

Submission to the Justice Commission

The legal profession, legal tech and the economy of Wales: The future for Welsh (Property) Solicitors

Background

In September 2017 the National Assembly Economy, Infrastructure and Skills Committee reported on the Digital Infrastructure in Wales¹

“Connectivity is no longer a ‘nice-to-have’ when it comes to living and working in Wales. For many people, including some of the businesses we spoke to as part of this inquiry, it is now considered an essential service – like water and electricity.

In recent years more and more people are getting connected at increasingly high speeds. This is good news, but a consequence of this improvement is that frustration and a sense of injustice grows in those left behind.

Those who are connected at low speeds, look enviously at those able to access higher speeds. And those with nothing at all are left with the greatest frustrations.

Wales’s topography and population distribution have proved structural disadvantages in a world where market forces have driven roll out. While the Welsh Government’s Superfast Cymru scheme – delivered in partnership with BT – has connected high numbers of people (96% of premises in Wales can access it), there remain pockets where it has not been able to reach. The roll out of mobile phone coverage follows a similar pattern.

We want to see everyone in Wales able to access the internet at fast speeds – whether for work or entertainment. But we also need to build a structure that is fit for the future. Our demand for bandwidth has grown exponentially, and is likely to continue to do so. Where we once needed enough to send some emails and look at a website, now we routinely stream TV programmes and films to a range of devices, at home and at work.

We have made a series of recommendations to help Wales develop a digital infrastructure which is as fast and reliable as that enjoyed anywhere else in the UK.

Filling in the gaps so that everyone can receive a good service is the minimum requirement. More can be done to help people take up those services once available, and to take potentially controversial steps to ensure that the connectivity many of us take for granted, is available to all.”

The Law Society’s Research Unit is currently developing a horizon scanning function looking at possible factors that might affect the legal sector (either directly or indirectly) over the next 15 years. The aim of this is to assist members in preparing for future changes that will affect the sector². Discussions at the Conveyancing and Land Law Committee of the Law Society and the Wales Committee of the Law Society frequently involve digital and technological innovation.

¹ <https://www.assembly.wales/laid%20documents/cr-ld11185/cr-ld11185-e.pdf>

² <https://www.lawsociety.org.uk/policy-campaigns/articles/artificial-intelligence-and-the-legal-profession-horizon-scanning-report/>

Examples include:

1.The Law Society 2017 report: The Legal Implications of Distributed Systems³

“A key barrier to the wider deployment of blockchain based products is a lack of standardised methods for businesses and individuals to automatically validate the identity of the transacting parties. Blockchains do not inherently contain the ability to comply with existing Know Your Customer (KYC) and Anti- Money Laundering (AML) requirements. Applicable transactions must enable all parties to verify the identity of everyone in the transaction. As a result, digital identity will play a huge role in the future of blockchains used by financial institutions, especially around the need to validate and authenticate identity information.

As the technologies become more widely used – or perhaps in order for these technologies to become more widely used – legislators, regulators and courts will have to address these issues and provide a proper legal framework within which blockchain can be utilised.

Criteria are needed to ensure the legal validity and enforceability of smart contracts under the law.

Traditional contract law may need to be modified to take account of the automated and deterministic nature of smart contracts, as well as issues to do with their validity and enforceability. The law is expected to face challenging questions concerning the need to establish a link with the physical, perform the necessary validation procedures and ensure compliance of blockchain applications with the applicable law (Boucher 2017).”

2.HM Land Registry Community engagement and collaboration on Digital Street⁴

“At HM Land Registry one of our key values is to drive innovation in the property market, and in our research and development project, Digital Street, we are doing just that.

*The team are working alongside representatives from across the market to co-create a vision of the future for buying and selling property. **A fundamental part of the project is to explore how cutting-edge technologies such as smart contracts and distributed ledgers can deliver simpler, faster and cheaper services for our customers and the wider property market.***

In the first year of Digital Street, we worked with a range of people, including conveyancers (both volume conveyancers and high street firms), lenders, estate agents, buyers and sellers, and those in the property technology (PropTech) community. Now in ['Year 2' of the project](#), our momentum for growing the community has gained pace and we've increased the number of people involved in Digital Street who are working with us to explore the potential opportunities and challenges around a future vision, technology and policy.

³ <https://www.lawsociety.org.uk/.../blockchain-legal-implications-law-society-horizon>

⁴ <https://hmlandregistry.blog.gov.uk/2018/11/30/community-engagement-and-collaboration-on-digital-street/>

These all provide an opportunity for different organisations across the property industry to come together and discuss topics, explore common problems and suggest ways to approach potential solutions. We've had some great organisations attend our events so far including the Law Society, the Ministry of Housing, Communities and Local Government, HM Revenue and Customs, GOV.UK Verify, Yoti, Consensys, IBM and many many more!"

3.Smart contracts: a boon or bane for the legal profession?⁵

"The legal landscape ahead

Smart contracts may also change the way lawyers work within and across firms. While some commentators have gone as far as to say that lawyers will need to know how to code smart contracts in the future, this is extremely unlikely. The more probable scenario is that products and services will be developed that enables lawyers to integrate smart contracts into their work without sweating the technical stuff. For example, [OpenLaw](#) seeks to assist lawyers in the negotiation and execution of legal agreements, as well as the integration of smart contracts to automate certain aspects of the written contract. In the demo provided, a user only needs to fill in a standard form to generate a smart contract that is incorporated into the written agreement. The ability of smart contracts to create immutable records on a blockchain may also be used to assist notaries in proving provenance and authenticity of documents. Across firms, [smart contracts and blockchain technology](#) may be used to provide a secure and efficient platform for storing and accessing information. This can help to streamline legal processes such as discovery of documents.

There is no doubt that smart contracts have caught the attention of the global legal industry. This is underscored by the fact that many of the largest global law firms have partnered with initiatives such as the Ethereum Enterprise Alliance and the R3 consortium's Legal Centre of Excellence to better understand how smart contracts and blockchains work, and their implications on the law and legal business. Collaborative and educational initiatives, however, are not the only way to be acquainted with smart contracts. As smart contracts and blockchains represent a new paradigm in technology, the easiest and quickest way to understand them is often to engage with the technology personally. After all, most of us learnt to use the Internet by using it instead of reading up on what URL or HTTP means.

Technological developments, such as artificial intelligence and smart contracts, are often portrayed as competitors of the legal profession. Rather than displacing lawyers, the truth is such technology often ends up positively disrupting the way lawyers work while creating demand for legal services. Therefore, there is no reason why lawyers should not see smart contracts as a boon for the legal industry."

⁵ <https://www.taylorvinters.com/article/smart-contracts-a-boon-or-bane-for-the-legal-profession/>

Submission

A key barrier for solicitors in Wales is a lack of or access only to a basic digital infrastructure which mitigates against innovation in the legal market place that will become mainstream in the next decade. Without investment in infrastructure, tech start-ups/innovation hubs and education and training the solicitors profession in a significant part of Wales will find it challenging to provide legal services and compete on a level playing field with the rest of the UK and beyond. This will be particularly the case in respect of individuals wanting to provide niche commercial services in non-traditional environments or structures. Those challenges have been identified by the Law Society in a blog by Alex Heshmaty, *Legal Tech in 2018: threats and opportunities*⁶

This submission is made in a personal capacity and not on behalf of the Law Society or any other body or organisation. It is prompted by a presentation on the work of the Justice Commission to the Wales Committee of the Law Society on 12.12.18.

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Biography

Michael J Draper
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⁶ <https://www.lawsociety.org.uk/news/blog/legal-tech-2018-threats-and-opportunities/>