

JULY
2021

Technology and Innovation in Legal Services

Final Report for the Solicitors Regulation Authority

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Suggested citation: Sako, M. & Parnham, R. (2021) **Technology and Innovation in Legal Services: Final Report for the Solicitors Regulation Authority**. University of Oxford. An electronic copy can be [downloaded from here](#).

Unmet Legal Needs and Risks: Providers' Perspectives

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In this chapter, we discuss three main topics, all from the perspective of legal service providers operating in England and Wales.

- First, we explore whether innovation and technology usage might reduce incidences of what is known as 'unmet legal need' (ULN). While we will highlight examples of innovation and technology deployments from across the PeopleLaw space, we will also include a short case history for one legal specialism where unmet need is particularly commonplace – employment law.
- Second, we explore actual (or perceived) regulatory and other barriers that may hinder the ability of SRA-regulated legal service providers to deploy new technology or innovative practices.
- Third, and moving away from our ULN focus, we investigate the risks associated with innovation and legal technology deployments. Here, we pay particular attention to the risks associated with legaltech supplier failure, including when a legal technology supplier ceases trading.

Our insights from this chapter come from three main sources: 32 interviews, each one hour long, with English and Welsh-based legal practices, most of which are SRA regulated and are regarded as being innovative by the legal trade press; our online survey findings (see Chapter 2); and prior research on ULN, technology and innovation ([see Annex report](#)) that has helped to scope our research.

Impact of technology and innovation on ULN – scoping observations

This chapter starts from the premise that technology and innovation may be able to help reduce incidence of ULN.¹ However, this premise comes with a significant qualification: the term ‘unmet legal need’ does not simply equate to situations where an individual or organisation cannot instruct a lawyer, perhaps for reasons of availability or cost.

Cost and availability are certainly important elements of the ULN concept, but they are not the entirety of it. Instead, the ULN concept is best thought of as a multi-stage process,² only some of which is likely to be directly mitigated by technology and legal practice innovation. For example, one element of ULN is that a person must ‘feel’ or recognise they have a legal need, that requires attention.³ However, prior research demonstrates that many of those who are objectively affected by what is clearly a legal issue may not ‘feel’ that the issue is, indeed, legal in nature. Rather, the issue may be felt to be moral, social or bureaucratic in nature – or even just bad luck and part of life.⁴ In such circumstances, it may not even occur to an individual or organisation that legal assistance is required. At that point, their journey along the ULN process will end, without legal sector technology and innovation ever having become relevant.

Additionally, faced with ‘non-serious’ legal problems (in particular), prior research has found that many people simply do nothing – ie they do not seek to enforce their legal rights. In general, the more serious a legal matter is, the more likely an individual is to do something about it, including seeking advice.⁵ Again, this lack of activity suggests that there may be an ‘end point’ in the legal need journey, before technology and innovation even has the opportunity to have an effect on a person’s ability to exercise their rights. Furthermore, even assuming that a legal need is thought to be sufficiently serious to warrant advice, the advice sought may not – necessarily – be obtained from an SRA-regulated organisation or professional. Often, legal advice is instead sought from other sources, which may include friends and family, charity and trade unions.⁶ Indeed, there is evidence that other advisor types are often preferred over solicitors,

1 Tulk, N., C. Gorst and L. Shanks (2020). The Legal Access Challenge – Closing the legal gap through technology innovation. Nesta Challenges, Solicitors Regulation Authority, Department for Business, Energy & Industrial Strategy, Innovate UK.

2 YouGov, The Law Society and Legal Services Board (2019). Legal needs of Individuals in England and Wales: Technical Report 2019/20, Legal Services Board / The Law Society.

3 Curran, L. and M. A. Noone (2007). ‘The challenges of defining unmet legal need’. *Journal of Law and Social Policy* 21: 63–88.

4 Balmer, N. (2013). English and Welsh Civil and Social Justice Panel Survey: Wave 2, Legal Services Commission; Pleasence, P. and N. Balmer (2013). In Need of Advice? Findings of a Small Business Legal Needs Benchmarking Survey. Cambridge: Legal Services Board.

5 Pleasence, P., N. Balmer and S. Reimers (2011). ‘What Really Drives Advice Seeking Behaviour? Looking Beyond the Subject of Legal Disputes’.

Oñati Socio-Legal Series 1(6): 1; Franklyn, R., T. Budd, R. Verrill and M. Willoughby (2017). Key Findings from the Legal Problem and Resolution Survey, 2014–15. *Ministry of Justice Analytical Series*. S. Bryant, Ministry of Justice; Legal Services Corporation (2017). The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans. Washington DC, University of Chicago for Legal Services Corporation.

6 World Justice Project (2019). Global Insights on Access to Justice: findings from the World Justice Project General Population Poll in 101 Countries. Washington DC / Seattle, USA, World Justice Project.

in particular, because solicitors are perceived (sometimes erroneously⁷) as being expensive.⁸ Finally, prior research suggests that consumers may have an ongoing preference for engaging with people, rather than technology (such as AI-assisted tools) when accessing legal services.⁹ This consumer reluctance to use technology will need to be overcome before technology-based solutions can become widely adopted mechanism for delivering legal services.

Taken in the round, legal innovation and technology is therefore most likely to help militate against ULN in circumstances when:

- a legal need has already been recognised as being such by the person affected
- the person regards the matter as being sufficiently serious that professional advice is warranted
- they are comfortable engaging with technology when seeking to address their legal needs issue.

Ideally, at this point of potential instruction, the advisors' use of technology and innovation should facilitate translating this desire for assistance into actual assistance, because other potential barriers to instruction – advisor accessibility, high price etc – do not prove to be impossible to overcome.

7 SRA. Encouraging trends identified in one-year review of SRA's transparency reforms, 15 October 2020

8 Pleasence, P. and N. J. Balmer (2014). How People Resolve 'Legal' Problems. Cambridge: Legal Services Board: Ipsos MORI / Social Research Institute (2015). Qualitative research exploring experiences and perceptions of unbundled legal services, Legal Services Board / Legal Services Consumer Panel.

9 Legal Services Consumer Panel (2019). Tracker Survey 2019 – How consumers are using legal services, 30 July 2019

Technology and innovation in a ULN-specific context

Even in a legal-sector specific context, there are many ways to define innovation. In this report, we define innovation by focusing on:

- Product innovation – introducing new services
- Delivery innovation – delivering services in new ways
- Marketing innovation – new approaches to promoting services.

In this chapter, we shall mainly explore product and delivery innovation – commonly, ‘productising’ legal services. By ‘productising’, we mean taking a legal service that has traditionally been delivered by human legal advisors – such as will-writing – but is instead turned into a (mainly) self-service legal product, typically delivered online. We focus on these two innovation types because they are arguably most closely associated with the actual provision of legal services. By contrast, marketing innovation is more relevant to seeking new instructions sometimes, including via new marketing channels. Chapter 2 of our report offers illustrative examples of marketing innovation. Chapter 5 also briefly explores marketing innovation in the context of what are known as digital comparison tools.

In terms of how ULN, technology, and innovation might complement each other, below is a quote from a large alternative business structure (ABS) legal practice, whose technology-led innovation is highly focused on mitigating against ULN. While this practice obviously cannot help those who never seek out its services, from the point at which contact is made, the service arguably mitigates several ULN challenges. Notably, tailored advice is given regarding the person’s

existence (or not) of a legal right via an online self-service tool, initially free of charge. This is an example of a ‘productised’ legal service, discussed previously.

‘So, we look at advice in three ways...Our whole goal has been to drive digital innovation into the first step, which is building a really clear understanding of the law, and the second step, which is giving you a clear understanding of what service you need; we have really focused on making those free, and we’re now focusing on the third step, which is, once you’ve been through those steps and you’re comfortable with what you need, we’re looking at taking your instructions digitally and providing a fulfilment service.’ – large PeopleLaw ABS firm

The legal ‘fulfilment’ service, mentioned above, is chargeable, although generally on a fixed fee basis. This ‘freemium’-style fee structure – a free service initially, followed by a payment for additional service – may therefore pose a challenge for those who cannot afford chargeable follow-on lawyers’ advice. Another way of reducing (if not eliminating) cost pressures on clients is to offer differentiated pricing, with a lower fee payable for those who are able to self-serve online.

This approach was taken by another of our ABS interviewees, who offered a productised legal service. While the cost of this provider's telephone-based legal advisory service was close to the industry norm,¹⁰ its self-serve online alternative was 25% cheaper.

For both of the ABSs mentioned above, and for others like them, another benefit of digital legal services delivery is that, once the upfront cost of investing in interactive web tools is paid for, supplier resource constraints are all but removed: a single service provider can, effectively, serve an almost unlimited number of clients who visit their website, simultaneously. This would not be the case, as we will explore shortly, where legal service innovation continues to require bespoke, human-led service delivery. This is especially relevant for situations where some, or all, of a legal service is given to clients for free: for services delivered online, there is no capacity constraint for offering this type of service. By contrast, when initial advice is delivered by humans, the key capacity constraint is the advisor's time-based availability, and their willingness to give it away for free.

The first of the ABS firms mentioned above was a clear advocate of meeting consumers' ULN. However, what is also notable about this practice is that its online service delivery platform remains in the development phase, with several new services due to be rolled out in the months ahead. Other firms we interviewed, which we regarded as being innovative in other ways, also observed that their ULN-related online legal services offerings were also in development, rather than being fully operational.

'We've been working on another prototype for the last three years, and this is...this is a purer AI tool... it will be online, it will be free, and it's going to be a digital experience that allows any individual who's experiencing a family law issue... they can go to the site, and they will be asked some questions, but the algorithm that's driving the outputs at the back, it will give them a tailored recommendation.'
– small PeopleLaw firm

'What I'm doing, and what we're innovating in next, is taking the technology and the legal knowledge and putting it in the hands of the client. So, we give the client the knowledge and the technology to use it for themselves.' – small PeopleLaw firm

Although these examples are anecdotal, they also reflect our survey findings, discussed in Chapter 2. By way of reminders, these survey findings anticipate that law firms will enhance this type of self-service legal provision in the coming years, including greater user of interactive websites (up from 9.9% of respondents using now to 19.5% planning to use) and chatbots / virtual assistants (up from 6.2% using now to 14.0% planning to use) (see Table 2.5). That said, even with profession-wide increase in the delivery of such services, our survey indicates that only a minority of firms plan to offer them in the near future.

Of course, delivering interactive services online in the ULN space may be good for firms' sense of purpose, but do they add to the bottom line? Unfortunately, our interviewees did not volunteer the profit margins from their digital services. What they did, however, confirm was that digital revenues had become a sizeable percentage of their practice's overall income, notwithstanding the fact that some of them now offer a freemium legal service.

For example, one SRA-regulated legal practice, which was now aggressively expanding its PeopleLaw-focused digital legal services, observed that 38% of the practice's income was now digital 'and that's up from 28% in 2019'. Another firm, which had been digitally focused for its entire existence, recalled that its practice's income was split 50:50 between technology and advisory-led revenues – a deliberate strategy. 'I see them as completely complementary and equal,' the practice representative said. These examples therefore illustrate how it is possible to deliver legal services digitally, offer some services for free – and still generate significant revenues from them.

These examples also arguably offer a proof of concept that mitigating against ULN and generating respectable revenues are not mutually exclusive activities.

Another, more indirect, way that practice innovation and new technology might help reduce ULN is by lowering the overall cost of delivering legal services – ideally making them cheaper to provide to end users. Here, the use of online portals and case management solutions was mentioned by several interviewees as their preferred approach to cost reduction across a variety of PeopleLaw-focused specialisms, including family and employment law. Managing a matter online may not appear particularly innovative. But, in a legal sector context, it is. According to our survey, just 15.4% of survey respondents currently offer ‘online portals for matter status updates’, while a further 21.2% plan to do so in the future (see Table 2.5). We should therefore not assume that offering client online portals and case management solutions will become ubiquitous in the near future.

In contrast to a general, sector-wide reluctance to offer clients online portals or case management solutions, those firms who had installed such systems were generally positive about them, some citing high customer usage and approval rating as key benefits. One PeopleLaw focused firm said that, on an annual basis, 70% of the firm’s clients used their online platform, which also enjoyed a 96.7% approval rating. What is more, this service also saves the firm £120,000 each year in non-chargeable time ‘because it does tasks that ordinarily we would have to do manually’. This interviewee was also critical of their peers, who had not embraced such platforms, asserting: ‘Don’t tell me your clients won’t like it. When was the last time you asked your clients anything?!’ they said.

Another firm, specialising in a different area of practice, estimated take-up for their online services as being 70–80% of the firms’ active client base, with no significant variances in take-up by age range. Indeed, this individual was so

confident in the user adoption of their platform that they were considering charging clients lower fees for those who used it and higher fees to those that didn’t. That said, as will be discussed in more detail shortly, another firm, focused on employment law, acknowledged that take-up of their online portal/case management solution was far lower: around 20%. This example also illustrates that high client usage of such solutions is not inevitable: there are risks attached in terms of actual client usage of such services. Indeed, as previously mentioned in Chapter 2, firms say that a lack of consumer appetite is a significant inhibitor of firms deploying new legal technology.

In each of the above-mentioned examples, the law firms had simply decided to offer their client portal services to clients, in the hope that they would be used. But, in other circumstances, external factors can drive the development of online client portals. For example, in the personal injury space, the forthcoming launch of the Official Injury Claim Portal, often known as the whiplash claims portal, was mentioned by four of our interviewees as a key driver for them investing in their own portal-based offering. Since its launch at the end of May 2021, the whiplash portal enables individuals to file road traffic accident-related personal injury claims with the courts service directly, without the need for professional legal assistance.

In order to remain active in the low-value whiplash claims market, some firms have built their own self-service tools, through which clients can process their claim – with the additional support of legal advisors where required. Explaining the rationale of this investment, one of our mid-sized PeopleLaw interviewees observed that their solution ‘allows us to run the claims on a much lighter touch than we would have historically. It takes a lot of the admin out of our hands and puts it in the hands of the customer... I guess our catchphrase would be “accessible expertise” – [the customer] can still access the expertise they need when they need it, but at a much lower cost’. Notably, this firm was now planning to draw on the experience, offering

online case management to other areas of work because 'you know, why wouldn't you? ...If it cuts down on telephone calls, [it] means we're sending less emails, less letters...then all the better'.

Another interviewee, who worked for a large national law firm, noted that their practice was planning to expand its PeopleLaw-focused online offering off the back of its whiplash portal development programme – the technology platform that underlay the whiplash portal had been created in such a way that it could be easily adapted to different practice areas. 'I think of it...like a printer that can print lots of different digital legal service experiences for consumers,' the interviewee said, adding that a new 'technology shell' – essentially the core elements of a new legal service offering – could now be created in just 27 minutes. Future areas of work on this firm's digital roadmap included family and employment law, amongst other areas of law. A third interviewee, whose firm acts for global insurance clients, said their experience of developing their own portal solution in the UK had the potential to scale up globally. 'There is almost endless potential,' they said.

Given that the above-mentioned whiplash portal investments were initially sparked by the UK government's legal services digitisation agenda, we suggest that it might be useful to undertake future research into the extent to which government-mandated legal technology usage has facilitated legal sector investment in PeopleLaw focused self-service lines, particularly in relation to areas of current ULN. Another avenue for research might be ancillary services which surround the UK government's divorce portal. While we encountered numerous family law firms who mentioned this portal while seeking our research interviews, we were unable to secure interviews with firms who offer self-service, online divorce services which supplement the portal's core functionality.

Case history – technology use and innovation to reduce ULN in relation to employment law

In this section, we briefly explore the use of technology and innovation in relation to employment law services. This practice area was selected for a variety of reasons, including that it is known to be subject to high levels of ULN, is disproportionality likely to induce stress and financial loss¹¹ among consumers, and is also regarded as one of the ‘big three problems’ affecting the small business sector.¹²

It is also an area of law for which there is very little data regarding the scale of innovation and technology activities by SRA regulated practices in England and Wales. For example, the 2018 LSB study captured no data on usage by employment-focused law firms of a range of emergent technologies, including interactive websites, live chat/virtual assistants, custom built apps or predictive technologies.¹³ Indeed, in our own survey on legal technology adoption – conducted as part of this research – we have been unable to obtain insights into the specific technologies that firms have adopted, or planned to adopt in the employment law space (see Chapter 2 Table 2.6a, which indicates that – compared to residential conveyancing and wills, probate and trusts – employment law did not elicit many instances of technology adoption).

In light of the above, we cannot say whether the examples of employment law-related innovation and technology deployments discussed below are reflective of wider market trends. Instead, we regard these interview-based insights as being illustrative of the ‘art of the possible’. Most of the organisations interviewed for this segment of our research were SRA-regulated law firms –

a mixture of general practices that we regard as being generally innovative, together with a smaller number of specialist employment-focused law firms. To gain a broader appreciation of innovation across the wider employment law market, we also interviewed a small number of unregulated advisors who focus on employment law.

Starting first with employment-law focused legal practices: echoing the results of our survey, the firms we interviewed were currently focusing their investment activities on what were – effectively – variants of client portals, ie the ability to update clients on the status of their matters. For example, one (non-SRA regulated) employment specialist observed that around one fifth of their practice’s client base – representing several thousand clients – had now downloaded the firm’s matter management phone app, two years into its development cycle. ‘That’s a decent percentage, but not as significant as I guess we’d like it to be... this is one area that we are really keen to develop further, in terms of the way in which our clients can access our services,’ the interviewee said. Another practice, an SRA-regulated legaltech / law firm hybrid, stated their entire underlying technology platform was

¹¹ YouGov, The Law Society and Legal Services Board (2019). Legal needs of Individuals in England and Wales: Technical Report 2019/20, Legal Services Board and The Law Society.

¹² Blackburn, R., J. Kitching and G. Saridakis (2015). The legal needs of small businesses: An analysis of small businesses’ experience of legal problems, capacity and attitudes, Kingston University.

¹³ Legal Services Board (2018). Technology and Innovation in Legal Services – Main Report. An analysis of a survey of legal service providers, Legal Services Board.

designed to allow users to open and track cases, communicate with their lawyers, receive training and obtain documents on a self-service basis. This technology platform was, the interviewee explained, 'a core, central part of our overall integrated proposition.' Notably, this interviewee also observed that, when seeking to develop the firm's solution, they had been unable to locate an off-the-shelf product to form the core of their offering. As a result of this apparent vendor shortage, the firm had been forced to develop its own solution. We shall return to the subject of vendor shortage as a possible inhibitor of legal technology deployments shortly.

Turning now to our wider pool of interviewees, across the PeopleLaw and BigLaw space. Here, our overall impression is that employment law has not tended to be a priority area for innovation and technology deployment among generalist practices, even among PeopleLaw-focused law firms. When asked to identify their main focus of innovation activities, most generalist practices failed to offer any employment law-related examples. And, among those that did, several highlighted their low-cost, subscription-based employment advisory services, mainly delivered by human advisors. The challenge of such services from a ULN perspective is, of course, that the human element of service delivery will invariably act as a constraint on the service's ability to scale, and capacity to reduce the overall cost of service delivery.

In terms of technology-led, employment law-focused deployments – ie. those more likely to scale – the examples offered by interviewees were eclectic in their nature. Examples included:

- a self-service disability discrimination diagnostic tool
- an automated whistle-blowing diagnostic tool, which thematically analysed complaints made by employees

- a digital collaboration tool for workforce engagement, which allowed collective consultations to take place while an organisation's workforce was largely working remotely
- a COVID-19 vaccination tracker, which captures details of employees' participation in vaccination programmes for compliance purposes.

Notably, only one of the above-mentioned examples – the self-service disability discrimination diagnostic tool – is unquestionably in the ULN/PeopleLaw space; owing to their employer focus, the remainder are arguably BigLaw-targeted solutions.

One possible explanation for why employment law appears to be a difficult practice area to automate is that, as the above examples also illustrate, employment law is not a singular work type: consequently, each area of employment law requires its own discrete automation tool. Additionally, and in clear contrast with the forthcoming whiplash portal, we are not aware of any state-mandated online tools, which might help encourage and direct legal practice investment in the employment law space. Unless this latter reality changes, we suspect that employment-law related practice innovation will remain fragmented and sporadic, and largely depend on the priorities and preferences of individual legal practices. In order to obtain a comprehensive picture of the state of innovation within the employment law space, it may be useful to undertake more quantitative – ie survey based – research among firms that offer such services. This might help establish the extent of automated / online service provision (in general), and also the scale of automated / online service provision within its various market subsections.

Regulatory and other barriers to innovation and technology deployment

During our interviews, we explicitly asked SRA-regulated practices if they had encountered any regulatory barriers to innovation and technology deployments.

However, in contrast with our survey findings, which identified ‘client confidentiality and data protection requirements’ as top concerns (cited by 69.8% of respondents facing regulatory barriers) (see Table 2.12), very few of our interviewees mentioned this specific challenge, and then largely in passing. Indeed, firms were more likely to mention how technology such as specialist email security software was helping them to mitigate such risks.

Once again, the use of portal technology was mentioned by several firms, this time in a security-related context: rather than relying on security solutions that chimed with lawyers’ traditional working practices, such as sending password-protected Word documents to clients by email, some firms had moved client matter management largely online, using secure portals as their default client service delivery mechanism. Indeed, one of our interviewees said they looked forward to the day that market pressure would effectively mandate this form of service delivery. There were, the interviewee claimed, ‘global data security [directors and managers] coming over the hill [that will] say, “Sorry, we can’t communicate like that anymore, with immediate effect – we now need to have a secure platform.” So, what will happen is those big businesses will just impose their platforms on the legal industry, and you’re going to have to work on those platforms’.

On a related point, several firms mentioned they had adopted new technology specifically to help them verify clients’ identities, thereby assisting with anti-money laundering compliance.

While the initial driver of this development was COVID, this specific use case illustrates how technology and innovation can help reduce firm’s regulatory risk exposure, not just increase it.

‘So, when we are verifying our new clients, they get sent a link to an app. They load the app, they take a selfie, they take a photograph of their passport, and it does it...and then they take a photograph of the utility bill, and the app does the rest, and it verifies – it says, yes, that is the person that they say it is, and a report comes through.’ – large PeopleLaw firm.

‘We have limited options in terms of other people certifying ID, so using these platforms has been absolutely key to being able to get through that first stage.’ – large PeopleLaw firm.

Where our survey findings and interviews aligned more closely was in relation to professional indemnity insurance (PII) challenges, identified by 63.1% of respondents facing regulatory barriers as a barrier to technology adoption. Among those interviewees who raised PII concerns, these concerns tended to focus on two main themes.

Firstly, whether their practice's innovation-related activities would be covered within their firm's main PII policy, and secondly, whether additional insurance cover would be required by firms for cyber-related risk exposure. By way of explanation, SRA-regulated law firms are obliged to take PII cover, and all insurers serving this market are obliged to provide at least £2m of insurance coverage for liabilities arising from 'private legal practice in connection with the insured firms' practice'. This insurance is provided in accordance with the SRA's 'minimum terms and conditions' (MTC) for insurance.

'One of our big ones at the moment is all around insurance. [One thing...] that's slowing things down slightly in sorting out, is whether or not we're insured for these things or do we need additional insurance because there's some services now that we're doing that don't [fall within] legal advice.' – large BigLaw firm.

'We're now offering something that is not pure legal services, so you need some user terms, and [to disclose] it all to our insurers, our brokers, what we're doing, and a disclaimer: you know, is it legal advice, that has to be looked at internally as well, making sure the disclaimers were right.' – large BigLaw firm.

'If you're launching any kind of new service, then there's going to be a question as to whether it's within the definition of 'professional activities' in your insurance policy. Firms would want to talk to their brokers and insurers just to make sure everybody was comfortable.' – large BigLaw firm.

'We have our normal professional indemnity insurance, but we also have cyber insurance now because we recognised the risk of everyone being online. Obviously, there are different risks – you know, hacking ... scam-emails, cloning of your website.' – mid-sized PeopleLaw firm.

'There's a really big thing happening that seems to have only just come to light in the last couple of months, in that our insurance companies, who look after our PII cover, are excluding silent cyber from claims.' – large BigLaw firm.

In light of these comments, we also obtained the opinions of two PII insurance brokers who specialise in legal services market. Unfortunately, these interviews did little to provide clarity regarding the extent of MTC coverage. Although both service providers acknowledged that the scope of the MTC appeared broad, they also suggested that firms should speak to their insurer if they had any doubts as to whether a planned service offered might fall outside the scope of 'private legal practice in connection with the insured firms' practice'. Firms should not, in the words of one interviewee, 'just [cross] your fingers and, if a claim arises, then try to [make a] dispute about it.' This approach was also endorsed by our law firm interviewees, several of whom said they had checked with their PII providers when developing innovative new services. Where MTC-based policies are deemed inadequate, additional cover, which does not include the 'private legal practice' coverage limitation, may be appropriate.

Both insurance representatives also suggested that insurance underwriters may require some education about the technologies now being used by law firms, to help them with its associated risks. Indeed, one interviewee suggested that the SRA and Law Society could play a role in this education process. A request for regulators to engage more with the PII market in relation to technology adoption was also made by one of the lawtech companies we interviewed for another segment of our research. This legal technology company, who aspired to become an SRA-regulated ABS, said they had decided to postpone their application because they were 'struggling to get PII because of the tech element of our business'. This technology company felt that the SRA's MTCs made it more difficult for insurers to provide services to technology companies such as theirs, which wanted to provide both technology driven legal information and also advice. Structuring the legal advisory element of their business as a separate company would involve 'more cost, more administration, more headache', this provider said.

In terms of cyber risks, both insurance broker interviewees observed that the industry intended to minimise its risk coverage, by reference to what would be covered by the MTC. Here, the crucial date for achieving clarity on this point was 1 January 2021, the point in time by which insurers needed to clarify whether or not cyber risks are included within their baseline, MTC-based PII policies. According to an insurance broker interviewee, 'the insurance market has taken the view that...OK, we'll exclude it then', adding that the market was 'very tough at the moment'.

In terms of the scope of PII coverage, our understanding is that third party losses in the event of a cyber attack – ie those losses suffered by clients – are almost certainly currently covered under the MTC. This is because, for more than 20 years, the MTC has required those who offer insurance to regulated legal practices to offer comprehensive consumer protection within their PII policies. However, there is now a degree of uncertainty as to whether certain third party losses will be covered by PII policies based on the MTC, where the policy is silent on cyber coverage – hence the term 'silent cyber' to describe such a situation. Here, the combined weight of greater use of technology, existing and emerging cyber threats, a hardening insurance market, and greater oversight by the Prudential Regulation Authority and the Lloyd's of London insurance market, have all combined to make PII coverage in the event of a cyber attack a live issue, which requires ongoing regulatory engagement.

To address this issue, the SRA has consulted on PII MTC coverage. Here, the objective of the consultation is not to try to extend the scope of the MTC to include cyber cover for losses suffered by the firm ie first party losses. Rather, the industry engagement aims to more precisely define when exclusions should, or should not be, permitted under the MTC. For example, the SRA's proposed approach would allow insurers to exclude first party losses caused by a cyber act which resulted in the total failure of a law firm computer system. However, insurers would not be able to avoid providing cover where a cyber

attack ultimately gave rise to a successful claim against an insured legal practice by a client or third party.¹⁴

The third major uncertainty inhibiting innovation and lawtech adoption – indicated by around 43.6% of survey respondents facing regulatory barriers – related to 'not knowing if wider regulations and legislation allowed what we are considering.' Broadly, this concern was reflected in our interviewees' comments regarding regulatory uncertainty. Here, a common theme was the absence of guidance and support by the SRA, rather than actual rules imposed. This absence of guidance and support concern covered two main topics – firstly, general guidance as to whether what firms were planning to do was permissible. And secondly, in relation to the deployment of specific lawtech solutions. Here, the absence of any approved list of vendors – or, at least, an approved methodology for selecting vendors, was a potentially inhibiting factor in innovation and technology adoption.

'They've reduced down and down the regulations and the requirements, so they're very much outcomes focused, which is fine in some ways, but if they're not prescriptive, you know, you don't know whether you're going wrong or you're not going wrong. And, you know, the support side of things can...they're not very definitive on support on things. It's, you know, "we can express a view but, em, you know, basically [we] will deny all knowledge of it and it won't stand up in a court of law – it's not our opinion". So, ...it's sort of almost meaningless.' – large PeopleLaw firm.

'For firms like mine, where we're trying to innovate both in the service provision, the models that we offer, and on the technology side, it would be...it would be nice perhaps if we had a more direct line to the SRA and we could say, "Look, can we tell you what we're doing? Can we tell you what the obstructions are? ...We're bootstrapping everything, so could you cut us a little bit of slack because it's hard enough?'" – small PeopleLaw firm.

'I think the industry would welcome SRA guidance – or an SRA position – on the various uses of legal tech and legal tech providers so that a provider of legal services can either go through a checklist or satisfy themselves, based on some SRA guidance, that they're doing the appropriate things to ensure that liability is fixed in the right place, that the right level of risk mitigation has happened and so on – but they need to do that in a way that is not onerous... The last thing we want is a new set of SRA regulations saying we're now regulating your use of legal tech, and unless you can satisfy us on this, you're not allowed to use it. That would be dreadful.' – large BigLaw firm.

'If there were products which are endorsed by the SRA, for example, then that might encourage other firms to think, "Oh, actually, you know, other law firms have used it and it is endorsed by the SRA, so it's got a quality-mark to it – maybe we should look at using it".' – mid-sized PeopleLaw firm.

Another notable barrier to technology adoption and innovation appeared to be the existing legal technology vendor market itself. Here, several interviewees complained that certain existing vendors hampered their ability to launch new solutions, either because of software integration problems, or their existing suppliers were not prompt in providing the required integration support.

'I feel quite angry about the poor service that lawyers are given from the main software providers. I think it's really, really poor. What are they afraid of: that they will not build APIs? That we'll connect to other competing systems?' – small PeopleLaw firm.

'The challenge is actually still things like the APIs and the integrations and so on...For example, there are two or three integrations where we have just had to put them on hold...because [company name] don't have the time as it stands to be able to do the development work that we want to be able to move forward. So, that's been a real challenge this year, particularly in that, ultimately, we're still beholden to the owner of the case management system.' –small PeopleLaw firm.

These comments may help explain another of our survey findings, which asked about risks associated with technology adoption. The second highest response to this question was 'support from the technology provider may be inadequate' (27.80%) (see Table 2.10). Clearly, some law firms are not happy with their legal technology providers. Furthermore, our interviewees point to a particular point of law firm annoyance – their solutions vendors' lack of APIs (application programming interface) and its knock-on challenge for law firms who are trying to integrate multiple solutions. That said, we also note that one long-standing legal technology company we interviewed, who provides 'white label' legal document assembly solutions, was equally critical of law firms as clients – describing them as 'fiefdoms' that were 'very difficult to sell into'. Because the law firm market was so hard to gain traction in, this company had switched its focus to institutional clients.

Another issue that appears to be relevant in the PeopleLaw space, in particular, is an absolute lack of vendor provision, specifically in relation to client-facing legal technology. For example, a provider of services in employment law market said:

'So, seven years ago, I sat there with a customer demand – a naivety that, actually, what I'll do is look out into the third-party market, find the best system I can and white-label it and offer that to my customers. The third-party market never arrived. It didn't exist. I couldn't find anything. So, I decided to build it.' – small PeopleLaw firm.

In the example offered above, the firm ultimately overcame an absolute lack of vendor provision by building their own solution in-house. Furthermore, we encountered several other examples of firms who had followed this broad approach. However, it is arguable that this 'build it yourself' approach is sub-optimal, in terms of wider scale-up of this type of technology deployment.

The comments below highlight several challenges with the 'build it yourself' approach to legal technology deployments. Firstly, and most significantly, non-legal IT skills are required to fashion legal technology solutions from generic technologies. Secondly, while freeware can help mitigate software creation costs and maintenance issues, firms may nevertheless require access to specialist (non-legal) personnel to create their novel legal technology solution – ie there is a human capital cost associated with the software's deployment. This consideration may help explain another of our survey findings, which was that 'lack of staff expertise to assess and implement technology' (50.1%) was one of the most significant barriers to legal technology adoption. Finally, it may also explain why around half (48.1%) of survey respondents who engaged in innovation employed consultants to help them.

Illustrating how they assembled PeopleLaw services from non-legaltech providers, the interviewees below discuss how they did so. The technical expertise demonstrated in these comments are arguably far removed of those expected of a typical lawyer.

'We used Gravity Forms, which is a plug-in [for] the WordPress blogosphere, and it's just that we spotted that it had very considerable scope for expanding beyond what's your name and what's your email address, because it had conditional logic rules, so we used it as a prototyping tool. So, the novelty is the fact that we applied it to an onboarding experience for [types of] clients in a certain level of distress, and then, because of the plug-and-play universe that sits behind WordPress, we were able to do all of those shortcuts, a low-code environment...way back in 2010.' – small PeopleLaw firm.

'I think probably cloud technology has been the fundamental enabler for the industry to move on... We build all our workflows in dot.net or whatever, but they sit in cloud.' – small PeopleLaw firm.

'It's got a modern database underneath it and we're using the Angular front-end framework, which was created by Google. So we're just leveraging that, and then we're writing good quality, reusable, API first, back-end technology.' – large PeopleLaw firm

'Natural language processing is available for everybody – AI machine learning, deep machine learning, document readers, etc... it's managing a client problem, taking legal knowledge, and then shaping technology, which is available to everybody. So, when I mentor some of the lawyers, they suddenly have this look over their face, "Oh my God, that's so simple! We thought there was some special technology that has to be invented to do legal." No, not at all, and that's part of the problem.' – small PeopleLaw firm.

In addition to the IT skills required to build their own solutions, several PeopleLaw interviewees mentioned the capital challenges associated with innovation. Notably, two of these were ABSs. However, each had its own unique capital challenge.

'Cash I still find is a barrier for legal services. I actually had to go to London to raise the cash because I needed to borrow several million, twice, to recruit people and technology to scale quickly... Although I'm based in [location], I couldn't find the right risk-taking capital market... I ended up going to London to raise the capital to be able to grow the business.' – mid-sized -based PeopleLaw firm.

'We don't have access to external capital...We develop on a shoestring.' – large People Law firm

Risks associated with technology deployments

The firms we interviewed had a wide range of experience regarding new technology deployments, and the risks involved in those deployments. In some situations, their entire practice was built on a bespoke technology platform, developed with the end-client's specific requirements in mind.

For these practices, the risk associated with technology deployments was central to their firm's very existence: no technology, no practice. But, far more frequently, a technology solution was being deployed in order to deliver a specific innovation outcome, such as using image recognition software to extract dates from leases. The outright failure of such a solution, or its failure to perform to an expected quality, would therefore be highly localised. It should therefore be appreciated that the nature, and scale, of risks involved in new technology deployments and practice innovations are highly specific to each context. Risks therefore need to be assessed on an equally specific basis.

Turning now to how law firms approach the risks associated with technology deployments: the dominant attitude towards their projects was one of calculated risk acceptance. Therefore, rather than avoiding risks entirely by not investing in technology, risk mitigation was the preferred approach. That said, we observed a slight difference in approaches between the BigLaw firms we interviewed, in that they were more likely to have a formal innovation evaluation architecture in place. By contrast, PeopleLaw firms were more likely to work on a smaller number of projects, and therefore not require such infrastructure. PeopleLaw firms, in particular, also tended to mention that the projects they were working on were being developed using minimal resources.

'We have also the innovations lab, which is an idea incubator. So, this sits within...that was set up in [date], and it was...it's just like a virtual team of lawyers and business services professionals, so from the risk team, from the finance team, who work together to develop ideas into viable business cases. So, someone

would come up with an idea, they would present a business case, a little bit like Dragon's Den, you know.' – large BigLaw firm.

'We have kept our model of development very, very, very light, very focused. We...can't afford an hour of misspent time. So, we get a long way by having a highly disciplined approach. We have very limited resources.' – large PeopleLaw firm.

In our survey, one of the more common risks associated with deploying new technology is the perception that the investment will not bring any business benefits (cited by 55.6%), or that clients will not like them (cited by 22%) (see Table 2.10). In relation to the previously mentioned whiplash portal technology investments, these risks could obviously be mitigated because the technology investment was essential to the firm continuing to operate in that particular market. Other firms we interviewed had reduced their risk of non-client usage by either engaging with them heavily during the development phase or by building specific solutions for specific clients. By contrast, comparatively few had adopted a 'build it and

they will come' approach. Even if this was the case, the specific solution developed was often intended to complement a service already offered.

In the PeopleLaw space, another way to spread the risks associated with technology development is to 'white label' your core offering, and sell it to third parties. This approach was undertaken by two of our SRA-regulated PeopleLaw law firm interviewees, both of whom had developed their legal service offering and sold it PLC clients. The advantage of this approach is that, while individual clients are likely to represent an ad hoc source of revenue, institutional clients will be more dependable, and the cost of acquisition of each customer will also be lower.

In terms of technology risk reduction, one potentially significant factor is 'low code/no code' technology platforms. Such solutions allow firms to build their own legal technology-based products and services in-house, at minimal expense – usually a licence fee and technical support, if required.

'We license the platform, and then we can completely build it all ourselves. We have arrangements where we have consultant developers that support us, as well as in-house developers, so we have a mixed approach. We have licence freedom to do as we will with it.' –BigLaw firm.

Where more complex legal technology products are needed, another risk-reduction strategy is to engage in 'bricolage' – that is, building a new product from several others:

'We've got [vendor name 1] [for] electronic signatures and we combine it with [vendor name 2], which integrates with [vendor name 3] to do mass re-papering. So, it's really trying to push the boundaries, and bring the suppliers along with us on that journey.' – large BigLaw firm.

'[We] used a mix of the [vendor name 1] platform and the [vendor name 2]...contract review platform.' – large BigLaw firm.

As with the no/low code examples offered above, this approach can reduce a solution's overall

development costs, because each component of the solution is not developed by the law firm in-house from scratch. Previously, in relation to PeopleLaw solutions, we have illustrated how new legal solutions can be created by using generic consumer tech, such as WordPress. In the BigLaw space, law firms appeared more likely to use multiple specialist legal technology solutions when creating their new legal offering via bricolage.

Of course, building a solution based on multiple components creates its own risk profile. On the one hand, a firm is able to leverage the domain expertise of each constituent software vendor, essentially adopting a best of breed approach. On the other hand, creating a new solution from multiple existing vendors poses a novel supplier risk: if one component supplier fails, will the entire solution fail? We briefly discuss how firms might mitigate this risk in the next section of this chapter.

Relying on third party technology also exposes the firm to risks, should that technology fail to perform as expected. This is arguably a particular risk in relation to experimental, AI-based solutions, perhaps developed by the law firm in conjunction with a university or startup company. Some of the firms interviewed for this report had addressed this issue by having frank conversations with clients about the risks involved, and also disclosing their use of this technology to their insurers. Ultimately, however, the regulatory position on who is responsible for the use of such technology is clear: according to rule 3.5 of the SRA code, law firms who supervise or manage others to provide legal services are 'accountable for the work carried out through them.' Acknowledging this situation, one of our interviewees noted in fairly robust terms that this type of solutions vendor are 'basically technology providers' and 'were not placing any responsibility on them to do anything that relates to the quality of legal advice or, indeed, the quality of the machine learning or the AI. It's essentially caveat emptor. We try to get the tool to do what we need it to do, and we make it as good as we can.'

Supplier failure risks

Today, there are hundreds of lawtech startups. And, in common with the wider startup community, many of these companies currently have little revenues, and some will not ultimately survive.

To minimise the likelihood of this eventuality, some of the firms we interviewed had developed risk reduction strategies that they drew on before engaging their legal technology suppliers. Some firms interviewed for this report have formal innovation processes in place, which must be followed before any new project can be approved. And, because this innovation process is collated and recorded centrally, it is impossible for firm employees to engage a lawtech venture without the approval of relevant authorising departments, such as the firm's innovation, IT or procurement function. As one BigLaw innovation leader said, 'If someone does try to sneak something in, it gets pinged back with the message "you can't".'

Once a need for a solutions vendor had become apparent, several of the law firms we interviewed said they use their standard procurement processes as a method of assessing supplier risk. Within this group, no clear pattern of behaviour emerged. Some firms preferred to appoint companies with a successful track record. Others were more willing to take a chance with suppliers that were less well known in the legal sector – especially where the task to be performed was standalone, and used proven technology. Here, data extraction from leases using image recognition software was an example mentioned by several of our interviewees. Some firms also preferred to appoint suppliers with whom there was a prior relationship – either their own, or with their clients.

'We use [vendor name] to extract data from title deeds. Our relationship with them is solely based on that.' – Large BigLaw firm.

'That supplier has a fantastic kind of history – they do work for a number of our clients. They do all the digital presence for [public sector body] and so forth.' – BigLaw firm.

'We had already engaged them for something else – so yes, the relationship pre-existed that product. We did look at more than one provider to do the development, but there wasn't really

an RFP [request for proposal – ie a tender] – we just know them.' – BigLaw firm.

Whatever type of supplier a firm ultimately engages, our interviewees tended to thoroughly assess their preferred suppliers' IT-related risks, focusing on issues such as data protection, data residency, information security, and disaster recovery. Here, accreditation such as ISO can help, in terms of confidence building.

In addition to monitoring the company against its project deliverables, some law firms also monitor the supplier company, looking for any sign of internal stress: in particular, the departure of a senior employee was seen as red flag worthy of investigation, as was the acquisition of the company itself.

In the event that a supplier fails entirely – or starts demanding unreasonable contract terms – one option for law firms may be to swap the solutions for its nearest competitor, accepting that there will be some disruption and loss of functionality while this switchover happens. Another option, particularly where the company has failed, is to acquire it, including its codebase. Indeed, several of the law firms interviewed for this project said that they had acquired lawtech companies and incorporated those companies into their business.

Chapter Summary

In this chapter, we have illustrated the situations where legal technology can help fulfil unmet legal needs, and also the situations where it cannot. Where cost is a barrier to instructing a lawyer, technology can help if it allows the service to be delivered for free.

And where there are perceptions of legal costs being unaffordable, technology can help to provide information on the actual costs. But where technology cannot help is when a person never realises that their problem is legal in the first place, and therefore does not seek legal help – or is simply not able or willing to use technology-driven solutions that are available. For that reason our position is that, while technology and innovation may be able to help reduce incidence of ULN in some circumstances, it cannot be expected to eliminate it entirely.

In this chapter, we offer examples of how it is possible for law firms to generate respectable revenues, while also improving access to justice. Firms can, and do, achieve this in two main ways: firstly, by developing self-service solutions, which clients can use at little or no cost. And secondly, by using technology to reduce the cost of delivering legal services. While some of the existing technology solutions do well in substituting for human lawyers completely, in other situations this costs reduction is achieved by requiring humans to undertake the more administrative elements of legal service given, often via self-service online portals.

Although our interviews revealed innovation activity across the PeopleLaw space, we also observed that the level of activity appeared to be practice area dependent. We observe that the government's whiplash portal appears to have spurred a flurry of innovation activity among law firms who serve that market. By contrast, innovation in the employment law space appears noticeably more ad hoc.

In terms of barriers to adoption, uncertainty appears to be an important inhibiting factor. This uncertainty can take many forms, including in relation to a lack of SRA guidance and uncertainty about PII coverage. One of the more unexpected barriers to adoption, revealed

by both our survey and our interviews, is the legal technology sector itself. Interoperability challenges between solutions vendors, and a lack of vendor support, appear to be important inhibitors. A lack of legal technology vendors appears to be particularly problematic in the PeopleLaw space, forcing law firms to 'build their own' solutions. This may inhibit the ability of the PeopleLaw sector to scale their usage of client-facing legal technology, in particular.

In terms of the risks associated with technology developments, these appear to be highly specific to the vendors and the solutions being developed. This, in turn, leaves the firm exposed to differing risk types, for which specific types of risk reduction strategies will be appropriate. For example, risks associated with technology deployments can be reduced by a variety of mechanisms, including innovation governance, costs control and client buy-in. Using off-the-shelf solutions can reduce technology development risks. However, this approach can also increase the vendor failure risks, especially when multiple vendors are used to create individual solutions. It is therefore important that law firms undertake appropriate due diligence of their legal technology software vendors, especially startup ventures.

Appendix to Chapter 4

Interview methodology

We identified organisations to be interviewed, by classifying them into legal service providers with individual and small business clients in areas such as conveyancing, personal injury, family, employment, immigration, and consumer matters, and those that advise large businesses, supporting commercial transactions and disputes. We also ensured variety in terms of ownership structures to include law firm partnerships, law companies, ABSs and alternative legal services providers.

We deliberately oversampled legal practices that were innovating in relation to employment law, the subject of our ULN case history. We additionally oversampled interviews with compliance officer for legal practice, and other professionals associated with the evaluation of lawtech companies, for our analysis of supplier risk failure. In light of comments made in both survey responses and interviews regarding the professional indemnity insurance (PII) risks associated with technology deployments and innovation, we additionally interviewed two insurance professionals to explore this issue further.

We contacted potential interviewees by email, or if we did not have their direct contact details, via LinkedIn. Each interview, conducted via Zoom, lasted one hour on average. All interviewees in each category were asked the same questions which were developed by the Oxford University team and signed off by the SRA. To ensure the authenticity of interview-based insights, a written assurance of anonymity was set out in the participant information sheet, emailed to all interview participants ahead of their interviews. The interviewee quotes included in this report are therefore provided on an unattributable basis. And, while the SRA was made aware of the broad demographics of the interviews undertaken, it was not informed about specific legal practices or persons to be interviewed – the exception being the two PII professional interviewees, who were recommended by the SRA.

All interviews were recorded and professionally transcribed, and detailed notes were taken during the interviews. The recordings and transcriptions were used to identify key themes and to provide examples to include in the report. The SRA will not be granted access to any of the research team's interview notes, recordings or transcriptions.