

Commentary on the Legal Week Strategic Technology Forum

June, 2011

This year's Legal Week Strategic Technology Forum went under the heading of 'Becoming a facilitator of change for the decade ahead'. For us the themes were less easy to discern than had been the case in previous years.

That said, the themes we did pick up on provided some strong content and well debated points. Those themes were as follows:

- Personal choice, mostly reflecting on the increasing consumerisation of devices and software;
- Client pressure, especially the demands from clients for their legal advisors to provide both increased efficiency and alternative fee arrangements;
- Risk, ranging from greater demand for assurances from clients to centralised teams for conflict checking.

In addition, there were three sessions that we attended which, in our opinion, did not fall readily into one of the themes above. These were the sessions on document management, sustainability, and cloud computing.

Personal choice (consumerisation)

In a world where 70% of global IT spend is thought to be on consumer devices and software (eg iPads and apps), lawyers surveyed in one firm felt that social media and specifically Facebook were the best way to resolve its internal communication issues. Interestingly, the firm has elected to create its own version of Facebook rather than allowing unfettered use of the original... but contrast the demand for Facebook with traditional resistance to CRM.

Another firm received requests from its overseas lawyers for Skype on the desktop, and elected to deploy this not least as it is cheaper than using video conferencing or even phones. A number of people spoke about the increasing use of iPads, although there were mixed views on how best to manage these – should they be tied down to a corporate approach, or provided with access to apps and used as people see fit ?

“CRM has failed over the last 15 years... so why are we still pushing InterAction instead of Facebook ?”

Those who felt the consumer devices and software should be resisted were likened to King Canute trying to withstand the inevitable tide of change. However, one supporter of such change also predicted that it would lead inevitably to anarchy and would require some form of management and reform in future.

One definition of knowledge management: “When I’ve run out of things that I know, and want to know what to do next”

It struck us that this theme of personal choice should also be extended to the knowledge management debate, especially as this is an area (like CRM) where firms often struggle to get any suitable level of engagement from the business for prescriptive approaches - this in spite of the fact that access to relevant content or information is a consistent requirement for lawyers. One delegate felt that their firm’s KM ‘system’ would be a successful failure, ie it would work technically but be little used by fee-earning lawyers.

The possible solutions here included the use of social media tools to provide lawyers with the means to check who has worked on similar matters to that which they are just about to commence. This could be likened to the casual research environment that exists in many forms on the internet.

One client representative bemoaned the lack of access to law firm’s know how, although the Banking Legal Technology (BLT) portal is a good example of where this has been done successfully. However, should the BLT’s use (and that of any similar sites) be extended via social media tools to allow clients to ask law firms to pitch informally for certain types of work ? The client thought so, the law firms felt this was giving work away for nothing - our view is that it simply creates a marketplace on the web.

3Kites commentary on personal choice

Before rushing headlong towards the light, firms need to consider the impact of embracing personal choice. Whilst on the one hand it is great that users are now pushing us towards solutions, it doesn’t mean that they are always right. As IT professionals, we must not abdicate our responsibilities to the firms that we work for, or their clients, in order to join a new wave. In such a fast moving arena as IT, there is a perceived pressure to be at the front of a curve. However, we think that making the right decision for your firm (whether that means joining the crowd or standing to one side) is the most important thing.

It will be important to assess the value such waves bring to the business via client service, whilst maintaining a duty of care to these same clients and ensuring that we operate within the regulations of the legal profession. This is where the debate about choice edges towards the third theme here, that of risk.

Client pressure

Due to the economic pressures placed upon clients’ businesses, support groups (of which legal is one) are often being asked to cut costs and provide more accurate budgetary figures for projects and other such work. This, in turn, is reflected in a downward pressure being placed on legal fees and requests for a different approach to the pricing of work to help clients assess costs more accurately.

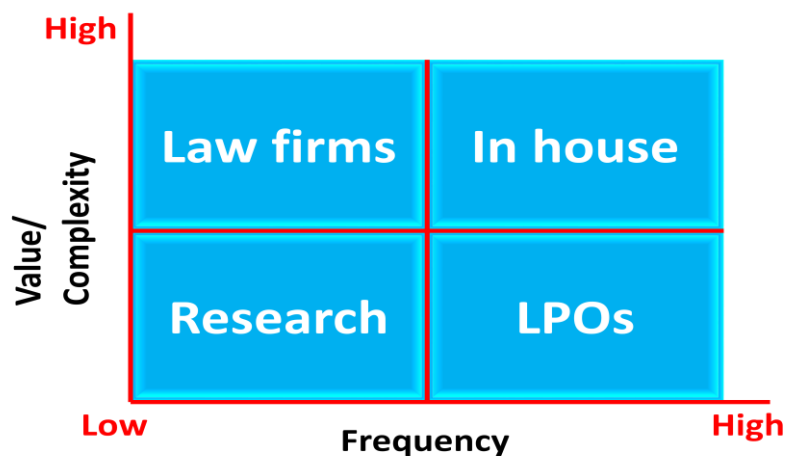
Some clients will make law firm selection a commercial decision - those firms that stay with the billable hour will get left behind

According to one client, some law firms are actively resisting such requests, with a few not only confirming their adherence to the billable hour (blaming this on the complexity of the legal process) but also increasing their rates. The client in question is fighting back by stating that it will either get a change in approach from its legal advisors, or change its legal advisors.

“Like democracy, the billable hour is the worst possible option... apart from all the others”

However, this is not the whole story. In one session, Fujitsu’s UK and Ireland General Counsel, Jonathan Smith, spoke about the importance of legal advice over and above other considerations such as tools like deal-rooms which may have been requested by procurement managers. He would welcome law firms challenging such requests and helping the in-house groups to articulate what they really need from their legal advisors.

When approaching work, the following diagram reflects how it currently tends to be assigned. If it is of low value or complexity and doesn’t happen very often, Jonathan’s team will undertake some research using the likes of PLC. If the same kind of work happens more often, it may make sense to ship it out to a legal process outsourcer. Where the work is higher value or complexity but happens infrequently, he would pass it to a law firm. But if this same works is likely to happen more regularly, he would consider adding someone to his team with the skills necessary to undertake such work in future.



The question is, should law firms be looking to occupy more (all ?) of these quadrants and, if so, is this achievable ? They may be too expensive at this point to offset the growth in clients’ own legal groups and to compete with the LPOs. They also lack a viable alternative to PLC and the like, although the BLT portal (mentioned above) may be held up as an option here. The worst outcome for the law firms, and for those clients who value specialist advice, will be if their input continues to diminish through a lack of flexibility/innovation.

3Kites commentary on client pressure

Those law firms that continue to hide their heads in the sand and think everything will return to the good old days are heading for real problems. Clients want excellent legal advice, but not at any price and ideally with greater understanding of the price before agreeing to engage.

If firms find the existing legal processes to be so complex as to prevent alternative fee pricing, maybe they should break the processes down in order to reduce the complexity to the application of pure law. Areas such as due diligence could then be estimated in advance with greater accuracy, whilst experience could be applied (through the correct categorisation of previous matters) to assess the likely costs of the pure law elements.

One firm at the event already employs a number of non-legally trained project managers to good effect, whilst other firms are using (or experimenting in the use of) matter managers. With such roles in place, firms should be able to impose greater control over (deconstructed and) phased matters in order to price them accurately and undertake them more efficiently.

Risk

This is a broad topic that was touched upon in many sessions. However, it was also highlighted as one where, all too often, clients have often been naïve in terms of trusting law firms to do the right thing with their data without ever actually checking. It appears, though, that this passive stance is changing and that clients are actively engaging with law firms. Clients want to know where their data is being stored, and how it is being managed.

One such area under increased scrutiny is the offsite storage of data, eg where law firms use a hosting arrangement or cloud computing. This may open data up to access from agencies outside the jurisdiction of either the law firm or its clients. Further, it is against regulations for some jurisdictions that data be held outside of that jurisdiction.

Data stored in the USA would be subject to the Patriot Act, regardless of the originating jurisdiction for that data

This is clearly an issue for IT (and, for international firms, may even be an issue where data is held internally if it is not located in the jurisdiction of origin), but it is also an issue for the business. Delegates suggested this issue should sit with a firm's Risk Partner, or that a risk lawyer could be part of the IT department. One pointed out that he was located in close proximity with the firm's risk team and that this helped to assess and deal with such issues.

Another area of risk that was debated was that of conflict checking, where risks are often assessed only in relation to previous work and only at the outset of a matter. Firms operate in very different ways - some leave the checking with individuals whilst others (and one firm at the event in particular) have centralised this function in order to increase efficiencies and provide a more consistent approach, albeit with lawyers signing off on decisions.

3Kites commentary on risk

It may be that regulations will need to change to allow for the benefits of technological progress to be fully realised. Until this happens, however, firms will need to consider the impact of the Data Protection Act and other such legislation on the storage of their clients' data.

The increasing complexity here will need to be addressed in order to satisfy the growing demand for information from clients about the whereabouts of their data - 3Kites is aware of firms being audited by third party organisations, and sometimes at cost to themselves. It must make sense for IT teams to work in close collaboration with risk lawyers not only when setting up storage facilities, but also when responding to audit requests.

3Kites Consulting, June 2011

3Kites Consulting is a limited company registered in England and Wales. Registered number: 5644909. Registered office: 1 High Street, Knaphill, Woking, Surrey, GU21 2PG. www.3kites.com