

Uncharted: the road to recovery

Episode seven: A new dawn

Host: Rebecca Burn-Callander

Participants: Tom Whittaker, Associate and Solicitor Advocate at Burges Salmon; Chris Osborne, Partner at FRP; and Steven Bain, Director at FRP.

Rebecca Burn-Callander: Welcome to Uncharted: The Road to Recovery, an FRP Podcast hosted by me, Rebecca Burn-Callander. In this seven-part series, we speak to experts and business leaders from across the UK to identify and analyse the issues facing the UK business community in the wake of the coronavirus pandemic.

Technology has had a significant impact on the world of forensic investigations in recent years, and the pandemic has accelerated that shift. In today's episode, the final one of the series, we will discuss how the industry is adapting to this new environment and how such trends like machine learning and big data, as well as the disclosure pilot scheme, will affect practitioners, businesses, and the wider industry in years to come.

Rebecca Burn-Callander: Joining me today is Tom Whittaker, an associate and solicitor advocate in the dispute resolution team at legal practice Burges Salmon. From FRP, I'm delighted to welcome Chris Osborne, partner in the forensic services team, and Steven Bain, who is our tech expert working in the field of electronic discovery. I'm your host, business and economics journalist, Rebecca Burn-Callander. Thank you all so much for being here today. Chris, perhaps you could start us off by giving us a little overview of what forensic services entail and maybe some of the cases you've dealt with in the past.

Chris Osborne: Sure. So 'forensic services' covers both forensic accounting and also forensic technology. Steve will talk a little bit more about forensic technology later. But yes, in forensic accounting and forensic technology, we very much work together on projects. So whether that be fraud investigations, litigation, and insolvency type matters. We have our respective skillsets, but there is a big crossover in the middle. So I'll talk a little bit about forensic accounting first.

The forensic accounting skillset really applies to a multitude of different disputes and investigations. We tend to be industry agnostic, so we apply those skills in lots of different situations, whether it's a contractual dispute, whether it's a fraud investigation, or whether it's valuing companies, those skillsets are applied.

Often we require Steve and his team to assist, especially where there is a large volume of data. We might need to analyse that data in the context of a fraud investigation, for example. So Steve and his team would be used to collect the data to then load that up onto a document review platform to enable us, lawyers; such as Tom and his team, to review for counsel, etcetera, or potentially for a corporate client to review that data. And what it's doing essentially is trying to take a large volume of data and to distil that into a smaller batch of data, which is a representative of the relevant documents to then review and understand what's actually happened.

Rebecca Burn-Callander: And I'd like to hear more about the technology side, but is it true and fair to say that forensic services is kind of the cornerstone in a lot of cases that are brought to court now, Tom? Are you seeing that this is playing an even greater part in that whole process?

Tom Whittaker: Thank you Bex. Yes, it's particularly important in a few respects. First one is, before proceedings have started, clients often want to find out what the merits of their case are so they decide whether they do want to proceed with court litigation or whether they want to try and settle the case in a different way. And that often relies upon understanding the evidence before. You may have an incomplete set of the evidence and incomplete picture, but still you'll have some important information that you'll want to understand. Then it will come through to the disclosure phase when you're bringing the case. And so you are starting to collect the data, possibly a wider set of data, analysing that and reviewing that, seeing how that fits within your case, and also seeing if any of that starts to undermine your case and to see whether that is then an appropriate time of settlement, especially when

the cost of disclosure, depending on the scale or the complexity of the case, may be particularly great. That is often a time where clients start to think about where the case may be going even longer term.

And then finally, when you get to the trial itself, you have to put the evidence in front of the witnesses. You have to know how to deploy it within pleadings and within submissions. And so the evidence itself is incredibly important to that. And often it can be what swings a case from one way to another. So you have to be thinking about that end game from the outset. And so that's where working with the likes of Chris and with Steve's team is particularly important so that you know what data is that you need to collect, how you analyse it, and then how you can ultimately deploy it in the best way for your end.

Rebecca Burn-Callander: And we're talking about vast volumes of data in some cases here, Steven, how on earth do you manage to go through or analyse it all? Because we must be talking about... I mean, how much data can you get for a typical, say, fraud case?

Steven Bain: I suppose every project is different, we have small cases where we have a few hundred documents but they're very key documents. And then you end up with a very large case where you have 15 people involved, everyone has a laptop each, a mobile phone each, an email account each, you may have data stored on Microsoft Teams, you may be collecting data from recordings, video conferences and things like that. So you have to first think about what you need, then collect it and then going forward it's what are you actually doing with it? Because from my perspective, from a technical perspective, we can go in and collect as much as we'd like, it's not proportionate, so we try and be smart with our approach. So rather than going into a company and collecting everyone's mailbox, can we just focus on 10 for example?

And once we're focused on 10, I may go back to Tom and say, "Tom, we've collected all the data that we need for the key custodians. What's next? Do you need to run some keywords, for example? Do you need to run some date ranges? Is there anything in this set that we're particularly looking for, and how can we assist you?" And using platforms like Relativity, and other review tools that are out there in market, having all this data in one place, making it searchable, allowing external clients and people to go in and review things is key.

Tom Whittaker: And I'd just add to what Steve said there. That it's not just about the volume of data, it's about different data sources and the different data types that you need to collect. So Steve referred to mailboxes where we'll just see how many emails we may get per day, which are relevant or more likely not relevant, and how you have to grade through those. But then when you start to add in the collection of mobile phones, potentially MS Teams or Skype or Slack or various different data sources, they will all be in different data formats. And each of those may warrant a different approach to review or to analysis. So structured data such as spreadsheets may be treated in a very different way to unstructured data such as text messages or emails. And so having an understanding of the issues behind each data source at the outset is really important so that you can work out how you're going to attack your overall dataset.

Steven Bain: it's still very surprising when you do investigations that people are still writing down things that's quite surprising that they would actually want to commit to writing possibly because they think that they're not going to get caught. But yeah, it's quite interesting on those types of investigations.

Rebecca Burn-Callander: So if we moved away then from this world of the discovery phase, with all the lawyers, I'm picturing, there's a film called Clueless and the character sitting there with a highlighter going through conversation by conversation, are those days over, Tom?

Tom Whittaker: They still remain for some people and for some cases, but I think that, by and large, discovery is becoming much more affordable and it's becoming much more expected so that it's starting to be deployed at different stages of cases. So rather than just within the disclosure phase of a civil claim, it may then be a key component of a regulatory investigation or early case analysis to work out your merits through to a data subject access request. And so you will often have cases at different stages where you need to start to analyse and review your data.

There may not just be a case of going through and highlighting, it may be a case of saying, I've got thousands upon thousands of WhatsApp messages or text messages, but there's no way that I can visualise who these messages are sent to or received from, when they were sent, the date and time of day. Perhaps I can start to draw out themes of

concepts or ideas from them. And so rather than going through document by document, which will still be important at some stage, and for some people, if you can start to draw out those key insights at an earlier stage, that's probably where the greatest value can be had.

Chris Osborne: I think it's very interesting actually that, certainly for our personal perspective, and as Steve will tell you, I tend to like using paper quite a lot and as do a lot of other people. And actually I think that this sort of trend will be things done much more electronically, which is the way that the things tend to be moving anyway. So Steve and I have been doing a project over the last few years, which involves litigation dating back 25 years. And that includes huge, huge amounts of hard copy documentation, including the very thin sort of fax paper, annotations on accounting ledgers, all of those kinds of things, which is very rare.

And Steve will tell you, it's moved much more towards an electronic data, heavy data sets if you like, so less scanning of documents to get into relativity or document review platforms. And I think that trend is going to continue partly because of home working, partly because people want to cut down on the use of paper for GDPR reasons, et cetera. So I think it's interesting that the pandemic has possibly accelerated that process.

Steven Bain: I agree Chris, falling on the back of the pandemic, I mean, everyone's now working differently. You're working from home, you could be working from anywhere in Europe, and if you're taking data with you as in electronically and in hard copy, how are you tracking that, for example from an investigation perspective? If we are investigating 10 people, typically you would have been able to go to someone's office, collect a laptop, collect a desktop, maybe a work mobile, collect email from the IT guy, and so on. Now, people are working all over the place, do I still need to consider the office accounts as well as potentially having to go to their personal address and collect a personal laptop and the personal phone? So data touches so many different areas nowadays. And at the start of an investigation or a dispute, it's so important to do your homework and understand where that data sits.

Rebecca Burn-Callander: So has your job become a lot harder then, Steve? Because it sounds like there's just no end to the data sources now, because the blend between work and personal life, it's just complete now.

Steven Bain: Yeah. I think there is an explosion of data sources especially during COVID because Microsoft Teams, Zoom calls, even these recordings we're doing now, how are we storing them? Where are they stored? How easily can we access them? And can they be searched? It's people's voices, but can I run keywords over them? Is there software available that can allow that functionality? Is there software out there that allows me to detect who was actually on that call? If everyone signs in as a guest, for example, do you have facial recognition software that can tell you who was in the call? So there's so many different ways of approaching things and there is technology out there for pretty much everything. It just comes down to what tools do we have in the toolbox to assist and allow all this data to be pulled together in one place and reviewed in a review tool.

Chris Osborne: And also Steve, just to further to that point, I think what's also proportionate as well, it depends on the value of the claim, or it depends on potential issue. As Bex said, these sorts of data sources are potentially endless, but I guess it's taking that surgical approach to work out what it is that exactly what we need and being cost and time proportionate to the particular assignment.

Rebecca Burn-Callander: Have the actual kinds of cases, the nature of the cases that are being brought, have they changed? I mean, you imagine that during times of financial difficulty, you see businesses cutting corners, taking risks, maybe fraud taking place, is that happening, or have we seen any evidence of that becoming more relevant right now?

Chris Osborne: As it currently stands in the last few months, we haven't seen any COVID pandemic related cases. We have been instructed on a number of different cases, whether it be fraud or disputes, but none of those are pandemic related, they're just in the normal course of business. My personal view is that I anticipate that's probably next year, possibly even to the back end of next year, we will start seeing those contractual type disputes, fraud type cases coming through. And it might well be that Tom possibly sees those before us and then seeks our assistance where there's data collection required or quantum analysis required from a forensic accounting perspective. But as it currently stands at the moment, we haven't seen those types of cases, but I do very much anticipate that those will be coming through.

Rebecca Burn-Callander: Yeah Tom, from your perspective, do you see any particular kinds of crime on the rise? Is that a kind of naive way of looking at this?

Tom Whittaker: The way I would look at it instead is looking at where the risks may be. And so with people changing their working practices and working habits and the tools and the applications that they use and the structures which are in place, the management governance structures, and you have suddenly a greater number of opportunities for there to be weaknesses and for those to be exploited. And then simultaneously you also have new commercial pressures on businesses and on individuals as well. So individuals may have a financial motive to try and commit a crime, or you may have state sponsored actors, or you may have other corporates in certain jurisdictions who may be interested in trying to hack into data. So key examples at the moment would be cyber-attacks on healthcare, or to try and get hold of intellectual property and anything related to vaccines or COVID-19 preparations or medicines around that.

So there's particular risk there. But you can certainly see on the horizon that there could be greater regulatory investigations and oversight to make sure that businesses are operating effectively. And whilst there has been recognition by those regulators to the challenges that COVID has brought about, ultimately the regulations are still in place and they will still expect businesses to be operating within those regulations. And then of course you can see that there will be potential contractual disputes arising from all of this because rarely is any business an island. They will be operating with third parties or have their employment contracts. And so if there is a crime, it's likely that it will have touched upon a number of different areas and number of different parties, and you will need to try and factually understand how it happened and whether anybody should have picked up on it or should have done something about it.

Chris Osborne: And further to what Tom was just saying in terms of fraud, there will be fraud, I'm sure, that will be committed during the pandemic because of the pressures created by that, whether that's directors who are in survival mode, who are doing things that otherwise they wouldn't normally do, that would be uncovered in the course of time, but it might well be that frauds that have been possibly been ongoing for months, if not years, pre-pandemic, with the financial downturn then become evident. So there's sort of two different types, I guess, of cases if you like. And it might be that those ones become a little bit more evident sooner rather than later, which would be quite interesting.

And also just further to what Tom was talking about around the regulators and enforcement agencies. I think our view from what we've been hearing from clients, et cetera, is that the enforcement agencies and the regulators, they've obviously had quite a lot to deal with in terms of the current crisis, especially the FCA. And actually some of the investigation work might well be, not necessarily stopped, but it's slowed down just because they've had to pivot some resources to looking at other issues. So there will be, I'm sure at some point, maybe that's into next year, a much more of a focus on taking forward investigations and enforcement actions.

Tom Whittaker: Picking up on that, I think there's a risk that in the future, we start out with the benefits of hindsight or indeed whoever it is who may be applying pressure to a business or potentially bringing a claim against the business, they will be doing so with the benefit of hindsight, forgetting just how difficult it was back in February, March, April, to respond to what was going on and the various pressures that were affecting businesses. Everybody was working incredibly hard and under immense time pressure, but I think in order to address future risks, it places the importance on documentary evidence, such as board minutes, to show that the proper procedures were followed, the thought processes were followed.

Of course, you shouldn't then just commit absolutely everything to writing because then there's a risk in itself. But to strike that balance so that you can show that you acted in accordance with your duties, whether you're a director or insolvency practitioner, so that in the future, if you do need them, you have the evidence available to show what you did and why you did it.

Rebecca Burn-Callander: And I'm curious, so where we are in the UK, a lockdown is easing, certainly in most parts of the country, but there's no certainty that we will remain out of lockdown. How on earth do you even begin an investigation when people are locked down? I mean, Steven, when you were talking about people remote working, all these different kinds of technology, where do you begin when you can't even meet a client?

Steven Bain: That's a great question. I think every project's different. I mean, one thing worth noting is that in the forensic technology industry, a couple of the bigger players, the bigger firms, did partner together in order to facilitate and allow forensic collections of data globally. So for example, if you're based in Europe and typically you were able to just hop on a plane with a team of 10 and fly into APAC somewhat, to do a collection and do client work, you couldn't

do that during a lockdown. So they partnered up with, I guess were all competitors, in order to do what's right for the industry. So I found that quite interesting during lockdown. But I guess from my perspective, every project's different.

So as an example, only recently I had to go and collect a mobile phone from a footballer, because he was obviously in the middle of disputes and he wouldn't come to me, so I had to go to him. COVID safety and everything, but we had to collect the mobile phone, return to the office, do the investigation, do the analysis, and then provide the feedback. And that was quite interesting. That project would have probably been the same pre-COVID. I know there are other projects that we work on that have really changed. We like to have people on the ground sometimes to touch physically, this is a laptop that belong to Tom, this is a laptop that belong to Chris, when you're doing remote work or remote collections, or you're having to trust people, there's obviously a risk element there because someone could say, "Oh, this is my laptop." Well, how can I prove that? I don't know where you had sat. How do I know if that's your laptop at your office, or whether that's your laptop at home or whether it's just your daughter's laptop that you just handed for the connection purposes?

So there are lots and lots of questions. And I think from a risk perspective, it's quite large. Unless you ask people the relevant questions at the relevant time, and you can have some kind of interaction like this, for example. So maybe when we do remote collections, you could have a video call, have a look around the room. Is there anyone else present? Show me the devices that you have, for example. So there's lots of different ways of approaching it, it's just making sure that everyone's on the same page, all the right questions are asked, and that the process, like Tom keeps saying, it's defensible and repeatable. And that's one of the key points in the work that we do going forward, whether it's six weeks, six months or six years down the line, someone somewhere should be able to repeat the work that was undertaken. And that's key.

Chris Osborne: From a forensic accounting perspective, especially when it comes to investigations, I think that for the most part we can work very effectively from remote locations. Where I would say it's difficult and it's all well and good during a meeting over a video conference, but if you are talking to someone who you think may have been manipulating an accounting system, for example, I think you miss something by not actually physically seeing them face to face, going into their office, seeing them in their work environment, seeing if they're a bit hot and sweaty and a bit flustered. I mean, sometimes you won't necessarily be able to pick that up over video conference. So I think that, although this sort of medium is very, very good, and I think it's great in the sense that there's a certain time efficiency about it, but I think where there's potential dishonesty type issues, I do think it's problematic in a sense that you probably just missed that maybe 10 or 15% of body language that you would get if you were face to face with someone.

Rebecca Burn-Callander: Yeah. The kind of intangible side of what you do, the body language and just the gut instinct that you get when you're in the room with somebody. That's so interesting. And Tom, I'd like to talk to you about the disclosure pilot scheme, because I've been told that that's one of the biggest, big changes to the industry, that's having a really massive impact on everyone that works within it. Do you mind just giving me a bit of an overview of what exactly it is and how it functions so far and whether you think it's been successful?

Tom Whittaker: Certainly. So whenever you bring a claim within civil courts, you turn for civil procedure rules, and those rules will set out what steps you need to take at various stages of a case. One of those stages is likely to be disclosure. So the parties are able to say, "Here are the documents upon which I rely, or these are the documents which I want you to go and find and provide to me." Because in this jurisdiction, at least in England and Wales, we operate on more of a cards on the table approach so that you can have access to justice. Whereas in some other jurisdictions, they just say, only disclose what you really want to disclose. And so there are very few documents involved. So there have been rules around disclosure for many, many years, and the issues that were coming out were that they really weren't fit for purpose within the changing world, where there is so much electronic data.

They had some rules for it, but it wasn't really designed as digital-first, which is a phrase I keep saying. And so what the disclosure pilot scheme tries to do, well, in a world where you have so much electronic data, what should the rules be for parties as part of civil litigation to provide disclosure to one another? And it's really trying to tackle the disclosure, which needs to be reasonable, and it needs to be proportionate in terms of the steps that are being taken, the time incurred, and the costs incurred, when looked at in the context of the case as a whole. So picking up on your last question in terms of where you start with collecting something, the first thing is, do you really have to? And so what the disclosure pilot scheme says is, instead of assuming that parties are going to go off and have a search, or

for the parties to assume that that's what they're going to do, you now have to make more of a reasons basis for saying that there has to be some sort of search.

Tom Whittaker: So the courts are trying to take a more strict approach to saying, is a search required? And I'd say that was probably the key change there. And what the parties are then facing is trying to determine, well, what is it that's required? What's reasonable? What's proportionate? And so the way they do it is to say out of all the issues in the case, which are the ones which require some sort of disclosure? And then in terms of giving that disclosure, do you just need to rely on the key documents? Is it just a few categories of documents? Do you need to go and search for documents? Or do you need to go and search for documents where there could be a train of inquiry such as with a fraud case where one document may lead to a further search in the future?

In terms of how it's going, it's only been around for nearly two years so far, starting in 2019, it's been extended to the end of 2021, there is an official observer and the courts have taken an active role in how it's been drafted and how it's been applied. So there's been some case law that's been coming through from it. However, I think a lot of practitioners are still finding that there are teething issues with it, or they are finding that there are issues with how certain parties approach the disclosure pilot scheme. So whether they are properly cooperating, whether they are using it in the spirit that it was designed with. And so I expect that people will still take some issue with it and it will still be finetuned over the next year and a bit. The official observer will publish statistics and reports on how it's been used. So there'll probably be some key areas of interest that will be changed. Although practically speaking, there will probably always be some areas where there will be differences of opinion as to how well it's working, and so you will always have to accept that there will be no perfect scheme for absolutely everybody.

Rebecca Burn-Callander: Steve, you were nodding when Tom was saying about teething problems, what have you experienced? What have you seen as a result of the disclosure pilot scheme?

Steven Bain: I've had a mixed experience, mixed feedback as well from external clients. It's worked really well for some clients because of the rules where you have to interact with each other, both parties have to have an open discussion and agree issues and how they're going to search for things and so on. You kind of get an insight into what the other side is trying to do. On the flip side of that, we've had clients who've had to spend a lot of money, up-front costs, in trying to deal with very, very difficult disclosure review documents. So bottom parts of the pilot scheme is that you have to agree your issues as Tom said, and if you've got 10 issues, fair enough, if you've got 30, 40, 50, that you're trying to agree, you can go very granular. And I think that in the first year of the disclosure pilot scheme, people were overdoing it, so to speak.

So they were picking five, 10, 15 issues, but really going into detail for each one, whereas I think the feedback from the courts is that your issues are your issues, just tell me what you're trying to search for, you don't have to tell me how you're going to do it straight away, but have a high level umbrella issue. And then within that, you just go off and do what you need to do in order to meet the criteria. So I've seen disclosure review documents, which are incredibly technical. You have lawyers and end clients agreeing keywords and date ranges without really understanding the logic behind what they're agreeing to do. You have people who are agreeing logics or keywords to search over the data before they've actually looked at their data. So they're saying, "Yeah, no problem, we'll run these 15, 20 keywords in this date range." And then they will run that in their system and realize that it's just too much data. They can't do it.

So there's lots of and lots of iterations of these DOD documents, and each time you want to make a change, it's not just a forensic technologist time in running the search is providing the feedback, it's then the lawyers time, it's then their time, I want to go back to the other party, then time for them to rerun. So every time a change is made, it's very, very costly. And I think from a client's perspective as well, it's front-loaded, meaning that the entire process is now having to be thought about much earlier in the case than it probably was before, which I think may have caught a few people out at the start when the pilot scheme came in. It was new, it was like a light switch, it just came on and people thought, "Oh, I need to now consider all these different things." But it's certainly helped its gross structure, I think it's helped with the wider understanding of what disclosure is, not just from a tech perspective, but also from an end client and from a law firm perspective.

So I've definitely found that there are benefits to it, but at the same time I've also heard that there are incredible negatives to that as well, from a client's perspective to spend all this money, just trying to agree something to move forward. So it's interesting and I'm looking forward to seeing the feedback that comes from it.

Rebecca Burn-Callander: It's a bit of a shame, isn't it? That a scheme that was introduced to bring down the cost of disclosure and make it more cost effective, actually ends up bringing excessive costs if abused, because presumably you can pull certain levers, and as you say at that level of granularity can kind of bankrupt your opponent in the process – Tom?

Tom Whittaker: That was certainly one of the criticisms previously that disclosure could be used in a very tactical way of trying to ramp up the overall costs, and significant amount of the costs would be from the reviewers having to go through document by document for all of the false positives, where a key word returned a document but actually it's got nothing to do with the issues and disputes, and could never have fallen within standard disclosure or whatever the disclosure there was. So in terms of the costs now, there are certainly increased amounts of costs around the beginning. The aim is though, that the more time that you're able to determine a narrower scope of issue, and the narrower scope of searches for that issue, the less time you need to incur for somebody going through document by document, which was previously where the time and the cost could have been incurred.

So it may appear unpalatable because you suddenly think, hang on, I'm only doing the initial advice or the initial thinking behind it and I'm incurring costs for it. But perhaps to use an analogy, the more time that you put into the preparation of, say, designing a building and hopefully the faster that you're able to do it, and the more robust it will be. And perhaps it's the case that the actual review stage will take a similar amount of time, but it's with a proper logical reasons basis to give it those solid foundations.

Chris Osborne: I guess then with the advancement of technology with computer assisted learning, things like that, then that should in theory, I'm sure Steve has his views on this, should in theory speed up the process and maybe mean that when I'm doing an investigation, for example, that actually the number of relevant documents that myself and the team need to look out at are that much smaller because the machine is learning from the inputs that we are making.

Rebecca Burn-Callander: Yeah, talk a bit about that, because we've covered off sort of what the environment ecosystem looks like right now, but I'd love to know what the future holds. So machine learning, are we going to see artificial intelligence used? I mean, how big is this sort of artificial, computer assistance going to be in this world? Steve, they're kind of big jumps and leaps in technology happening right now, are you predicting them in the future?

Steven Bain: I think at the moment artificial intelligence is still quite a way away. The reason I say that is because most of the systems that we use still require human input. We're still trying to tell the computer what's good and bad. So the computer can't go away by itself and think, oh, this is good and this is bad. We still need to, I suppose, steer the ship in the right direction, that'd be one way of saying it. So we've been using a system called continuous active learning, basically where all the documents in your system get a score between zero and 100. Documents scored with a zero are likely not relevant, documents scored with 100, are likely relevant. I suppose another way of explaining that would be a bit like Netflix. So when you first log into Netflix, it knows nothing about you. You then watch an action movie and the system then starts to learn that you like action movies. And as you keep watching different films and different series, you realize that Netflix is actually starting to show you the next likely movie or series that you want to see.

And that logic works in these platforms as well. So for example, you could start with a hundred thousand documents, you don't know where to start, and the system will feed you a few documents to say, is this good? Is this bad? Just to get a setting. And then as it continues to give you documents, the aim of the game is that the system is only trying to give you good documents. So it kind of shakes the box and all the good stuff comes to the top, meaning that it's efficient, it's more cost effective. And that in theory, you are only seeing more relevant documents, the more relevant documents. And historically you may have to read 100 irrelevant documents before you got to one relevant document. Whereas these systems and the algorithms are really powerful, really effective, and when used properly on the proper projects and good data, they bring up fantastic results and really does do save a lot of time and a lot of money for the clients.

Chris Osborne: Certainly my experience of conducting investigations is that maybe five, 10 years ago, that you'd have to use quite a number of junior people to sift through the irrelevant documents or sift out the relevant documents. Actually, the teams of people required to do this now actually need to be smaller, and often people that understand the context of the case in which they're operating in. So because the machine is obviously learning from the inputs, actually you need people who have got the experience and the understanding to actually educate the

machine, if you like, in terms of what is relevant. So I think the teams have ended up being smaller, and that means actually, as Tom was indicating, hopefully the costs are then coming down somewhat.

Tom Whittaker: And just from a legal perspective, the idea of technology assisted review and the use of AI to power your data analysis and document review is not particularly new. You had cases from the US from 2010 where the courts were giving their backing for this. And then you've had cases in the UK, they've been published since 2016 and so on. I don't think you've had a case yet where one party is trying to force the other one into using it against their will, but generally speaking, the courts have been very encouraging for parties to make use of their sorts of data analytics and technology assisted review. So then the disclosure pilot scheme, if you have more than 50,000 documents, then you have to explain why you wouldn't use technology assisted review.

So the expectation is very much, you should be considering it. And for that sort of thing, you really do need to be engaging people like Steve's team, to be able to understand how you can use it. But then also you need to be engaging the lawyers, as I would say, so that you can understand why it is that you need it, and you'll need to be working with your clients as well to understand the data and the nuances behind it.

Rebecca Burn-Callander: And this might be a stupid question, but I mean, I can't imagine technology replacing human beings simply because even when we're talking about keywords, say you're looking for a fraud and the person that's involved is called Macefield, and you put that as the keyword, but what if some people call them 'Mace' or 'Fieldy', do you know what I mean? All of these little kind of strange semantics and turns of phrase, and ways of couching the truth in complicated - not code - but almost slang or whatever, can computers really spot that the way the human eye and the human brain can?

Tom Whittaker: Yes. And a few examples of that. So from the Enron scandals, which is a data set which has been made public and is often used by different disclosure service providers to demonstrate what the technology can do, they show what sorts of coded language was used by some of the traders, which at first wasn't identified because people didn't know of that coded language, but it was, and in terms of the libel fixing and manipulation cases that have come out as well, a number of the traders use code for that, and there will be plenty of ways by which you can try to find out what that code is. Partly you just have to look at the documents and you start to think why on earth are they referring to Macestar rather than to Macefield? But also you could use something called concept searching where the disclosure platform will look at all of the documents.

You may be able to exclude certain types of data such as repeated data like the confidentiality and provisions of the bottom of an email. So it can then say, right, from the rest of the data is that able to draw out certain themes. So if I keep seeing emails to A, do I keep seeing repeated phrases or similar concepts coming out, or if I see repeated references to company A within an email, is that often followed by another phrase afterwards. And this concept works a little bit like one of those word clouds, where the most repeated words appears in a larger font so that you can obviously see it, but within the concept searches, you often have them in some sorts of cluster wheel, so that you're able to look around the wheel and say, okay, I'm starting to see one cluster here with certain words and concepts that come out and then a sub cluster has these.

So as soon as you do that, you then say, well, that word makes sense, I can go into that because I think that's more like these have relevant documents, or I look at something else and think, that doesn't make any sense at all, I want to investigate that a little bit further. And then from there in a very intrusive approach, you can start to build up a picture of what's been going on and what sorts of phrases are used, but that really still emphasizes that you still need the humans to be doing the review and to be feeding all of that knowledge and insight back into the system so that you can continue with your very iterative process.

Steven Bain: I agree, and Tom just hit on some great technology that most platforms nowadays do have that type of technology built into them, very powerful when used correctly. One thing I do want to make a note of is that, as Tom says there, that's the perfect approach to a project. You take some time at the start of a project, you kind of have an early case assessment where someone who understands the project will use all the tools in the toolbox to try and slice and dice the data, bring out the good stuff, hide the bad stuff, and then a review starts on the back of that. However, in a lot of cases, time is of the essence and people will say, "Look, here's some keywords, here's some date ranges, off you go, run them. And I've got 15 people that wants to review all these documents."

So it's still a bit of give and take in the industry, and it comes down to the clients, it comes down to people like myself, having to explain what's available, how they can use it, how it can benefit them. But if you're dealing with

someone who has a team of 15 people doing no work, is he or she going to steer to, or towards technology? Or are they going to go for the, 'there we go, let's get some hours on the clock'?

Chris Osborne: Steve, I guess that then plays to cost pressures, doesn't it? And quite a few clients these days, particularly with the pandemic, are under cost pressures, especially cashflow type issues and therefore they want to do things time and cost efficiently, which is where I think, my personal view is where the technology comes in, as opposed to people time, it needs to be more machine time. And I think, or we've seen it since the financial crisis that the clients, and when I say clients, I'm talking about law firm clients, in house counsel, or regulators, et cetera, they are just much more aware now of technology and what it can and can't do. They're much more educated, I think.

I mean, there are still people out there that are less sophisticated of course, and I know part of what Steve does is trying to sort of get people up to speed in terms of, and explaining very well in nontechnical language what we're trying to achieve. But I think they have a good sense about how much these types of things should cost. Sometimes it's not terribly realistic in terms of what actually is required to be done, but there is a pressure on costs and will continue to be, I think, more so with this, what is now a financial crisis as well as a health crisis.

Rebecca Burn-Callander: And while we are on the topic of the kind of catalyst for change in the industry, and we've talked little bit about the disclosure pilot scheme, we've talked about technology. Brexit – I know this feels like, a topic that was flogged to death before the pandemic came along and focused our minds on something else. But is that likely to have an impact? Chris, are you worried about what that means for sort of international cross border disclosure cases, that spun multiple territories?

Chris Osborne: I think it's just an additional risk to certain businesses, and of course where there's risks there's also opportunities. I suppose from litigation perspective, as Tom rightly mentioned about contractual disputes. You could potentially see a contractual disputes on the back Brexit, whether it's issue around supply chains, that type of thing which more than likely will probably generate work for the like of us, on the forensic accounting, forensic technology side but also on the legal side. So, conversely it'll generate more work on top of the work were likely to see on the back of the pandemic.

Rebecca Burn-Callander: Great. I mean, this has been a fascinating conversation. I feel like I understand how the forensic investigations industry has performed, and it looks like it's adjusted and adapted incredibly well in the wake of the pandemic. But as you say, there are risks and opportunities ahead. Thank you all so much for your insights and for your time today, amazing points and have a great rest of your day.

Sadly, that's it for this series of Uncharted: The Road to Recovery, we've covered a huge range of topics. And as the pandemic continues to affect businesses up and down the country, we hope you've benefited from the advice and experiences shared over the last seven weeks. If you've missed any of the episodes, don't forget to go back and give them a lesson wherever you get your podcasts. On behalf of FRP, thanks for listening.