

The Opportunities and Threats Posed by Lawtech to the Legal Industry in Jersey

**A collaborative research project between
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CEPLER Report

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Executive Summary

Law firms are critical to Jersey's political and economic strength. Although Jersey's professional services sector has a well-founded track record in embracing digital innovation, law firms globally have historically been more risk-averse. To remain successful, law firms will need to know how to harness these technologies effectively. Jersey will also need to have a supportive and robust regulatory regime and the infrastructure to underpin this.

This project was commissioned by Jersey Finance Limited to:

- explore familiarity and uptake of lawtech in Jersey by law firms and lawyers;
- identify potential practical, regulatory and ethical barriers that may impede successful adoption of and risks associated with greater reliance on lawtech; and
- develop appropriate strategies to overcome and/or mitigate barriers and risks so as to enhance opportunities for responsible use of lawtech in law firms in Jersey.

It drew upon international academic and grey literature on the emerging use of technology in the legal and allied professional services contexts. It also used a range of interviews and other more informal conversations with legal professional and technological innovators and current professionals operating in the legal and allied professional sectors in Jersey.

Interviewees had very similar views about the opportunities, threats, enablers and blockers, although law firms were at different points on the digital innovation spectrum.

Benefits to the profession included cost reduction and/or profit maximisation; the mitigation of risk; and an increase in the quality of work, client satisfaction and the reputation of the profession. These would improve the competitiveness of the jurisdiction for law.

The biggest enablers were considered to be having the right people working in firms that were able to move at speed by being less hierarchical than those onshore, and the benefit of being in a small jurisdiction that could adapt its rules where it was apparent that they were a barrier.

Some threats were identified, including: knowledge gaps within firms; the challenge of convincing senior leaders of the need to innovate; and the lack of capital to invest. Other issues were the need to retrain staff effectively; the difficulty of hiring good staff with the right skills, know-how and experience; and the limited opportunities to learn from others. Technological barriers were identified as: the plethora of legacy systems and the cost and difficulty of replacing them, as well as the costs and risks associated with migration of data; and the need to digitise legacy data held in paper format.

Interestingly, interviewees did not consider regulatory or professional conduct rules to be a barrier to lawtech adoption in Jersey. In fact they considered them to be neutral. The biggest challenges were the shortage of the right people and high costs, with some practical challenges associated with being in a small jurisdiction.

A number of recommendations flow from the research. These are:

- To facilitate a means to share experiences, including good practice and best practice, using case studies of what has and has not worked
- Clarity on and/or reduction of some points of friction, including e-signatures, identity verification and anti-money laundering protocols
- A guidance note on data protection, professional privilege and cloud-based storage
- Support as regards change management and cultural change, including education and training, as law firms consider how they will develop their delivery of legal services
- Continued focus on developing IT and other business-relevant skills for those in Jersey and consideration of whether the immigration system is sufficiently flexible to allow talented people in skill shortage areas to be recruited from off the island
- Continued moves towards greater electronic capabilities in Jersey courts
- A Jersey fee structure for electronic legal products to enable their effective adoption in firms

1. Introduction, Background and Context

Background

Although technology's transformative impact was predicted more than two decades ago, only recently has this appeared in professional practice. Innovations have yet to seriously disrupt markets in Europe, but the effects of commodification and the unbundling of legal and financial services are being felt. Algorithms applied to big data increasingly underpin the processes at the heart of legal services. These technologies have proven adept at increasing the speed and accuracy of legal work.¹ Machine-generated deep learning and quantum computing may ultimately save law firms time and money and open up new markets, but they are also threats to current legal practice and legal education models.

Law firms are critical to Jersey's political and economic strength. Although Jersey's professional services sector has a well-founded track record in embracing digital innovation (for instance, founding the first regulated Bitcoin fund in 2014)², this culture is less embedded in the context of lawtech in legal services, although this is not unusual in most jurisdictions. To be successful, law firms will need to know how to harness these technologies effectively. Jersey will also need to have a supportive and robust regulatory regime.

Lawtech Context

Lawtech has been defined in different ways and is a term that has been used interchangeably with the term artificial intelligence (AI). Lawtech is defined here as any relatively novel technology that is used for legal practice purposes. It includes, but is not limited to, technologies referred to as AI. AI encompasses technologies that enable 'machines' to reach decisions autonomously from human beings. A number of technologies fall within this family including:

- natural language processing systems through which machines analyse and make use of human language rather than requiring language to be translated into computing languages;
- neural networks that contain algorithms modelled on the human brain and nervous system so that they mimic the way in which the human brain makes decisions, even though they do not 'think' like a human;
- complex machine learning systems that use advanced statistical techniques such that computer systems 'learn' over time, making gradually better and more nuanced decisions; and
- artificial social intelligence systems that learn from human interactions so that their interactions with humans become more tailored and human-like over time.

¹ Kohn, 2017.

² BBC, 2014.

Lawtech includes systems that automate tasks, as well as systems that may support problem diagnosis, perform certain decision-making tasks and, in some instances, permit the analysis and prediction of risks and likely outcomes. It also includes more sophisticated forms of practice management software that allows data analytics to drive legal practice innovation. More details of the capabilities of some of these products and platforms are set out in section 2.

The Project

The project has drawn upon international academic and grey literature on the emerging use of technology in the legal and allied professional service contexts. It also uses a range of interviews and other more informal conversations with legal professional and technological innovators and current professionals operating in the legal and allied professional sectors in Jersey.

The main research phase was principally conducted through a series of in-person/telephone and/or Skype interviews over the summer and autumn of 2019 to gauge how lawtech is currently being considered and/or used in Jersey.³ Potential participants, members of Jersey Finance and other stakeholders and leaders, were approached by Jersey Finance to invite them to be interviewed. Details of the information received and the questions asked are set out in the appendices at the end of this report. In total, 16 people took part in formal interviews that were from 45 to 90 minutes in length and were recorded to allow subsequent analysis.

Cumulatively, law firms that contributed to this project employ 55% of Jersey's legal services sector. Interim findings were prepared and then shared through a Jersey Finance event attended by more than 200 people. Those at the event were able to ask questions and make contributions in light of the findings, and those insights have augmented the findings in the report.

This project set out:

- to explore familiarity and uptake of lawtech in Jersey by law firms and lawyers;
- to identify potential practical, regulatory and ethical barriers that may impede the successful adoption of and risks associated with greater reliance on lawtech; and
- to develop appropriate strategies to overcome and/or mitigate barriers and risks so as to enhance opportunities for responsible use of lawtech in law firms in Jersey.

The next section will examine technological innovations in legal practice to provide a basis for discussion of the interview findings.

³ The research and comments contained within this report, particularly those relating to working locations and practices, were made prior to the COVID-19 pandemic. Through trade association engagement, Jersey Finance understands that a number of positive changes in these areas have been implemented.

2. Lawtech in Legal Practice, Familiarity and Uptake

Overview

Many lawyers working in small to medium-sized law firms in multiple jurisdictions have indicated that their areas of legal practice remain relatively untouched by lawtech as yet, although they are of the view that this is likely to change in the next five years. In contrast, many international law firms, including legal practices within the global accountancy firms, Big Law, are investing heavily in lawtech, including in AI-enabled systems. Some have their own legal tech start-up hubs, others are collaborating with technology houses⁴. Some niche practices are doing the same.

Others who service the legal sector are also developing products and services that fall within the broad umbrella of lawtech. Some legal publishers and database providers have developed or are developing decision-tree systems for a variety of legal practice areas. These form the basis of expert systems that assist lawyers with triage/diagnosis of legal problems and may provide suggestions about routes to resolution.

New Law entrants, new forms of legal business, have set themselves up with technology at the heart of their model. Some are regulated legal entities in jurisdictions that permit this, others are more akin to technology start-ups. Some are hybrids having merged with or taken over more traditional law practices to combine multiple forms of expertise – for example, LegalZoom with Beaumont Legal⁵, and Riverview Law taken over by EY⁶.

Other platforms have been developed from a niche starting point, some not for profit, some for profit – for example, DoNotPay⁷ and Robot Lawyer LISA⁸ – often offering high-street law to clients (individuals and small businesses) who require low or no-cost services. Some provide a full service, meaning that they take instructions from clients; others operate on a DIY-law plus partnership model through which the client is supported to do much of the work themselves with a view to reducing the cost of the legal service to the client. Consequently, there are technological innovations alongside business model innovations.

This section delineates the main types of lawtech systems in use in England and Wales, as well as some systems in use in other jurisdictions that may migrate to the UK and on to Jersey.

⁴ See, for example, Allen & Overy's Fuse:

<http://www.allenoverly.com/advanceddelivery/fuse/Pages/default.aspx>; and Herbert Smith Freehills: <https://www.herbertsmithfreehills.com/latest-thinking/hubs/disruptive-technology-and-innovation>

⁵ J. Hyde, LegalZoom to Make First UK Acquisition, Law Society Gazette 7 December 2015, <https://www.lawgazette.co.uk/news/legalzoom-to-make-first-uk-acquisition/5052608.article>

⁶ EY Law, 'EY expands global legal managed services offering with acquisition of Riverview Law' 8 August 2018, <https://eylaw.ey.com/2018/08/08/ey-expands-global-legal-managed-services-offering-with-acquisition-of-riverview-law/>

⁷ <https://www.donotpay.com/>

⁸ <http://robotlawyerlisa.com/>

This is not exhaustive, but instead sets out the types of products, platforms and functionality on offer. The research is not endorsing any of the products or services mentioned, it is using them as illustrative examples. Others are available that may or may not be more appropriate for organisations' and individuals' needs.

Lawtech developments support lawyers' work in a range of different ways. These may be grouped into technologies that allow for:

- document review (including contract review and analysis);
- expertise, analysis, prediction and strategy development;
- legal research; and
- other tools that support legal work and legal practice management.

Many platforms or tools use a range of AI methods (machine learning, natural language processing systems etc.) in order to produce their results, but they do not all require AI. They do not, necessarily, employ only one form. And some automate tasks in a relatively blunt way, whereas others offer high levels of granularity.

Document Review and Analysis

There are a plethora of document review and discovery products that use natural language processing to automate the scanning, 'reading' and comparison of large quantities of documents in both contentious and non-contentious business settings. They systematise tasks that are often regarded as tedious and lower skilled. They speed up the process, reduce human errors and free up lawyers to undertake higher value work. They may reduce the need for (quite so many) paralegals and legal assistants. These systems usually work by identifying and/or matching keywords and phrases, which may be simple words or ways of describing fact patterns and legal issues.

Such tools are often employed for discovery and/or contract analysis. They are categorised under the umbrella term of Technology Assisted Review (TAR) to indicate that results will still need to be checked for accuracy, analysed, and then used by a lawyer. There are some more sophisticated tools containing machine learning capabilities, which can be trained to answer questions of law (procedural and substantive) with reference to a decision-tree. In other words, they may answer questions of law for which a series of 'yes/no' questions can be developed and deployed. Legislation is not yet written to facilitate these easy binaries, although there are pilots in place to consider the desirability of doing so.⁹

Widely used products and tools of this kind include:

- Kira, a contract analysis tool used by a large number of global law firms, including Allen & Overy, Ashurst, Clifford Chance, DLA Piper and Freshfields Bruckhaus Deringer¹⁰
- Leverton, which 'reads' documents, such as real estate and financial documents, in a range of human languages and extracts information for

⁹ The National Archives Big Data for Law project:

<https://www.nationalarchives.gov.uk/documents/digital-projects-at-the-national-archives.pdf>

¹⁰ For details see: <https://kirasystems.com/how-it-works/contract-analysis/>

lawyers to review. It is used by a number of global law firms, including Baker McKenzie and Freshfields Bruckhaus Deringer¹¹

- Luminance, which scans, 'reads' and then uses a form of probability theory (Bayesian theory) to analyse the content of those documents. It is used by many firms, including Slaughter and May¹²
- RAVN, which scans, 'reads', analyses and then extracts information from documents, populating a spreadsheet with that data. It is used by law firms such as Linklaters and Reed Smith¹³

There are other systems, including contract management and analysis tools such as ContractProdAI¹⁴ (a US system) and eDiscovery. There are also tools that assess risk and present forensic analysis and evidence, such as Relativity (US)¹⁵ and Law In Order (in Australia and across the Asia Pacific).¹⁶ The list keeps expanding as developers sense an appetite for greater automation in law firms.

Expertise, Analysis, Prediction and Strategy Development

Sophisticated tools are available that will allow for contextualised review and prediction of the likelihood of a range of outcomes, whether in negotiations, mediation or litigation. They are powered by Bayesian analysis (a statistical analysis of probability) and large quantities of data (referred to as 'big data'). These algorithms are trained to spot and then make use of context; the training is a partnership between expert lawyers and technologists, although over time the machine is able to learn from the data (machine learning).

There are even more powerful learning capabilities being developed in the form of neural networks. These have not yet reached full maturity, but it is anticipated that they will be self-learning. They pose challenges in a legal context, as currently it is not easy to interrogate the basis for the learning and how the decision has been reached, and thus decisions are not fully explicable. This poses particular challenges in law, where professionals need to know the basis for a decision so that they may determine whether it is reliable or susceptible to challenge.

Some tools seek to assess and/or predict risk and are already heavily used in the insurance sector and some other areas of the financial services sector. These tools have been increasingly repurposed to predict litigation (and mediation and negotiation) success, although they are largely confined to a US context. Further development is stunted, in large part, by the constraints on available data. Big datasets are needed to allow for reliable prediction of risk. In the case of litigation,

¹¹ For details see: <https://www.leverton.ai/>; see further: <https://www.artificiallawyer.com/2017/03/29/baker-mckenzie-signs-global-ai-deal-with-leverton/>

¹² For details see: <https://www.luminance.com/>, see further: <https://www.slaughterandmay.com/news-and-recent-work/news/luminance-launches-with-backing-of-invoke-capital-and-in-collaboration-with-slaughter-and-may/>

¹³ For details see: <https://imanage.com/product/ravn/>, see further for use: <https://www.legalpracticeintelligence.com.au/reed-smith-experience-with-ravn-and-imanage/>

¹⁴ For details see: <https://contractpodai.com/>

¹⁵ <https://www.relativity.com/>

¹⁶ <https://www.lawinorder.com.au/>

that means fully readable and comprehensive judgments that are available for all cases of a similar level or type.

Tools in this category include:

- Judge Analytics by Ravel Law¹⁷, which analyses US federal and some state court judgments to indicate how named judges decide particular types of case, how and why (with reference to their use of language)
- Legal Analytics for Lex Machina¹⁸, which analyses US federal legislation, case law and court files to compare it against a client's case information to provide predictions based on how other similar cases have been concluded. It also makes additional relevant material available to help the lawyer to develop and model different case strategies¹⁹
- Docket Alarm²⁰, which provides analytics to assist the development of litigation strategy in the US, as does LexisNexis Legal Analytics Australia (High Court judgments)²¹

Attempts to develop such systems in the UK have been less successful due to the way in which cases are reported and judgments stored, although Vizlegal²² is seeking to change this. It is harder, too, for small jurisdictions to develop such systems, given the small number of cases that will be heard each year and the need for large data sets to support the development of algorithms. Instead, it is probably more profitable to focus on other aspects of lawtech, such as document review and analysis and technologies in the Other section below.

Legal Research

Most lawyers will make extensive use of digital legal research tools, which are in essence search and retrieval tasks that are readily susceptible to automation. Most lawyers that have trained in the past 20 years will have drawn upon LexisNexis, Westlaw and similar systems, and nearly all of us will use similar tools in non-legal contexts when using Google or equivalent search engines.

Some legal research systems focus on traditional legal sources, others commentary and/or know-how, and others still will provide additional sources such as media coverage. Some, such as Casetext's CARA AI²³, will locate and provide all filed documents, a few will surface all relevant publicly available documents on any matter.²⁴ Ravel Law²⁵ goes further to give access to contextual legal research results for US federal and state law to indicate (including in visual form) the relevance of certain cases to determining a particular legal question, using machine learning and

¹⁷ <https://www.ravellaw.com/judges>

¹⁸ <https://lexmachina.com/>

¹⁹ Koebler, 2017.

²⁰ <https://www.docketalarm.com/>

²¹ <https://www.lexisnexis.com.au/en/insights-and-analysis/practice-intelligence/2018/Lawyer-vs-AI-A-legal-revolution>

²² 'Litigation analytics: Vizlegal grows UK caselaw', 11 May 2018 Legal Insider repository: <https://www.legaltechnology.com/latest-news/litigation-analytics-vizlegal-grows-uk-caselaw-repository/>

²³ See <https://casetext.com/cara-ai/>

²⁴ See Mills, 2018 and Koebler, 2017.

²⁵ <https://ravellaw.com/search>

natural language processing. ROSS²⁶, a legal research service, does the research and analysis of how the law is applied in different contexts²⁷ and has been challenged to compete against 100 UK lawyers to test its reliability.²⁸

Other

There are a wide variety of other systems and products, some of which are augmented case management systems, combining storage, retrieval, scheduling, document formatting and court filing, for example. Some of these systems are standalone, while others plug in to other software, including some of those mentioned above (eDiscovery and legal research). These systems are often the backbone of law firms' work and are also a brake on innovation if they fail to be updated or are no longer compatible with other systems.

Other lawtech innovations include 'smart contracts'. The contracts themselves are similar in nature to standard contracts, but they are written in such a way that intermediate stages of the contract are set out clearly, including the data that will be used as the basis to work out whether those stages are met. These can then be programmed into a technological tool and underpinned with algorithms that trigger payments or raise red flags (automatically or after lawyer review) when certain contractual conditions are met or not met, making some components of the contract self-executing. They are underpinned by blockchain technology, which is used to verify and validate that conditions have been met.²⁹ Ethereum is one of the leaders in smart contract technology.³⁰ Such contracts will profoundly change certain types of transactions, such as conveyancing, in jurisdictions that place their land registry on the blockchain (Dubai, for example). This method has been used successfully in the UK without the need for conveyancing lawyers³¹.

There are other ways in which AI may be used in a legal context, by courts in sentencing³², for example, or to guide parties through their disputes. Some of these initiatives are not without controversy, as algorithms based on skewed data will lead to biased and potentially highly discriminatory results.³³ Natural justice rights can be breached due to a lack of transparency of the decision-making.³⁴ Yet AI-enabled

²⁶ See <https://rossintelligence.com/> Ross notes: "ROSS is an artificial intelligence (AI) system designed to improve the efficiency, accuracy and profitability of legal research. Firms using ROSS have reported a 30% reduction in research time and found 40% more relevant authorities, translating to an ROI of 177% to 545% off of core search alone."

²⁷ Mills, 2018 and Koebler, 2017.

²⁸ Ava Chisling, '100+ lawyers are competing against AI software',

<https://blog.rossintelligence.com/post/100-lawyers-competing-ai-software>

²⁹ This was possible using Clicktopurchase.com. For one view of how blockchain may impact on lawyers' roles see: 'Smart Contracts: The Blockchain Technology That Will Replace Lawyers; A beginner's guide' <https://blockgeeks.com/guides/smart-contracts/>

³⁰ S. Peyrott, 'An Introduction to Ethereum and Smart Contracts: a Programmable Blockchain', 28 March 2017, <https://auth0.com/blog/an-introduction-to-ethereum-and-smart-contracts-part-2/>

³¹ M. Cross, 'Blockchain deal bodes ill for conveyancers' 16 October 2017, Law Society Gazette <https://www.lawgazette.co.uk/news/blockchain-deal-bodes-ill-for-conveyancers/5063242.article>

³² COMPAS, US. See Stobbs et al, 2017.

³³ Dressell and Farid, 2018.

³⁴ Hamilton, 2017; Kehl et al, 2017.

systems may support people through civil disputes to improve access to justice opportunities, too.³⁵ These are still relatively early days in these initiatives.

Key Findings on Familiarity and Uptake in Jersey

All those interviewed were familiar with a range of lawtech tools, and all noted that their firms wanted to make greater use of technology and were working towards it. Some were frustrated that they were relatively lone voices within their organisations and that very senior colleagues were not sufficiently enthusiastic about investing in this area.

“We shall just follow, unless innovative individuals come into the island – the absolute best thing that could happen for legaltech in Jersey is for one firm to publicly do very well due to their technology use.”

“It is really difficult to convince people internally that we need to change, to invest in technology and change how we do things. Most of the partners have been here for 20 years and have done very well to date. The profession is pretty conservative.”

They were also concerned about what they did not know. In other words, there was an anxiety that others in the sector had a better grasp of the tools available and were quietly beginning to deploy them to good effect. Few were able to give examples of where they could see this happening (with two notable exceptions), but there was a firm impression that others were moving faster than they were. There was also a nervousness among interviewees about their knowledge of underpinning technologies and whether they would be able to assess the effectiveness of any products that were to be offered to them.

“We have a practice management system that is pretty robust. We are largely digital, and have a complete digital record. There are some very basic levels of automation in our firm; we aren’t yet using sophisticated automation [unlike some others] ... would like the automation on the banking side and it’s a way off. We’re a long way away from AI here.”

“It is difficult to work out what systems we want to implement. Perhaps the Law Society could give some examples. There’s an appetite... which is dependent on cost... and [what they will deliver]. Do you wait to find out what is coming out... their convenience... the cost implications?”

³⁵ For example, The Family Court of Australia’s Split Up Initiative: Carneiro et al., 2014 and British Columbia’s, Civil Resolution Tribunal Solution Explorer for small claims <https://civilresolutionbc.ca/how-the-crt-works/getting-started/small-claims-solution-explorer/>

Some were looking at possible solutions, such as Alteryx, to allow them to extract and analyse data, but many firms were not sure whether the possible solutions would deliver what they hoped they would and had little in-house support to be able to assess effectiveness. Others were extremely skilled at judging the utility of platforms and products, as that was their full-time role and they enjoyed the challenge of reshaping law firms' knowledge systems and ensuring they all talked together to maximise use of data.

“Technology is an enabler and not a solution... I am involved with trying to source and, together with the business, make the decision about what we buy... I'll sweep away all the old systems and put in a new one that will draw data from all the enterprise systems. It is the way that you slice and dice the information underneath that is important; as technology has changed over the years, how you do that has changed... There is more data around now to do that.”

Those in such roles indicated that they tended to use mainstream corporate core systems from large technology companies that would continue to service and update them. Some of these systems also interoperate with other types of software that could be used to add on features more specific to law firms. Standardised data formats were important to allow data to be migrated when the firm was ready to change those more law-firm-specific systems. There is no guarantee that legal software developers will continue to update their products, even if promises are given when those systems are bought, and firms may be left with legacy systems. Standardised core systems are a means to mitigate if not protect against this.

All firms were using digital technology as a professional tool for communication, research, storage of documents and their retrieval. This was standard for all in their firms, although a small number of interviewees did reference examples of senior, older lawyers who clung on to traditional working practices, including asking others to type up their outgoing emails and print off their incoming ones.

Most firms were moving towards electronic storage of all documents, even though a lot of physical paperwork was still generated. Some were hampered by fixed PC systems and the lack of a Virtual Private Network (VPN) and/or cloud storage system. This made it impossible, given the lack of remote access, or more clunky, if using Citrix, to access electronic files when out of the office. The fall-back was to take physical files out of the office to allow lawyers to work elsewhere.

Some firms were looking into developing client portals, either so that clients could access their documents via a digital file, or gain access to added benefits free or at a reduced cost, or upload documents and fill in data for the firm, reducing the cost to the client and the time spent by lawyers on routine work.

“Unless you have huge amounts of volume coming through, they [portals] are great but may not be cost-effective. Costs are prohibitive at the moment, for smaller firms and in a small jurisdiction.”

A few were flirting with machine learning, natural language processing and robotics, although there were few concrete examples of how these were being used beyond document automation. One was using AI to undertake an analysis of historic billing data to examine fees including tolerances for fixed fee billing. Some were considering platforms such as iManage, which offer document and email management along with analytics and some AI functionality. Others felt unable to introduce this as they were not using cloud-based systems.

There was a real split in views of whether it was safe to use cloud storage for client files. Some firms had embraced this, saw absolutely no problem with it, and noted that the cloud storage providers had much more robust, up-to-date security systems than any law firm they knew. Some firms indicated that their clients would not permit them to use cloud storage, or products that were public cloud hosted, or that some clients would only allow them to use one named provider.

“Some guidance on cloud-based things, that would just make life so much easier... as well as knowledge of the risks.”

“Jersey does have private hosting (such as Logicalis), we would need to check where it was backed up and how secure it was [and whether our clients allowed us to use it].”

One interviewee voiced concern about whether legal professional privilege could be overreached by a foreign state such that a client’s data could be subpoenaed via the cloud storage provider. Cloud storage and data security were particularly live issues for some firms, which were keen to have more guidance on what they could and could not use and do.

A very small number of firms were working towards scaling up to ‘mass’ routine delivery in some transactional areas (e.g. tenancy agreements or debt recovery). However, they noted that this was only possible for niche areas that related to work outside the jurisdiction because much of their work was Jersey-based. There was insufficient throughput of routine work such that investment in software to automate tasks was worthwhile. The Jersey legal system does not easily lend itself to automation, given the number of cases, and the complex and bespoke nature of the work undertaken by many firms is not work that could or should be addressed in this way.

A very small number of interviewees who were familiar with or were working in Jersey-based general practice were looking with interest at digital technologies that allowed unbundling and guided lawyer-client co-partnering. There was consideration of whether some of these methods may be useful for pro bono work. They talked about whether it was worth investing in this kind of technology, as a profession, so as to deliver on Jersey lawyer pro bono obligations in an efficient, cost-effective, and high-quality way. One was of the view that there were opportunities to partner with regtech so that clients who were brought on board through financial services

providers could then be seamlessly transferred to law firms without the need to reverify identity data were lawtech and regtech to team up.

A very small number of interviewees' firms were working on bespoke systems that catered very specifically to the needs of their law firm and their clients. Some had the help of computer science interns still at university but supervised in the law firm by the technology officer, who was able to guide them on what was needed by the firm. This allowed for a relatively cheap, bespoke, targeted solution that was quickly delivered as an undergraduate or postgraduate research project.

These firms were understandably coy about revealing the details, as they wished to retain first mover advantage for as long as possible. Two were harnessing the power of their in-firm data to develop analytics that would steer their approach to practice – one firm was in the process of a total change programme to standardise all back-office protocols and much initial lawyer work so as to gain efficiencies, limit risk, maximise data quality and inform good practice approaches to the cases they took on. Another was using data as the basis for analysing cost and the way in which lawyers undertook cases, to work through fee levels and working practices. Two other firms were planning to do something similar and had either embarked on the early stages of interrogating their data or were shortly to do so. One was working with an onshore supplier to customise a system that was to be used in the firm.

Some recognised that technological developments were only as good as their colleagues' ability to harness their use. This meant that those firms at the forefront of tech adoption were investing heavily in change management alongside or in advance of tech adoption.

“We’ve spent a lot of time demystifying stuff ... from a technical perspective, if you chuck some fancy system on top of rubbish, it isn’t going to land. So we’ve recognised the importance of that investment internally in how people think, how people challenge the process, how people visualise the delivery of legal services as a process and the importance of challenging every single step and how we engage with clients, how do we reduce costs, how do we make it faster... more accurate? etc etc.”

A very small number were utterly reinventing the way in which they conceived of the legal expertise and the delivery of legal services. Others considered that they were being driven by City of London referral firms' technological adoption, as they needed to be able to integrate with their systems in order to service their clients' needs. This was a source of insight, a means to drive those Jersey firms forward, but it also meant that they had less choice about how to engage with technology.

Most were of the view that law is a personal service and the tech must not be seen as eroding lawyer-client relationships, even if it could and should reduce friction and create efficiencies.

“The challenge for all law firms is... how you interact with your new clients who are more used to a higher proportion of web-based stuff, the ability to see information quickly, not really caring how it is done, but want: ‘show me the product, make it easy for me, information comms, interactivity, a bit more technology’. There is still a place for the human face because no one wants to be talking to a robot ...”

The spectrum of tech adoption included firms that were still, at the time, struggling to work remotely as their practice remained largely paper-based, with fixed PCs and a good number of colleagues who had relatively basic IT skills. At the other extreme were firms that were reinventing what it was to deliver legal services, with major change management projects involving partnerships between technology ‘ninjas’ and highly skilled lawyers who understood legal process mapping. This meant efficiency could be maximised at each step of a legal transaction and technological investment could be harnessed to greatest effect. Multi-jurisdictional firms were more likely, in part due to their scale, to be further along the technological innovation spectrum. This was partly because technology was at the core of making these firms function, and transferability was woven into their processes. Those firms that were largely Jersey-based were keen to invest in technology but were more likely to need support with knowing where best to spend their money and what business benefits could be expected from that investment before the firm would be willing to commit to expenditure.

Summary

In essence, all interviewees were familiar with a range of products and tools. Many felt a little out of their depth but were very interested to know more (had they not been, it is unlikely they would have agreed to take part in the project). Some considered themselves amateur enthusiasts, some were full-time lawyers, some were business service professionals, including HR professionals, some were technology experts who had been brought in to drive technological change. Many felt that they were having to convince others in the firm of the utility of lawtech. Some saw a role for Jersey Finance in helping them to do this. Many wanted a chance to learn more from those who were ahead in adopting technology; those who were ahead were more inclined to want to keep their progress relatively private. These characteristics are in keeping with other contexts in the grip of technological change.

3. Opportunities and Risks, Enablers and Blockers

The increased use of AI in the legal services sector raises fundamental questions about the nature of legal practice, the identity and practice of being a lawyer and the nature of professionalism itself. Many of the innovations have developed through partnerships between lawyers and technologists, many driven by those outside the legal profession rather than those within.³⁶

Traditionally, law firms employed few technology officers and business and operations managers and, when they did, those roles were service roles to support the partnership rather than the driving force behind change. This picture is changing quite rapidly. Interviewees working in firms in Jersey that are at the forefront of technological innovation all had senior-level chief technology officers or people performing very similar (if differently titled) roles. These members of staff were able to leverage their expertise, secure funding from the firm and institute quite profound change, not just in back-office systems but also in lawyer working practices.

A lack of in-house technical expertise was evident when concerns were raised about systems knowledge and the ability to judge the benefits ahead of making investment decisions. Some firms had tried to use external consultants but with limited success, as the consultants were often insufficiently knowledgeable about legal practice or merely wanted to sell their own product(s). There is a gap between a willingness to innovate and the knowledge required confidently to make it happen.

Key Findings on Benefits and Threats, Enablers and Blockers

Interviewees identified a range of perceived lawyer-client opportunities that flowed from greater positive adoption of lawtech. These included benefits to the profession, benefits for an offshore jurisdiction and benefits for particular firms and chambers. They also identified some risks or threats to the profession, the jurisdiction and to firms or chambers if lawtech was not adopted appropriately and in a timely way.

Benefits to the profession were noted as cost reduction, either to make firms more competitive or to maximise their profit margin. The other key benefits were the ability to mitigate risk caused by human error or the lack of systematic work practices and the lack of robust systems, and the ability to drive up quality, attract more clients and increase their satisfaction. Interviewees were also of the view that a greater use of lawtech should reduce the amount of tedious work that needed to be done, which would both cut costs and, it was hoped, attract talented people who would want to continue to work at the firm.

“We want to recruit the best graduates and they expect good tech and to work in a way that is as efficient as possible, spending time doing things that are a bit more challenging and interesting that they are trained to do rather than routine work that can be done by the system.”

All interviewees saw major benefits in harnessing the power of technology in their firms. Most thought that law firms would thrive once they got to grips with both the

³⁶ See City-REDI et al, 2018.

systems and the business models they needed to adopt to be able to serve clients well at an appropriate price.

“The technology should be the enabler to make you feel good about what you are doing.”

They also saw real benefits for those who work in the firm where technology can be appropriately harnessed³⁷:

“People are truly mobile, wherever [they are] in the world ... a flexible work environment. I have every variation of flexible working in my team that you can imagine, and it all works incredibly well as they have the technology to help them.”

All saw cost reduction to be a major incentive to embrace technology. Some thought cost efficiencies would drive down prices, others that it would increase profits. Many considered it essential to be able to offer value for money, and increased use of technology was the greatest opportunity to do that. They considered that they could compete on quality with London and may be able to compete on price if technology was used well. Some thought price would remain a concern but quality would be the way to retain or increase their client base.

“Efficiency goes to the bottom line, goes to price, profitability, but the added pressure that we have in Jersey is that not only do you want to keep the staff and attract the staff but there are just not enough people here to do the jobs anyway. Anything we can do...to save costs and add capacity.”

“You can take out back-office costs by making fee-earners more self-service, but that has drawbacks too, so you have to be careful.”

Many saw the mitigation of risk as equally, or in some cases more, important. The more standardised that processes were, the fewer times data needed to be entered and the less likely it was that errors would be made. There were also benefits for clients in this regard, as their experience of the firm would involve less friction for them. The service would appear more professional and client-centred. It would become easier and easier to transact business virtually.

³⁷ This has become a business continuity issue in the context of COVID-19 and the need for people to be able to work effectively remotely.

“You can reduce risk by having as many standard form documents as possible, which can be made bespoke to meet client needs. Every time you have to add in information it introduces risk.”

“Taking out the errors, as many as you can, has to be a good thing.”

“Mitigation of risks is a key benefit of technology but that does require that you have someone constantly maintaining the system, otherwise you could be doing absolutely everything wrong!”

All of the interviewees also saw benefits in attracting and retaining high-quality staff if their firms could reduce the amount of routine, tedious work that was capable of being done effectively by computer, while maximising the client interaction and complex legal work that colleagues could undertake. There was a lot of discussion about the difficulties of attracting well qualified new lawyers to join firms in Jersey and that the more attractive the work could be made, the more likely it would be to lure them to Jersey rather than losing them to London.

“Anything we can do to reduce the headcount makes that easier, and recruiting in Jersey is terribly, terribly difficult at all levels... The more work that can be automated the better, given this.”

Interviewees also mentioned difficulty in attracting or being able to buy in technical help, including assistance in software development, maintenance, data analytics, data security and data cleansing and migration. It was, however, acknowledged that some of this work to develop home-grown expertise is being led by Digital Jersey.

A couple of the very large firms indicated that they were investing enormously in recruitment for 21st century legal service delivery.

“So yes, we have invested a lot in tech... but we have probably invested even more in some of the culture stuff. The cultural stuff is a huge piece, the big piece about mindsets, the type of people you bring into the business... tech-savvy recruitment at partner level so you lead from the top. So we have a very bespoke type of person that we try to bring in while trying to build the business in terms of the interviewing process – the interview process is a core part of recruitment. Great, you are a good lawyer, you wouldn't be here if you weren't, but it is also about tech and how you are thinking about process.”

They did, however, highlight challenges and threats.

Most interviewees noted the difficulty of working with a complex web of legacy systems that did not interact with each other, were difficult and expensive to update and could not readily be customised.

“We have a cloud-based practice system that does time recording and document management and compliance... a separate one that does financial management... they don’t talk to each other And the difficulty is what talks to what...”

“Our constraints are to do with legacy and size.”

“Practice management systems, even in most of the big firms in Jersey, are about three to four years behind those in small legal practices onshore in the UK. There aren’t proper time capture systems from phones, emails etc.”

Many of the firms felt blocked from being able to move forward with some products and tools, because they could not afford to invest in a whole new suite of back-office systems. Others were willing and able to invest but could not find a system that was sufficiently tailored to the Jersey context or a firm of their size, or one that operated across borders and jurisdictions.

There were concerns about data: data security (including client concerns about the use of cloud systems and the operation of professional privilege if data was hosted off site); data migration from old systems to new ones; data quality sitting in firms’ repositories and whether this could be used as the basis for data analytics or the training of algorithms. Some were concerned about the need to digitise large volumes of paper for clients that had been with the firm for a long time.

More sophisticated AI systems required large quantities of data that were not available in a small jurisdiction such as Jersey in a substantive context, although may be possible in the context of business processes and analytics.

There were also concerns about the ability to train junior lawyers so that there are effective senior lawyers if AI is used for document, particularly contract, review.

“The AI is most usefully being deployed for document review, contract review... You do have the problem that if you take all the learning opportunities away from the junior lawyers ... you can tell within the profession those that have been at the coalface... and the value add comes from those who have been doing it. Things will change if junior lawyers don’t work on the underlying documents but only review the reports that come from the AI system... they may not develop their underlying knowledge...”

There was also some nervousness that some areas of work would disappear as technology made it easier for others to offer cheaper (if less high-quality) services. Some were concerned for the generations to come, if the profession was not able to adapt effectively and demonstrate added value to their clients.

Key Findings, External Enablers and Blockers

External factors also affect the extent to which law firms and other legal providers are enabled or blocked from embracing lawtech in their practices. There may be regulatory reasons why lawtech is favoured or disfavoured. There may be ethical issues that need to be addressed. And there are practical reasons why firms find it harder or easier to navigate the adoption of lawtech, including issues of infrastructure and the availability of potential staff with the right skills and experience.

Participants identified a range of enablers that made Jersey a great place to develop lawtech expertise. These were:

- A small jurisdiction such as Jersey can be fleet of foot and take up opportunities swiftly if they arise
- Regulatory burdens do not generally prevent innovation, although more guidance on anti-money laundering protocols and e-signatures, and greater use of digital filing in court, would help
- Law firms are well placed to partner with fintech leaders given Jersey's financial services strength and its fintech excellence
- There was evidence of client demand for greater use of lawtech, and that will drive practice

"It is all about the interaction between the tech and the people. In the end, law is a people business."

There were other issues that were described more as niggles or friction to some, but real blockers to others. These included the lack of clarity about the acceptability of digital signatures (and what constituted a 'signature'); the lack of court infrastructure for full e-filing; and the differing protocols across jurisdictions when it came to anti-money laundering rules (AML), including the need to keep verifying identities in different jurisdictions.

Some of these were perceived blockers, such as the e-signature issue, which has now been clarified by amendments to articles 11, 12 and 13 of the Electronic Communications (Jersey) Law 2000, following consultation between the Law Society of Jersey and Government. But these had already been overcome by some firms, with a strong lead from their senior technical teams working with lawyers to address concerns.

“Electronic signatures – the DocuSign system – make it easier to do business not just internally but for clients. It was quite a hard sell, with lawyers feeling uncomfortable about that to begin with, but then they were sold. It has become a blueprint for how we do other stuff.”

There was also some concern that other small jurisdictions may be stealing a march on Jersey due to high levels of investment in technology by the state. There was a feeling that e-ID changes were likely to be faster and more responsive in offshore jurisdictions such as Cayman than in Jersey. The example was that the ease with which one may open a bank account through use of a service such as Revolut was really important to enabling business and the legal sector servicing that business. Some of that was put down to the ‘wooliness’ of some of Jersey’s regulations.

Other issues appear to be more embedded problems, such as the stage of development of digital court infrastructure – the British Virgin Islands are further ahead as regards e-litigation than Jersey. The way in which property transactions are undertaken was also viewed as a blocker for some firms. Concerns were also raised about the lack of an international standard that allows for single verification of AML rules for those firms operating cross-jurisdictionally, and the slowness of moves towards an accepted e-ID verification model.

Regulatory and ethical barriers were rarely mentioned, and only then in passing. Concerns were voiced about the cost of subscriptions to various technological services, which were based on onshore firm sizes and turnovers rather than offshore jurisdiction contexts. Interviewees wondered whether it would be possible for Jersey to negotiate a Jersey rate collectively, which covered all firms on the island.

“They are geared up for the big organisations, whether or not Jersey Finance or Jersey as a jurisdiction could apply leverage to work with some of the big suppliers to make them aware that the subscription needs to be adjusted for offshore jurisdictions ... there is an imbalance [in] the ability to put these technologies into the jurisdiction as things stand.”

“A lot of our law firms are very small... even big law firms in Jersey are small by comparison in the UK, yet we do just what the City firms do... we could do with the same solutions but the investment costs are vast comparatively. Things like LexisNexis, in addition to the Jersey products, we have to buy in these systems and we are priced as if we are a UK law firm and we don’t use them anywhere near as much... Could the Law Society become the purchaser and give it to us as a benefit? We’ve had to cut access for many of our staff on cost grounds as it is charged on a fee-earner basis.”

A very small number of jurisdictions, such as Singapore, have been actively investing in seeking to develop lawtech within their jurisdiction. Others have been seeking to remove friction points – the examples cited by interviewees were the BVI in litigation (but further behind as regards digital access to legislation and case law; some jurisdictions do not have copyright licences to allow firms digitally to store case law) and the Cayman Islands for matters such as e-ID. To attract tech start-ups as new clients, ease of use, quality and expertise could make Jersey a natural fit, but there are said to be challenges such as the way in which shares are issued in Jersey. It was noted that this acts as a blocker to bringing technology entrepreneurs into Jersey as both clients and drivers for change, which could be addressed through legislation to make Jersey more attractive to innovators.

“There have been discussions around how we bring that type of business [regtech with lawtech] to the island, as ... a small island we can sandbox things quickly... The best way of bringing that work in... is for our larger clients, aside from the financial benefits that are usually associated with the offshore jurisdictions, we have a much more flexible offshore regime about how one can structure one’s companies and what one can do... One of the key opportunities is in regtech as once one has onboarded someone onto the island, you are fine for all professional services, lawyers, companies... There are a few blockers to that, in that our law at the minute does not allow you to transfer shares electronically easily. If shares could be issued as a security token [that would help].”

Some perceived there to be regulatory fuzziness about the use of things like cloud-based systems, data security and legal privilege, although others did not, suggesting that this could be resolved through guidance rather than regulatory change.

Having said that, Jersey was considered to be ahead of most of the Crown Dependencies and not that far behind most other small jurisdictions in most types of legal practice, and the Government’s Digital Court Plan will be welcome. The work of the Jersey Legal Information Board in promoting access to justice was also praised.

Summary

Interviewees had very similar views about the opportunities, threats, enablers and blockers. They indicated that the jurisdiction is largely quite conducive to innovation, although it is sometimes difficult to sell the importance of innovation to leaders in law firms. The challenge is that, although a small jurisdiction allows flexibility, as an offshore jurisdiction it also operates as a bespoke legal service for complex cases that may be lawtech-enabled but not routinized and automated. This means that some of the power of AI cannot be used. General practice firms may be able to do more with this, but with a relatively low number of cases, this is challenging. Gains may be made, though, in terms of cost, quality and reputation.

The range of lawtech tools is expanding rapidly as the underpinning technologies become more refined, more data is available to train algorithms and law firms signal their interest. Many of these products and services are, however, jurisdictionally specific. They are encoded with substantive law and procedure, applicable in one jurisdiction and not in others. They are often priced for Big Law rather than niche practices. They may be susceptible to some firm-based personalisation, but this often comes at quite a price. And personalisation requires in-house expertise to allow for ongoing updates if the systems are to stay current. Many of the systems do follow protocols that allow them to be plugged in to other systems, but not all do, and very few are compatible with legacy systems. None offer a full-service package; law firms need to purchase multiple systems to service all their technological needs. These issues came through starkly in some of the interviews with Jersey legal professionals.

4. Conclusions and Recommendations

Familiarity and Uptake

All those involved with the project were knowledgeable about a range of lawtech opportunities that they considered would be of benefit to their firm and/or to the wider legal system and/or clients. None were sceptical. All were keen to develop their organisations technologically.

With the exception of two organisations, all felt ill-equipped to make good long-term decisions about what kinds of technology to invest in. All noted that purchasing and development decisions needed to be well conceived, budgets were limited and most needed to convince others in the firm of the need to make greater investment in technology. The products that they were being offered by salespeople were not well tailored for law and certainly not the Jersey context. Without their guidance or without assistance from a professional or industry body, they did not feel confident about which products would be beneficial and which a risk or worse.

Opportunities and Risks, Enablers and Blockers

The opportunities and threats, benefits and risks were largely held in common by interviewees, with a few notable exceptions voiced by those who were technology experts rather than lawyers, and who felt more confident in their decision-making about lawtech.

Benefits to the profession also included cost reduction, the mitigation of risk, and an increase in the quality of work, client satisfaction and the reputation of the profession. The jurisdiction would be able to compete even more effectively with other similar jurisdictions because it would have the technological edge as well as, it was hoped, a price dividend. It may be possible to integrate even further with fintech and financial services and gain market advantage there. Clients would be better served virtually. And firms would benefit from all of these same factors, as well as from first mover advantage.

There were concerns that the poor adoption or execution of lawtech may lead to an erosion of trust in lawyers. And the more that DIY legal services were developed, the harder it would be for general practice firms to survive. There were worries about the cost of investment and whether firms would know which systems were worth investing in and which not. There were concerns about a lack of reliable data to train algorithms for more sophisticated machine learning.

Other threats identified were knowledge gaps within firms, the challenge of convincing senior leaders of the need to innovate, and the lack of investment. Other issues were the need to retrain staff effectively, the difficulty of hiring good staff with the right skills, knowledge and experience, and the limited opportunities to learn from others. Technological barriers were identified as the plethora of legacy systems and the cost and difficulty of replacing them. There were costs and risks associated with migration of data and the need to digitise legacy data held in paper format.

The biggest enablers were having the right people working in firms that had an ability to move at speed by being less hierarchical, and the benefit of being in a small jurisdiction that could adapt its rules where it was apparent that they were a barrier.

Interestingly, interviewees did not consider regulatory or professional conduct rules to be a barrier to lawtech adoption in Jersey. In fact, they considered them to be neutral. The biggest challenges were the shortage of the right people and high costs, with some practical challenges associated with being in a small jurisdiction. Those that were at the forefront of technology adoption stressed the importance of doing the cultural change work as the key to innovation, with technology being the enabler rather than the driver. In the absence of an innovation culture – and the right people with the right skills, knowledge, capabilities and attributes – the technology is unlikely to yield real benefits for the firm or its clients.

Recommendations

A number of recommendations flow from the interviews. These are:

- To facilitate a means to share experiences including good practice and best practice, using case studies of what has worked and what has not. There may be some reluctance for the more advanced to participate in these sessions, but even a means by which those in similar situations may talk through their thinking would be beneficial, many interviewees noted. A few said it would be helpful to know when lawtech events were happening, even if onshore, so that they could learn more from others
- Support as regards cultural change/change management, including education and training to support law firms considering how they will develop their delivery of legal services
- The development of an innovation toolkit to assist law firms with technological development
- Clarity as regards hard and soft copy signatures, identity verification and anti-money laundering protocols. Some work has been done on some of these issues since the interviews, in particular on digital signatures. Some are less easy to solve as they would need to involve cross-jurisdictional agreements. The legislative amendments have resolved the e-signature points; this may need further propagation round the jurisdiction
- A guidance note setting out information on data protection, legal professional privilege and cloud-based storage
- A continued focus on developing IT and other business-relevant skills for those in Jersey and consideration of whether the immigration system is sufficiently flexible to allow talented people in skills shortage areas to be recruited from off the island
- A continued move towards greater electronic capabilities in Jersey courts
- Consideration of whether it is possible for the Law Society of Jersey to negotiate a Jersey fee structure for products such as LexisNexis, taking into account very small jurisdiction issues and the need for multiple jurisdiction subscriptions

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