

The IT needs of litigators

for

The Law Society

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SUMMARY

Aims

This study set out to examine how Information Technology (IT) is currently being used in solicitors' firms undertaking civil litigation and to identify their priorities and concerns for the future. It was of specific interest to discover how the proposed changes to civil litigation resulting from the Woolf enquiry were influencing firms' future plans.

The firms

Interviews were held with members of 31 firms: eight in the Liverpool area, 11 in London and 12 in Hertfordshire. The sample was not designed to be representative of all practices but was chosen to contain:

- a range of small, medium and large firms undertaking litigation work;
- some general practices and some specialist firms;
- some with little experience of IT systems and some with relatively sophisticated IT systems.

The selection included sole practitioners through to large City firms and those serving urban, rural, affluent and depressed catchment areas. The number of fee-earners in civil litigation within the firms ranged from one to 147. This broke down in bands as follows.

Number of fee-earners in civil litigation

	Frequency	Per cent
1	3	10
2 - 4	9	29
5 - 10	10	32
10 - 20	6	19
over 100	3	10
Total	31	100

In some firms, more than one person was interviewed and the total number of interviewees was 40. The majority of interviewees were partners although some assistant and trainee solicitors were spoken to. Interviewees also included one paralegal and one accountant.

Findings

- Only the three large London-based firms in the survey had an in-house IT department.
- All but one of the firms interviewed were users of IT and of these, 19 (63 per cent) were satisfied with their arrangements for procuring IT.
- Nine firms (29 per cent) had a written IT strategy.
- Fourteen firms (45 per cent) had used consultants for some aspect of their IT needs and many others were considering their use in the future.

- Nearly all firms either already have systems that are PC based or have plans to introduce such systems in the near future.
- The majority of firms were operating in a Windows environment of some kind with just six firms (20 per cent of those with computers) still using DOS.
- Eighteen (67 per cent) of the 27 firms with more than a single PC had them linked in a network. Eight of the 11 firms which had more than one office in the UK were networked but only four of these had a link between offices.
- Only the three largest firms in the survey had installed high bandwidth ISDN lines despite recent reductions in installation costs by BT.
- Two of the three sole practitioners had a computer on their desk. In nine of the other 28 firms none of the civil litigators had their own computer while in seven all litigators were provided with terminals. In the remaining 12 firms, a proportion of litigators had computers.
- In only five firms did civil litigators have laptops and only litigators in the two large City firms used their laptops in court.
- Twenty-five firms (81 per cent) were planning to replace or add to their systems.
- The extent to which firms had implemented system management practices was variable. Fewer than half had written standard operating procedures, an asset register of equipment, a written security policy or virus protection; more than half used access controls, backed up their data regularly and stored a back-up copy off site.
- Fewer than half the computerised firms had an IT training programme.
- All 30 firms in the survey with computers used them for word-processing and all but one had precedents stored on their computers.
- Case management software of any kind was used only by a minority of firms. The most common functions were caseload statistics, which were often generated by the firm's accounts system, and electronic diaries.
- Fewer than half the firms had an automated time and action recording system.
- One in three firms had created an in-house database holding proprietary information about the firm and its client base.
- Around one-third of firms accessed legal information on CD-ROM or through on-line databases.
- Few firms communicated electronically with outside agencies. The most common electronic link was with clients, a facility used by eight firms.
- Only the two large City firms made use of video-conferencing.
- Nine firms (29 per cent) had access to the Internet and six of these (19 per cent) had a homepage on the World Wide Web.
- Eighty-one per cent of firms said their members were aware of the changes to be introduced as a result of the Woolf proposals but only half of these had taken any action in anticipation of the changes.

Issues for the legal profession arising from the study findings

- An underlying problem for firms in the study was access to technical expertise. Other than the three large London firms, only one practice employed an IT professional. Fear, bewilderment and frustration seemed to characterise the relationship between many firms in the survey and their system suppliers.
- Just under half the firms had turned to IT consultants to fill the gap in their technical expertise but this was, at best, only a partial solution. Reliance on outsiders who do not

always understand the legal environment brings its own risk. Indeed, a certain level of in-house IT knowledge was needed to interface effectively with the consultants and to control and guide their work.

- Although use of computers was widespread, the quality of the controls used by firms to manage their IT systems was generally poor.
- The dominant use of computers in legal firms was for document production and to deal with accounts. For other tasks relating to the litigator's function, manual systems were still the order of the day. In particular, there was little use of technology to support case management. Only a small number of firms communicated using e-mail even though a free service is available to firms from Link.
- The implementation of Lord Woolf's proposals was not high on the list of concerns of solicitors' firms in this study, nor was it driving their plans to introduce new technology. Legal aid franchising was a more significant factor in this respect.

Issues for the Law Society arising from the study findings

- Many smaller firms feel the need for support and advice on IT procurement, particularly those who had looked to the High Street Starter Kit to meet their case management needs.
- While awareness of the content of the Woolf reforms was reasonably high, fewer firms had analysed what the impact would be on how they managed cases. There is a need for practical guidance, including the use of IT, on how to survive in a Woolf environment.
- Speedy and reliable communication with agencies and individuals will be critical to a firm's ability to comply with the demands of Woolf. The Society needs to press for all those involved in the civil justice system to accept and deliver information electronically and to provide the profession with guidance on how to take full advantage of electronic communication options.
- A prerequisite for the effective interchange of information is the adoption of common data standards. The Law Society should take a lead role in developing agreed formats for the content of documents that are exchanged in the course of legal proceedings.

Other issues

- The Judicial Studies Board has already embarked on a three-stage training programme for all levels of judges who hear civil cases. Only the third stage, which does not begin until September 1998, will involve joint sessions with members of the local bar, solicitors and court administrators. Successful implementation of Lord Woolf's proposals will require the development of a constructive partnership between the judiciary, the courts and the legal profession. The uncertainty which this study discovered among the profession about how the arrangements will operate suggests that much earlier consultation is needed if implementation is to take place as planned in October 1998.
- Discussions are taking place between the judiciary, the Court Service and the PFI contractor on the implications of Woolf for judicial resourcing and CASEMAN enhancements. The legal profession has not been party to these discussions. The interests of all those involved will be best served if systems are designed in a way that makes the electronic exchange of information as easy as possible. The Law Society and the Bar could comment on the practicality of what is being proposed and reflect the outcome of such discussions in the guidance produced for the profession on standards and IT procurement.

1 INTRODUCTION

1.1 The study

This is the report of a study into the Information Technology (IT) needs of solicitors undertaking civil litigation. The study was carried out by Richard Woolfson and Joyce Plotnikoff on behalf of the Research and Policy Planning Unit (RPPU) of the Law Society.

1.2 Background to the study

The Woolf Report on civil justice¹ foresees a much expanded role for technology, particularly in relation to case management. In Chapter 21 of his report, which deals specifically with IT, Lord Woolf points out that:

‘sensible investment and appropriate technology is fundamental to the future of our civil justice system. IT will not only assist in streamlining and improving our existing systems and processes; it is also likely itself to be a catalyst for radical change.’²

Referring to the impact of technology on legal practitioners, Lord Woolf calls in particular for:

‘more widespread use of litigation support technologies (document indexing, full text retrieval and document image processing) within the legal profession to assist with the management of document loads in preparation for trials; and, more specifically, to help cope with discovery.’³

He goes on to cite many other technologies which might be employed to improve the efficiency of the civil justice system including telephone and video-conferencing, kiosk technology and case management and project management systems for the courts and the judiciary. He calls also for a more strategic and consultative approach to the introduction of IT than has hitherto been the case.

In his response to the report, the Lord Chancellor announced that he intended to implement its main recommendations from October 1998 including the streamlined procedures for ‘fast-track’ cases which, in broad terms, are straightforward and have a value of less than £10,000. He also declared:

‘It is my firm intention that we should consult closely with practitioners and others on future IT systems.’⁴

The new Lord Chancellor has looked again at the feasibility and costs of implementing Woolf and has put back the scheduled implementation date to April 1999. In the meantime, the Law Society’s Council decided that implementation of the civil justice reforms should be one of the

¹ Access to Justice (Final Report), Right Honourable the Lord Woolf, Master of the Rolls, July 1996

² Para. 1

³ Para. 6

⁴ *Access to Justice* ‘The Way Forward’, Lord Chancellor’s Department, October 1996

key policy areas for action by the Society in 1998. To further this objective, the Society is engaged in discussions with the Court Service and the Lord Chancellor's Department (LCD) as to how the new regime will work in practice. In order to inform these discussions and to ensure that the Law Society can fully represent the interests and concerns of the profession, it commissioned this short study of the IT needs of civil litigators.

1.3 Study aims

The purpose of the study was to gather information on the extent of existing and planned investment in IT by solicitors' firms and to identify their priorities and concerns for the future. The results will be used by the Law Society to assist in agreeing appropriate procedures with the courts and to help ensure that the profession is well placed to cope with the changes introduced as a result of Lord Woolf's recommendations.

More specifically, the interviews with firms involved in civil litigation were aimed at obtaining information about:

- their current use of IT and case management systems;
- their software needs;
- their awareness of the changes recommended by Lord Woolf;
- their views on the impact of the changes to their work.

1.4 Acknowledgements

The researchers would like to thank all the interviewees in the 31 firms visited in the course of the study for giving so freely of their time. Despite the commercial sensitivity of the subject matter, all discussed frankly and openly their firm's approach to the use of IT. We are grateful also to Suzanne Burn, head of civil justice policy and secretary of the Law Society's Civil Litigation Committee, for her helpful advice in planning the work, designing interview schedules and preparing a letter of introduction to the firms included in the study. Carole Willis, Controller of the Research and Policy Planning Unit, provided support and guidance throughout the project and resolved quickly and effectively any methodological problems that arose.

2 METHODS OF RESEARCH

2.1 Choice of firms

The study's terms of reference called for interviews to be held with around 30 firms. The sample was required to contain:

- a range of small, medium and large firms undertaking litigation work;
- some general practices and some specialist firms;
- some with little experience of IT systems and some with relatively sophisticated IT systems.

It was decided to select firms in three geographical areas, to include firms of differing sizes and, if possible, to obtain feedback from firms of with varying experience of IT. The areas from which firms were selected were London, Liverpool and Hertfordshire.

In choosing the firms a range of sources were drawn on. These included:

- firms known to the Law Society for conducting significant amounts of civil litigation;
- a list of firms who had registered an interest in the High Street Starter Kit (HSSK) with the Society;
- various directories of legal firms undertaking civil litigation.

Telephone screening was used to confirm that the firm undertook civil litigation and to determine the name of a senior litigator to whom the request to participate in the study should be addressed. By using these techniques, it was possible to obtain a range of firms conducting civil litigation in the three areas. A letter of introduction from the Law Society was sent to the individual identified as dealing with civil litigation. The letter was followed up a few days later with a telephone call to establish the contact's willingness to participate and to arrange a convenient date for interview. In many cases, the person approached indicated that, in view of the subject matter, he or she was not the appropriate person to interview and passed us on to someone else within the firm.

Only one of those contacted by telephone refused to participate. However, many others were not available and failed to return calls. After five or six attempts to make contact, the attempt was abandoned and alternative participants were approached. Eventually, 31 participating firms were identified although this had involved approaching a total of 42 firms. Of the 31, eight were located in the Liverpool area, 11 in London and 12 in Hertfordshire.

2.2 Design of the interview schedule

A framework for the questions to be put in interview was drawn up and discussed with the Law Society. Various sources were used in identifying suitable topics for inclusion, for example:

- Chapter 21 of Lord Woolf's final report;
- an internal Law Society paper produced by Suzanne Burn;
- an unpublished paper by John Jenkins of the RPPU containing the results of a survey relating to the impact of Lord Woolf's proposals;

- an MSc thesis by Martin Walker of City University entitled ‘Information Provision Within The City’s Major Law Firms: A Survey’;
- the unpublished report of a study on judicial technology carried out by the researchers on behalf of the Court Service.

Following helpful comments from Carole Willis and Suzanne Burn some amendments were made to the design. The initial two interviews were used to pilot the questionnaire and some further minor amendments were made as a result. The final version contained a balance of open and closed questions and covered a wide range of issues. A copy is contained at Annex A to this report.

2.3 Conduct of interviews

When agreement to participate was given, notification of the date and time of the interview was sent to the interviewee. The researchers’ contact details, including a mobile phone number, were provided in case a need to rearrange the interview arose at short notice.

The interview began with an explanation of the background to and purpose of the study and by emphasising the confidentiality of the responses given. An assurance was given that no interviewee or firm would be identified by name or by implication in the study report. A copy of the questionnaire was provided to the interviewee although all noting of answers was done by the interviewers. It was also explained that the questionnaire provided only a framework for the discussion and not all questions would necessarily be relevant to the firm being interviewed. In practice, the format of the questionnaire proved adequate to deal with all the points which interviewees wished to raise.

The total number of interviewees was 40. A single person was interviewed in 26 firms, two people in three firms and two firms provided four interviewees. The roles of the lead interviewees within the firm were as follows.

Role of lead interviewee

	Frequency	Per cent
Litigation partner	17	55
Managing partner	4	13
Sole practitioner	3	10
Assistant solicitor	3	10
Trainee solicitor	2	6
Paralegal	1	3
Accountant	1	3
Total	31	100

The roles of additional interviewees were practice manager, senior cashier, IT director, IT consultant, assistant solicitor and trainee solicitor. Seventeen (55 per cent) of the 31 lead interviewees had a computer on their desk.

Interviews tended to last longer than was originally expected. The average length was just over an hour and the range was from 20 minutes to over three hours. Many interviewees welcomed the opportunity to discuss the problems that their firms had encountered in relation

to IT with the interviewer. Some questions raised issues of which the interviewees were not aware and interviewers were often asked to expand on the matters raised. Following the interview all participants were thanked in writing for their co-operation. With the agreement of the Law Society, interviewees were promised that they would receive a complimentary copy of the study report when it was published.

2.4 Analysis of results

The answers to closed questions were input to the statistical package *SPSS for Windows* for analysis. Responses to open questions were dictated into *Microsoft Word for Windows* using IBM's voice recognition system *VoiceType 3.0*.

3 PROFILE OF FIRMS

3.1 Size of firm

The number of fee-earners in civil litigation within the 31 participating firms ranged from one to 147. This broke down in bands as follows.

Number of fee-earners in civil litigation

	Frequency	Per cent
1	3	10
2 - 4	9	29
5 - 10	10	32
10 - 20	6	19
over 100	3	10
Total	31	100

The three firms with a single fee-earner in civil litigation were sole practitioners. Twenty of the firms interviewed (65 per cent) operated from a single office (although some of the largest firms also had offices overseas). Of the rest, six had two offices, one had three, three had four and one had eight.

3.2 Areas of specialisation

Five firms (16 per cent) felt unable to identify any specialist areas in which they operated. Another five also described themselves as generalists but cited certain kinds of work in which they specialised. The remaining 21 firms (68 per cent) nominated a range of specialist areas although some said they would undertake other kinds of work if the opportunity arose.

Eighteen firms (58 per cent) said they specialised in personal injury or medical negligence and 12 (39 per cent) in family or matrimonial cases. Seven firms (23 per cent) specialised in housing matters, five (16 per cent) in commercial and city disputes and two (6 per cent) in mental health, employment, immigration and prisoners' rights. A single firm specialised in each of construction, fraud and entertainment.

3.3 Legal aid and franchising

The subject of legal aid was raised in most interviews. Twenty firms (65 per cent) indicated that they undertook a significant amount of legally-aided work. Of these, seven said that they had a franchise in at least one area, seven said either that they had already applied for a franchise or intended to do so in the near future, and the remaining six said that they had no plans to apply for a franchise in the next few months. One other firm said that it had a franchise but did little legally-aided work.

4 APPROACH TO SYSTEM PROCUREMENT AND MANAGEMENT

4.1 Introduction

This chapter describes how firms in the survey approached the tasks of purchasing IT systems to meet their needs and controlling the use of the equipment once it had been procured. The general features of the systems that were in use by firms at the time of the study are described together with their plans for enhancing or replacing these in the future. Attitudes to the issues of system security, documentation, maintenance, resilience and millennium compatibility are explored.

4.2 IT strategy and procurement methodology

The task of purchasing hardware and software that is both affordable and meets the needs of the organisation has long been recognised as one of the most difficult challenges for any business. An entire science has grown up based on strict methodologies which divide the procurement cycle into precise stages covering development of a business case based on a cost-benefit analysis, specification of user requirements, system design and development, testing, installation, implementation and ongoing maintenance and support. Unfortunately, the science is not exact and numerous systems development projects have failed in a spectacular manner despite rigorous adherence to a particular methodology.

For most firms the application of such methodologies is not a realistic option. The cost of employing a systems house to develop a tailor-made solution to IT needs is prohibitive for all but the largest firms. A less risky and more cost-effective alternative is to look for a commercially available package whose performance matches closely a firm's requirements. Because the development costs are spread among all those that purchase the system, the cost to the individual user is much less. Equally, the risks involved in development are assumed by the supplier and by the time the product is launched commercially, its performance should be assured and demonstrable.

Even the purchase of packaged solutions can be a daunting prospect. Suppliers are adept at emphasising the strengths of their products while minimising their shortcomings. How can the average solicitors' firm with limited technical expertise distinguish between the many products available and identify one which matches both its requirements and its budget?

Only the three large London-based firms in the survey had an in-house IT department. One Hertfordshire firm with 14 litigators had recently employed a computer-literate physics graduate to handle its IT needs. The decision followed a disappointing experience with a supplier commissioned to provide a bespoke package to meet the firm's needs. The managing partner complained that purchasing systems was like 'buying a pig in a poke'. In his experience, suppliers 'sell you systems and hardware and then walk away from you.'

Even if a firm cannot afford to employ IT professionals, it should consider producing a written IT strategy describing the general approach to be adopted in meeting the organisation's IT needs. Such a strategy needs to be closely linked to the practice's business

plan and to address, among other things, the policy relating to the updating and replacement of equipment.⁵

Only nine (29 per cent) of the 31 firms in the survey said they had a written IT strategy. All nine firms had at least five fee-earners, including a partner, engaged in civil litigation. Ten firms with between five and 20 civil litigation fee-earners had no written IT strategy although one of these said it was currently in the process of writing its strategy.

One firm had used consultants to help in devising its strategy and was using the document as part of a tendering package to issue to potential suppliers of its new system. On the other hand, another firm admitted that its strategy amounted to no more than 'a few words in our business plan'.

Many firms delegated responsibility for purchasing equipment to a motivated computer literate employee. This was often the interviewee:

'None of us are technical. I have an uninformed interest. It is left to me and my secretary to purchase IT' (firm with five litigators)

'We purchase on an ad hoc basis. I do it. I look in magazines and speak to my brother who is a programmer, then I buy from magazines by mail order' (five litigators)

'We get a staff member who is computer literate to ring round and get the best prices' (11 litigators)

'A partner deals with computer purchase' (16 litigators)

'It is handled by a senior partner. I might ask for something but I don't know how he would get it. He has some preferred supplier' (two litigators)

'I am the only computer-literate staff member' (eight litigators).

A number of firms had formed a relationship with a particular supplier. However, the quality of the relationship was not always good:

'We have an agreement with a consultancy firm who supply all our IT needs. They prepared a specification but they did not follow it. No-one in the firm had the knowledge or experience to handle the situation. The consultants took us to the cleaners. Now we are suing them' (eight litigators)

'We bought a bespoke package from a supplier after seeing their exhibit at the Barbican. The product is not very good but we are now tied to them and have to go to them when we want to purchase new kit' (14 litigators)

⁵ Guidance for law firms on how to formulate an IT strategy can be found in Chapter 7 of 'IT in the Solicitors' office', Blackstone Press, 1997. The Law Society has also developed a set of guidelines for the procurement of IT which are available free of charge to the profession.

‘Our major IT supplier is a firm of consultants and we are tied to some extent. I inherited them when I took on responsibility for IT. We did look at changing two years ago when the firm split but we decided to stay with them’ (10 litigators)

‘We are tied in with a company that we decided to go with eight or nine years ago. We will review the position in a year or so. If we have a requirement we tell them what we need and they say if they think they can assist us’ (four litigators).

Some interviewees felt bewildered by the task of IT purchase:

‘We were hoping that the HSSK would give a lead. We have word-processing for secretaries and an accounts package only. There has been no strategy, the system has grown like topsy’ (four litigators)

‘I spoke to the Law Society’s IT department. They were friendly and keen but of limited help. What I wanted was advice about specific software packages but I only got a list of 100 firms that were approved by the Society. In the end I took my accountant’s advice about what packages to choose’ (sole practitioner)

‘A lot depends on where I can get finance. Leasing arrangements often drive it. We are on “snarling” terms with our case management system supplier’ (three litigators).

Others had developed a more controlled and structured approach which they felt worked well:

‘We define what is wanted, try to find out what is available (this is the hard part), select software and then the hardware to run it. The principal basis for our choice is the capability of the software. We are looking for value for money, not just the cheapest solution’ (14 litigators)

‘We write a specification for the software, then put it out to tender to identified suppliers. For hardware, we shop around. We know what we want. We made an early mistake by buying cheap equipment. Now we choose top of the range. We decide on the quality standard and then shop to a price’ (over 100 litigators)

‘For straightforward needs we use preferred suppliers, no competitive tendering. Someone local builds and supports machines and we use him. It is worth it even if it costs more. For less straightforward requirements I do the research, for instance I go to the Barbican exhibition. I draw up a short list of suppliers, get demonstrations and proposals from them and then make a choice based on value for money’ (three litigators)

‘We produce a written specification and evaluate tenders with the help of a consultant’ (11 litigators)

‘We have developed a requirements specification with the help of consultants. This will form the basis of a competitive tender’ (nine litigators).

However, even the two large City firms included in the study did not adopt a completely formal approach:

‘We don’t often get to the level of a business case. It is a combination of prediction and the users stating their requirements. If I do my job well, I should have something in place before the user knows he has a requirement so we cannot be too formal. For hardware, we go the standard route through mainstream suppliers. It is hard for them to deal with us because we are specialists in contracts. They respond to us without a contract. For applications software, we have an in-house development team of 15 people. Litigation support tends to be developed in-house. They take core engines and adapt them as needed by the end user. Cost-benefit calculations are rarely followed through. You can sometimes demonstrate such benefits retrospectively but partnerships are strange beings in this respect. For instance, we rolled out e-mail five years ago. It would be hard to do a cost benefit analysis but it would be disastrous if you tried to take it away. It is a cultural issue. Our shareholders are our users and in this we differ from the commercial sector’ (IT Director)

‘Our procedures are informal. We have an IT department of 30 people including programmers. We need some development capacity for interfacing to databases but we do not develop applications ourselves. We have a technology committee which includes three partners, the head of administration and the head of technology. They are responsible for budgeting and developing our long-term strategy. The committee drive technology procurement. Our technology people identify products that do or do not meet our requirements. We evaluate and test these. This was the approach, for example, in choosing a voice recognition system. With more complex requirements, for instance a new database system for controlling precedents, the technical people are more likely to become involved’.

But the third large London firm warned against too much informality in system procurement:

‘It’s very important to know what you want the systems to do before you purchase. Too many firms buy the systems and then worry afterwards about how they will use them. The discipline of writing down your requirements is of prime importance’.

4.3 Consultants

The use of IT consultants presents a dilemma to many firms: on the one hand, consultants offer access to technical knowledge that is not available within the firm; on the other, they are an expensive solution to the problem and there is always concern about their understanding of the legal environment. One interviewee confessed:

‘We are considering using consultants to help reduce risk but we are concerned that risk may actually increase if we go down this route’ (12 litigators).

Fourteen firms (45 per cent) had used consultants for some aspect of their IT needs and many others were considering their use in the future. The purpose for which consultants were used, and the perceived value of their contribution, varied between firms:

‘We use consultants to find out what is out there, check the technical ability of the software and to ensure that we get what we asked for’ (14 litigators)

‘We used consultants to evaluate the options and to specify the system’ (nine litigators)

‘In general we don’t use consultants but we have used someone to look at upgrading our conveyancing system. He has recommended a supplier’ (11 litigators)

‘We use consultants to talk about marketing the practice and IT has come up on occasion. I feel that IT organisations do not appreciate what we do although they are improving’ (seven litigators)

‘I approached consultants for advice but found that they were not helpful. They tried to sell us their own products’ (three litigators)

‘We have engaged someone for the first time to help in choosing a new off-the-shelf accounting package. The consultant has proved to be very helpful’ (11 litigators)

‘We buy everything from our consultants although they tolerate use of other machinery that I inherited. We feel tied to some extent. I would like to use other suppliers sometimes but the consultants would moan about supporting such systems’ (10 litigators).

Two of the three largest firms in the survey were wary about the extent to which they relied on consultants:

‘We use contract staff under our management. We also use consultants to validate the way we are going as regards strategic planning. We have not outsourced a complete development’

‘We don’t use consultants at the strategic level. We have used them to do a network health check but not to guide our vision of the future’.

The third large firm placed greater faith in the use of consultants:

‘Over three months consultants have conducted a complete IT audit in all offices and departments to assist us with formulating a strategy, developing a

specification and monitoring the tender process. We rely on them heavily. We consider that it is justified because of the expenditure involved in purchasing our new system’.

4.4 Satisfaction with procurement method

In all, 30 of the 31 firms interviewed were users of IT and of these, 19 (63 per cent) were satisfied with their procurement arrangements. The 11 who were not satisfied ranged in size from a sole practitioner to a firm with more than 100 fee-earners. They gave various reasons for their dissatisfaction although a common theme was fear of the entire process based on lack of technical expertise:

‘We are a solid, old-fashioned firm of 150 years’ standing. We have no great IT skills and feel very vulnerable. We need to make sufficient money to afford consultants’ (four litigators)

‘Our current procurement methods are too ad hoc but we have little choice in the matter’ (16 litigators)

‘We still feel exposed as a purchaser of IT’ (12 litigators).

Some felt that the Law Society should do more to assist firms with IT purchase, especially in view of the discontinuance of the HSSK:

‘It would have helped to have more support from the Law Society. I was confused about the HSSK. It kept being mentioned and I delayed a decision while I was waiting for it. I would also have preferred more specific advice from the Law Society. I believe that there is still a need for the HSSK, particularly for sole practitioners because the Law Society imposes so many regulations on you. In its absence there is a vacuum for small practitioners’ (sole practitioner)

‘Rather than the HSSK, it would have been more helpful if the Law Society had provided advice on which systems to choose’ (five litigators)

The Law Society has not provided the right sort of information and support in this area. Lots more could be done. I have the feeling that legal software is over-priced. Solicitors’ accounts are not so different from others’ (five litigators)

‘The Law Society’s list of approved suppliers does not help at all. You are completely at the mercy of salesmen’ (14 litigators)

‘No two computer suppliers say the same thing. We are at their mercy because the Law Society has not filled the gap’ (three litigators)

‘I get the impression that the Law Society does not have a good idea of how High Street practices work on a daily basis’ (five litigators).

However, one firm had praise for the Society's efforts:

'The Law Society has held evening seminars in the regions and that has worked very well. It has helped the smaller firms who would otherwise have to go to the City and pay a fortune' (five litigators).

Finally, one firm had found an innovative way to reduce the risks involved in system procurement. It had entered into an agreement with an established legal systems supplier to jointly develop and market a cost control system which would not only meet its own needs but could also be sold to other firms.

4.5 Existing systems and future plans

As was to be expected, there was much variation in the size and complexity of systems used by firms in the survey. The number of computers or terminals in use was loosely correlated with the size of the firm, ranging from a single PC operated by the three sole practitioners to around 1,000 screens in the largest firms. Only one firm had no computers. This organisation had one partner and three assistant solicitors involved in civil litigation. For document production, it relied on electronic typewriters with a floppy disk storage facility. All other functions were performed manually. The managing partner had no plans to introduce more technology:

'What we have is cost-effective, precise, and reliable. We see no reason to change.'

Some interviewees were not sure precisely how many computers the firm had and others were vague about details such as operating systems or networking strategy. Eight firms used dumb terminals linked to a large UNIX machine but all of these also had PCs within the firm. The remaining 23 computerised firms relied solely on PCs.

Eighteen (67 per cent) of the 27 firms with more than a single PC had them linked in a network. (One sole practitioner had his single PC networked with the system operated by his fellow tenants, who were not solicitors, to enable him to use their scanner and fast printer). Many of those with a network also had stand-alone PCs, particularly to handle accounts. One interviewee confessed that their network was not functioning correctly and they were, therefore, making no use of its facilities.

Eight of the 11 firms which had more than one office in the UK were networked but only four of these had a link between offices. In one case, the link was restricted to accounts computers. The two large City firms were linked to their foreign offices. Only the three largest firms had installed ISDN lines for high bandwidth communication.

Six firms operated their PCs under DOS while the remaining 24 used a version of Windows on at least some of their PCs. Ten interviewees said they were using Windows 95 although some others were not sure which version they were using.

Two of the three sole practitioners had a computer on their desk. In nine of the other 28 firms none of the civil litigators had their own computer while in seven all litigators were provided with terminals. In the remaining firms, a proportion of litigators had computers: five firms

with three, five, six, eight and 14 litigators had a single litigator with a computer, in a further five less than half had computers and in two firms the majority of litigators were computerised.

In only five firms did civil litigators have laptops for use away from the office and only litigators in the two large City firms used their laptops in court. One of these firms was planning to provide all its civil litigators with laptops in the following few months and, as part of that exercise, to provide them with training in portability including the use of a PC in court.

Twenty-five firms (81 per cent) said that they were planning to replace or add to their systems. The plans ranged from a sole practitioner who was hoping to take on a second person who would be provided with a computer, to large firms intending to introduce a practice-wide Intranet with a firewall to allow secure communication with the outside world. The diversity of plans is illustrated in the following comments:

‘We plan to replace our old computer with a Pentium’ (firm with two litigators)

‘We will add more PCs so that all members of the firm have them’ (three litigators)

‘We are looking for software packages but the cost is very high. We need to integrate whatever we buy with Microsoft Office’ (three litigators)

‘We are considering getting an electronic link to the bank’ (four litigators)

‘We need to get our software onto a Windows-based system. We will look at the hardware implications of this’ (four litigators)

‘We are hoping to upgrade our accounts and time-recording and to purchase a package to help with franchising’ (five litigators)

‘Our systems are ageing and outgrown. We are moving to a new building and we plan to have a new networked system for case management and accounts’ (five litigators)

‘We are looking at a networked system for the new building’ (six litigators)

‘We are updating with four or five faster machines and phasing out the slower equipment’ (nine litigators)

‘We have a tendering process currently underway using a specification developed for us by consultants. We aim to create a network serving fee-earners and secretarial staff and to include home computers for fee-earners’ (nine litigators)

‘We are purchasing a new accounts package and considering putting PCs on all fee-earners desks’ (11 litigators)

‘We are planning a company-wide network with more terminals. We may extend our existing system or run it in parallel with another’ (12 litigators)

‘We need to move to Windows 95 then upgrade to Windows NT. We need to replace many of our PCs... We are also getting a new accounts system plus desk to desk fax, voice recognition and voice mail’ (large firm with over 100 litigators)

‘We have the infrastructure for an Intranet and we expect to move that way in the longer term. Our first priority is moving our Management Information System and accounts to Windows NT’ (large City firm)

4.6 System management

A variety of questions enquired into the controls that firms applied in operating their systems. As with most aspects of the survey, the responses ranged across an entire spectrum of practice. Naturally enough, controls were most likely to be in place for firms’ accounting systems. Figures in this section refer to the 30 firms in the study that used computers.

As the following table demonstrates, the larger the firm, the more likely it was to have written standard operating procedures.

Do you have written standard operating procedures?

Number of fee-earners in civil litigation	Yes	No	Total
1	0 0%	3 10%	3 10%
2 - 4	0 0%	8 27%	8 27%
5 - 10	3 10%	7 23%	10 33%
10 - 20	2 7%	4 13%	6 20%
over 100	3 10%	0 0%	3 10%
Total	8 27%	22 73%	30 100%

There was less evidence of a correlation in the maintenance of an asset register:

Do you maintain an asset register of your computer equipment?

Number of fee-earners in civil litigation	Yes	No	Don't know	Total
1	2 7%	1 3%	0 0%	3 10%
2 - 4	2 7%	6 20%	0 0%	8 27%
5 - 10	1 3%	8 27%	1 3%	10 33%
10 - 20	3 10%	2 7%	1 3%	6 20%
over 100	3 10%	0 0%	0 0%	3 10%
Total	11 37%	17 57%	2 7%	30 100%

One firm with 11 fee-earners admitted that it had only realised the need for an asset register when it began writing its procurement specification.

There were basically two arrangements in place to deal with system maintenance and support. Twenty-two firms (73 per cent) had an external support contract while seven (23 per cent) called in an engineer as and when required and paid for the service on a one-off basis. One interviewee did not know what maintenance arrangements were in place.

The size of the firm was not necessarily a guide to the approach to system maintenance. One firm with 16 litigators and 10 PCs had no formal maintenance agreement. The three large firms with an in-house IT department nevertheless relied on an outside organisation to support their equipment and one had an engineer permanently on-site.

Only the larger firms had a written policy on security.

Do you have a written security policy?

Number of fee-earners in civil litigation	Yes	No	Don't know	Total
1	0 0%	3 10%	0 0%	3 10%
2 - 4	0 0%	8 27%	0 0%	8 27%
5 - 10	0 0%	10 33%	0 0%	10 33%
10 - 20	2 7%	3 10%	1 3%	6 20%
over 100	2 7%	1 3%	0 0%	3 10%
Total	4 13%	25 83%	1 3%	30 100%

The use of access controls, usually in the form of passwords, was more widespread except among sole practitioners.

Do you have access controls?

Number of fee-earners in civil litigation	Yes	No	Total
1	0 0%	3 10%	3 10%
2 - 4	4 13%	4 13%	8 27%
5 - 10	6 20%	4 13%	10 33%
10 - 20	4 13%	2 7%	6 20%
over 100	3 10%	0 0%	3 10%
Total	17 57%	13 43%	30 100%

However, at least six firms with access controls used them only in relation to specific functions, usually accounts. Even where they were used for general document production, discipline could be lax:

‘We have passwords but all the secretaries know each other’s’.

Half the firms used software to protect against viruses.

Do you have anti-virus measures?

Number of fee-earners in civil litigation	Yes	No	Don't know	Total
1	2 7%	1 3%	0 0%	3 10%
2 - 4	2 7%	6 20%	0 0%	8 27%
5 - 10	4 13%	5 17%	1 3%	10 33%
10 - 20	4 13%	2 7%	0 0%	6 20%
over 100	3 10%	0 0%	0 0%	3 10%
Total	15 50%	14 47%	1 3%	30 100%

Again, its effectiveness was sometimes undermined by poor practice:

‘We have a rule that no floppy disc should be used without first checking it for viruses but the rule may not be strictly observed’ (14 litigators)

Some of the larger firms were looking at more sophisticated data protection measures:

‘We are looking at encryption for external e-mail’ (14 litigators)

‘We have a firewall for sending documents to selected clients over the Internet. We also have an encryption capability. It is left to individual judgement whether to use it’ (large City firm).

Interviewees were asked whether they backed up their data and whether they had catastrophe planning, that is whether they could recover from an event such as a fire on their premises.

Do you back up your data regularly?

Number of fee-earners in civil litigation	Yes	No	Don't know	Total
1	3 10%	0 0%	0 0%	3 10%
2 - 4	6 20%	1 3%	1 3%	8 27%
5 - 10	6 20%	4 13%	0 0%	10 33%
10 - 20	6 20%	0 0%	0 0%	6 20%
over 100	3 10%	0 0%	0 0%	3 10%
Total	24 80%	5 17%	1 3%	30 100%

Seventeen per cent of firms did not back up. Even where back-up procedures were used, they were sometimes restricted to certain kinds of data, in particular accounts. The frequency of back-ups was also variable. Although most backed up daily, others did not.

Do you have catastrophe planning?

Number of fee-earners in civil litigation	Yes	No	Don't know	Total
1	1 3%	2 7%	0 0%	3 10%
2 - 4	5 17%	2 7%	1 3%	8 27%
5 - 10	4 13%	6 20%	0 0%	10 33%
10 - 20	6 20%	0 0%	0 0%	6 20%
over 100	3 10%	0 0%	0 0%	3 10%
Total	19 63%	10 33%	1 3%	30 100%

A back-up stored in a fireproof safe or a separate back-up kept at a different location were accepted as catastrophe planning.⁶ One firm pointed out that its insurers insist that it stores a full back-up off-site. Once again, some firms' arrangements were restricted to certain kinds of data, most often accounts. The largest firms referred to more comprehensive arrangements including access to emergency computing power.

⁶ The fireproof safe, although better than an ordinary filing cabinet, is only a partial solution to the problem. Access to a building may be denied following an incident and the safe may survive a fire but not a bomb blast.

Only three firms generated statistics on system usage. Two of these were large City firms while the third was a Hertfordshire firm with five litigators. The system administrator received statistics on their UNIX system which supported 10 terminals.

The issue of millennium compatibility of IT systems has received extensive coverage in both the national and specialist legal press.⁷ The fundamental issue is the manner in which the 'year' part of the date is stored. Systems which use a two-digit date will not be able to distinguish between different centuries and this could lead to chaos in the year 2000 for any operation, and there are many, which involves date arithmetic.

Sixteen firms (53 per cent) claimed to have investigated whether their current systems, or those they were about to install, were millennium compatible. Most of those who had not done so were aware of the issue but not unduly concerned:

'We hope to solve the problem by buying a new accounts system at some point in the future' (five litigators)

'We expect to change our systems before the millennium' (11 litigators)

'We will worry about it when the time comes' (two litigators).

One London firm with 14 litigators was not only investigating the matter, it had identified a marketing opportunity:

'We have asked IBM about the internal clock on the RS 6000 and we are waiting for their reply. We are now mail-shotting clients about the legal issues'.

4.7 Training

It is universally accepted in the world of systems engineering that training is an indispensable aspect of deriving the maximum benefit from investment in IT. However, only a proportion of firms in our study regarded training as a high priority.

Interviewees were asked whether their firm operated a training programme on IT skills. Responses were as follows:

⁷ For example, 'The Millennium Time Bomb: Legal Issues for Suppliers and Users', Computers & Law Volume Seven Issue 4, p. 3.

Do you have an IT training programme?

Number of fee-earners in civil litigation	Yes	No	Total
1	0 0%	3 10%	3 10%
2 - 4	3 10%	5 17%	8 27%
5 - 10	5 17%	5 17%	10 33%
10 - 20	3 10%	3 10%	6 20%
over 100	3 10%	0 0%	3 10%
Total	14 47%	16 53%	30 100%

The extent of training provision varied from very little:

‘We have a trainer who comes in when needed’ (firm with three litigators)

to a great deal:

‘We have an extensive training programme. It is a fundamental part of our IT strategy. We need lawyers to make better use of technology and we have a large in-house IT training department for this purpose. We run classes on applications at the same time each week. Pupils can book in. We have clocked up 900 student hours per month this year’ (large City firm).

In many firms training was provided for junior or support staff only:

‘We have a firm that does training but only secretarial staff for now’ (eight litigators)

‘We only train accounts clerks’ (seven litigators)

Two firms, one with three litigators and one with 11, described their training arrangements as ‘ad hoc’. Others were concerned about their firm’s record on training:

‘We are utterly committed to training but we fall down in practice. We intend to devolve training to our own people and adopt a more structured approach’ (over 100 litigators)

‘Our biggest single problem is training people to use the technology we have invested in. It is paradoxical that the more powerful software becomes, the harder it is to use’ (large City firm)

‘We will [train staff] as part of the future package we are currently procuring. At present we are undertrained and not using the full capabilities of what we have’ (nine litigators).

However, even some moderately-sized firms had grasped the nettle:

‘We have a practice training plan which includes IT training for lawyers as well as support staff’ (12 litigators)

‘Everyone gets trained in the use of packages such as WordPerfect for Windows. We wait until they have used the software for one month then send them on a tailored course put on by a local training provider’ (three litigators).

The large City firm that conducted 900 hours of training each month described its approach as follows:

‘You need commitment to training at the top so, for example, on the rollout of portable PCs we insist that the managing partner of each department undergoes training first. The training burden reduces over time because of familiarity. Younger recruits are more receptive and familiar with technology. An aptitude to use IT is a prerequisite for joining the firm. The message on day one for the new intake is that you can’t work here if you don’t use IT’.

5 SYSTEM USAGE

5.1 Introduction

This chapter describes the uses to which IT was put by the firms participating in the survey. These are considered under four headings, namely:

- document production and management;
- case management;
- financial systems;
- information and communication services.

5.2 Document production and management

Wordprocessing

All 30 firms in the survey with computers used them for word-processing and all but one had precedents stored on their computers. Only the three large London firms used specialised text searching and information retrieval software that allowed searching across documents for key words and phrases using Boolean logic. One Liverpool firm with 12 litigators said that the use of such software was under consideration. One interviewee admitted that he was not aware that such software existed.

Graphics

Use of graphics software was limited to nine firms with two more firms considering using it in the future. A Hertfordshire firm with 11 litigators used graphics to reproduce the firm's logo, to create charts and to produce a client newsletter. At least four firms admitted that they had graphics software on their systems but did not know how to use it or what they might use it for.

Electronic files

Use of electronic files involves the creation of an electronic version of all documents relating to a particular case. The documents are stored in a single electronic folder bearing the name of the case. Documents created in-house can be stored in word-processed form while documents received from outside sources can be scanned in and suitably indexed. Electronic files not only reduce the need for storage space but also make it possible for anyone with a computer terminal to access the file. Time is no longer wasted in retrieving the paper file and the incidence of lost files is greatly reduced.

Some courts in America are already experimenting with electronic case files. For instance, the Bankruptcy Court for the Southern District of New York has established a web site at www.nysb.uscourts.gov. Any visitor to the site can view the docket⁸ for a case and read the documents in the case file.⁹ The docket contains hypertext links to the documents which can be accessed by clicking on the link with a mouse. Once opened, the documents can be

⁸ The docket is a case chronology. It lists by date court actions relating to the case and documents filed by the parties. In the federal court system all dockets are electronic.

⁹ In the United States federal court system the entire case file is a public document.

searched and text can be selected, magnified and printed although the original document cannot be changed. The New York system also allows lawyers acting in the case to file documents with the court electronically.

In our survey only one large London firm was currently using electronic files. Two more firms had plans to introduce electronic files and a further nine said that an electronic filing system was under consideration. One of these was a large City firm which explained its position as follows:

‘Electronic files will happen but for now the master is still paper. I don’t expect to see a paperless office. We are not trained to read on computer. I print out what I receive electronically’.

The remaining 17 firms were not considering the use of electronic files.

Scanning

Apart from the firm using electronic files, three other participants in the survey used a document scanner. One of these, a large City firm, struck a warning note:

‘We use imaging as and when the case requires it. There are a lot of hidden costs with imaging, for instance upgrading printers. We do not want to get locked into a proprietary route. It is not a fundamental requirement for us. We are waiting for the technology to be mature with respect to litigation support’.

The other City firm used scanning ‘for litigation support - we normally hit scanned images with OCR’.¹⁰ The third firm was based in Hertfordshire and had three litigators. It used scanning ‘on an ad hoc basis only’. A number of other firms possessed scanners but did not use them.

Voice recognition

Voice recognition systems have undergone dramatic price reductions in recent months. They are considered by many to be of particular value in the legal environment and the specialist legal press has contained many articles assessing the relative merits of different systems.¹¹

Voice recognition is not an alternative to the keyboard for novice users. Its value is in increasing the productivity rate of those familiar with computers but who cannot touch type. Until very recently, the technology was not capable of handling continuous speech¹² and a gap of at least one-sixth of a second had to be inserted between words. The technique takes a

¹⁰ Optical Character Recognition, a software driven process by which the electronic image produced by a scanner is converted into text that can be searched, edited and stored as a word-processed document. Problems arise with OCR because of inaccurately identified words. The level of accuracy depends sensitively on the quality of the document being scanned.

¹¹ See, for example, ‘Voice Choice: The Voice Recognition Seminar’, *Computers & Law*, Volume 8, Issue 1, p.16.

¹² The first general purpose (IBM have a specialist package for radiologists) voice recognition system capable of handling continuous speech was launched in 1997 by Dragon Systems. The product is called *Dragon NaturallySpeaking* and it is claimed that, with practice, users can achieve 95 per cent accuracy. Similar products from other leading vendors were released subsequently

little time to learn. Most systems are adaptive which means they learn from their errors and the accuracy with which they transcribe words improves with time. Nevertheless, there are always some words that are incorrectly recognised and these need to be identified and changed by the user. Also the adaptive process is user specific so if the system is used by someone else, the accuracy will fall.

Seven firms (23 per cent) in the survey were using voice recognition, three (10 per cent) had plans to use it in the near future and 13 (42 per cent) said its use was under consideration. The remaining eight firms (26 per cent) were not considering using voice recognition. A London firm with 14 litigators used the system to reduce turn round times for document production by lower level employees:

‘I have suggested that trainees use it. They are at the bottom of the pile when it comes to getting secretarial help’.

One Liverpool interviewee had tried and then abandoned using voice recognition:

‘I had Dragon Dictate but I stopped using it. I found discrete speech problematic’.

Discovery management

Specialist database software is available to assist in controlling documents during discovery. This is of particular value in complex litigation involving the disclosure of large numbers of documents. Such a system was used only by the three large London firms in the survey. One of these saw the system as central to the firm’s software development activities:

‘Discovery is the starting point and driving force for our systems. Seven or eight years ago we set up a database for discovery but we found we had to start from scratch for each new case. After around 10 cases we decided to write our own software and this has enabled us to bring in firm-wide standards for discovery. We use customisable modules that we fit together. We can put together a system in an hour or two’.

Another London firm with 14 litigators used a mix of automated and manual procedures to control discovery. The interviewee doubted whether the cost of a fully automated system could be justified:

‘The up front loading of costs is too high given that 97 per cent of our cases settle before trial’.

Six firms indicated that the purchase of such a document management system was under consideration while one firm had developed its own application to manage documents based on a spreadsheet.

Document presentation

Only one large City firm used technology to control the presentation of documents in court while a further six said they were considering the purchase of such a system.

5.3 Case management

Advertisements for case management systems fill the pages of the legal press. The precise functionality provided varies between systems and so, for the purpose of this survey, specific questions were asked about the capabilities of firms' software. The responses indicated that none of the case management functions were used extensively. Only two applications were available in more than one firm in five. These were electronic diary systems, which one in three firms operated, and caseload statistics, which half the firms could generate automatically. An electronic diary is provided as standard with Windows 95 while caseload statistics were often generated by the firm's accounts system.

Many firms pointed out that they performed some or all of the specified functions but using manual rather than automated systems. The following comments illustrate the views of interviewees:

'I looked at a case management package but I felt I could do most of it myself. I use a spreadsheet for accounts and for timesheets' (sole practitioner)

'I am applying for a franchise and in this connection I use a computer-generated form to fill in these details but they are not held on computer' (five litigators)

'As regards case management, we only use discovery management. The rest does not fit in with our practice or kind of work. Our litigators have only a few cases and they keep the details in their heads' (large City firm)

'The accounts department do caseload management but at a very basic level' (firms of three, four and nine litigators)

'I am keen on one page procedural checklists. They are just typed or photocopied. We have 40. They tell you what needs doing and what has been done. Every litigation file has one, with different lists for defence and plaintiff. You don't need a computer to keep a diary. Someone could touch a button and scramble your appointments for the next five years. Each of our fee-earners has a diary with appointments, reminders and phone numbers. You can't get better than that' (four-litigator firm with no computers).

5.4 Financial systems

Billing

Fewer than half the 30 computerised firms had an automated system for time and action recording.

Billing system which includes time and action recording

Number of fee-earners in civil litigation	Currently in use	Planned for the future	Under consideration	Not being considered	Total
1	1 3%	1 3%	0 0%	1 3%	3 10%
2 - 4	1 3%	2 7%	1 3%	4 13%	8 27%
5 - 10	4 13%	3 10%	3 10%	0 0%	10 33%
10 - 20	5 17%	0 0%	0 0%	1 3%	6 20%
over 100	3 10%	0 0%	0 0%	0 0%	3 10%
Total	14 47%	6 20%	4 13%	6 20%	30 100%

‘We send our bills to our cost draughtsman. That will have to continue even with Woolf. All time is recorded but not all recorded time is billable’ (three litigators)

‘We could get a lot of information from our new accounts system on individuals but we don’t ask for it yet. We don’t do time-recording. Instead I pay fee-earners a bonus. With civil litigation, insurers know what they can pay you and you know what you can recover. It is up to me to use my experience to decide whether overheads can be recovered, not on an individual basis’ (11 litigators)

‘I don’t need a computer to control the accounts. I get the client account and the office account at the end of the week. It is on the file what time was spent on the case. It is the clerk’s drop to put the bill together. I do not borrow but if a partnership borrows and the bank manager requires it, then a computer may be important, for instance, to know the amount of work that is unbilled. I am prepared to carry work in progress. We have a time lag of only six months’ (four-litigator firm with no computers)

Cost estimation

Two London firms, one with 14 litigators and one with more than 100, used software to assist in estimating the likely cost of a specific piece of litigation. Six other firms (20 per cent) said they were considering using such software. One PI specialist felt that cost estimation software was not of use to firms doing high volume work. On the other hand, a large City firm commented:

‘We are expected to do [cost estimation] but we are not really supported by software. We are not doing high volume work. If we had a case management

system, it should help with this task and with monitoring progress against the budget. At present we only use spreadsheets to estimate costs’.

Two firms pointed out that they had automated cost monitoring even though they had no cost estimation software.

Legal aid forms

The Legal Aid Board (LAB) indicated in response to an enquiry from the researchers that it accepts computer-generated versions of its forms provided that the original LAB form is either white or light grey. Reproduction of the LAB logo is not a requirement. If the original is in colour then a computer-generated version is only acceptable if the colour is reproduced.¹³ The LAB is currently bringing in a new computer system and changing to all-white forms. When this happens, computer-generated versions of all its forms will be accepted and the Board intends to make versions in Word format available to the profession on diskette.

Study participants were asked whether they had legal aid forms on computer.

Computerised legal aid forms

Number of fee-earners in civil litigation	Currently in use	Planned for the future	Under consideration	Not being considered	Total
1	1 3%	0 0%	1 3%	1 3%	3 10%
2 - 4	2 7%	0 0%	2 7%	4 13%	8 27%
5 - 10	0 0%	2 7%	2 7%	6 20%	10 33%
10 - 20	3 10%	0 0%	0 0%	3 10%	6 20%
over 100	1 3%	0 0%	0 0%	2 7%	3 10%
Total	7 23%	2 7%	5 17%	16 53%	30 100%

As might be expected, firms that undertook a significant amount of legal aid work were more likely to have the forms on computer.

¹³ There appears to be some misunderstanding of the Board’s position. One Liverpool firm that undertook many legal aid cases but had no computerised legal aid forms was under the impression that the LAB did not accept them.

Computerised legal aid forms

Does legal aid constitute much of your workload?	Currently in use	Planned for the future	Under consideration	Not being considered	Total
yes	6 20%	2 7%	3 10%	8 27%	19 63%
no	1 3%	0 0%	2 7%	8 27%	11 37%
Total	7 23%	2 7%	5 17%	16 53%	30 100%

Conditional fees

No firms in the survey were using software designed specifically for work undertaken on a conditional fee basis. One firm had plans to introduce such software and six others said the matter was under consideration. There was, nevertheless, concern about monitoring the risks associated with this kind of work:

‘You have to force people to do risk analysis properly and to keep track of whether you have got it right’ (large London firm)

‘We take on these cases on an ad hoc basis so the situation needs to be monitored in case they become too large a proportion of our caseload’ (Liverpool firm with nine litigators).

5.5 Information and communication services*In-house databases*

In a survey of 17 City law firms conducted as part of an MSc degree course at City University,¹⁴ 15 were found to have developed their own internal databases which the author refers to as ‘know how’ systems. The contents of these databases varied widely but typically contained client details, information on expenses and billing, library material, details and performance assessments of counsel used by the firm, notes on points of law, counsel’s opinions, in-house journals and information on rival firms.

Firms in our survey were asked whether they had created such a database for in-house use:

¹⁴ ‘Information provision within the City’s major law firms: a survey’, Mark Walker, October 1996.

In-house databases

Number of fee-earners in civil litigation	Currently in use	Planned for the future	Under consideration	Not being considered	Total
1	0 0%	0 0%	1 3%	2 7%	3 10%
2 - 4	1 3%	0 0%	3 10%	4 13%	8 27%
5 - 10	3 10%	1 3%	0 0%	6 20%	10 33%
10 - 20	3 10%	0 0%	2 7%	1 3%	6 20%
over 100	3 10%	0 0%	0 0%	0 0%	3 10%
Total	10 33%	1 3%	6 20%	13 43%	30 100%

The likelihood of having an in-house database rose with the number of fee-earners:

‘We have a library database on computer. We also have a limited client database and a register of barristers and experts together with our views on them’ (Hertfordshire firm, 11 litigators)

‘We have an integrated database for accounts and time-recording. It also has client details’ (Liverpool firm, 10 litigators).

Litigation support

There is no universally accepted definition of what a litigation support system does and the term is used generically to describe many products with widely differing functionality. In enquiring whether survey firms possessed such a system, examples provided as to what they might contain included templates for schedules of loss, computerised actuarial tables, state benefit tables and standard tariff tables.¹⁵

¹⁵ Document production and management functions, which are often considered to be part of litigation support, were dealt with in an earlier section.

Litigation support system

Number of fee-earners in civil litigation	Currently in use	Under consideration	Not being considered	Total
1	2 7%	0 0%	1 3%	3 10%
2 - 4	0 0%	2 7%	6 20%	8 27%
5 - 10	2 7%	2 7%	6 20%	10 33%
10 - 20	3 10%	1 3%	2 7%	6 20%
over 100	2 7%	0 0%	1 3%	3 10%
Total	9 30%	5 17%	16 53%	30 100%

Access to legal information

CD-ROM drives allow PC users to access and search around 640 megabytes of information at once and this figure will soon increase with the recently agreed new standard. The price of CD-ROM drives has tumbled in recent months while their performance has improved just as dramatically. Most new PC systems now come with at least a four-speed¹⁶ drive as standard. The huge capacity of CDs makes them ideal for multi-media applications which are particularly memory intensive and they are fast becoming the standard medium for delivering system and application software. They are also used for electronic presentation of documents in courts where the necessary viewing equipment is available.

Legal publishers have been quick to realise the potential of CD-ROMs for providing information electronically and there is an ever-growing list of legal material available in this form. However, these products are often spoiled by a poor search facility, the mechanism by which users identify from the huge mass of material on the CD-ROM particular items of interest. Nevertheless, when combined with powerful search and retrieval software, CD-ROMs provide an effective way of accessing legal information.

¹⁶ The speed of the drive is related, roughly linearly, to the speed at which data can be read from the CD.

Legal information on CD-ROM

Number of fee-earners in civil litigation	Currently in use	Planned for the future	Under consideration	Not being considered	Total
1	0 0%	1 3%	1 3%	1 3%	3 10%
2 - 4	2 7%	1 3%	3 10%	2 7%	8 27%
5 - 10	5 17%	0 0%	2 7%	3 10%	10 33%
10 - 20	1 3%	0 0%	4 13%	1 3%	6 20%
over 100	3 10%	0 0%	0 0%	0 0%	3 10%
Total	11 37%	2 7%	10 33%	7 23%	30 100%

Thirty-seven per cent of firms were using CD-ROMs and a similar number were planning or considering their use in the future. But many interviewees had encountered problems in retrieving information from CD-ROMs and the need to revert to paper versions. In this connection, specific reference was made to the CD-ROM version of the Green Book and the Law Society expert witness directory. Some firms had CD-ROM equipment but had not tried to use it while others had found the limited shelf-life of the information to be a serious weakness.¹⁷

The alternative to CD-ROMs for the legal community is on-line access to information services. While this may be slightly less convenient for some users, there are important advantages in terms of the currency of the information and the logistics of keeping it up to date. The equipment used to access on-line service is also less vulnerable to technological change and the search engine is usually provided centrally by the service provider.

Much legal information is already available on-line although costs can be high and American material still dominates. The best known legal research databases are provided by CONTEXT, LEXIS and Westlaw and most of the leading legal publishers offer a dial-in service in addition to print and CD-ROM. The cost of these services puts them beyond the reach of many of the firms in our survey. However, a low-cost alternative is offered by the Legal Information Network (Link). The basic functions, a secure e-mail and conferencing facility for communicating with around 7,000 other Link users and access to some news information, are provided free while a charge is made for accessing various databases of legal information.

Despite the availability of Link, only one computerised firm with fewer than five litigators had access to on-line databases.

¹⁷ Because information on a CD-ROM can be out of date from the moment it is received, many suppliers offer annual subscriptions which include regular updates, but these come at a high price.

Access to on-line databases

Number of fee-earners in civil litigation	Currently in use	Under consideration	Not being considered	Total
1	0 0%	1 3%	2 7%	3 10%
2 - 4	1 3%	3 10%	4 13%	8 27%
5 - 10	3 10%	1 3%	6 20%	10 33%
10 - 20	3 10%	1 3%	2 7%	6 20%
over 100	3 10%	0 0%	0 0%	3 10%
Total	10 33%	6 20%	14 47%	30 100%

Electronic links

The theme of remote communication was continued with questions about electronic links to clients, other firms of solicitors, chambers, experts, the LAB and the courts.

Enquiries made in the course of the study revealed the LAB does not, at present, accept electronic communications although the Board's strategy states that it intends to do so in the future. It hopes to pilot the facility with franchisees but, because the current priority is development of a large corporate database, the timescales are uncertain.

As far as the courts are concerned, only the Bulk Centres in Northampton accept electronic communications although Crown Court, High Court and some county court lists are available on the Internet and through Link. Around half the judges in England and Wales have been provided with computers through the Court Service's Project JUDITH (JUDges' IT Help) and each participant has access to an e-mail and electronic conferencing facility called FELIX.¹⁸ All judges on FELIX have a unique e-mail address but to date these have been used primarily for judge-to-judge communications. There may be reluctance among the judiciary to extend their use to communication with the legal profession on case-related matters.

Only eight firms (27 per cent of those who used computers) in the survey made use of electronic links although many more said that links were either planned or under consideration. The most common use for an existing link was to communicate with clients.

¹⁸ An article by His Honour Judge Sean Overend which describes FELIX was published in Issue 1 of the Journal of the Judicial Studies Board, May 1997. It is also available on the Internet at <http://www.cix.co.uk/~ljwk/felix.htm>.

Electronic links

To:	Currently in use	Planned or under consideration	Total
Clients	8 27%	18 60%	26 87%
Other firms	6 20%	21 70%	27 90%
Chambers	6 20%	21 70%	27 90%
Experts	4 13%	21 70%	25 83%
Courts	1 3%	23 77%	24 80%
LAB	0 0%	21 70%	21 70%

The figure of one firm with an electronic link to the courts may be slightly misleading. The interviewee in question said his firm received the Manchester county court list electronically through Link. Other firms may also have made use of this service. A number of firms also pointed out that they had, or were about to install, an electronic link to the bank.

Voicemail

The use of Voicemail is on the increase as anyone who makes frequent calls to large organisations can testify. In his survey of 17 City firms, Mark Walker found that eight had such a system and four more had plans to introduce one. Only one firm in our survey had such a system although the interviewee had reservations about its use:

‘We are rolling out voicemail at the moment but there are concerns about its use’ (large City firm).

Three firms had plans to introduce Voicemail and three were considering it. Some of the rest were openly hostile to the system.

Telephone and video-conferencing

Although Lord Woolf advocates greater use of telephone and video-conferencing as case management tools in Chapter 21 of his report, there was little use of such systems by study participants. Although most telephone systems now being sold offer teleconferencing facilities, only five firms (16 per cent) indicated that they made use of this feature. Nevertheless, there was some appreciation of the contribution that such technology can make:

‘We would love to have [teleconferencing] to prisons but it would never be allowed unmonitored. At present, all phone calls with prisoners are monitored and prison access [for legal visits] is still a nightmare’ (nine-litigator firm specialising in prisoners’ rights).

The history of video-conferencing is more complex. Until recently, the major stumbling block to the increased use of video-conferencing was the cost and inflexibility of the technology. The problems stemmed from the fact that specialised equipment was needed to digitise the

information coming from the camera.¹⁹ Speed of transmission was also a crucial factor. This meant that those wishing to hold a video-conference had to travel to purpose-built suites and pay a high price for use of the facilities. For participants, this could be almost as inconvenient as attending a face-to-face meeting.

The situation has changed recently because of technical advances in microelectronics and the availability of high-speed, high bandwidth ISDN²⁰ lines. BT has recently reduced significantly the cost of installing and leasing these lines. Using a single ISDN line, it is now possible to set up a video-conference between any two PCs equipped with a video card and a small computer-top digital camera costing around \$100. With three ISDN lines, multi-party video-conferencing becomes feasible. American companies such as PictureTel, CLI and VTEL are the market leaders in supplying the technology.²¹ Because the facility is PC based, it can be integrated with other applications. Operating within a Windows environment, shared document viewing and editing can be supported. These developments greatly increase the convenience and reduce the cost of video-conferencing.

Pilots based on this technology are underway in the United States and feasibility studies are planned by the Court Service. Through its new Business Centre at 113 Chancery Lane, the Law Society has already made PC video-conferencing available to its members although the current price of £150 per hour (plus line charge) is likely to ration its use.

The two users of video-conferencing in our study, both large City firms, were generally enthusiastic:

‘We have supplied video-conferencing to the court and experimented with video-conferencing over the Internet’

‘We have ISDN links for video-conferencing. We have two suites. We link to clients and other lawyers’.

Real-time transcription

Like telephone and video-conferencing, real-time transcription has been available for some time. It is a development of computer aided transcription (CAT) in which a court reporter’s stenograph machine (or the paper tape it produces) is linked to a computer which translates the contents into an electronic version of the English words represented.

In the real-time version, courtroom participants have a computer which is linked to a ‘feed’ from the stenography equipment. The court reporter’s keystrokes are translated within seconds into rolling transcript that appears on the computer’s monitor. The user can interact with the transcript as it appears by annotating the text, selecting passages and assigning them to predefined ‘issues’ or searching the text for key words or phrases.

¹⁹ It is possible to transmit the analogue signal without digitisation, as with the closed circuit TV link sometimes used for child witnesses in the Crown Court, but this is less suitable for long distances as transmission requires a large amount of bandwidth that cannot be compressed.

²⁰ ISDN stands for Integrated Services Digital Networks. With an ISDN line, the transmitted signal is digital and so there is no need for a modem to convert between digital and analogue. Connection to a PC is by means of a terminal adapter and transmission speeds of up to 128,000 bits per second can be achieved.

²¹ Comprehensive information on the capabilities and prices of desktop video-conferencing products is available at www3.ncsu.edu/dox/video/survey.html.

Further system enhancements are available. Live links can be provided to remote sites allowing, for instance, clients and legal teams in civil trials to follow courtroom proceedings from their offices. An on-screen chat facility lets the solicitor in court request searches and receive the results without leaving the hearing. Real-time transcription can also be linked to litigation support and document presentation systems enabling the user to select and display a document referred to in the transcript. The technology is already available (although its use in court is not yet permissible) to allow the transcript text to be linked to a digital video-recording of the witness. The video appears side-by-side on the computer screen with the rolling transcript of what is said.

The drawback of the equipment is the high running costs which arise from the use of a stenographer with above average speed and accuracy. The enhanced performance is needed because, unlike traditional CAT which provides courtroom participants with a transcript after the end of the court day, there is no opportunity to remove transcription errors before the text is delivered on courtroom monitors. Proponents of the system claim that the extra costs must be balanced against the savings that result from the increased pace of courtroom proceedings when real-time transcription is used. Others feel that the extra benefits delivered by the real-time version as compared with traditional CAT do not justify the additional costs. Wherever the truth lies, the system is likely to be beyond the pockets of all but the largest firms until voice recognition technology matures to the point where it can replace the stenographer. This is still some years away.

Only four of the largest firms in our survey were users of real-time transcription. All were London based. One was particularly enthusiastic about the Smith Bernal system 'LiveNote':

'LiveNote is very good and if you are getting daily transcripts you might as well use it. The lawyer need not be in court and this can result in some cost savings to the firm. We have received disks from other systems and we have looked at competitors but we like LiveNote. The parties normally agree to pay for the judge to have the system' (large City firm).

The Internet

The Internet has received more media exposure than any technological development since television. The information technology sections of the legal press are dominated by news of the latest Web pages, the possibility of selling legal services over the Net, the availability of court lists and statute law and access to legal information of every imaginable kind. Gurus such as Richard Susskind see the Internet as the setting and the means of delivery of an entirely new approach to legal services:

'... A vast, latent legal market will probably be realised on the Internet... giving everyone - not only lawyers' - ready and inexpensive access to legal guidance obtained through a variety of legal products and information sources. The focus of such services will be on helping individuals and businesses with their legal affairs where, in the past, direct consultation with lawyers would have proved too costly or impractical.'²²

²² *The Future of Law*, Richard Susskind, Oxford University Press, 1996.

Much has been written on the advantages to legal firms of having not only access to the Internet but also a presence in the form of a homepage that can promote and explain their services to an enormous audience of potential clients. Anyone who is still unfamiliar with the issues need only leaf through the pages of any recent issue of *Computers & Law*. Link has recently launched a new service which offers users Internet access for £100 plus VAT. Nevertheless, less than 30 per cent of the firms in our survey had an Internet account.

Internet access

Number of fee-earners in civil litigation	Currently in use	Planned for the future	Under consideration	Not being considered	Total
1	1 3%	1 3%	1 3%	0 0%	3 10%
2 - 4	1 3%	2 6%	3 10%	3 10%	9 29%
5 - 10	1 3%	1 3%	7 23%	1 3%	10 32%
10 - 20	3 10%	0 0%	2 6%	1 3%	6 19%
over 100	3 10%	0 0%	0 0%	0 0%	3 10%
Total	9 29%	4 13%	13 42%	5 16%	31 100%

Two interviewees from small firms felt that the Law Society should make more use of the Internet to make legal information electronically:

‘I would like the Law Society to give access to our legal library electronically over the Internet. It is hard for a sole practitioner to get legal information’

‘The Law Society has an obligation to ensure that small practices have equal access to information with the larger firms. I would like to see the Law Society library being made available electronically. I would be willing to pay a significant annual subscription for this’ (three litigators).

Sixteen per cent of firms were not considering getting an account. One interviewee explained:

‘Younger members of our staff are interested but not the decision-maker’ (London firm with nine litigators).

Six firms (19 per cent) had a homepage including all three large London firms. Some interviewees doubted whether the expense of designing a homepage could be justified but, as one sole practitioner pointed out, there are inexpensive solutions to the problem:

‘Liverpool University will design a homepage for you free of charge’.

The final question, aimed mainly at larger firms, asked whether firms had an internal charging policy on information provision. In other words, was the cost of providing

information charged to the requesting projects or departments. The argument in favour of creating a separate cost centre is that it can improve a firm's awareness and control of an important and potentially expensive aspect of its work. In recognising the significant cost involved in meeting the IT needs of individual cases, Lord Woolf observed:

'The developing use of IT will also require separate consideration on the question of the recoverability of expense occurred in IT in the course of dispute resolution, a matter of ongoing uncertainty for litigants and so still of concern to me. A decision is required on whether the cost of IT should be included in general overheads and/or whether, in specific cases, the costs of specially tailored systems can be recovered.'²³

Mark Walker's survey of 17 City firms found that in four the unit providing the information charged back nothing to the originator of the request, in one the unit charged back all its costs and the remaining 12 firms operated a system of partial cost recovery. In interview firms said that they were moving away from internal charging because it was seen as unnecessarily bureaucratic. In our survey, only one large City firm operated an internal charging policy for information:

'We have internal charging for scanning on-line databases and we also track some other costs'.

The other City firm expressed a commonly held view:

'There is no point in costing and charging for information provision. It is a basic tool and is covered by our overhead. Our clients expect it to be built in'.

²³ Chapter 21, para. 6.

6 VIEWS ON LORD WOOLF'S PROPOSALS AND OTHER MATTERS

6.1 Awareness of the Woolf proposals

Interviewees were asked if litigators in the firm were aware of the content of Lord Woolf's proposals for changes to the civil justice system.

Are members of firm aware of the changes to be introduced as a result of Lord Woolf's proposals?

Number of fee-earners in civil litigation	Yes	No	Total
1	2 6%	1 3%	3 10%
2 - 4	8 26%	1 3%	9 29%
5 - 10	6 19%	4 13%	10 32%
10 - 20	6 19%	0 0%	6 19%
over 100	3 10%	0 0%	3 10%
Total	25 81%	6 19%	31 100%

Most felt they were aware but some qualified their answer:

'Only vaguely' (four litigators)

'We are not getting too far into it until final decisions are made' (five litigators)

'We are aware of the changes in general but not the specifics' (five litigators).

6.2 Preparing for the changes

Fewer than two firms in five in the survey had taken any action in anticipation of the changes.

Has your firm taken any steps in preparation for these changes?

Number of fee-earners in civil litigation	Yes	No	Total
1	1 3%	2 6%	3 10%
2 - 4	3 10%	6 19%	9 29%
5 - 10	3 10%	7 23%	10 32%
10 - 20	3 10%	3 10%	6 19%
over 100	2 6%	1 3%	3 10%
Total	12 39%	19 61%	31 100%

For some firms, the preparatory steps were educational in nature:

‘We have the LNTV video and we have had a seminar on it’ (seven litigators)

‘We educate ourselves and our clients through running seminars’ (14 litigators)

Some firms were tightening up their manual procedures in preparation for the changes:

‘I am trying to create a slimline office environment’ (sole practitioner)

‘We were waiting for the HSSK. Now that it will not be available, we are trying to introduce manual systems management including reminders etc.’ (four litigators)

‘We are starting to make Woolf style limiting discovery and formulating trial plans’ (14 litigators).

A number were introducing new computerised systems:

‘All our IT should be set up by the end of the year then it should take seven or eight months to develop its use. Case management will be Woolf-related’ (three litigators)

‘We are introducing a computerised case management system’ (three litigators)

‘We are developing new IT systems to ensure that we can comply with the timetable and constraints on costs’ (eight litigators)

‘Woolf has been in the forefront of our mind in procuring new IT. Our system will force actions to be taken and push the case forward instead of relying on the user to set the pace. It will also allow unbundling of less skilled work to allow it to be undertaken by staff at a lower level although still supported by IT’ (over 100 litigators).

But the majority of firms were either adopting a ‘wait and see’ approach as far as IT was concerned or else they did not view Woolf as driving the changes they were introducing:

‘I don’t react to anything until I know it is actually being implemented’ (sole practitioner)

‘I use LNTV which has not yet addressed Woolf. I have not yet considered the implications of the changes’ (sole practitioner)

‘Our manual systems are adequate for the fast-track’ (four-litigator firm with no computers)

‘We would take action if we felt we needed help in complying with the new procedures. We don’t have a clear idea of what they will mean as yet. I think we would need to do more work up front’ (five litigators)

‘The firm is not thinking in terms of Woolf. There is lack of awareness of what is being proposed. The firm relies heavily on barristers and expects that they will do the time-monitoring’ (eight litigators)

‘The areas affected by Woolf are a small proportion of our work. We try to pick up areas of work which others are not doing and so there tends to be no mass market software available. We will be reactive to Woolf’ (nine litigators)

‘We have no plans for anything at the moment’ (11 litigators)

‘None of our plans include changes to our IT for now. Our current system does not alert you to deadlines so we have to have wall charts’ (11 litigators)

‘The changes we are making are driven not by Woolf but by our need to stay competitive by keeping up with changing times’ (three litigators)

‘Franchising is more of a driver than Woolf. Woolf definitely will happen but it will be harder for larger firms to comply. We feel that we can respond with our existing controls’ (six litigators)

‘We are more preoccupied with legal aid changes. We are in the pilot on block contracting. The introduction of case management is driven more by franchising and our own needs. Previously our efforts at case management met with resistance. Although we may not be very aware of the changes being introduced by Woolf we are probably moving along the same lines’ (nine litigators)

‘Woolf is part of the theme of what we are doing anyway regarding case management systems. This is consistent with Woolf but not driven by Woolf. We need to respond to pressures from various sources and in particular the Legal Aid Board’ (12 litigators)

One interviewee saw little connection between the Woolf proposals and IT:

‘I am not sure what the impact of Woolf will be. One is always anti-change so I feel it cannot be as good as what we have already. We may do more work before the case starts. Legal aid and medical reports will be problems. I don’t see that there are implications for IT’ (two litigators).

Eight firms (26 per cent) said that the trigger for them to take action would be the publication of the new rules and procedures:

‘I want to wait and see what happens. There have got to be amendments to the Green and White Books. When they are consolidated then that will be the trigger for change. The new rules will be the touchstone’ (four litigators)

‘We will need to take action at some point. I will not believe it is going to happen until I see the rules. I am not convinced that it will work’ (16 litigators).

6.3 Attitudes to Woolf

The scepticism in the last quote about whether the changes would actually be implemented was echoed by others. Many doubted the ability of the courts to respond to implement the changes:

‘I don’t believe it will happen under the current regime. The courts will not be able to manage fast-track cases. The staff are of low quality and poorly paid’ (four litigator firm with no computers)

‘The courts have been notoriously slow in getting to grips with IT’ (seven litigators)

‘Lawyers generally are not brilliantly organised, although they are improving, but courts are much worse’ (four litigators)

‘How can the court manage getting expert reports in time? Imposing controls requires the close co-operation of solicitors’ (four litigators)

‘Courts will have problems with Woolf because they won’t be able to adhere to the timetable’ (11 litigators)

‘I feel there will be more disruption to the courts. They will be inundated with arguments about the procedures’ (seven litigators)

‘I am concerned about the capacity of court buildings to support technology’
(large City firm)

‘I share the general cynicism about the ability of the courts to respond to Woolf. I have reasonable faith in the judiciary provided they are given appropriate training. I have no faith at all in court staff. Our experience is that quality has declined dramatically over the last five years. Lost files are commonplace and they make a pig’s ear out of simple tasks. I am afraid that computers will not solve the problem of poor quality staff’ (three litigators).

One interviewee felt that the new rules would not be ready in time:

‘I don’t believe in the October 1998 start date. They need the fixed cost scales for the fast-track. The studies are producing wildly differing figures’ (five litigators).

Several interviewees agreed with this comment on the change in government:

‘The election has made us wonder if the changes will in fact take place’ (10 litigators).

However, one interviewee warned against complacency:

‘Whether you call it Woolf or evolutionary change it is going to happen. I don’t agree with those who say simply that it will not happen because the courts do not have the resources to implement Woolf. The profession should be driving the changes. People who wait till October 1998 are going to catch a cold’ (large London firm).

6.4 Other issues related to Woolf

Many interviewees raised other concerns relating to the proposed changes and these are summarised in this section.

Some drew attention to the lessons to be learned from existing case management procedures in specialist courts:

‘Much of our work is in the Official Referees’ court where we are already implementing many of the Woolf proposals. Ninety-seven per cent of our cases settle before court, often well before. If we are ordered by the judge to put all documents on a database it will be very expensive. Woolf concentrates too much on the trial stage. The compulsory exchange of witness statements has increased costs and judges seem surprised by this fact. Yet getting witness statements right is technically our most difficult task’ (14 litigators)

‘A large part of Woolf is sorting out personal injury. All our work is High Court based. Most of it is large High Court actions. The impact will be significant. The patents court has seen great changes already. The British Sugar case was about forcing the parties to cut down the scope of discovery

and kicking people to get things done. That is broadly what Woolf is about' (large City firm).

A major area of concern was fixed costs:

'I am not worried by the Woolf proposals and I am sure that we can comply with them. The real issue will be what costs we can claim' (14 litigators)

'I don't know how flexible the courts will be in waiving fixed costs, e.g. for illiterate clients for whom interviews take twice as long. We are being squeezed by the Legal Aid Board and we will now be squeezed by Woolf' (five litigators)

'Lawyers will have to provide IT to the courts. Judges will set down rules about standard systems and parties will pick up the tab' (large City firm)

'We will have to send fewer letters and fewer reminders because we won't get paid for these, only by the value of the claim. At present, insurers pay on a time basis. Because of this change, Woolf will force more people into litigation and service to clients will suffer, although I hope we will get paid more quickly than now. At the moment we have a problem in getting our costs from insurers. If costs draughtsmen knock off 15 per cent then we can live with that but now they are knocking off 25 per cent. Woolf will stop this so we might get paid less but more quickly. Clients will lose out because we won't write status letters reporting what has happened. We will have to alert clients that this is what to expect' (11 litigators).

'To control costs, we will get our IT system to deal with client care. We expect to get PI out of the fast-track. If not, we need to be sure that we can still make a profit with fast-track cases. The one thing you can avoid is client care. Clients will not be able to call up for attention' (over 100 litigators)

The fast-track rules which exclude oral expert evidence were also considered to pose problems, particularly for adherence to the timetable:

'I am worried about the time to file experts' reports. Woolf means that you need the information before you start proceedings. With housing repair cases, for instance, things go wrong half way through and you need a new expert report' (sole practitioner)

'I do not agree with excluding oral expert evidence. This is such a radically different approach that it should require an Act of Parliament. Is the intention to throw out the adversarial system?' (four litigators)

'Delays are often to do with the difficulty of getting information and getting an expert who can adhere to the timetable. Having the court tell you to find another expert is just impossible. My main concern is the time it takes to get a medical expert's report' (two litigators).

But one interviewee welcomed the new rules on expert evidence:

‘We do mostly county court work and I am not worried about the fast-track rules excluding oral expert evidence. Most of our expert evidence is agreed’ (16 litigators).

Finally, there were concerns about the ability of the judiciary to adapt to their new role and the adequacy of the resources assigned to support them:

‘We believe that the resources needed for supporting judges have been seriously underestimated. There is also a wider question of who serves whom. If judges try to run it for themselves, there will be massive resistance because clients don’t want to pay’ (14 litigators)

‘District judges will have computers in their rooms which will give us a laugh because they probably won’t know how to use them. It would be fascinating to see how much judicial time has been wasted on struck out cases’ (two litigators)

‘Woolf will have a radical effect in terms of judicial control. It will mean tighter timescales and deadlines. I don’t think technology will help the courts in this’ (large City firm)

‘We need investment in court systems, district judges, etc. We must not repeat the small claims experience’ (sole practitioner).

For multi-track cases, the incompatibility of approach of large firms was seen as a major stumbling block to case management by one large City firm:

‘The nature of the litigation process is such that people do not want to agree standards for the content of documents early on. But there is an acute need for standards. The court needs to get involved. We have already established our own set of standards for data in conjunction with other big firms. By the time firms have got together to talk about detail it is usually too late so either standards need to be mandatory or firms should get together and agree amongst themselves at an early stage on a case by case basis. We are talking about standards at a very basic level, not in the realm of the competitive edge. For example, simply agreeing the format for dates, names, document types and reference numbers. Courts have a role and there should be consultation between courts and users who have to make it work. The Law Society could put out a recommended format’.

This firm also cited an experience that highlighted the need for shift in attitude by the courts:

‘We were acting in a case involving a £600 million claim. There were six firms of solicitors involved and 25 counsel in court using IT. We wanted to back up what was on the system at the end of the day but the building supervisor would not pay overtime to keep the courtroom open for more than 10 minutes after court, despite the support of the judge’.

7 CONCLUSIONS

7.1 Overview

The results of a recent unpublished survey of just under 100 legal firms conducted by post-graduate student Tony Reed-Jones at Warwick University Business School suggested that computers were still viewed by a large proportion of firms as machines for producing documents and managing client accounts. While our study of 31 firms confirmed this picture, it also revealed a wide variation in approach to IT matters, even among firms of similar size. On virtually every topic raised in interview there was a diversity of views and practice. Nevertheless, all but the largest firms approached the purchase of IT with apprehension and fear. They felt exposed due to their lack of technical knowledge and suspicious of consultants who charge large fees but often have an inadequate understanding of the legal environment. The need of firms for advice on procuring systems and access to technical expertise was a theme that ran through many interviews.

The findings relating to firms' future plans suggest that a transition may be underway to a more integrated model in which the computer plays a vital role in the work of litigators. The driving force behind this change seems to be more the demands of legal aid franchising and the need to remain competitive than the reforms proposed by Lord Woolf. In this new vision, the computer provides access to the commodity on which every litigator most relies - information. For the present, however, there is no universal acceptance that the computer is an indispensable tool for litigators.

The following sections discuss the issues arising from the study for the legal profession, the Law Society and other agencies of the civil justice system.

7.2 Issues for the legal profession

System procurement

No firms in our study, not even the largest, employed a formal procurement methodology such as that used by government departments for the purchase of information systems. Such a totally formal approach would be inappropriate for most firms but it is of more concern that many had taken no steps of any kind to produce a written statement of their IT needs. Less than one firm in three had an IT strategy to guide their purchase of systems.

An underlying problem was access to technical expertise. Other than the three large London firms, only one practice employed an IT professional. Fear, bewilderment and frustration seemed to characterise the relationship between many firms in the survey and their system suppliers. Some felt that they had become prisoners of such a relationship, one said that he was on "snarling terms" with his supplier and in one case the relationship had completely broken down and was itself the subject of a civil suit. A number of firms had pinned their hopes on the Law Society's High Street Starter Kit. Following the decision to discontinue its development, these firms felt technically exposed and in need of advice and support. They looked to the Society for a new initiative to help reduce the risks involved in IT purchase.

Just under half the firms had turned to IT consultants to fill the gap in their technical expertise but this was, at best, only a partial solution. Reliance on outsiders who do not always understand the legal environment brings its own risk. Indeed, a certain level of in-

house IT knowledge was needed to interface effectively with the consultants and to control and guide their work.

Sole practitioners' IT needs were modest and the technical demands of purchasing a single computer are much less than for a networked system. On the other hand, the three large firms with over a hundred litigators had sizeable in-house IT departments to protect their interests in dealings with suppliers. The remaining 25 firms with between two and 20 litigators felt most trepidation about system purchase. Overall, 37 per cent of firms said that they were not satisfied with their procurement arrangements.

Existing systems

The diversity of systems in use reflected the disparity in the size of firms in the survey and the nature of the work they undertook. Nevertheless, certain factors emerged:

- nearly all firms either already have systems that are PC based or have plans to introduce such systems in the near future;
- the majority of firms were operating in a Windows environment of some kind with just six firms (20 per cent of those with computers) still using DOS;
- two out of three firms with more than a single computer had a network linking at least some of their equipment; however, only four of the 11 firms with more than one office had electronic links between offices;
- only the three largest firms in the survey had installed high bandwidth ISDN lines despite recent reductions in installation costs by BT;
- only nine firms (29 per cent) provided all litigators with computers. In a third of firms no litigator had a computer while in the remaining 12 firms (39 per cent) a proportion of litigators were computerised.

The reluctance to provide litigators with computers is not solely a British phenomenon. In her book *The Business of Practicing Law*,²⁴ Carroll Seron examines the work of small firms of attorneys in and around New York City. She observes:

‘When it comes to hands-on experience at a terminal, most associates and partners tend to take pride in claiming that they are "illiterate" about computers or that their "hands never touch the keyboard"; they prefer to communicate with a secretary or paralegal or typist through dictation equipment.’

However, she goes on to cite one firm where computerisation has ‘muddied the division of labor associated with professional and support functions’. A partner at this firm is quoted as saying:

‘Just like the typewriter has become obsolete with the wordprocessor, it is very difficult to say who is a secretary these days and who inputs information into computers and who does what’.

²⁴ Temple University Press, 1996.

There were signs of the start of a cultural shift in our study also. More than four firms in five had firm plans to add to or replace their systems in the near future and many of these were moving towards putting a computer on every fee-earner's desk. Only one firm did not currently use computers and it had no intention of introducing them in the future.

System management

The quality of the controls used by firms to manage their IT systems was generally poor:

- 73 per cent had no written standard operating procedures;
- 57 per cent did not have an asset register recording details of their equipment;
- 83 per cent had no written security policy;
- 67 per cent did not use access controls;
- 47 per cent had no protection against viruses;
- 17 per cent did not back up their data;
- one-third of firms had no measures to protect their data from a fire on their premises.

Where protection measures were in force, they often applied only to certain kinds of data, most commonly that relating to accounts. Some interviewees had doubts as to whether the stipulated procedures were followed in practice.

Fifty-three per cent of firms had investigated whether their systems were millennium compatible. Most of the remainder were aware of the issue but took a relaxed view of the implications. A common response was that systems were bound to be replaced before the turn of the century and new software would surely be millennium compliant.

Fifty-three per cent of firms had no training programme on the use of IT. Even where training was given, it was often restricted to junior and support staff only.

Use of systems

As indicated above, the dominant use of computers in legal firms is still for document production and to deal with accounts. In the Warwick University survey every firm used wordprocessors and 90 per cent had an accounts system. Only seven out of 10 respondents had specialist legal software of any kind. In our study all but one firm had wordprocessors and 47 per cent had a billing system which included time and action recording, although others had accounts systems that did not include these features.

For other tasks relating to the litigator's function manual systems were still the order of the day. Apart from word-processing and accounts, no other application software was used by more than a half of the firms in the survey. More specifically:

- 50 per cent of firms could generate statistics by case and by fee-earner, often because it was a capability of their accounts system;
- one-third used electronic diaries;
- one-third had in-house databases;
- 30 per cent had litigation support functions;
- 23 per cent had computerised legal aid forms;
- 20 per cent had computerised case tracking;

- 17 per cent had procedural checklists on computer;
- 10 per cent used project management software;
- no firm had software to assist in monitoring conditional fee work.

A similar picture emerged with respect to information retrieval and electronic communication:

- 37 per cent accessed legal information on CD-ROM;
- a third used on-line databases;
- 29 per cent had an Internet account and 19 per cent had a homepage;
- 27 per cent had electronic links with other organisations, most commonly with clients;
- 16 per cent used teleconferencing and six per cent (two firms) used video-conferencing;
- one firm had voicemail.

The small number of firms using e-mail is particularly disappointing in view of the free service available to firms from Link. In many cases, the number of firms considering the purchase of systems to perform the above tasks exceeded the number of current users. For instance, 40 per cent were considering use of CD-ROMs, 77 per cent were thinking about electronic communication and 55 per cent wanted an Internet account.

Responding to the Woolf proposals

The responses of practitioners in this survey suggest that the implementation of Lord Woolf's proposals is not high on the list of concerns of solicitors' firms, nor is it driving their plans to introduce new technology. Four out of five interviewees felt that litigators in their firm were aware of the general nature of the changes although possibly not the detail. They tended to view the potential impact of the reforms with mild concern rather than acute anxiety. Many felt that they already controlled and managed their caseload in a manner that was compatible with the proposals. Others were sceptical about whether the October 1998 start date was realistic and whether court staff were capable of driving the pace of litigation. There were also doubts raised as to whether the necessary resources would be assigned to supporting and training the judiciary for their new responsibilities, particularly in relation to fast-track cases.

Two in five firms had taken action of some kind in anticipation of the changes. Some were holding seminars, some were tightening up their manual systems while others were introducing new technology, including case management software, to assist in adhering to the fast-track timetable and constraints on costs. However, three out of five firms were either adopting a 'wait and see' approach to the reforms or else they did not consider the changes they were making to be driven by Woolf. Many saw the demands of complying with legal aid franchise conditions as more pressing than Woolf.

Among those who were concerned about the changes, the issue that caused most unease was the fixed scales of cost for fast-track cases. One firm felt that the main casualty of an austere cost regime would be client care. There were signs that some firms would try to have all personal injury cases designated as multi-track. Another area of concern was the exclusion of expert oral evidence in fast-track cases. This was seen as impractical by some and fundamentally unjust by others.

7.3 Issues for the Law Society

This study has tried to gauge the state of readiness of the profession in IT terms to respond to the changes to be introduced following the Woolf enquiry into civil justice and to reflect the attitudes and concerns of litigators relating to the changes. The results are intended to assist the Society in deciding how best to represent the interests of the profession in discussions with the Court Service and the judiciary. Among the many issues that have emerged, the Society may wish to focus its attention on the following:

- many smaller firms feel the need for support and advice on IT procurement, particularly those who had looked to the HSSK to meet their case management needs;
- while awareness of the content of the Woolf reforms was reasonably high, fewer firms had analysed what the impact would be on how they managed cases. There is a need for practical guidance, including the use of IT, on how to survive in a Woolf environment;
- speedy and reliable communication with agencies and individuals will be critical to a firm's ability to comply with the demands of Woolf. The Society needs to press for all those involved in the civil justice system to accept and deliver information electronically and to provide the profession with guidance on how to take full advantage of electronic communication options;
- a prerequisite for the effective interchange of information is the adoption of common data standards. The Law Society should take a lead role in developing agreed formats for the content of documents that are exchanged in the course of legal proceedings.

7.4 Issues for the courts and the judiciary

The final report of Lord Woolf's enquiry called for a fundamental shift in the ethos of civil litigation which has traditionally allowed the parties to dictate the pace at which cases proceed. In the new environment, the courts would take control by assigning cases in the first instance to one of two "tracks" depending on their value and complexity and by ensuring that the timescales established by the court at the outset are adhered to.

The responsibility for controlling and managing case progress will be shared between court staff and the judiciary. Cases will be allocated to the appropriate track once the defence is received and after scrutiny by a master or district judge.²⁵ For cases allocated to the "fast track",²⁶ the judge will set a standard timetable with specific dates by which stages should be completed. This will include:

- directions in relation to disclosure, witness statements, expert evidence and other relevant matters;
- the allocation of a trial date between 20 and 30 weeks after the order for directions.

Failure to comply with the timetable will result in automatic sanctions being imposed unless an extension has previously been applied for and granted. The court will send the parties a

²⁵ Chapter 3, para. 2.

²⁶ Broadly speaking, cases of between £3,000 and £10,000 in value although judges will have discretion to assign to the fast track cases that do not meet these criteria.

questionnaire asking for listing information 10 weeks after service of the directions order. Failure to respond or an inadequate response will lead to a court hearing and the possibility of a wasted costs order. With regard to the trial itself, Lord Woolf observes:

‘Judges will have to exercise control throughout the hearing, as many do at present. To do this effectively, they will need time to pre-read papers. There will also be a greater need to exercise discipline on late applications for additional witnesses and other matters where this is likely to affect the length of the trial. The importance of not overrunning the allocated trial time cannot be overemphasised. It will call for a skilful, professional partnership between judiciary, legal profession and Court Service alike.’²⁷

Judicial case management will be an even more significant factor in the “multi-track” procedure which will be invoked for those claims which are too complex or involve too much money for the fast track. The precise form of that case management will be decided according to the needs of the case by the procedural judge as part of the initial scrutiny. Although there is more flexibility as regards matters such as cost and oral expert evidence than with fast track cases, the principle that the case should proceed according to a pre-determined timetable still applies.

The Judicial Studies Board has already embarked on a three-stage training programme for all levels of judges who hear civil cases. Only the third stage, which does not begin until September 1998, will involve joint sessions with members of the local bar, solicitors and court administrators. Successful implementation of Lord Woolf’s proposals will require the development of a constructive partnership between the judiciary, the courts and the legal profession. The uncertainty which this study discovered among the profession about how the arrangements will operate suggests that much earlier consultation is needed if implementation is to take place as planned in October 1998.

The situation with respect to IT is also unsatisfactory. In the past, no attempt has been made to harmonise the development of technology for the courts, the judiciary and the legal profession. Under Project JUDITH, the Court Service has provided over 400 selected judges with laptop computers and a small additional number with desktops. JUDITH participants can, if they wish, communicate with each other using FELIX, an electronic mail and conferencing service. However, the future of the project remains in some doubt. The funds allocated to the purchase of equipment have been exhausted and it is generally acknowledged that any future expenditure must be linked to measurable objectives related to improvements in the way in which court business is processed.

A new computer system called CASEMAN, procured under the Private Finance Initiative (PFI), is being rolled out in county courts to assist administrative staff with case tracking and generation of correspondence. All county courts should have CASEMAN by the end of year. In its current state, CASEMAN is not designed to support to the court’s case management responsibilities under Woolf, nor is it intended to provide judges with terminal access to the system.

Against this backdrop, discussions are taking place between the judiciary, the Court Service and the PFI contractor on the implications of Woolf for judicial resourcing and CASEMAN

²⁷ Chapter 3, para. 34.

enhancements. The legal profession has not been party to these discussions. The interests of all those involved will be best served if systems are designed in a way that makes the electronic exchange of information as easy as possible. The Law Society and the Bar could comment on the practicality of what is being proposed and reflect the outcome of such discussions in the guidance produced for the profession on standards and IT procurement.

ANNEX A

The Questionnaire

IT NEEDS OF LITIGATORS

Name of firm:

Telephone:

Name and role of interviewee(s):

Date and time of interview:

Start time:

End time:

Characteristics of firm

Number of fee earners who deal with civil litigation:

Partners _____ Solicitors _____ Trainee solicitors _____ Paralegals _____

Number of offices handling civil litigation _____

Areas of specialisation (in civil litigation):

1. System procurement

1.1 Does your firm have an IT department (i.e. serving IT needs of firm, not dealing in IT law)?

YES NO

1.2 Does your firm have a written IT strategy?

YES NO

1.3 What procedures do you follow when purchasing IT? (e.g. written specification, business case, evaluating options, approval of expenditure, competitive tender)

1.4 Does your firm use consultants to assist with any aspect of your IT needs?

YES NO

1.5 If so, which aspects?

1.6 Do you consider that current arrangements for IT procurement are satisfactory?

YES NO

1.7 If not, are there any plans to change the arrangements? YES NO

1.8 What are these planned changes?

1.9 Are there any other points you would like to make about the way your firm procures IT?

2. *System description*

Please describe the technology currently used by your organisation in terms of:

2.1 Numbers and types of computers

2.2 Do you use: PCs dumb terminals a mixture of both

2.3 What operating system(s) do you use?

2.4 What is your networking strategy (LANs, WANs, Intranets, use of ISDN lines)?

2.5 Which members of staff involved in litigation work have a computer on their desk?

2.6 Do any of your civil litigators have laptops for use out of the office? YES NO

2.7 If YES, do they use laptops in court? YES NO

2.8 Do you have plans to replace or add to your systems? YES NO

2.9 If so, what are these plans?

3. System management

3.1 Do you have (written) standard operating procedures? YES NO

3.2 Do you maintain an asset register of your computer equipment? YES NO

3.3 What arrangements do you have for system maintenance and support?

responsibility of in-house IT department external support contract? other (please specify)

3.4 With respect to security arrangements, do you have:

a) a written security policy YES NO

b) access controls YES NO

c) anti-virus measures YES NO

d) other data protection measures (eg firewalls, encryption - please specify) YES NO

3.5 Do you:

a) back up data regularly? YES NO

b) have catastrophe planning YES NO

c) have an IT training programme YES NO

d) generate statistics on system usage YES NO

3.6 Has your firm investigated whether your systems are millennium compatible? YES NO

3.7 Please tell us of any other features of your firm's information systems which you wish to draw to our attention?

For each item in the lists below, please indicate which statement applies:

4. Document management and production

		Currently in use	Planned for future	Under consideration	Not being considered
4.1	Word processing				
4.2	Precedents/ templates, e.g. for standard documents and forms, client questionnaires and pleadings, applications and orders				
4.3	Text searching and information retrieval software				
4.4	Graphics software				
4.5	Electronic case files				
4.6	Document scanning and OCR				
4.7	Document support systems for discovery				
4.8	Document presentation systems for use in court				
4.9	Voice recognition software				

5. Case management

		Currently in use	Planned for future	Under consideration	Not being considered
5.1	Computerised case tracking providing a chronology of key events in the case to date				
5.2	Project management software, including bar and gantt charts, activity and milestone plans, critical path analysis, resource management, monitoring of key time intervals and comparisons of actual with estimated progress and cost				
5.3	Caseload management, including statistics by case and by fee earner				
5.4	Procedural checklists for different types of case				
5.5	Electronic diary systems				

6. Financial and accounting systems

		Currently in use	Planned for future	Under consideration	Not being considered
6.1	Billing system including time and action recording				
6.2	Cost estimation software				
6.3	Computerised legal aid forms				
6.4	System for cases taken on a conditional fee basis				

7. Information and communication services

		Currently in use	Planned for future	Under consideration	Not being considered
7.1	In-house databases (e.g. "intelligence" systems, expenses and billing information)				
7.2	Litigation support system (e.g. templates for schedules of loss, computerised actuarial tables, State benefit tables, standard tariff tables)				
7.3	Legal information on CD-ROM				
7.4	Access to on-line databases (LAWTEL, CONTEXT, LEXIS, WESTLAW)				
7.5	Electronic links (E-mail, intranet) to clients				
7.6	Electronic links to solicitors firms				
7.7	Electronic links to chambers				
7.8	Electronic links to courts				
7.9	Electronic links to experts				
7.10	Electronic links to LAB				
7.11	Voicemail				
7.12	Teleconferencing facilities				
7.13	Video-conferencing facilities				
7.14	Computer-aided and real-time transcription				
7.15	Internet access (eg for accessing court lists, statute law, Hansard)				
7.16	Internet presence (i.e. home page)				

		Currently in use	Planned for future	Under consideration	Not being considered
7.17	Internal charging policy on information provision				

8. *Woolf proposals*

8.1 Are members of your firm aware of the changes to be introduced as a result of the recommendations of Lord Woolf's enquiry into civil justice? YES NO

8.2 Has your firm taken any steps in preparation for the introduction of these changes? YES NO

8.3 If so, what are these steps?

8.4 Which of these steps will include changes to your firm's use of IT?

8.5 If you are waiting for further developments in the implementation of the civil justice reforms, which of the following will act as triggers for your future decisions:

- Publication of the new rules and procedures
- Implementation of the fast-track
- Implementation of case management
- Introduction of IT systems in the court