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Harbour View

The next big thing

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Featuring topical articles by guest authors and the Harbour Team.

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The next big thing
March of the Millennials

By Silvia Van den Bruel, BD and Marketing Manager, Harbour

We asked our stellar group of contributors about the one aspect they would identify as the 'next big thing' for the legal sector? Guest-editing this edition as a non-lawyer, I also invited senior BD directors and PR specialists to comment, given the vital role they play in keeping the legal sector's finger on the pulse.

The result is an incredibly varied scope of answers, ranging from specific topics - such as the One Belt One Road initiative, disruptive courts, reputation and GDPR - to behavioural conduct like being curious and collaborative.

So what is my next big thing?

The Millennials, enigmatic creatures to many lawyers. Millennials, those born 1980 – 2000, have a liberal approach to politics and economics and are big consumers of media and digital technologies.

Already the largest generation in the workforce today, millennials will make up 90% of employees by 2025. Many will be/become partner at firms or decision makers at the sector's clients by then. 2025. As in eight years from now.

How has the legal sector integrated them into their teams or client base? How is it equipped to deal with Millennials, their traits, motivation and behaviour? Based on conversations with my peers, they are close to flying below the radar.

Who are they?

In September 2016, YouGov - with access to the habits, beliefs and opinions of 250,000 people - painted a picture of the under-35s. Virtually all use the internet as their main source of information and 72% use social media. They place a heavy emphasis on climbing the career ladder. Attitudinal data shows that they sacrifice free time to get ahead but are more motivated by career progression than money. They are a distinct group, but treating them as a bloc of people who act, think and feel the same is a mistake. The technology that unites them, also shows how different they are.

A 2014 Nielsen Report shows that Millennials are the most ethnically diverse generation ever; inspired by people they can relate to; connected but not tethered; into self-expression and receptive to a good deal. Often the result of immigration, they are open to other cultures. With unlimited access to tech platforms they know how to express themselves. Seemingly self-absorbed, research shows they do care about social causes. They are adaptable to and embrace change. A fellow successful millennial is more likely to inspire than someone from an older generation. Their outlook on life is different. For example, older groups experienced some technology as revolutionary; Millennials take these for granted. They are accused of being lazy but they see themselves as doing a million things at once.

How to attract this generation?

One thing is clear: when Millennials form 90% of the working force and a major part of our client base, it will no longer be business as usual. Having access to a wealth of information, they are smart and savvy. They feel they have a wide choice of options and are not fooled. They have opinions and take action.

In June 2017, NBC's Today interviewed 4,000 millennials. Their observations:

- 35% say they own a business or plan to own a business. *(Your target audience).*
- 49% recognised the good and bad of social media.
- 87% of them would speak up if something was wrong.
- They care about the LGBT community, equality for women, minority groups. *(There has been progress in the legal sector, but diversity still has a long way to go).*

If legal businesses want to appeal to Millennials, they need to align themselves with this group. I believe there are three major challenges for the legal sector known for its hierarchical structure and traditional approach to doing business, and perhaps less for being nimble and embracing change.

- Millennials are independent and don't want to be treated the same as everyone else. This is a creative generation and businesses need to offer the tools for self expression. Companies would be foolish not to tap into this creativity.

- Millennials want to work where innovation happens and hours are flexible. They believe in the social good and employee happiness. They frequently change jobs and are not willing to accept a job that doesn't offer the motivation they desire. They care less about money and more about a variety of tasks, expanding their skills and not getting bored. Employee loyalty won't be a given.

- They influence, as they are super connected. That can be a good thing, but a bad thing too. They switch devices and apps all the time. Whether recruiting or reaching them as clients, grab their attention and connect on every platform. And deliver your message in a very short time. Client loyalty will be hard-earned.

And practically?

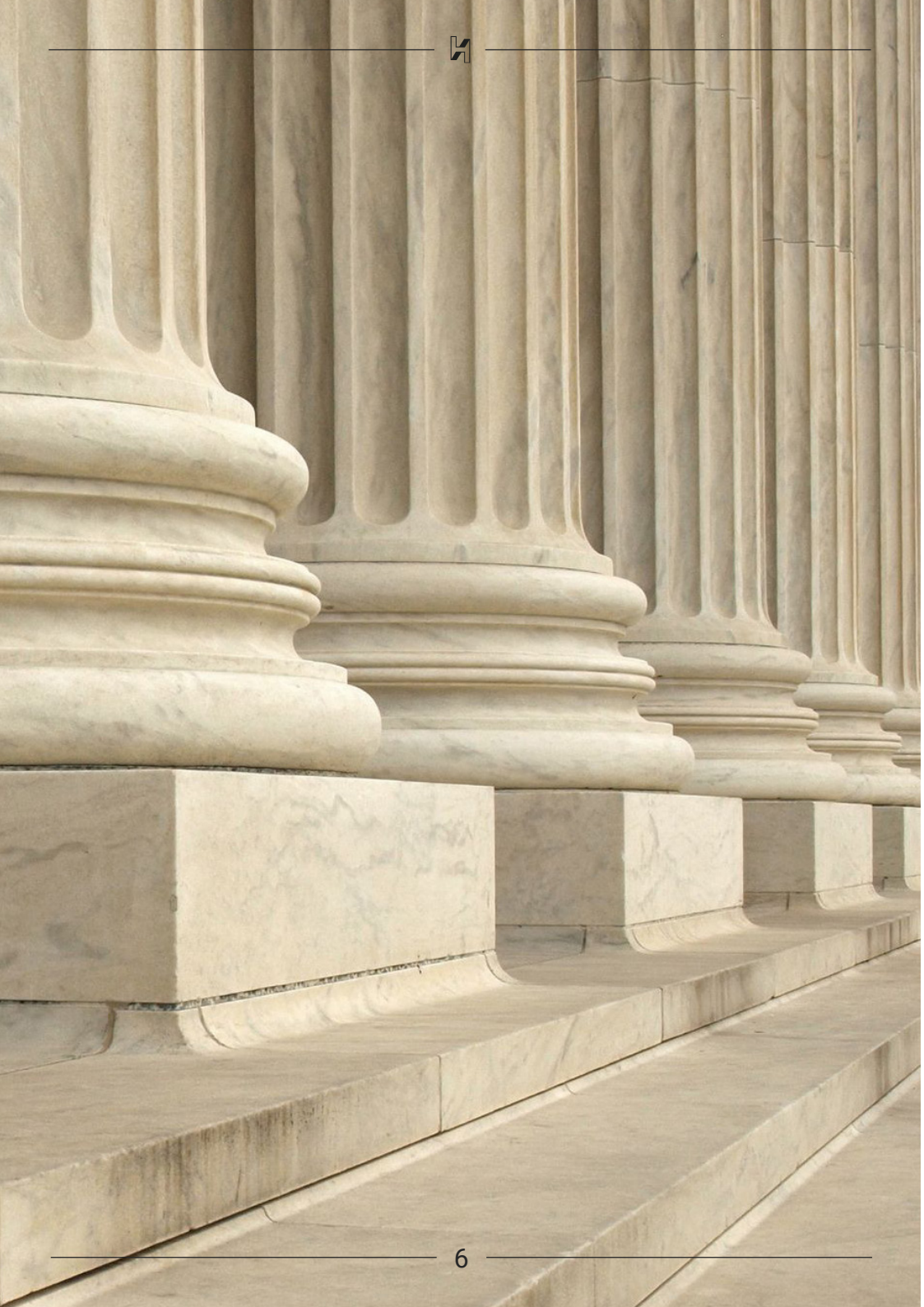
Talk to your HR and Marketing departments and start a project 'Millennials', or a more subtle 'Tomorrow's law firm'.

Don't assume that because they are young(er), they can't bring anything to the table. When strategising or problem solving, engage from top to bottom, rather than just horizontally at the top. Use technology in a collaborative way to ask their views (as client or staff) and genuinely incorporate the outcome in the decision-making process.

Communicate with clients across all platforms. Make it brief. Vlogging and video will become key to communication. Ditch the training manuals and use YouTube videos. Provide specific visual examples of the performance that you expect from employees.

A fellow successful millennial is more likely to inspire. Firms need to identify those Millennials with leadership qualities early and nurture them, as they are likely to become key influencers. More than ever, communication will be a two-way street.

You heard it here first. Enjoy the edition.



FT Innovative Lawyers Report

The next big thing in litigation

By Kirsty-Anne Jasper, RSG Consulting, founder and research partner to the FT Innovative Lawyers Report and Awards

In the latest research for the FT Innovative Lawyers Europe report, the most commonly reported barrier to change was lawyers' inherent risk-aversion.

However, when we asked why clients instruct particular law firms, they increasingly seek out individual lawyers who are prepared to assume an element of risk. The top-ranked FT matters often involve lawyers taking on cases where others have said that they have little or no chance of success.

Innovative solutions can involve forum shopping to have a case held in an amenable jurisdiction, moving away from the billable hour to a fee structure where the law firm assumes some of the risk, or in third-party funding.

The idea, so valued by clients, of litigators sharing risk, is still rare to be found in practice. Examples such as RB Group plc, the British multinational consumer goods company, whose ex-GC, Bill Mordan insisted that his outside lawyers have skin in the litigation game, are rare. (Mr Mordan won an FT award for his approach in 2012).

Instead, lawyers tend to inappropriately assess litigation risk. They either over-stress the dangers or fight cases that they should have realised have no chance of winning.

The appetite for litigation funding

The FT reports first featured litigation funding in 2007. Initiatives from Norton Rose were some of the first in the UK market, and at the time were considered ground-breaking. Despite the growth of litigation funding companies such as Harbour Litigation or Burford Capital in the past decade, it is only in the last couple of years that we have seen an uptick in clients' readiness to use these methods to fund their cases.

Interestingly, there is an appetite for litigation funding in geographies such as the Ukraine. This fledgling democracy is innovating to protect foreign investors and its economic growth, and embracing alternative routes to dispute resolution. One law firm recently secured a fully-funded asset tracing package at an early stage for a Ukrainian client, showing an increased willingness to third-party funding in jurisdictions that have traditionally been considered high-risk.

Improving litigation

Despite lawyers' risk aversion, they are, in actual fact, getting better at litigating. A greater and smarter use of technology means that lawyers are able to better assess litigation outcomes and advise their clients accordingly.

Clients and firms are turning to new types of artificial intelligence and data capture to ensure more efficient mining of information; from in-house technologies which have been developed to keep track of litigation currently in court, to automated document analysis tools implemented to search for patterns in written texts.

These technologies are invaluable to lawyers as they can process materials at a speed and quality that far exceeds that of a manual search. Algorithms and data mining enable better diagnosis of the strengths and weakness of a case. When compared to a manual exercise, the algorithm is invariably faster and more accurate.

The next big thing(s)

The increasing use of these software tools has implications for resourcing. Younger, less experienced lawyers can get up to speed faster with litigation strategies. The judgement of the senior partner garnered after years of litigating is beginning to be condensed. For example, Kirkland & Ellis, the US law firm submitted to the FT their data capture exercises, where they break down all their litigation matters into 50 data points, which they can then analyse.

The more data recorded, the more scope there is to reduce risk. Algorithms are increasingly being used to make predictions that traditional commentators get wrong. For example, LexPredict, the knowledge management and **legal analytics** company, has had remarkable success in predicting political outcomes in the United States, including a win for Donald Trump and Gorsuch's selection to the US Supreme Court. Their recent announcement that they are making their core platform ContraxSuite, which lies behind its contract and document analytics platform, available under an open-source licensing model opens up exciting new possibilities for law firms. It allows them to freely tailor and implement their own contract and document analytics.

Better capture of legal data with these types of predictive algorithms could change the face of litigation. Some commentators predict that litigation will soon become an asset class – a trend that will no doubt speed up the adoption of third-party funding as investment returns become more attractive.

Certainly, the research for the FT reports show that third-party funders themselves can be drivers of innovation.

The open access to algorithms and data is a cause for celebration but as yet we still have to see whether it will create greater opportunities to access justice for resource-constrained clients to bring cases to court.

"The idea, so valued by clients, of litigators sharing risk, is still rare to be found in practice."

One Belt, One Road

The impact on dispute resolution in Asia

By Justin D'Agostino, Global Head of Practice Dispute Resolution, Regional Managing Partner Asia and Australia, Herbert Smith Freehills

I am regularly asked about the trends and patterns in dispute resolution across Asia. I can't guarantee that I can identify the "next big thing" for the legal sector, but I am certain from my standpoint at Herbert Smith Freehills, that we are all going to feel the impact of China's "One Belt, One Road" ("OBOR") initiative on our dispute resolution practices in this part of the world.

The OBOR initiative is a vast PRC development strategy, the effects of which are likely to be felt throughout the region for considerable time to come. There are over 60 countries along the routes envisaged by President Xi Jinping's plans and the proposed connectivity of infrastructure and projects is a mammoth undertaking for all involved. While the further development of the economies concerned will bring benefits for the relevant countries, it is likely that there will be an increase in disputes in the affected sectors. My forecast for the "next big thing" from my viewpoint in the legal sector is a surge in demand from clients with potential or actual commercial disputes arising out of OBOR projects and deals.

This leads me to consider the potential nature of those disputes, and the means by which the affected parties may wish to see them resolved. With such an emphasis on connectivity and co-operation between jurisdictions, it seems inevitable that many disputes will have one or more cross-border elements, with all of the complex legal factors this entails. In terms of types of dispute, the sky is the limit, as is the road, the sea, the power station, and everything involved in the logistics and financing sectors which are required to make such an ambitious investment programme work. With more than half of the world's population involved or affected by the OBOR Initiative's scope, the potential for disputes in the projects and infrastructure fields is almost limitless in both its size and influence. There is also potential for a rise in disputes under bilateral or multilateral investment treaties, something that we have so far seen few of in Asia.

More disputes will mean more demand for dispute resolution. The PRC government has indicated that it is keen to promote mediation for OBOR disputes. I have seen it suggested that there is a panel of PRC disputes specialists working on a uniform procedure for resolving OBOR disputes which favours mediation, followed by arbitration if the parties fail to reach a mediated settlement. Investment treaty disputes are generally arbitrated, either at ICSID or under the UNCITRAL Rules. Whatever mechanism is adopted, it is clear that such a large number of countries, with very different approaches to legal processes and remedies and different stages of cultural development and economic cycle, are likely to find themselves in need of advice as to how to resolve any disputes that arise.

As an arbitration practitioner in Asia myself, I think the potential for an increase in parties

looking to obtain and enforce an arbitral award in a cross-border disputes is manifest in the OBOR Initiative. Unlike a court judgment, arbitral awards are much easier to enforce cross-border than national court judgments, thanks to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958. By definition, a significant number of OBOR disputes will involve parties of different nationalities, with assets in different jurisdictions. Arbitrating OBOR disputes will produce awards that can be readily enforced in most, if not all, of the OBOR countries. To my mind, therefore, arbitration should be the dispute resolution mechanism of choice for OBOR contracts, combined with mediation wherever appropriate.

Many of the arbitral institutions in this region have been undertaking preparatory work in readiness for the impact of the OBOR Initiative. Although there may be a lag of a year or so before the majority of disputes begin to emerge I think we will all see an increase in workload as the PRC government's investment strategy gets underway.

"… we are all going to feel the impact of China's "One Belt, One Road" initiative on our dispute resolution practices…"

Court disruption disrupted

By Mark Beer, OBE

What would I pick as the one 'next big thing' for the legal sector? My answer – disruption. Not just technological, but also through new markets - products addressing non-consumption in an existing market, such as low-cost airlines - and low end disruption i.e. when a lower-cost offering steals customers for whom price is focus. In addition, physical disruption, as clients eschew expensive offices for augmented **reality access 24/7**, and disruption in the wake of the **Fourth Industrial - or digital - Revolution** will leave most legal systems behind.

Having worked in private practice, in-house, in hedge funds and for the last 10 years as part of a judiciary, I can see the potential impact of disruption versus the complacency of many legal systems reluctant to adapt.

For this article, I solely focus on disruption of the Courts. Considering my current position as Registrar at the DIFC Courts it is important to note that these opinions are my own and do not necessarily reflect any official policy or position.

At a recent conference in London attended by the UK's judiciary, a futurologist predicted a world of holographic judges and decisions made by robots using artificial intelligence. I'm not proposing to look too far into the future but rather to examine disruption on our doorsteps. In their 1995 Harvard Business Review article "Disruptive Technologies: Catching the Wave", even then, Bower and Christensen's premise was that if organisations fail to make the technological investments that future customers expect, they should expect low-cost competitive alternatives to enter the marketplace, addressing the needs of the unserved and under-served populations.

Monopolies are often marked by lack of innovation. The justice sector, sadly, is no exception. Alternatives take a long time to filter through, let alone those resulting in cost-efficiencies. Is the decline of case numbers a reduction of disputes, or a reduction in public trust? Regrettably, many baulk at the idea of court users as 'customers' or 'serving customers' even. But I'm convinced that with sufficient nurturing, we might ensure that in the future Courts can serve those most in need in their communities.

Some disruptive practices

The Global Center for Digital Business Transformation says that for true disruption to occur it needs to be combinational: it needs to 'fuse cost value, experience value, and platform value to deliver products and services that make offerings from incumbents immediately unattractive or obsolete'.

Worldwide, we see examples of Courts considering disruptive practices. The use of a virtual court by

the DIFC Courts, allowing access from anywhere via a Smart Phone delivers their service in a way which is convenient to the community, and not the other way around. It is part of a shift visible in Dubai, Abu Dhabi, Singapore and Shenzhen, towards Courts seeing themselves as a service.

Online Dispute Resolution is also on the rise. Disruption has been mostly led by the private sector, primarily through large online retailers. Does this mean the future of Court disruption will be a partnership between the private sector and the judiciary? The cooperation between the DIFC Courts and Microsoft is a step in that direction. China announcing an internet court to trial internet-related disputes on an online court platform in Hangzhou, a hub for e-commerce, is another.

Many courts have implemented - with varying degrees of success - 'intelligent automation', which is hardly 'disruptive' but a good first step for an organisation which may not have adapted its practices for decades. However, the peculiar passion of maintaining big workforces and budgets leads to 'unintelligent manualisation' i.e. these projects run over budget, don't deliver the desired outcomes and create the need for more staff and even bigger budgets.

The disruptors to court disruption

The reasons for the difficulties encountered when Courts embrace innovation, particularly disruptive innovation, are plentiful.

Complacency
A product of inflexibility and a belief in the monopolistic right to deliver justice. There is no competition and the judiciary serves 'mother justice' rather than the community.

Jurisdiction
Fixed jurisdictional limits can cause inefficiencies. If a Court in one district is busy, but quiet(er) in the next, would the Head of a Court look to balance the work between the two, or ask for more resources instead? Are the limits set for small claims based on objective science? If not, why are Courts so reluctant to change them? Think of the benefits achieved if Courts were to find ways of working together, especially to ease the burden of international enforcement, rather than claiming jurisdictional independence.

User vs Customer
Many Courts see the people who come to them for help as 'users', rather than customers. A useful analogy is the way that you and I 'use' the road to get to work. The road does not need to serve our needs, other than providing a route. It might be badly maintained, full of pot holes and congested with traffic, but we still 'use' the road. How much innovation have we seen in roads versus the innovation we see in, say, the design of the cars that ride on them? Why? Because we are customers to the car manufacturers and users to those who maintain our roads.

Unhappy judges and staff
The UK Judicial Attitude Survey published by UCL Judicial Institute in February 2017 is an example of how morale in Courts around the world is low. Inefficient processes, designed decades ago, complicated by technology increase inefficiencies, requiring more – rather than less - people. Think filing paper submissions and scanning them into the system! If staff are unhappy, it follows that the commitment to drive through innovation will not go beyond the team meetings discussing accessing the digital vortex.

Protectionism
Michele R Pistone and Michael B Horn from the Christensen Institute in *Disrupting Law School: How disruptive innovation will revolutionise the legal world* say: "Access to a lawyer is expensive and out of reach for many potential customers because the market for legal services is opaque, the provision of legal services has been restricted through licensure, and the services themselves have traditionally been provided on an individual, customised basis." Unless we see further deregulation and delinking of the Bars, Law Societies and Courts, and for so long as they are seen as a closed shop, innovation will be stifled.

Lowest common denominator thinking
'We can't innovate because we need to be committed to the least capable, least tech-savvy potential audience'. Agreed, they should not be denied the chance to access justice in the same way that it has been done for hundreds of years – in writing, but that thinking should not be allowed to prevent the development of tech-savvy solutions offering access justice, say, through a Smart Phone.

The best is the enemy of the good
There is a belief, often exacerbated by the IT company's sales force, that Court technology needs to be faultless. A recent bid for an IT tender in Europe contained a $400,000 price tag for the design, testing, implementation and support of an integrated and scaleable platform built by an SME in the UK. The cost of 'testing' the software charged by the Ministry's appointed 'technology implementer' was a further $2 million. Is the desire to have a perfect system, not only costing tax payers dearly, but also putting a brake on innovation?

Structure and hiring
A Chief Justice who is supremely well qualified to render legal judgments, may have no experience in corporate management, administrative functions or innovative IT. If the Chief Justice is fortunate, (s)he is able to appoint an experienced Chief Administrator. Both work closely to develop a clear vision about how to serve their community and drive efficiencies throughout the judiciary and are empowered to make tough decisions about staffing and investment in disruptive technology. However, that is rarely the case. A Chief Justice might have a say in the appointment, but based on a shortlist provided by the Executive. Civil servants do not always have the focus as described above. They are often hampered by committees and the use of external consultants to validate their decisions. When projects run over budget and/or fail to deliver, ownership is hard to pinpoint. The system promotes inefficiency and a lack of accountability. Procurement processes to which they are tied, may not always promote nimble and cost effective implementation of IT reform.

Funding
Whilst Courts in most jurisdictions have their independence enshrined in statute, very few benefit from true financial independence. There are some useful hybrids, such as in Singapore, where a judicial budget is independent from the 'administrative' budget. For most courts, the annual budget review is painful. It is no wonder that many grab what they can. Inability to plan over multi-years, not knowing if funding will be forthcoming, leads to short term and sometimes ill thought out spending patterns. Often the attitude is to spend all of the budget within the financial year.

The use of said excuses for the lack of disruptive innovation in Courts is widespread. The upshot is a lack of public trust and confidence in its ability to help the community. We see a decrease in case filings in many civil courts and the continued rise of arbitration, which is well suited to embrace disruptive innovation. A continued cost/benefit imbalance for many civil and commercial cases makes them uneconomic to pursue and, even if economic to pursue, some systems try to cut off the routes to litigation funding vital to address the cost/benefit imbalance created by the system itself. In some judiciaries, the system implodes on itself with ever higher legal costs driven by a monopolistic and protectionist approach to litigation and arbitration combined with an unwillingness to allow alternatives (such as litigation funding) to address that imbalance.

How to avert a crisis

So, what can be done to address this imminent crisis? Holographic judges? Possibly, but not yet. Let's get the foundations in place for the Courts to enter the digital vortex. Let's introduce the basics to support 'combinational disruption' across cost, experience and platform.

Let's sweep aside Court leaders solely focussed on budgets and staff, and support those committed to delivering justice that serves the people.

Let's destroy any hint of monopoly behaviour by the Courts or the legal community; lower the cost of justice and, for complex disputes, open up a party's right to fund justice, provided appropriate safeguards are in place to ensure transparency as well as to avoid the issues raised in *Excalibur Ventures LLC* and *Ors -v- Psari Holdings Limited and Ors*.

The key to a Court's success are the team members whose job it is to help those in need, so let us empower them to help and use intelligent automation to remove drudgery, not increase it. Let's advocate a judge to registry staff ratio of 1:3, not 1:300. Let Courts with international parties embrace an international bench, use the language most convenient to the parties, and collaborate with other courts, be it through using blockchain to speed international enforcement of judgments or work balancing between Courts within a territory.

Will this happen?

In my view, yes, but not universally and not quickly. The meeting of commercial courts from 5 continents in May 2017 in London, attended by Chief Justices of 16 jurisdictions, showed a willingness to engage in a dialogue to share best practice and work together to keep pace with rapid commercial change. Where that leads, and whether we will see an organisation setting standards for the world's leading commercial courts (cfr IOSCO for securities regulators), remains to be seen. Certainly, if the UK's Lord Chief Justice is involved there is considerable hope, as set out in his recent speeches at the DIFC Academy of Law Lecture and Grand Court of the Cayman Islands Guest Lecture.

Along the way, we will see bright spots of disruptive innovation in Courts which will attract the bulk of the world's major international commercial disputes – my predictions – London, DIFC, Singapore and Hangzhao/Shenzhen.

Would I be delighted to be proven wrong by other jurisdictions taking the lead – absolutely.

"Monopolies are often marked by lack of innovation. The justice sector, sadly, is no exception."

High on the agenda

What forward-thinking law firms do

By Richard Chaplin, Founder and Chief Executive, Managing Partners' Forum

What is high on the agenda of the leaders of forward-thinking law firms? Strategising around four key issues.

Deciding how to:

- break out of the legal silo
- recognise the vital role of leadership and management
- embrace innovative business practices
- increase the productivity of your clients

UK economic strengths include a world-class financial centre, an ever-growing technology hub, global links, attractive regulatory environment and a highly skilled workforce. The services sector comprises 79% of GDP - a larger proportion than for any of the other G7 nations.

Within the services sector, the UK is a global leader in professional and financial services (PFS) - this includes accountancy, legal, consultancy, engineering, marketing, banking, insurance, and design. PFS employs 2.2 million, contributed £190bn to the economy in 2014, and generated a trade surplus of £72 billion, with each 1% increase in productivity delivering an additional £1.9 billion. The sector has a strong regional footprint, and is critical to driving growth, competitiveness, productivity and resilience across the UK.

A question that is seldom asked is why the UK is so successful at delivering services.

Key factors are the strength of its leadership and management, and the flexibility of its business models. The default leadership style is challenge and support - command and control is not viable when your sales force own the business and elect the leader.

The services sector has recognised expertise at promoting women into leadership roles, and converting technical people into leaders. Attitudes are mostly long-term with the goodwill owned by the business. Relationships are built on reciprocity, ethics and trust rather than on pure financial advantage. As regards business models, it is not unusual for the majority of a forward-thinking firm's services to have been launched in the preceding five years.

The rapid pace of change in technologies such as AI, machine-learning, big data and block-chain is already having an impact on the legal sector and will continue to do so for the foreseeable future. It enables and catalyses new business models and client offerings.

Yet, the Boston Consulting Group has found that service companies lag far behind industrial organisations in applying technology. The role of science in service sector innovation is often downplayed, with innovation viewed through the lens of procurement and adopting technology from elsewhere. The rapid pace of change in information and communication technologies means that it is no longer sufficient for legal businesses to rely on others to develop tech for them if they are to gain competitive advantage and remain world-class.

Future growth is contingent on the sector embracing innovative business practices, as well as on developing and adopting new technologies.

There is a strong empirical two-way causal relationship between productivity and employee engagement. Levels of employee engagement in professional firms are typically twice to three times higher than those at corporates, which indicates high productivity.

Pairing up PSF management teams with their peers at clients should help improve employee engagement, and could result in significant enhancements to the productivity of UK plc.

The Managing Partners' Forum brings together professional firm leaders to share ideas on strategic leadership and management excellence. It provides an independent voice and direct access to policymakers.

"A question that is seldom asked is why the UK is so successful at delivering services."

Embracing technology, managing change

Eversheds Sutherland, a case study

Harbour spoke to Paul Worth, Co-Head of Global Litigation at Eversheds Sutherland (ES) about their approach to change management and technology.

What are the current challenges for a firm your size?

Critical mass and a global footprint brings opportunities and challenges in equal measure. We are constantly reminded of the need to innovate, embrace technology and be more efficient in the services we deliver to clients. From a 3-partner high street firm to a $1 billion+ global practice, those particular challenges are similar, even if they manifest themselves differently. At their heart is the ability to drive through change and continuously improve the way we do things.

How do you handle that at ES? How can you make sure it happens at all?

Cross disciplinary teams work on numerous change management projects. We are looking at areas such as pricing, project management, AI, digital platforms, data analytics and global mobility. These are not just issues for the firm's partners to consider. Lawyers look at things differently to accountants, who in turn have a different perspective to IT or HR professionals. By taking a collective approach to strategic projects such as these, we are more likely to devise a solution that is client focused, deliverable and hopefully profitable. The key is to continue to challenge the status quo. Standing still, as we all know, is going backwards.

So what is *"the next big thing"*, Paul?

Different practice areas and geographies face different opportunities, market conditions and challenges. Our focus in Washington might be different to say Singapore. But a common thread is our ability to change the way we do things and the services we offer in a way that responds quickly to clients' changing needs and expectations. You might say that is a statement of the blindingly obvious. It probably is. But a firm's appetite for innovation is inextricably linked to the ability to drive through changes.

As a junior lawyer in 1993, I recall a senior partner complaining about the speed of change. We had just moved from paper timesheets to computer based time-recording and dictaphones with mini-tapes were being rolled out. It was cutting edge stuff at the time. *"Where will it all end?"* the partner asked. Quite what he would have made of big data and desk top robotics, I have no idea.

The appetite and willingness for change has thankfully moved on considerably in the intervening 25 years. My personal involvement in a recent litigation technology project brought home to me the importance of effective change management.

Tell us more about that project.

We launched ES Locate, our in-house eDiscovery platform, a few months ago. We had recognised for some time that we needed our own eDiscovery capability. Our lawyers had developed trusted relationships with many vendors, but sometimes they did not understand the complexity of the supply contracts they were entering into, the pricing differentials between suppliers, how best to use the technology and so on. This could expose the firm to risk. It is also fair to say that we were spending a disproportionate amount of time networking with enthusiastic vendors and conducting time consuming procurement exercises every time we wanted to source a platform.

So how did you change the way you worked?

That was not as simple as it may sound. We started by forming a small panel of preferred vendors with whom we had existing relationships. We carried out risk assessments around data security and negotiated servicing agreements and basic pricing with the panel. We ensured that information about the panel was freely available to the 500+ litigation team all who needed it and sought to make use of the panel mandatory. Asking lawyers to change their existing relationships isn't easy, but we got there. We were at base camp.

To move up the mountain, I wanted to migrate from the panel arrangement, where we were still dependent on third party suppliers, to a managed service with a sole provider. Having evaluated a number of excellent vendors we chose to go with Recommind (now Open Text) and their Axcelerate technology with which many litigators will be familiar. They agreed to white label their product and ES Locate was born.

Shortly after reaching agreement with Open Text, we hired a Head of Litigation Technology and 2 data analysts. So we had a new document review platform and a new team to integrate. Plus a dent in the P&L that I had to make good. We were half way up the mountain.

What would you say is/was key to secure a smooth transition?

Communication and buy-in are key. Throughout the process, I delivered regular email updates to the whole of the Litigation Practice Group, ensuring everyone knew the plan and the benefits. For 6 months before we went live, I trailed the launch of the platform in my partner briefings and in meetings with different teams around the UK. It was key to show that the senior team fully supported the project.

Once the team and technology were in place, we carried out a series of office roadshows, demonstrations and webinars, helping everyone to understand the capability of ES Locate and how it might best be used: *"Yes, a change of approach is needed, but look at all the benefits: cutting edge technology, best in class data analytics and an in-house team capable of fully supporting the platform. What's not to like? Great reasons to talk to your clients about it".*

What happened, once it went live?

Once we rolled out ES Locate, I was pleasantly surprised at how everyone embraced its use. Immediately, colleagues came up with a variation of new ideas about how we could use the technology to best effect, both on existing litigation work streams and into our employment and competition practices.

Talking about and using ES Locate has become second nature, and I am also pleased that our clients are directly seeing the benefits of our lawyers' enthusiasm for this new technology.

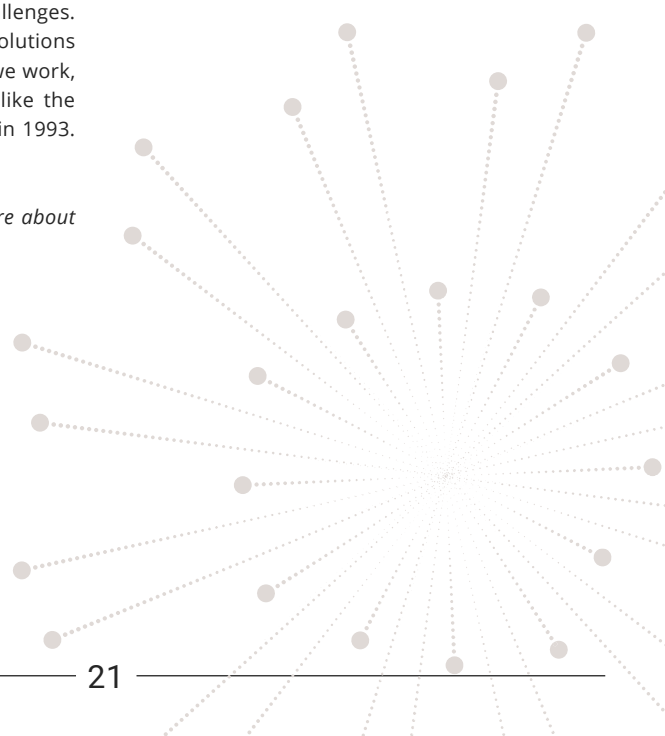
Changing the way we work has added far more value than the technology impact alone. Making that change happen has been down to good communication, justifiable business decisions and genuine interest in the technology from our team and our clients. If we can review 100,000 emails more quickly, more accurately and more cost effectively, it becomes a no brainer. Summit reached.

And what's next?

We have many projects to choose from. Enhanced digital matter management, upgrading client portals, and AI in particular are getting lots of focus. In the meantime, given digitalisation of the courts, as discussed by Lord Justice Briggs in the Innovation edition of Harbour View, we are tackling the overhaul of our digital bundling and court presentation software capability. Digital bundling is a particular area where technology can make a real improvement to efficiency and quality. Cloud based systems are being created by vendors which offer a good solution to security and IT infrastructure challenges. Adapting to digital bundling software solutions does require slight changes to the way we work, but again the benefits are clear. A bit like the move to paperless time recording back in 1993. Plus ça change, plus ça reste la même.

If you are interested in understanding more about the ES Locate project, please **click here**.

"The key is to continue to challenge the status quo. Standing still, as we all know, is going backwards."



General Data Protection Regulation

The golden opportunity behind the administrative nightmare

By Sally Wollaston, BD and Marketing Director, Hardwicke Chambers

Olive Cooke. You may not recall her name but you may remember the terrible story of the little old lady driven to take her own life partly as a result of being pursued relentlessly for donations by various charities who had obtained her contact details directly or indirectly.

Personal data has become big business and the wide misuse of that data has resulted in positive action by the EU in the form of the General Data Protection Regulation ("GDPR") which comes into effect on 25th May 2018. The Privacy and Electronics Communication Regulation ("PECR"), which governs unsolicited direct mailings, is also being updated and the indications are that this will follow the provisions of the GDPR. And before you skip this article thinking that Brexit means that we no longer have to worry about these regulations, the UK government has announced that it will adopt the provisions of the GDPR (and by implication the PECR) into UK law.

There is much to commend in the thinking behind the new legislation. No longer will you have to look for those annoying tick boxes hidden at the end of reams of small print which need to be either unticked or ticked to stop the deluge of advertising from a company from whom you simply wanted to buy a sofa or, even worse, them selling on your personal data to third parties who continue the deluge.

Going forward, the general rule will be that, if you want to use someone's personal data (their home address, email etc.), you must have a lawful basis (as defined by the GDPR) so to do.

Much has been made of the eye watering penalties for severe breaches of GDPR – €20 million or 4% of turnover – and as the 25th May 2018 deadline fast approaches, hysteria mounts concerning the complexities and cost of implementation.

Less has been said of the golden opportunity GDPR offers. Now is the time to streamline your contacts and upgrade your ability to sort/use those contacts according to more sophisticated parameters. Doing so will make your business development more targeted as well as efficient and should in turn produce greater ROI.

Databases are the bane of every business, whether you are selling legal services or anything else. They become obscenely overweight, loaded down with a large proportion of contacts who are to all intents and purposes (and sometimes actually) "dead". Maintaining the efficacy of those databases is a time-consuming and expensive task that most small – medium sized businesses simply do not normally have the resources (or will) to prioritise. GDPR provides the justification to take this task centre stage.

Many large businesses will already have sophisticated databases which control their contacts in a manner designed to assist business development – both in terms of communicating with those contacts and reporting on the success of those communications. At the Bar, business development functions have necessarily been bolted on to internal systems as the basis of those systems was designed before the Bar was able to advertise its services. Whilst marketing functions have been becoming more sophisticated, GDPR is a shot in the arm in this regard and this will undoubtedly be to the Bar's general advantage.

And that general advantage is also another positive development to GDPR – at the Bar at least. GDPR has got us all talking and sharing. Leading by example and presenting a united front will do wonders for the Bar's public profile.

"Personal data has become big business and the wide misuse of that data has resulted in positive action by the EU…"

Be curious

The secret to sustainable success

Elliot Moss, Partner and Director of Business Development, Mishcon de Reya LLP

We are in the middle of a revolution. A revolution that is shaping our expectations as consumers, as clients, as purchasers of products and services. We all want what we want *right now*, delivered with the minimum of fuss and at a fair price.

Netflix, Spotify, Apple, Uber, Amazon, Google, TripAdvisor – just some of the brands that are at the vanguard of this revolution, that understand what we want, that have been prepared to innovate, to invest heavily in technology and people, to continually try to improve and to be change agents. In doing so they have all become commercial leaders in their sectors.

For a number of reasons the legal profession is not immune from this change in the way we consume the world:

Firstly, because we – those people in the industry – are already enjoying the benefits of innovation and technology in everyday life. This means all of our collective expectations as consumers are higher, more demanding, less understanding of slow or inaccurate delivery of a service. This is as true for a lawyer in private practice as it is for a lawyer working in a business.

Secondly, because those firms and businesses that choose to embrace technology and innovation as a way of doing business, are starting to make their competition look weak. Do you prefer to wait 4 weeks and pay £200,000 for 30 paralegals to undertake discovery in a litigation, or wait 3 days and pay £50,000 for technology plus 2 legal technologists to do the same work?

And thirdly, which law firm or business would you rather join? One that continues to look backwards, denies change is upon us and lives in an analogue world insulated from consumers? Or one that believes innovation and technological transformation are critical to its future relevance and ability to deliver a service that is fit for purpose?

The highly demanding consumer in 2017. Competitive advantage. Attracting the best talent. All vital for sustainable success. The individuals, firms and businesses that are already showing signs of both understanding this and addressing it – and there is a significant gulf between the former and the latter – are emerging as the leaders. What those people realise is that winning as a law firm or an in-house legal function is not just about the application of blockchain, or AI as it relates to e-discovery, or mining more data, or an upgraded CRM system, or more automated marketing tools. All of these developments are exciting and are making big differences to service delivery. But they are just today's features not tomorrow's.

The key to winning is about something more human, something that underpins new ideas and new technology based solutions. It is about being curious. About asking questions. About being open to the answers. About wanting to know more. About not being fearful of that which one does not know. If this sounds familiar, it should: it describes a brilliant lawyer at their best.

So be curious, embrace what technology can do and respect the importance of what the individual lawyer brings. Sustainable success will follow.

Reputation, reputation, reputation

By Gus Sellitto, Managing Director, Byfield Consultancy

When I consider the next big thing for the legal sector, I naturally look towards my own line of work – reputation management. Our 2017 survey of in-house PR teams in the legal industry in conjunction with Legal Business, revealed that 40% of respondents did not think that their organisations prioritised risk to reputation as seriously as other industries. To answer the question, the next big thing for reputation management in the legal sector is, well, exactly that!

Corporates in any industry seek guidance in communications to find a voice: they seek a voice that stays abreast of change in the industry and demonstrates how competitive they are; they seek the means to become *relevant* and *respected* and once they achieve that status, they want to maintain it.

Yet when comparing the legal industry to other industries, in my opinion, we are about ten years behind our corporate cousins in many of these areas. When we talk about the 'next big thing' in law, conversation typically turns to AI and the rise of an automated workforce, Brexit or further consolidation of the industry. These are all changes and innovations which may seem ground-breaking for the legal sector, but for other industries they have become the norm. The concept of reputation management is no different.

The Legal Services Act in 2007 might have been seen as a damp squib by some, but it did fundamentally change the business of law. Competition is fierce among legal services providers in a changed and evolving landscape that now includes traditional law firms and barrister sets as well as new entrants such as litigation funders, Legal Process Outsourcers and, of course, the looming spectre of the Big Four. We now work in an industry where Alternative Business Structures allow legal work to be challenged by companies who might once have been clients of law firms. Consequently, firms are becoming more discerning as growing numbers of GCs shop around between legal services providers that offer essentially the same service. The market has changed, and so has the ability of law firms to rest on their laurels and assume business will continue as normal.

In an increasingly saturated market, the ability to raise the organisation's profile is king and a lack of action or reliance upon existing reputation leaves a business at serious risk. It is no coincidence that top-50 law firms employ a head of PR with significant experience. The industry has begun to recognise reputation management for what it is: a powerful tool to gain a competitive advantage.

But firms must also consider the reputational risks they might be exposed to. Just as brand value can grow, it can also fall. Reputation has become something we can put a price on. Following the emissions scandal in 2015, VW's market share in 2016 fell to its lowest level since the financial crisis. It has since increased again only to show that reputation really can affect the bottom line. To compound this in our industry, legal services providers are finding that they are not responsible just for their own reputation, but for their client's as well.

Without a strategy in place for a firm's own reputation management, it is unlikely that they will be prepared to cope with the knock-on effect of a client's reputational problems. Legal services providers will have to become more literate in seeing, managing and mitigating reputational risk and the means by which they do this will consequently become more sophisticated.

Be it technological progress, the proliferation of social media and faster news or even just a move towards a more Millennial-led workforce, the channels by which the legal industry communicates are going to have to adapt. For me personally, this has been never as apparent as this August. I noticed a significant departure from the usual status quo: in what is usually a quiet holiday period, our clients have been digesting news and wishing to react to it more than ever. It starts to dawn on law firms that even if their partners are on a sun-lounger, their reputation never is.

Byfield Consultancy offers reputation management services to the legal sector.

Collaboration

The defining issue for successful firms of the future

By Lee Grunnell, founder and brand strategy director, Thirteen

Think back to the mid-noughties. Words and phrases like “commerciality”, “we understand your business”, “client focus” and “thinking strategically” seep into the vocabulary of law firms. They quickly became derided by clients as jargon and marketing speak. Something everyone said, but few actually did. “Working collaboratively” was another white noise phrase thrown around like confetti. However, clichés not withstanding, collaboration - real collaboration - could and should be a defining issue for firms in the future.

In large part, the collaboration I imagine will be driven by a trend we’re seeing now, an increasing focus on brand.

As firms uncover and articulate what makes them distinctive, they’ll develop a clearer sense of business purpose and their core competence. This will force firms to decide what they will and won’t do and, in turn, bring about collaboration.

How, and with whom, should law firms collaborate?

It would be nice to think that similar firms will collaborate with each other. On a shared client panel, there’s huge scope for pooling client knowledge and joint reporting, as a minimum, all in the name of delivering as much value to the client as possible.

Unlikely though. The legal industry is top of the league when it comes to competitor paranoia and enmity.

So let’s think about collaboration between traditional firms and alternative providers. Until now, firms have tried to take on the likes of Axiom, Obelisk and Halebury at their own game, setting up flexible resourcing arms, often staffed by alumni.

Unfortunately, most firms have missed the point. They think “New Law” wants to compete directly with “Big Law” for everything; in fact they’re trying to offer something different - something that traditional firms aren’t geared up to deliver.

So why bother trying? Far better to work with these new players, to see how you can collaborate to address clients’ legal resourcing needs. Focus on the work you can deliver efficiently and profitability and let your New Law partner do the work you can’t.

An even more valuable area of collaboration (for clients initially and, therefore, for firms in the long run) is between firms and other client advisers. This is something that clients regularly say law firms are poor at. Take, for example, the insurance world, with insurers, brokers and loss adjusters. The health sector, with multiple public health providers, private health providers and investors. Private clients with accountants, bankers and business interests. Real estate with investors, developers, contractors and tenants.

In each of the markets above, law firms have a huge collaboration opportunity. They can put the client at the centre of a virtuous circle, where each adviser works together united by a common objective.

Each player - whether law firm, accountant, broker, or investor - is, in reality, just a part of a supply chain that helps the client achieve whatever it is they’re trying to do. They each have a role to play, but they play it in isolation.

If law firms really were client focused - if they really did understand their clients’ business, behave commercially and think strategically, they’d unite the supply chain and make it more efficient.

The other great piece of law firm marketing jargon is “added value”. Law firms have long struggled to explain exactly how they do this for their clients. The sort of collaboration above would be a great place to start. And the more value you bring, the more valuable you become.

Harbour news

We recently welcomed **J-P Pitt**, **Christopher Lindsay** and **Elliott Berger** to the team. J-P joined from Gregory Rowcliffe Milners having trained at Bird & Bird. In addition to his legal expertise, he brings a wide range of project management experience from his previous career as a British Army officer. Christopher, previously at Nomura International's in-house litigation team, was a senior associate at Travers Smith between 2006 and 2011. Elliott joined from his role as a Senior Director and legal risk and compliance consultant with Gartner (previously CEB) in Washington DC, Amsterdam and London after initially qualifying as Corporate Lawyer with Clifford Chance.

On 18th October Gavan Griffith QC will address the oversubscribed 2nd Annual Lecture in Hong Kong: "The rise and rise of litigation funding, RSM v St Lucia - 3 years on". He will engage in a tour d'horizon of the growing maturity of the litigation funding industry including the emerging controversies around security for costs orders sought against funded claimants.

The Harbour team continues to travel, meet contacts worldwide and speak about third party funding globally. The team are regularly invited to write for publications or to share their opinions:

- Stephen O'Dowd in **Time warp, Irish ruling in the Persona case** for Litigation Funding Magazine, August 2017
- Ruth Stackpool-Moore in **Speakers' Corner** for Newton Arbitration, August 2017
- Susan Dunn on **The latest global trends in TPF** for The Lawyer, July 2017
- Mark King on **Litigation Funding in Dubai** for LexisNexis, July 2017

Don't forget to visit the new **Harbour Hub** which brings together our views, latest events, key trends and developments within the litigation funding market and legal sector.

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