

Law Society of England and Wales – Written evidence (NTL0023)

Introduction

1. The Law Society is the independent professional body for solicitors in England and Wales. We are run by our members, and our role is to be the voice of solicitors, to drive excellence in the profession and to safeguard the rule of law.

2. We welcome the Committee's focus on the development and use of new legal technologies and the opportunity to share our views on the questions raised. Technology underpins innovation in the delivery of legal services, and Law Society research suggests that the adoption of new technologies could reduce the cost of legal services to UK businesses by £350 million by 2030, and double productivity growth in the legal sector.¹ As the UK emerges from the pandemic, legal technologies will play a crucial role in returning the country to prosperity. We are also clear that technology can play a vital role in meeting the needs of the 3.6 million people a year in England and Wales who fail to have their legal needs met in resolving a dispute.²

3. Given the role technology can play in promoting and improving legal services, the Law Society supports our members in adopting appropriate technologies. Our members are increasingly engaged in providing services employing electronic signatures, smart contracts, and distributed ledger technologies, and we provide them with advice and guidance on their use. We are also engaged in considering legal reforms needed to ensure the UK is the best place to operate a digital business in conjunction with the Law Commission's current work programme examining smart contracts, digital assets, and electronic trade documents.

4. In 2019 the Law Society published both its *Technology, access to justice and the rule of law*³, and *Algorithm use in the criminal justice system*⁴ reports, the latter the work of our Technology and the Law Policy Commission to examine the use of algorithms in the justice system of England and Wales. The Commission considered both simpler 'hand-crafted' systems and more complex, computationally generated ones such as machine learning. It held four public evidence sessions, interviewed over 75 experts, and received over 80 submissions of evidence and many more supplementary studies, reports and documents on the topic.⁵

5. Technology offers an extensive range of possibilities for the application of the law, delivery of justice and early resolution of legal issues. However, we consider it crucial that the use of technology ensures people are not left behind as new

¹ Analysis available on request.

² 'Legal needs of individuals in England and Wales', <https://prdsitecore93.azureedge.net/-/media/files/topics/research/legalneedsofindividualstechnicalreportjanuary2020.pdf?rev=c28071eb3e5b4c42bf9660d4ef52bf62&hash=4E6A598B6920A3EBB79F159856648B3E>

³ <https://www.lawsociety.org.uk/en/topics/research/technology-access-to-justice-and-the-rule-of-law-report>

⁴ <https://www.lawsociety.org.uk/en/topics/research/algorithm-use-in-the-criminal-justice-system-report>

⁵ Ibid.

tools are developed and utilised. Successful digital transformation requires trust to be embedded in the design, development and deployment of new systems. The capabilities of people should be built into the functionality of new technologies in a meaningful way, the limits and benefits of new tools should be understood, and transparent information about the technologies used in their development and use should be publicly accessible.

Questions

Q1. Do you know of technologies being used in the application of the law? Where? By whom? For what purpose?

6. Legal technologies provide powerful tools to change the way in which legal services are provided and can help in addressing unmet legal needs, supporting legal education and promoting early access to legal advice.

7. Different segments of the legal market are at different stages of maturity and are focussed on adopting different technologies. Within the business-to-business market, applications using artificial intelligence and machine learning are common, with legal analytics, project management, governance, and compliance and contract management showing strong growth. Tools for collaboration, document management, IP management, and e-billing are increasingly standard.

8. In business-to-consumer legal markets, automation is driving efficiencies and, increasingly, helping to promote legal services offerings by firms. The use of chatbots, DIY and legal triage tools are all increasingly common with some automated decision making undertaken on the basis of information provided by the client and appropriate human review to ensure key issues and risks are properly considered. Digital technologies are providing services including client on-boarding and regulatory compliance checks; the acceptance of instructions; analysis of legal problems; construction and delivery of a legal solution; billing and payment; storage and archiving; and, increasingly important during the pandemic, secure communication with clients including document sharing and video calling.

9. The not for profit sector is using legal technologies to help meet unmet legal needs and increase access to justice through services for legal education, information and advice, triage and legal aid.

10. Technologies that have increasingly prominent legal applications include:

- **Distributed ledger technology (DLT):** DLT is most commonly associated with cryptocurrencies and blockchain and refers to a broad umbrella of technologies that seek to store, synchronise and maintain digital records across a network of computing centres. The benefits include joining up services and opening up data, while improving efficiency, transparency, trust and security
- **Public Key Infrastructure (PKI) federations:** Several industries use security systems based on PKI federations. In the UK, only the police

service operates a large-scale PKI federation in accordance with international standards, albeit in a basic form.⁶

- **Artificial intelligence (AI):** Those working in the criminal justice sector, including police forces, crime labs, courts, lawyers and parole officers use algorithmic systems in a wide range of ways, such as:
 - o Photographic and video analysis, including facial recognition;⁷
 - o DNA profiling;⁸
 - o Scoring at arrest, suspects, victims, staff, prison system;
 - o Individual risk assessment and prediction;⁹
 - o Digital Forensics;¹⁰
 - o Predictive crime mapping;¹¹
 - o Mobile phone data extraction tools; and¹²
 - o Data mining and social media intelligence (SOCMINT).¹³

- **Extended reality (XR):** An umbrella term for immersive experiences that constitute a combination of real and virtual environments, including virtual reality (VR), augmented reality (AR) and mixed reality (also known as hybrid reality). Immersive technologies will play more important roles in the criminal justice system. They will make research, training, law enforcement, and implementation of justice more effective and efficient. Applications of this technology include:
 - o Immersive training using VR: Decades ago, police training would be taken outside the classroom and into the streets for real-life applications.¹⁴
 - o Recreating a crime scene for forensic investigation, through cameras mounted on headsets worn by the initial investigators to digitize the crime scene.

- **Quantum computing:** A form of computing that can store substantially more data than classical computing, which ultimately allows for lightning-fast processing speeds and the capacity to solve vastly more complex computational problems that were previously considered

⁶https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/492972/gs-16-1-distributed-ledger-technology.pdf

⁷ See Davies B, Innes M, and Dawson A, *An Evaluation of South Wales Police's Use of Automated Facial Recognition* (Universities' Police Science Institute and Crime & Security Research Institute, Cardiff University 2018), 11.

⁸ Amankwaa AO and McCartney C, 'The UK National DNA Database: Implementation of the Protection of Freedoms Act 2012' (2018) 284 *Forensic Science International* 117.

⁹ See eg Moore R (ed), *A Compendium of Research and Analysis on the Offender Assessment System* (Ministry of Justice Analytical Series 2015) <<https://perma.cc/W2FT-NFWZ>>; Singh JP, Kroener DG, Wormith JS, Desmarais SL, and Hamilton Z (eds), *Handbook of Recidivism Risk/Needs Assessment Tools* (Wiley Blackwell 2018).

¹⁰ House of Lords Science and Technology Committee, *Forensic science and the criminal justice system: a blueprint for change* (HL Paper 333 2019).

¹¹ Report' (Home Office Online Report, Home Office 2007); Perry W, McInnis B, Price C, Smith S, and Hollywood J, *Predictive Policing: The Role of Crime Forecasting in Law Enforcement Operations* (RAND Corporation 2013).

¹² Privacy International, 'Digital Stop and Search' (Privacy International 2018).

¹³ See generally Edwards L and Urquhart L, 'Privacy in Public Spaces: What Expectations of Privacy Do We Have in Social Media Intelligence?' (2016) 24 *International Journal of Law and Information Technology* 279.

¹⁴ <https://www.hydrafoundation.org/>

impossible. Although this technology is nascent it is predicted that it will be used by criminals and law enforcement alike.¹⁵

Q2. What should new technologies used for the application of the law aim to achieve? In what instances is it acceptable for them to be used? Do these technologies work for their intended purposes, and are these purposes sufficiently understood?

11. The provision of affordable and accessible legal advice and support can be driven by the adoption of new approaches through technology. There are already many examples of the work of our members to meet legal need through innovation, and new programmes of legal training are bringing together technologists, academics, and new generations of lawyers to understand new possibilities.

12. New technologies can also play an important role in ensuring that law firms operate more efficiently, enabling them to continue to provide affordable and quality services to all. Our members have shown their resilience and willingness to adopt new approaches through the pandemic and have been at the forefront of meeting the unforeseen legal challenges that have arisen since the first lockdown.

13. The Law Society considers it vital that systems and the people who develop them should be:

- Lawful;
- Compliant;
- Transparent;
- Capability Building; and
- Accountable.

14. By employing these principles we can ensure that the person with unmet legal needs is at the centre of the development of new products for the law, and that these new products are fully utilised for their benefit.

Q3. Do new technologies used in the application of the law produce reliable outputs, and consistently so? How far do those who interact with these technologies (such as police officers, members of the judiciary, lawyers, and members of the public) understand how they work and how they should be used?

15. The Law Society's view is that the five principles referred to above should be at the core of the development and use of new legal technologies. Putting legal users at the centre of system development can enable us to address gaps in provision.

16. Some people are not able to engage with technology and many who are able to engage will want reassurance that they have entered the right information and are interpreting the answer correctly. In some cases, the person may do everything right, but be opposed by a party that has no intention of doing anything unless and until there is a human lawyer involved and they believe

¹⁵ <https://eucrim.eu/news/europol-report-disruptive-technologies-and-future-crime/>

there is an immediate threat of litigation. New systems of delivering legal services should be adaptable to address these situations and there may be circumstances in which further consideration needs to be given before they are viable.

17. Algorithms in the criminal justice system can be used to make law enforcement and the administration of justice more efficient and consistent. Indeed, they might be useful in understanding and monitoring discrimination within criminal justice. But we need to recognise that bias, both conscious and unconscious, can be baked into algorithms and undermine consistently reliable results, and that using algorithms without questioning them or explaining them to the public could lead to decisions which threaten human rights and undermine trust in the justice system.

18. The Law Society's *Law under lockdown* report highlighted the impact of Covid-19 measures on access to justice and vulnerable people.¹⁶ In particular, we are of the opinion that the use of remote court hearings during the pandemic highlights the importance of analysis, research and evaluation for effective policy making about the use of technology. Without it, there is a danger that an incomplete picture of the needs of users will be formed. Before decisions are made to use remote hearings more permanently for particular cases or categories of cases, consistently well-functioning platforms, policies and procedures must be in place, covering:

- Procedures for ensuring parties have access to equipment and platforms, training on how to use them, adequate internet and a safe and private place from which to take part;
- Standard mechanisms to ensure parties can confidentially communicate with their legal representatives throughout a hearing; and
- Measures to ensure all parties understand what should happen when a technical problem arises.

19. Another area of concern to the Law Society is the balance between open justice and privacy. The Rehabilitation of Offenders Act was meant to ensure that once someone convicted of an offence had paid their debt to society and had reformed, information about their former misdeeds would effectively be treated as confidential. That does not work when contemporary news reports about the case are just a Google search away. We have suggested in a recent response on the Law Commission's work programme that this is an issue that it might want to examine.

20. Related to this is the Law Society's concern that if court lists are published, data scrapers will Hoover up all the information and compile it into files that anyone can consult for a fee. We have raised this in discussions with HMCTS officials and encouraged them to take effective steps to address this.

Q4. How do technologies impact upon the rule of law and trust in the rule of law and its application? Your answer could refer, for example, to issues of equality. How could any negative impacts be mitigated?

¹⁶ <https://www.lawsociety.org.uk/en/topics/research/law-under-lockdown-the-impact-of-covid-19-measures-on-access-to-justice-and-vulnerable-people>

21. See our answers above.

Q5. With regards to the use of these technologies, what costs could arise? Do the benefits outweigh these costs? Are safeguards needed to ensure that technologies cannot be used to serve purposes incompatible with a democratic society?

22. See our answers above.

Q6. What mechanisms should be introduced to monitor the deployment of new technologies? How can their performance be evaluated prior to deployment and while in use? Who should be accountable for the use of new technologies, and what accountability arrangements should be in place? What governance and oversight mechanisms should be in place?

23. Transparency concerning the use of technologies and their lawful basis is crucial. The Law Society considers the five principles we set out in our answer to question 2 as fundamental in the design and development of new technologies.

24. For our members, professional and regulatory compliance early in the design or evaluation of legal services provided through technology is required practice, and the 'data protection by design and by default' requirement in the GDPR makes it a legal requirement. Given the nature of the data legal professionals process, any proposal for the use of new technology in data processing is likely to require a Data Protection Impact Assessment (DPIA) to be carried out.

25. As well as providing our members with detailed guidance on their regulatory and professional responsibilities for data protection, the Law Society advocates steps for effective cybersecurity, business continuity, training and capability building as essential to effective monitoring, governance and accountability in the use of legal technologies. This has been, and remains, of critical importance, particularly when so much sensitive data is being processed digitally by workers working remotely and in hybrid settings.

Q7. How far does the existing legal framework around new technologies used in the application of the law support their ethical and effective use, now and in the future? What (if any) new legislation is required? How appropriate are current legal frameworks?

26. Solicitors and their clients in England and Wales benefit from a regulatory environment that has enabled adaptable and innovative approaches to the provision of legal services. The Law Society's role in producing information for our members and the public and promoting dialogue between the profession, users, and LawTech providers is aimed at ensuring that ethical and effective applications of technology inform new products and systems. That was the aim of our *LawTech and Ethics* report in July of this year¹⁷ which had a particular focus on helping smaller law firms and sole practitioners with the procurement of legal technologies.

¹⁷ <https://www.lawsociety.org.uk/topics/research/lawtech-and-ethics-principles-report-2021>

27. Ensuring English law is fit for purpose and continues to underpin a strong digital economy as new types of digital transactions, contracts, trading documents and businesses become more common is the focus of our work in engaging with the Law Commission's consideration of the law in these areas.

Q8. How can transparency be ensured when it comes to the use of these technologies, including regarding how they are purchased, how their results are interpreted, and in what ways they are used?

28. Appropriate human review must be built into the delivery of legal services to ensure that key issues and risks are taken into account. Technology has an increasingly important role to play in promoting transparency and equitable and efficient outcomes but it also comes with unique challenges.

29. Making the data that underpins algorithms traceable and auditable in order to promote the identification and evaluation of biases is key. Ensuring that service providers can clearly explain to clients and consumers how the algorithms that inform LawTech products and systems arrive at their conclusions is particularly important. The Law Society will continue to promote dialogues between our members, technology providers, the Government and the public to ensure a set of quality standards and reporting and evaluation frameworks for the development and use of legal technologies.

Q9. Are there relevant examples of good practices and lessons learnt from other fields or jurisdictions which should be considered?

30. We would highlight three broad categories of best practice from other jurisdictions with regard to the use of technology in the law.

Community partnerships to increase the success of digital transformation

31. In India service providers are collaborating through industry and informal networks to improve knowledge creation and sharing in online dispute resolution, and to develop industry-wide standards for conduct and data privacy. Organisations such as non-profits and early adopters are incentivised to partner with emerging start-ups to build capacity and capabilities.

32. Denmark is another example: the OECD has stated Denmark's public sector is categorised by innovation as a core capability, which is sustained by networks, momentum and working with community organisations. This has allowed common priorities, which are decentralised, to be executed.¹⁸

33. Meanwhile the Netherlands is developing a toolkit with the Inter-American Development Bank to build capability and success of digital transformation projects.¹⁹

Integrating public legal education into the user journey:

¹⁸ <https://oecd-opsi.org/wp-content/uploads/2021/03/Public-Sector-Innovation-Scan-of-Denmark.pdf>

¹⁹ <https://publications.iadb.org/publications/english/document/Digital-Technologies-for-Better-Justice-A-Toolkit-for-Action.pdf>

34. In Colombia a tool called LegalApp has been developed which explains in simple and accessible language the justice services offered in the jurisdiction and communication channels for each justice operator, so that people keep receiving justice services.²⁰

35. To provide information about specific challenges and issues being dealt with by vulnerable groups, the Ministry of Justice in Israel has published videos that simplify different legal subjects and rights in matters such as public housing, mental institutionalisation, personal status, debt management and labour law.²¹

Data and digitisation of the judicial chain:

36. India has created a National Judicial Data Grid – a portal which acts as a national repository of data relating to cases pending and disposed of in all district and taluka courts of the country.²² The portal has been developed around the concept of elastic search technology enabling efficient case management and monitoring of cases leading to effective disposal of cases.

37. In Sweden, digitisation of information exchange in the judicial chain has allowed for stronger governance and more efficient resource use in the judicial system.²³ The National Council for Crime Prevention is undertaking an information flow strategy split into several stages, starting with setting up the electronic flow between the authorities handling the largest volume of criminal cases, with a full link between all authorities to be established by 2022.

Q10. This Committee aims to establish some guiding principles for the use of technologies in the application of the law. What principles would you recommend?

38. We cover this in our answer to question 2. The Law Society has set out five principles that should underpin the development of technologies for use in the application of the law, namely that the systems and the people who develop them should be:

- Lawful;
- Compliant;
- Transparent;
- Capability Building; and
- Accountable.

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²⁰ <https://worldjusticeproject.org/world-justice-challenge-2021/legalapp>

²¹ <https://www.oecd.org/governance/global-roundtables-access-to-justice/access-to-justice-compendium-of-country-practices.pdf>

²² <https://doj.gov.in/otherlinks/national-judicial-data-grid>

²³ https://ec.europa.eu/info/sites/default/files/2021_rolr_country_chapter_sweden_en.pdf