

COMPARISONS

WHERE ENGLISH LAWYERS LEAD

COST BUDGETING

Under the Jackson reforms to the civil litigation costs system, solicitors have had to get a much firmer grip on figures before trial. Commercial claims of up to £10 million are soon to fall under the regime, meaning software companies are producing packages ranging from fairly complicated web-based tools to enhanced use of Excel spreadsheets.

PROPORTIONALITY

Not so much a technology as an ethos – and a stark difference between England and the US. Pre-trial disclosure rules in England and Wales explicitly state that parties should use technology to speed processes. But the disclosure between sides is limited to a tight definition of what is germane to the case.

SOCIAL MEDIA

Use by law firms is varied, but there are stellar examples. Hertfordshire and London SA Law drums up attendance at marketing seminars through LinkedIn. Julie Gingell, marketing director partner, says: “We did a mock employment law tribunal recently that attracted 60 people, of whom only 15 were existing clients – the rest were prospects.” The firm also targets, via demographically specified Facebook advertisements, high-net-worth middle-aged wives looking to divorce their husbands.

WHERE THEY LAG BEHIND

E-DISCOVERY

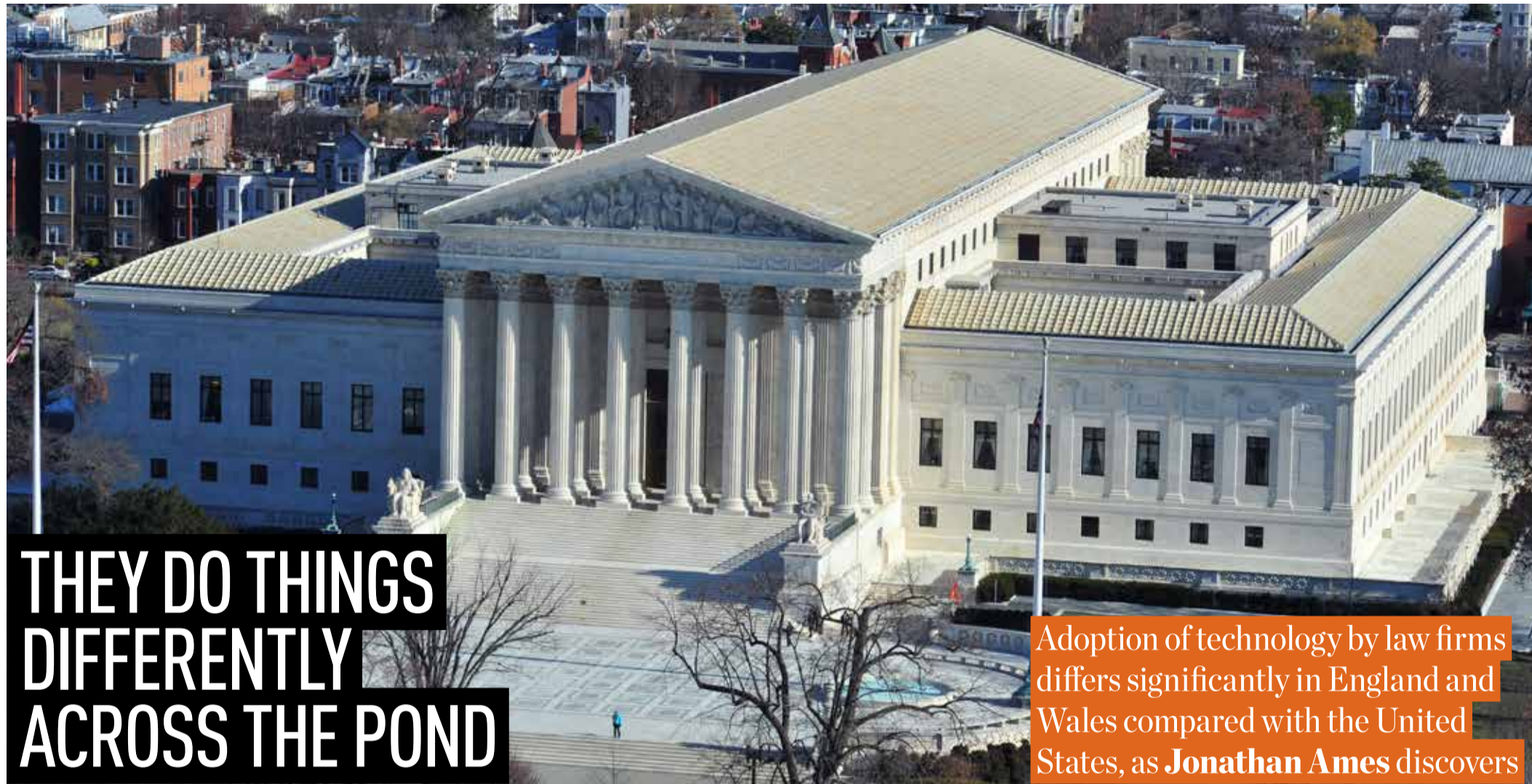
It may sound a subtle vernacular shift, but there is a world of difference between English disclosure and US discovery. The Americans attack litigation with a combine harvester, overturning every stone and rummaging through every hedge, no matter how apparently unconnected to the matter at hand. That has created a huge technology industry around e-discovery, in which keyword searches are as outdated as the Model T. Think “predictive coding”.

COURTROOM GADGETRY

Loiter for a few minutes outside the Rolls Building, the new home to England’s Commercial Court, and a parade of flustered clerks will still cart in boxes of paper files. The court may be billed as bringing cutting-edge technology to London, but the lawyers still like a lot of paper. In the US, on the other hand, iPads are nearly yesterday’s technology, with individual trial lawyers already talking about using Google Glass in courts.

SOCIAL MEDIA

As innovative as some English firms are in their marketing and recruitment use of LinkedIn, Twitter and Facebook, more US firms are in the game in an increasingly aggressive style.



THEY DO THINGS DIFFERENTLY ACROSS THE POND

Adoption of technology by law firms differs significantly in England and Wales compared with the United States, as **Jonathan Ames** discovers

UK/US

Five years of economic turmoil have forced the global legal profession to embrace technology, but the giant UK and US law firms have been forging different paths.

The move towards efficient internal systems has coincided with another imperative with which English (and Welsh) firms are especially struggling – marketing legal services in the age of social media.

of London-based legal profession consultancy Jomati, and former managing partner of “Magic Circle” law firm Clifford Chance.

Large English commercial firms are focusing technology tools on the underlying profitability of work so they can understand pricing models before walking into corporate-panel pitches. Firms are also using technology for case

disclosure on this side of the pond is much more focused and targeted.

But proportionality doesn’t get much of a look in Stateside. There, disclosure is called discovery, with every possible jot of information up for grabs. And in a digital world, that’s a lot of potential data, meaning US law firms have had to be at the forefront in use of e-discovery technology tools, with terms such as “predictive coding” tripping off their tongues while still catching in the throats of their English counterparts.

“There is definitely a big difference between the UK and the US when it comes to litigation systems and systems used in investigations,” says Ramin Tabatabai, a solicitor and senior legal technology consultant at London-based professional

If anyone benefited from the worst financial crisis in living memory, it is the general counsel heads of major corporate legal departments. Provided their businesses have survived, these top in-house lawyers now hold the whip-hand over their law firms regarding costs.

Pre-crisis, the senior partners at major law firms presented fait-accompli annual fee increases to their clients that would make the eyes of mere mortals water, expecting nothing more from their corporate clients than cringing compliance. Today the watchwords are efficiency, alternative billing structures, fee caps and transparency.

Law firms might not like it, but they have to live with it – and they are increasingly turning to technology to ease the squeeze on ever-narrowing profit margins.

“When it comes to the use of IT analytics, firms on both sides of the Atlantic have got better at billing methods as well as monitoring their work in progress and debtors,” says Tony Williams, principal

or deal post mortems. These assess profit margins and dig deep into working patterns by analysing staff allocation on specific matters, all of which is designed to determine underlying profitability.

“These issues are becoming more important with margins under pressure and with pressure to use alternative billing,” says Mr Williams. “Firms must understand where they are making and losing money. It is as stark and simple as that.”

“So we are seeing more analytics, more work being done with project and process managers, and much more work being done with the aid of computer-generated flow charts.”

While billing systems cover all law-firm departments, certain areas of practice have a greater reliance on enhanced technology. For example, litigation is at the cutting edge on both sides of the Atlantic, but in different ways.

In England, recent government reforms to civil justice procedure have emphasised the concept of proportionality. That means pre-trial



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services advisory company Control Risks. “The US approach is very wide – give us all the data without considering cost implications. But in the UK, proportionality is specifically mentioned in practice directions and the courts are meant to insist on that.”

Mark Cordy, a director at San Francisco e-discovery specialist business Recommind, agrees that cultural differences in litigation have a significant impact on US and English law firms’ use of technology. “US firms are confronted with a vast amount of documents and data that must be processed in litigation across many cases,” he says. “They have been forced to solve that problem through technology. In the UK, the volumes are often less, so the pressures around the use of technology are not the same.”

However, there are other issues affecting litigation lawyers in England and Wales, which are driving them into the arms of techie geeks. Cost budgeting, brought in by the 2013 Jackson reforms to civil litigation funding and costs, is soon to be extended to commercial cases valued at less than £10 million.

That means law firms will have to produce far more detailed cost projections prior to trial and they face strict court sanctions if they get the budgets wrong. That peril has spurred software boffins into designing programs to produce litigation cost forecasts.

But, warns Andy Ellis, managing director of London’s Practico Costs Lawyers, bolting on new

software is just part of the battle. “The real challenge,” he says, “is that, once you’ve got a budget in place, how do you get existing systems to monitor adherence to the budget? You need early-warning systems to alert you to when you are exceeding the budget at various stages.”

Yet, the use of technology by law firms is not all about internal systems and boosting the bottom line through efficiency. Increasingly, firms are actively generating work through innovative use of websites and social media. And in that realm the Americans are considerably further advanced.

“New social networks and website technologies kicked off in the US,” explains Leeds-based legal sector social media consultant Chrissie Lightfoot. “So the Americans have been a bit more cheeky and in your face – bolder and braver in their approach.”

“The English are stereotypically more reserved, certainly in terms of letting loose – in other words, letting their lawyers loose on social media. It is still very much a case of having one or two individuals whose role it is to do social media marketing on behalf of the firm. The English legal profession needs to get to the point where each and every lawyer is doing it.”

Regardless of which side of the Atlantic, many in the legal profession seem to remain averse to the concept of new technology. However, those who are doing it right are much more efficient, effective and productive. ■

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