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The role of AI in the civil courts of England and Wales: a new era of justice

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Status: **Published on 06-Nov-2024** | Jurisdiction: **England, Wales**

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In this article, Duran Ross and Nicola Thompson of Lewis Silkin explore the potential benefits and challenges of integrating artificial intelligence (AI) into the civil courts of England and Wales. They outline the position of advocates of integration, such as Sir Geoffrey Vos and Lord Justice Birss, focusing on what future AI use in the civil courts might look like.

The integration of artificial intelligence (AI) into the civil courts of England and Wales is no longer a distant possibility but an emerging reality. The Master of the Rolls and Head of Civil Justice, Sir Geoffrey Vos, and the Deputy Head of Civil Justice, Lord Justice Birss, have been vocal advocates for the digitisation of the justice system and the transformative potential of AI. Through various speeches, they have outlined how AI could revolutionise the Business and Property Courts (B&PCs) and the broader civil justice system. This article delves into the potential uses of AI in the civil courts, the challenges involved, and the guidance issued to ensure its responsible use.

AI in judicial decision-making

In his speech in June 2023, Sir Geoffrey Vos predicted that AI might, in the future, be used to take some judicial decisions. Initially, these would be very minor decisions, with appropriate controls in place, such as transparency about which decisions were being made by machines and the option to appeal to a human judge. As automated decision-making becomes more commonplace, routine decisions may be made by the courts using AI.

In another speech in October 2024, Vos cautioned against lawyers and legal systems preventing or hampering innovation. He referenced provisions of the EU's Artificial Intelligence Act and the General Data Protection Regulation, which are "likely to affect the adoption and development of AI processes in general and automated decision making in particular", especially in relation to AI systems concerned with the administration of justice.

Digitisation and AI in the Business and Property Courts

Sir Geoffrey Vos has previously addressed the benefits of further digitisation and AI integration in the B&PCs specifically. He emphasised that the modernisation of these courts should not be delayed, advocating for "end-to-end online case management" that goes beyond mere online filing and "must make maximum use of available AI technologies and of smart systems" (*speech* in November 2023).

The aim of such digitisation is to reduce unnecessary costs and delays, thereby enhancing the B&PCs' international reputation for commercial dispute resolution. It can also expedite dispute resolution. Sir Voss has previously suggested that "integrated (alternative) dispute resolution processes can and should be driven by AI, so that the parties are faced with regular logical proposals for the resolution of their dispute".

Judicial thoughts on future AI use

Aside from automated judicial decision-making and wholesale digital reform of the B&PCs, which seems some way off, the judiciary, particularly Lord Justice Birss in a speech earlier in 2024, has identified several potential uses for AI within the judicial system:

- **Assisting litigants in person (LIPs):** AI tools can interact with LIPs in a manner similar to a lawyer, providing guidance and assistance for low-value claims. These tools can operate at scale, making

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legal assistance more accessible and affordable. The government or third-party organisations could implement such systems to support LIPs effectively.

- **Summarising Information:** AI can assist judges and judicial assistants by summarising large volumes of complex information. AI tools can enhance productivity, which is particularly valuable given the limited resources available in the court service. AI-generated summaries can provide judges with a concise overview of a case before they enter the courtroom, enhancing their preparedness without the risk of serious errors influencing their decisions. The use of ChatGPT by Lord Justice Birss to summarise an area of law, which he then openly incorporated into a judgment, provides another example of how AI can be used by the judiciary in practice.

- **Transcription:** AI-driven transcription systems have shown significant improvements in accuracy. These systems can automatically transcribe proceedings, and with a recording available, any errors can be easily checked and corrected. This technology could be used to provide summaries of evidence to the parties and the court at the end of each day of a longer case.

Challenges and missteps

Despite the promising potential of AI, there have been notable instances of its unsuccessful use in legal proceedings, which the courts are having to grapple with.

For example, in 2023 a party in a tax appeal cited nine cases that had been 'hallucinated' by an AI tool (*Harber v Revenue and Customs Commissioners [2023] UKFTT 1007 (TC) (04 December 2023)*). More recently, in a case decided on 10 October 2024 in the US, an expert's use of AI to cross-check their calculations was identified as a concern by the judge. Despite their reliance on a large language model generative AI chatbot, the expert could not state what sources the AI relied on, explain how it worked or how it arrived at a given output. Such incidents underscore the importance of exercising caution and ensuring the accuracy of AI-generated content.

Guidance on responsible AI use

Guidance on the use of AI has been issued to judicial office holders to mitigate these risks and uphold the integrity of the justice system (see Legal update, Judiciary publishes guidance on use of artificial intelligence for judicial office holders (December 2023)). This guidance highlights key risks and issues associated with the use of AI, such as the potential for inaccuracy, incompleteness and bias in AI-generated content. It emphasises the importance of verifying AI outputs before relying on them, ensuring confidentiality, privacy and security, and maintaining accountability for the material produced. Judicial office holders are advised to exercise caution with public AI chatbots and to be aware of the possibility of AI creating forgeries.

In terms of the use of AI by court users, the guidance advises awareness that court users may have used AI tools and that it may be necessary to remind individual lawyers of their obligations and confirm that they have taken necessary steps to independently verify AI-generated content. The guidance also recommends making inquiries about the use of AI by LIPs, who may not have the ability to verify the information received.

Conclusion

The integration of AI into the civil courts of England and Wales is regarded as representing a significant step towards a more efficient and accessible justice system. It is crucial to implement appropriate safeguards and ensure that AI-generated content is thoroughly verified to maintain the integrity of the justice system. The judiciary do not advocate the replacement of human judges as decision-makers but recognise that, while there are challenges and risks associated with AI, the potential benefits are substantial. By leveraging AI, the judiciary can enhance its productivity and provide better access to justice.

As judicial leaders continue to advocate for digitisation, the use of technology and AI, the civil courts of England and Wales are poised to enter a new era of justice.

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