

England and Wales

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Introduction

This is an examination of attitudes towards the use of artificial intelligence (AI) as a professional tool as used by the legal profession in England and Wales. The profession in this jurisdiction includes a number of different types of lawyers, of which solicitors are the largest group. This chapter focuses predominantly on the use of AI by solicitors.

Solicitors are authorised by the Solicitors Regulation Authority (SRA), which is described as an approved regulator with powers to issue practising certificates that enable individuals to carry on certain legal activities known as reserved legal activities. Solicitors are able to provide legal services, subject to various conditions, as sole practitioners and independent solicitors, in law firms, and also in in-house employment.

The SRA also authorises law firms, which include sole practitioners, traditional firms of solicitors and alternative business structures where ownership and management is shared with non-solicitors. Individual solicitors and authorised law firms must comply with the SRA Standards and Regulations,³¹² which set out the standards and requirements that must be achieved for the benefit of clients and in the wider public interest.

The Law Society of England and Wales is the independent professional body for solicitors, with a representative role designed to promote England and Wales as the jurisdiction of choice, and support its members through a variety of services.

Both the SRA, as the approved regulator, and the Law Society, as the representative body of solicitors, have considered the growth of AI. This is also true of the regulatory and representative bodies for the other parts of the legal profession (eg, barristers³¹³ and legal executives³¹⁴), who also have similar interests in the topic. It is recognised, and not challenged, that AI will change the way in which legal services are provided both by qualified lawyers and law firms, and also non-lawyer individuals and businesses.

In this chapter, we examine both the national position and then issues for the legal services profession in responding to developments with AI technology.

312 www.sra.org.uk

313 The Bar Standards Board, see www.barstandardsboard.org.uk and the Bar Council, see www.barcouncil.org.uk

314 The Chartered Institute of Legal Executives, see www.cilex.org.uk

1. What is the understanding or definition of AI in your jurisdiction?

There is a burgeoning interest in AI and its use, but there does not appear to be a universally agreed definition of AI when discussing its use in the provision of legal services.

The SRA produced a risk report titled *Technology and Legal Services* in December 2018,³¹⁵ in which it did not seek to formulate its own definition and instead used the following meaning for the phrase, which it attributed to The Future Computed: AI and Manufacturing:

'AI refers to software systems that can interpret data in ways that would normally need human involvement. It is loosely defined as machine learning that can improve its own capabilities without needing humans to reprogram it. This allows the system to process information more quickly and accurately. AI systems are generally focused on specific tasks and aim to assist and enhance performance. They enhance human judgment and intelligence, rather than replace it.'³¹⁶

2. In your jurisdiction, besides legal tech tools (ie, law firm or claim management, data platforms, etc), are there already actual AI tools or use cases in practice for legal services?

The Law Society published an article called 'Six Ways the Legal Sector Is Using AI Right Now',³¹⁷ explaining the use of AI by the legal sector. This was written by one of its commercial partners, Seedrs, and identified the six main ways in which the legal sector was using AI tools as follows:

1. practice management automation;
2. predictive coding;
3. document assembly;
4. legal research;
5. voice recognition; and
6. do-it-yourself (DIY) law and chatbots.

While the majority of these tools are used by solicitors subject to SRA oversight, DIY law and chatbots are also being used by businesses that are not authorised and/or do not employ solicitors. The AI enables these businesses to interact with customers to create their own legal documents and get access to certain legal advice.

315 See www.sra.org.uk/risk/risk-resources/technology-legal-services.

316 See <https://news.microsoft.com/futurecomputed>.

317 See www.lawsociety.org.uk/news/stories/six-ways-the-legal-sector-is-using-ai.

The SRA's research supports these findings. The SRA confirms that AI systems have been developed and applied in areas that include document reviews (eg, contract reviews and discovery); conflict checks and due diligence; identifying precedents; legal research and analytics; predicting case outcomes; and billing.

The SRA generally regards the use of AI positively, arguing that technology can help smaller firms to compete with unregulated businesses through the fact that it helps solicitors with their time management, and that it can also help firms complete more work, particularly that of a routine and formulaic nature, more quickly and accurately. AI is also used to provide legal services in innovative ways, such as virtual law firms and more online legal services.

3. If yes, are these AI tools different regarding

- independent law firms;**
- international law firms; and**
- in-house counsel;**

and what are these differences?

Most solicitors and law firms will be using AI in its simplest form with case management systems to run client files, for time recording, accounting purposes and so on. Many firms also have access to online legal information resources, such as those provided by LexisNexis³¹⁸ and other businesses. With both of these AI solutions, cost will be a determining factor that influences take up.

Larger firms, often those with an international reach, and firms that service commercial clients, are more likely to develop the use of AI more quickly because of the realities of economics, and because the volume and type of work that they do is more likely to generate a commercial justification for the use of such AI as document assembly and predictive coding. Time-consuming tasks that might otherwise be performed by humans (often by paralegals and non-lawyer employees) in smaller firms will be performed more cheaply and more quickly through the use of AI in larger firms.

In-house counsel employed in commerce is also likely to be able to adopt AI answers because of the financial position of its employers.

4. What is the current or planned regulatory approach on AI in general?

The United Kingdom is a signatory to the Organisation for Economic Co-operation and Development (OECD) Principles on Artificial Intelligence.³¹⁹ These were agreed in May 2019, and are designed as standards for the safe development of innovative technologies. The OECD AI Principles are:

318 See www.lexisnexis.co.uk.

319 See www.oecd.org/going-digital/ai/principles.

- AI should benefit people and the planet by driving inclusive growth, sustainable development and wellbeing.
- AI systems should be designed in a way that respects the rule of law, human rights, democratic values and diversity, and they should include appropriate safeguards, for example, enabling human intervention where necessary, to ensure a fair and just society.
- There should be transparency and responsible disclosure around AI systems to ensure that people understand AI-based outcomes and can challenge them.
- AI systems must function in a robust, secure and safe way throughout their life cycles and potential risks should be continually assessed and managed.
- Organisations and individuals developing, deploying or operating AI systems should be held accountable for their proper functioning in line with the above principles.

The OECD also provided five recommendations to national governments:

1. Facilitate public and private investment in research and development to spur innovation in trustworthy AI.
2. Foster accessible AI ecosystems with digital infrastructure and technologies, and mechanisms to share data and knowledge.
3. Ensure a policy environment that will open the way to deployment of trustworthy AI systems.
4. Empower people with the skills for AI and support workers for a fair transition.
5. Cooperate across borders and sectors to progress on responsible stewardship of trustworthy AI.

In June 2019, the Group of 20 (G20) (of which the UK is a member) adopted human-centred AI Principles that build on and complement the OECD initiatives.³²⁰

The UK Government was one of the early developers of a national response. The Office for Artificial Intelligence is a joint government unit forming part of the Department for Business, Energy and Industrial Strategy and the Department for Digital, Culture, Media and Sport, and is responsible for overseeing the responsible and innovative uptake of AI technologies for the benefit of everyone in the UK.³²¹ This includes:

- society: making sure AI works for people – ethics, governance and future of work;

³²⁰ See www.mofa.go.jp/files/000486596.pdf.

³²¹ See www.gov.uk/government/organisations/office-for-artificial-intelligence/about.

- demand and uptake: supporting adoption across sectors, including via ‘Missions’; and
- foundations: ensuring the best environments for building and deploying AI – skills, data, investment and leadership.

Additionally, the Centre for Data Ethics and Innovation is a government-level advisory body that considers AI advances.³²² For example, in September 2019, it published three papers addressing particular areas of public concern in AI ethics: deepfakes and audio-visual information; smart speakers and voice assistants; and AI and personal insurance.³²³

Also, in 2019, the UK Government committed approximately £2m to help develop law technology opportunities in order to drive innovation and help the UK legal sector grow.³²⁴

However, none of this is a regulatory solution. In a book published in 2019 called *AI, Machine Learning and Big Data*,³²⁵ the authors of the chapter on the regulation of AI and Big Data in the UK expressed the following thoughts: ‘As the seat of the first industrial revolution, the UK has a long history of designing regulatory solutions to the challenges posed by technological change. However, regulation has often lagged behind – sometimes very far behind – new technology. AI is proving no exception to this historical trend.’

The authors concluded that there was no consensus on whether AI required its own regulator or specific statutory regime, and concluded that there was ‘currently no overall coherent approach to the regulatory challenges posed by the rapid development of AI applications’.

In summary, therefore, there is an awareness of the need for oversight of AI development, but no current plans for regulation, either at a national or sector level.

5. What is the role of the national bar organisations or other official professional institutions?

In the absence of national law or regulation, it is necessary to consider the role of the SRA in regulating the use of AI by those individuals and firms that it authorises and regulates. There is also the need to acknowledge that there are many non-lawyers and unauthorised businesses using AI to provide certain legal services, but these are not subject to SRA oversight.

322 See www.gov.uk/government/organisations/centre-for-data-ethics-and-innovation.

323 See www.gov.uk/government/publications/cdei-publishes-its-first-series-of-three-snapshot-papers-ethical-issues-in-ai.

324 See www.gov.uk/government/news/legal-services-and-lawtech-bolstered-with-2-million-of-government-funding.

325 Berkowitz M and Thompson J (Eds), *AI, Machine Learning and Big D* (Global Legal Group Ltd, 26 June 2019).

Solicitors are subject to individual regulation by the SRA, regardless of where or how they practise. All law firms (and all their owners and all employees) that are authorised by the SRA are similarly subject to regulatory oversight. Solicitors who are employed in unauthorised businesses (eg, those employed by commercial and other organisations as in-house counsel) are subject to regulatory oversight but the SRA's regulatory reach does not extend to their employer.

The various principles and rules to which individuals and law firms are subject are contained in the SRA Standards and Regulations.³²⁶ These were drafted on the premise that certain outcomes must be achieved by individuals and firms, and these achievements will demonstrate that clients have received ethical legal services and the public interest purpose of regulation has been met.

The SRA also describes itself as a risk-based regulator, which means that it prioritises concerns that pose the highest risk both to clients and impede the public interest in having trust and confidence in the legal profession. Current risk priorities, as described in the SRA Risk Outlook,³²⁷ include considerations such as information and cybersecurity, integrity and ethics, and standards of service.

In the previously mentioned SRA publication 'Technology and Legal Services', the SRA made its position clear: 'Our regulation is based on the outcomes that firms achieve, not the tools that they use to achieve them'. In other words, the SRA assesses individuals and firms against personal and entity-based duties, and does not impose restrictions on how required behaviours are achieved. The individuals and entities must meet regulatory standards, and the SRA has supervisory and enforcement powers that will be used, if necessary.

This publication highlighted some of the ethical and risk-based issues from the use of AI, including:

- the use of chatbots to provide legal advice may not be able to identify all the individuals that the system is advising on behalf of the solicitor or the law firm and lead to conflicts of interest;
- some documents prepared by AI might involve the system carrying out reserved legal activities with the questions that would trigger in respect of legal restrictions on the provision of these activities, for example, certain conveyancing and probate activities can only be performed by qualified persons, including solicitors;
- the use of AI technology to process personal data requires the consideration of data protection legislation and the information that must be provided to data subjects; and

³²⁶ See www.sra.org.uk.

³²⁷ See www.sra.org.uk/risk/outlook/risk-outlook-2019-2020.

- bias in AI systems creating complications in respect of equality, diversity and inclusivity duties imposed on solicitors and others in law firms by the application of the law and also because of regulatory duties in the SRA Standards and Regulations.

This means that while AI, and innovative technologies more widely, can be used, and this use is encouraged by the SRA, the following should be understood:

- Nothing about the use of AI should undermine or compromise an individual's or firm's ethical, regulatory or legal duties.
- Firms must implement effective governance systems to oversee the ethical and legal use of AI.
- The lack of the correct response that is attributed to AI faults will nevertheless be of regulatory interest.
- The risks of using AI must be acknowledged, managed and mitigated. Topical issues include information security and data protection, and the threat of data breaches caused by cyberattacks. Breaches must be considered and, depending on seriousness, possibly reported to both the SRA and the UK's Information Commissioner's Office.