholder disputes, a role he combines with head of Modria's European advisory board. A member of the Civil Justice Council group which produced the Susskind report, Mr Ross says: "Rather than seeing the courts as buildings, we would like to rebrand them as portals to dispute resolution or dispute resolution hubs." He describes the Susskind report as "just the first" and notes that justice secretary Michael Gove referred to ODR in his first speech in the role.

Mr Ross is equally positive about the new European ADR directive, implemented on 1 October, which he describes as probably "the first law in the world to embrace ODR and require businesses with disputes to promote it". Under the directive, businesses must point consumers to certified providers of alternative dispute resolution which operate online. From next year businesses will also have to include on its website a link to a special European Commission website that will direct dissatisfied customers to an approved ADR provider.

Mr Ross stresses that although businesses must say whether or not they will participate in a form of ADR, participation itself is not compulsory - a decision he regards as a big mistake. "Any member state could pass legislation making participation compulsory. If businesses want it, they could oblige buyers to participate. The danger is that if ODR is non-mandatory, and if businesses don't participate when they are told it's a good thing, then the public will distrust it. There is an opportunity to advance ODR through the directive and a risk it will be damaged."



Professor Roger Smith

How HM Online Court could work

As recommended by the Civil Justice Council advisory group for appropriate sub-£25,000 civil, family and tribunal cases:

Tier 1 – dispute avaidance. Online evaluation of the problem with the support of interactive aids and information services. This would be a support of interactive aids and information services. This would be a support of interactive aids and information services.

Tier 1 – dispute avoidance. Online evaluation of the problem with the support of interactive aids and information services. This would help people diagnose their issues and identify the best way of resolving them.

Tier 2 – dispute containment. Online facilitation, in which trained, experienced facilitators "bring an objective eye to the problem and try to help the parties reach agreement on resolving the issue". There would also be some "automated negotiation", or blind bidding. Tier 3 – dispute resolution. If not resolved in the first two stages, professional judges would decide suitable cases online, largely on the basis of papers received electronically, but with an option of telephone hearings. The decisions would be as binding, enforceable and appealable as any other court rulings.

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The human touch

When does technology go too far, leaving the client in the wilderness and how can a personal service be delivered when there is such huge pressure on costs? **Dan Bindman** finds out

The tectonic plates of legal practice are heading for a dramatic collision, and a tsunami of professional negligence litigation may follow. As the commoditisation of legal services and an increasing adoption of IT meets a fixed-fee environment in which margins are tight, proper customer service could suffer if solicitors chase the bottom line.

This is one possible outcome of the growing tension between law firms becoming technology enabled and being able to deal with matters in bulk, especially in personal injury cases, yet still needing to retain a personal, 'traditional' service.

The problem might become more acute if the advice of Geoff Wild, the pioneering solicitor who is director of governance and law at Kent County Council, is followed without also attending to the fundamentals. His view is that lawyers must "wake up to the fact that they need to rapidly become digital businesses that happen to do law, rather than legal businesses that use technology", or "they will very soon face extinction".

He explains: "Eighty per cent of the population already devise means of solving their legal problems without going to see a lawyer. Increasingly, they do this through self-help access to readily available information online, telephonically, or through portals, blogs or cloud computing. Easy access to legal answers on the internet is changing how individuals and organisations use lawyers."

Mr Wild is not alone in predicting that more legal services will be delivered remotely in the future, enhancing the risk that clients could be let down as margins are squeezed. Legal Futures reported in February that Neville Eisenberg, senior partner of Berwin Leighton Paisner, said that there would soon be much more 'client self-service', including "services available entirely through online services without having to interact with human beings".

Low tolerance

There is evidence that the courts will not tolerate firms placing their bottom line before their duty to clients, whatever the economic realities in which they operate. In *Procter v Raleys* [2015] EWCA Civ 400, an appeal against a ruling that Yorkshire firm Raleys had been negligent by failing to conduct either a meeting or a telephone conversation with its client, the Court of Appeal made it clear it agreed with HH Judge Gosnell in the Leeds County Court that it had.

Mr Procter, a miner who developed vibration white finger after working in Yorkshire collieries for 18 years, claimed that if Raleys had properly advised him about the government's compensation scheme, he would have made an additional claim for 'services' required as a consequence of his disability, and been £11,079 better off. Raleys argued that he had been properly advised.

But HHJ Gosnall upheld his claim and awarded damages of 50% of the claimed amount, saying it was the firm's commodifised approach to miners' compensation cases, "involving as it did, the extensive use of questionnaires and standardised letters with very little personal contact with the client", that caused the problem.

In the Court of Appeal, Lord Justice Tomlinson recorded that Raleys' counsel "drew to our attention the difficulties posed for solicitors in modern conditions, where financial constraints may require them to 'commoditise' their advice to potential claimants".

continued on page 12



Geoff Wild



David Bott

Dismissing the appeal, he continued: "Whatever may be the practical and economic constraints in conducting face-to-face meetings or telephone discussions with clients in claims handling of this nature", there had been opportunities in the case to give "a straightforward exposition of the circumstances in which a claim could be made, and to follow up the implications of such relevant information as the client had given".

The judge concluded: "It is not asking much of a solicitor in such circumstances to make sure that his client understands the opportunity apparently being passed up."

Under pressure

It seems likely that a crunch is approaching, where solicitors are under pressure to make money in an increasingly competitive market, where profits are constrained, and the temptation to buy leads from claims farmers rather than create their own becomes irresistible.

At worst, firms which have done so without investing in the necessary staff training, could be sitting on a 'toxic' caseload that will have implications not just for their businesses, but, more widely, for the cost of indemnity insurance for all solicitors. There is no suggestion that this is what happened with Raleys.

Lesley Graves, the founder and managing director of Citadel Law, a specialist PI consulting law firm, who audits law firms for a living, has little doubt there are those for whom it is only a matter of time before poor case handling and corner-cutting is revealed. For them, forgetting that people who have been injured at work or in a road traffic accident react differently to bodily injury will ultimately prove costly, she says.

"For a very long time law firms without any particular expertise in personal injury have made money despite themselves, in spite of their failings, and what's happened is a perfect storm of fixed recoverable costs, the non-recovery of success fees and ATE premiums... and law firms buying in work because they have not developed their own skills to generate work themselves."

She accepts that process is an essential part of running a PI caseload, but says large firms like Irwin Mitchell have tuned their operations perfectly in terms of commoditisation: "They make sure they have not lost the human touch, even though the firm has scaled up massively. They know exactly when to do the human bit and when to do the process."

Ms Graves recommends that firms whose disease cases are not showing signs of yielding cash in settlements, say, two to three years after they started buying them in, should act quickly to examine the way they were handled before they present indemnity and other risks. "It invariably means that the people on the ground dealing with them do not have the skills or the expertise to turn them into winning claims," she says.

Finding the bit in the middle

Finding the correct balance between 'mechanised' and 'bespoke' legal services is the essence of running an efficient business, says David Bott, senior partner of the alternative business structure Bott & Co Solicitors, which recovers almost £30m in compensation each year. As well as PI, the firm has a headline-making flight delay compensation service which handles 10,000 cases a year, and a holiday claims service.

Although he describes the flight delay offering as "hugely automated" – which it needs to be given that the claims fall in the non-costs-bearing small claims jurisdiction – lawyers are heavily involved throughout, he says, adding: "It's about finding that bit in the middle which fulfils your compliance and best advice [obligations] but also gives the customer the services in a way that they want.

"If you ended up with 100% bespoke, where you drove to each individual client and took every detail from them... you'd have to question whether under the new fixed-fee regime you would make any profit at all. But if you were 100% mechanised, you would equally have to question your ability to provide best advice when you've decided before you've even met the client, the pathway of that particular claim.

"The skill is to have the right people doing the right things at the right times... What we are trying to achieve here is 'mass bespoke' in the sense that you're doing it on a wide scale, but with IT, and within the compliance regime, each person feels there has been an individualised process."

Jeremy Brooke, co-founder of Sheffield firm Simpson Sissons & Brooke, agrees that in the

The impact of technology

Procter case, the Court of Appeal was critical of neither the use of technology nor the use of standard letters, per se. In his view, offering a cut-down service to consumers who cannot pay for more is acceptable, if also accompanied by clear warnings as to what they are buying.

"There are circumstances where a consumer may not be able to afford full-blown legal advice on, say, a will, and simply cannot afford anything other than perhaps a straightforward [internet-only] approach. In those circumstances, if that's all the consumer can afford and if the consumer is made aware that the document may not be suitable for purpose, and makes an informed decision to go ahead anyway, then I think there is a need for it."

However, there are strict limits. "With the right consumer, in the right legal service area, there is a place for a wholly-automated service. But in litigation I fail to see how there could ever be a scenario where you don't need some conversations with your clients about the process."

In general, he says: "It's about making sure that you use technology to improve the service that you give to customers, rather than use it to cut corners and provide a worse service but improve your margins."

He continues: "It's about informed decisions and informed choices. This is where the system has to be the servant and not the master. It's there to serve a purpose, to put efficiency into the system which ought to have benefits for the client as well as to the lawyer but not to drive the thing regardless. At the end of the day we are duty bound to do our best for the client. It is the whole purpose of using technology."

Lesley Graves

The human touch

The solicitor who acted for Andrew Procter, Rob Godfrey of Mellor Hargreaves Solicitors in Oldham, says: "I think *Procter* showed that when you're looking at claimants' responses to, in particular, standard letters, you need to be cross-referencing them to the file and to all the other evidence that is there. Just relying on a box that has been ticked is not enough and certainly in *Procter* there were a number of red flags.

"Secondly, all too often you have got cases that are being processed by people who are ill-equipped with the relevant experience and are poorly supervised."

Ms Graves agrees, stressing the importance of firms remembering, as in the case of Mr Procter, that human interaction can be important to the individual concerned, and a failure to carry it out can make firm "vulnerable to a damages claim".

Information gathering in person is necessary to ensure follow-up questions are appropriate, she says. "The *Procter* case shows you that all it takes is to pick up the telephone, that human touch, to ask very simple questions.

"It's very easy to work through a questionnaire on the telephone... and if you are an expert in industrial disease claims you know exactly which question to ask next. It isn't hard. Your witness statement and your proof of evidence from your client is your protection, should your client go back on what they've said."

Mr Godfrey continues: "Nowadays, firms are operating in some instances on the cheapest model to get the job done and thereby maximise the profit... The problem is that firms tend to deal with cases without ever speaking directly to a client, working off *pro forma* information sheets that have been passed to them, and then quite often just following standard letters.

"Clients, when they make an inquiry, whether it's by website or telephone call, are not necessarily going to be speaking to a solicitor or anyone qualified... they are going to be spoken to by an individual who has probably been trained to ask a series of questions and is possibly reading off a crib sheet. If it's not on the crib sheet, it's not asked."

The Procter judgment means that no solicitor should ever feel inhibited from ensuring that his client understands the advice by consideration of the fees being paid, he concludes. "Clearly, fees being recovered cannot determine the quality of the advice that's being given."

While solicitors must be mindful of their responsibilities to clients, far from being a bad thing, the use of commoditisation will help law firms meet rising client expectations and demands in the future, suggests Mr Wild.

But he adds: "Client relationships will continue to be important for the future business of a law firm, and technology – far from replacing or threatening that – enables better customer service, improved client-centric focus, and attention to value."



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Intelligent design

Professor Richard Susskind is back – together with his economics lecturer son – with his latest predictions for the future of the legal profession. **Neil Rose** has a read

The future of law is no longer enough for Professor Richard Susskind. In his latest book, he has teamed up with his son Daniel – a lecturer in economics at Oxford University – to cast his eye over the future, such as they believe it is, of the professions more generally, including journalists, even though we, surely, are irreplaceable.

Back in 2008, in his book *The End of Lawyers?*, the good professor predicted that traditional lawyers would in large part be "replaced by advanced systems, or by less costly workers supported by technology or standard processes, or by lay people armed with online self-help tools".

This book takes this thesis forward and expands on it. The pair set out their stall from the first line: "This book is about the professions, and the systems and people that will replace them." If you are coming towards the end of your career, this will not be of great concern; if you are just starting out, you may already be worried.

Unsurprisingly, given Susskind senior's work over the last three decades, it is all about the impact of technology bringing about the end of what they describe as the "grand bargain" that dates back to the 19th century – the professions receive exclusivity over certain activities, along with status and the right to regulate themselves, in return for providing their specialist knowledge and expertise to a public that needs them, while conducting themselves to high standards.

End of the grand bargain

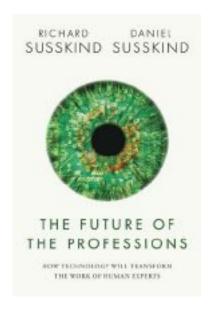
This is already changing and the book points to numerous examples of how technological change is manifesting itself. Most striking are that more people signed up for Harvard University's online courses in a single year than have attended the actual university in its 377 years of existence, an online community designed a house that was 'printed' and assembled last year in London for less than £50,000, while an architectural firm used a group of autonomous flying robots to assemble a structure out of 1,500 bricks.

So the well of knowledge which was once the sole preserve of professionals is now freely available online. You still have to know how to apply that knowledge, of course, but the Susskinds suggest that the professions are no longer holding up their end of the bargain. "By and large our professions are unaffordable, under-exploiting technology, disempowering, ethically challengeable, underperforming and inscrutable," they write. The traditional of charging by the hour is responsible for some of this.

In an era of increasingly capable systems, they argue, the professions should only survive because they bring value and benefits no system or tool can; "not because we regulate competitors out of the market, nor because we cannot imagine a world without professions, nor again out of nostalgic impulse for a fading way of life".

But this is just the start. For the Susskinds, the least likely future is that nothing much will change, while recognising that the idea technology can streamline and improve, rather than replace, 20th century working practices continues to dominate the approach of many professionals and policy makers.

The authors' core belief is that technology will change not only the professions but indeed society fundamentally over time – towards the end of the book they raise deeper and more exciting/worrying questions (depending on your point of view) about the role of humans in a world where continued on page 16



The Future of the Professions: How Technology Will Transform the Work of Human Experts

By Richard Susskind and Daniel Susskind

Published by OUP, 368pp, £18.99

www.legalfutures.co.uk



Richard and Daniel Susskind

they are needed less and less, at least as workers. And before that, the concept of what a 'job' is will change, they say.

The most significant characteristic of technology for the professions, the authors emphasise, is that "our systems and machines are becoming increasingly capable". They explain: "When it comes to the future capabilities of our machines, the overall trajectory of technological advance is clear and of great importance for the professions – more and more tasks that once required human beings are being performed more productively, cheaply, easily, quickly and to a higher standard by a range of systems. And there is no apparent finishing-line. New capabilities are emerging on an apparently daily basis."

This means, they add, that machines will not be confined to the grunt work. They point to developments already with us, such as Big Data, systems like IBM's Watson that can perform tasks that we would normally think requires human intelligence, robotics that enable machines to "interact with apparent manual skill and dexterity in the physical world", and systems that can detect and express emotion.

Incremental transformation

We are not talking about 2020 or 2120, it seems. The Susskinds expect neither a big bang revolution, nor "leisurely evolutionary progression into the post-professional society". Instead they predict an "'incremental transformation' in the way in which we organise and share expertise in society, a displacement of the traditional professions in a staggered series of steps and bounds... Its eventual impact will be radical and pervasive".

They are assiduous in confronting and then dismantling objections to their theories. For example, rather than reduce personal interaction – as many feel new technologies do – they argue that often such interactions actually increase. And even where they do "disintermediate traditional professionals", it does not necessarily lead to the end of personal interactions. "Often it will be para-professionals who take the place of traditional professionals: these are people with less formal training but empowered by new technologies to carry out tasks once reserved for the professions."

In any case, objections are based on three underlying mistakes, they say. The first is a tendency to increasingly confuse the means with the end, which is to make practical expertise available to those who need it. Second is "a failure to strike the best balance between competing values" – the value of greater access to affordable expertise, and the value of maintaining some desirable elements of the status quo. "In our view, this balance falls in favour of transformation," they say. The third mistake is to expect more of machines than of humans, so if a machine gets a particular task correct 80% of the time, "our instinct is to declare that the 20%... is intolerable, rather than to compare that error level with human beings' current capabilities".

Moral dimension

The book does not overlook the moral dimension to this debate. First, are there tasks that only human beings should be permitted to undertake, whatever the benefits of using machines (turning off a life-support machine being one emotive example)? Second, who should own and control practical expertise in a technology-based Internet society?

The first is one that society needs to debate, the Susskinds suggest. But on the second, their clear preference is for it to be available for all at little cost – in their words liberated, rather than enclosed. "We feel a great sense of excitement in imagining human beings across the world – rich and poor – having direct access to living, evolving treasure-troves of help, guidance, learning and insight that will empower them to live healthier and happier lives," they conclude. "But this shift will not come about spontaneously. It is a goal to which we must actively strive."

For many lawyers, this will read as near-science fiction and of little relevance to their day jobs and time sheets. In some ways this is fair enough, but equally it points to opportunities to pioneer change in the operation of the law that could bring benefits to many. Personally I have always found myself in the pro-Susskind camp of impending radical change, and watching the way my children (aged 11 and 8) interact with the world through technology (digital natives rather than the digital immigrants of my generation) makes me think that they will expect the world around them to operate very differently to how I do.

I suspect, frankly, that this book could have been a bit shorter and still made its point, but as a contribution to thinking about the future of the legal and other professions, and of work and society more generally, it deserves to be read.





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