

| *Insights*

# The Strategy Challenge

Part two



**It is all very well to accept the imperative of change in the abstract – but to what extent is it embraced in practice? Doing instead of talking?**

Above all, change – and in particular all-encompassing societal and technological change – requires leadership and courage – courage to face the future head-on.

**Does your firm actually have a strategy?**

By this we don't mean the document which is prepared every two or three years, based on a 5% or 10% annual increase in turnover and headcount, using the predictors of past success and extrapolating a 'strategy' from them. We mean a living, breathing strategy which the firm embraces, enacts and keeps under constant review – ready to react to, or even better, anticipate emerging challenges and conditions in the market place.

At the very start of the process it requires a far more fundamental review of strengths and weaknesses, threats and opportunities – a full balanced scorecard analysis of the firm's current position and market opportunities.

The main challenge is not to rely on the old equation of % growth, but to focus instead on profitability, efficiencies and opportunities in order to underpin the firm's future.

Whilst the current buzz word technologies of AI, process automation and machine learning are as yet not widely adopted or trusted outside the top 30 or 50 law firms, these changes are coming.

True, we cannot be absolutely sure what the legal landscape – or indeed society at large – will look like five or ten years hence. But we can look at some of the trends and prepare better by building flexibility and resilience into the strategy we adopt.

**Key takeaways**

1. All change requires leadership and courage – courage to face the future head-on.
2. Development of a true living, breathing strategy which the firm embraces, enacts and keeps under constant review
3. Be ready and prepared to react to, or even better, anticipate emerging challenges
4. The only constant is change and products/ technologies are now under development which are not currently perceived as of use which will become 'normal'.
5. There is no such thing as a technical or 'IT' project – there are business change projects which use technology to strategic advantage

## Technology will advance legal services

Unless some cataclysmic event occurs, society and by implication, the legal landscape, will increasingly become technology driven.

## Connected and commoditised world

Our lives will increasingly be conducted online and reliant on technology, which connects or provides services or information in hitherto unimagined ways. For example, the retail sector has already experienced a dramatic impact due to the move away from bricks and mortar in favour of clicks, and is now wrestling with how to put together a successful omni-channel strategy. The legal sector is not exempt from such challenges as the technology finally catches up with the hype.

Services – including legal services – will increasingly become commoditised, reduced in cost and requiring faster delivery.

## Information is king

Information and knowledge is increasingly available, pervasive, and free. Why consult an expert at considerable cost, when expertise is freely available online? Why pay a lawyer to draft your will, when DIY tools are a click away? Already, current TV ads pose the question of why pay an estate agent a commission, when the consumer can obtain the same sale outcome from Purple Bricks at a fraction of the cost. Legal services cannot be expected to be exempt from this trend.

These are the predictors of the future. It is not only likely but inevitable that the role of a lawyer will have to change, to become that of an advisor, mentor and negotiator rather than a creator of standardised documents

or follower of standard processes. Already most practices rely on 3rd party precedents provided by specialist knowledge organisations such as PLC and Lexis Nexis.

There's an irony there somewhere that technology might end up taking lawyers back to how they were before the digital era – the learned counsellor and friend assisting with, and assuaging the effects of, a distress purchase. The difference between then and now though is that today there is the risk they might be disintermediated entirely.

## A changing world

The introduction of completely new technologies (such as the Internet of Things, driverless cars, delivery drones) represents magnificent opportunities for savvy lawyers. Whole new legal disciplines are being created which will replace those which have become significantly restricted, such as PI claims.

IP lawyers will thrive, as they pioneer the frontiers of risk between hardware suppliers, software suppliers, outsourced development resources, managed services providers and individuals.

To provide an example of an area of law currently under development – self-driving cars have killed people. Where does the risk and liability fall? Was it a hardware failure? Was it a software failure? Was the cause of death attributable to a flaw in the software design? Or a failure in support and maintenance? Was the vehicle at the time in control of a human, or a human agency? To what extent?

As driverless vehicles become more pervasive (as they will), what about class actions? Even before we get to fully autonomous vehicles, most vehicles are computerised these days. What if a hacker hacks into the security system of your latest and greatest SUV and steals it?

Do you have recourse to your insurer/ the manufacturer of the SUV/ the software developer who supplied the security system? Or, on a more mundane level, what if the smart temperature control on your fridge/freezer fails? Yes, you could probably claim under regular contents insurance – but what recourse does the insurance company have against the manufacturer of the hardware and/or the supplier of the software (and they are unlikely to be the same!)?

Whole new complex areas of liability and insurance law are opening up. A further example of these challenges are chatbots and virtual assistants. Some more progressive law firms are already deploying AI-driven conversational agents to guide potential clients through initial contact with the firm. The next step of this is for the chatbot/agent to provide automated processes and advice but what if the chatBot provides negligent or inaccurate legal advice?

## **Interaction with Courts**

The courts and tribunals of the UK are rapidly embracing technology – online Courts are already in pilot, and online filings are becoming ever more widespread. Even though one is inclined to be cynical insofar as large-scale government technology projects are concerned, eventually the MOJ and the HM Courts and Tribunals Service will probably come good. This will undoubtedly have a significant impact on most law firms – not only in the way they work, but also, as more online DIY tools become available to the public, there will be less need for the services and advice they typically provide. Are these law firms facing up to the fact that at least a proportion of their traditional business will disappear?



## **Where are we now?**

Outside the UK's top 50 firms and some of the ABS legal start-ups, the evidence of a change agenda is still rather lacking.

In a wide-scale survey on 'Law Firms in Transition 2018' conducted by Altman Weil Inc in early 2018 (polling 801 US firm managing partners at firms with 50 or more fee-earners, 50% participation rate), the main findings were:

Describing the impact which the 2008 recession had on US law firms, they state:

*"10 years on... the threat in 2018 is broader and more nuanced, arising primarily from the sweeping force of technology evolution... that has resulted in the commoditisation and commercialisation of more and more legal services. ...in reacting to the last crisis, they fail to recognise the next. Most law firms continue to plan for short term, incremental improvements in performance, while deferring or slow-walking more forward-looking actions to address more long-term, systemic threats"*

And *“In 69% of law firms, partners resist most change efforts”*

Another US commentator, Kathryn Rubino in [abovethelaw.com](http://abovethelaw.com) (25/5/18) commented on the Altman Weil report:

*“Engage influential partners now in the thoughtful consideration of current market change and likely future outcomes. Those partners need to care about the future of the firm – or, at the very least, get out of the way”.*

## Sounds familiar?

Of course, it is a US survey, and you may dismiss the findings as not applicable in the UK. But should you?

At the end of 2017, the Legal Practice Management section of the Legal Support Network conducted a comprehensive survey of mid-tier UK firms.

Circa 80 firms participated, which we suggest is a representative cross-section of the mid-market. Their findings seem more encouraging with AI, automation and innovation scoring very highly in the areas of interest. Dig deeper, however, and a rather different picture emerges. The evidence may be circumstantial, but we suggest it leads to only one logical conclusion.

It is, alas, a question of ‘putting your money where your mouth is’. On average, 72% of IT budgets are still spent on business as usual, with 21% of the budget going on ‘new tech’. But what counts as ‘new tech’? We also had 80% of respondents stating that their firms do not spend enough on ‘non-business as usual’ technology. And then, if we analyse what they actually do spend their ‘non-business as usual’ IT budget on, it emerges that fully 73% of the respondents envisage spending on technology such as

replacing a PMS/ DMS, managed desktop and hosting, and cloud. As a percentage of a percentage, this leads us to conclude that a pretty meagre number in the mid-tier are actually focusing any investment on truly forward-looking, innovative technologies.

Another strand in the argument: firms were asked what they see as their firm’s biggest commercial threat over the next five years. The overwhelming majority either saw firms “just like us” or larger firms as the major threat (with a further 18% mentioning non-traditional organisations and 13% virtual providers of legal services).

How many of the 6% who mentioned “something else” mentioned macro societal and technological factors, such as the fundamental change in the way consumers and businesses expect services to be delivered to them ie the unescapable digital transformation that will affect every aspect of business and society over the next 5 to 10 years? It is similar to Kodak responding to the same question and saying that it saw Leica or Olympus as its major threat – when in fact it was the digitisation of photography that put it out of business.

There’s an important point to make here as we close. This isn’t about greenlighting a swathe of new technology and simply buying new stuff. Value is only ever had through adoption and utilisation and that could come from new – or equally it could come from what you already have, but just re-implemented or rethought out. Be mindful of the silver bullet sale when you might already have the golden opportunity.

One thing is for certain. Unless law firm partners and managers start to grasp the ramifications of technological change, and tailor their strategy accordingly, then plenty of firms will be having their own Kodak moment – and not in a good way.



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