KEYNOTE ADDRESS TO OXFORD CIVIL JUSTICE SYSTEMS IN THE 21ST CENTURY CONFERENCE, MAY 2026

AI AND CIVIL JUSTICE: PREPARING FOR THE TSUNAMI

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Introduction

1. Civil justice continues to lie at the heart of the Rule of Law. The rules and principles governing civil procedure are vitally important. As Lord Justice Birss recognised in his foreword to the most recent edition of *Zuckerman*,[1] the exercise of identifying the principles and making the rules is a task that has been greatly complicated by the advent of digital technology as the primary medium of communication in civil litigation. I would add, and this is my principal theme this evening, that those complexities have only been further intensified, perhaps by an order of magnitude, in very recent times by the rapidly developing influence of AI.
2. In this short address, I will address three central themes:
   (i) First, that the lessons to be derived from the adaptation of civil procedure to deal with digitisation reveal a cautionary tale. When digitisation was on the rise, the development of procedures to cope with the change to digital courts occurred very slowly and in a piecemeal way. We are now on the precipice of another technological revolution in the form of AI. The message that I wish to emphasise is that we ought not to be quite so slow in devising appropriate rules

[1] Lord Justice Birss, 'Foreword' in Adrian Zuckerman and others (eds), *Zuckerman on Civil Procedure* (5th edn, Sweet & Maxwell 2026).

to regulate – and accommodate - the use of AI in civil practice this time around.

(ii) Secondly, I will consider the AI revolution itself to outline the potential challenge that the principles and rules governing civil practice will need to meet. A main feature of that challenge will be to accommodate a "tsunami" of small to medium sized civil litigation by LIPs.

(iii) Thirdly, I will explain what I call "the democratic question", concerning the use of AI by courts, and by judges in particular. This is not about whether the functions and capabilities of AI are useful in assisting lawyers and judges in performing their work – the direction of travel already suggests that they are.[2] Rather, the democratic question is whether AI can or should actually replace human lawyers and judges in the resolution of some or even all types of civil litigation. It is a democratic question because it is ultimately not a question appropriate for lawyers and judges to decide. It is a matter for the people, and for taxpayers in particular.

3. The key takeaway is that we ought to begin to think seriously about developing procedural rules and regulation to accommodate AI <u>in advance</u>, rather than responding piecemeal to technological developments as and when they occur, as we did with digitisation. And we ought now, before it is too late, to identify just what contribution to the rule of law is made by the human elements in the process, and how to preserve it from erosion.

<u>The precursor to AI: digitisation</u>

[2] Sir Geoffrey Vos MR, "'What a difference a year makes"' (Legal Geek Conference, London, 15 October 2025) < https://www.judiciary.uk/speech-about-ai-by-the-master-of-the-rolls-what-a-difference-a-year-makes/> accessed 05 May 2026.

4. The run up to digitisation:
    - When I was called to the Bar in 1978: there were no skeletons, no pre-reading, no word-processors (just golf ball typewriters), no internet, no mobiles. There were also very few women (at least in chancery, although I was lucky enough to marry one of them), still less on the bench.
    - On the other hand: there was much greater transparency, plenty of Legal Aid, limitless pupillages but scarce tenancies, in tiny sets. All hearings were face to face. Everything was read out in court, so a member of the public sitting in the back row could understand what was going on almost as well as the judge.
    - This all changed, but quite slowly:
        - CPR from 1997 (Civil Procedure Act 1997). Since then, civil procedure rules in England and Wales have been made by the Civil Procedure Rule Committee (CPRC), established by section 2 of the Act. Whether the CPR really revolutionised or simplified civil procedure has been much debated, but it is not a subject for this evening.
5. Digitisation occurred in fits and starts from around 2010. It is still not complete, both in the County Court and even on the KCs' desks in the Supreme Court. They generally still use paper.
6. In my Civil Courts Structure Review Report published in 2016,[3] I identified the principal weakness of the civil justice system in England and Wales as being very poor access to justice for the pursuit of small to moderate civil claims,

[3] Lord Justice Briggs, 'Civil Courts Structure Review: Final Report' (*Courts and Tribunals Judiciary*, July 2016) <https://www.judiciary.uk/wp-content/uploads/2016/07/civil-courts-structure-review-final-report-jul-16-final-1.pdf> accessed 25 February 2026.

because of the disproportionate cost of instructing lawyers, and the costs risk of having to pay your opponent's legal costs if you lost. I advised that it might be remediable by the introduction of a digital online court with built-in automated triage for litigants without lawyers: to help them formulate simple claims, sufficient to enable them to translate their grievances into a format which the court and their opponent could understand, respond to and adjudicate upon.

7. However, the success of the online court would critically depend upon the implementation of up-to-date IT systems and digital assistance for litigants challenged by the use of computers.
8. In addition, I recommended that embracing digital processes would address the second fundamental weakness of the system – heavy reliance on paper-based processes, which I called "the tyranny of paper".[4]
9. I also recommended that an Online Rules Committee be set up as a matter of urgency to do the necessary blue-sky thinking about digitisation, in advance of the implementation of the new technology.
10. My recommendations were almost all accepted by both sides of the justice partnership (judiciary and MoJ). The potential advantages of digitisation for litigants and the judiciary were widely acknowledged. When setting out their joint vision for transforming the justice system in September 2016, the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals stated:

> "Looking ahead, we need to make sure that our justice system continues to lead the world [...]. To do this, our

[4] ibid [5.28], [7.10], [7.18], [12.4].

system needs radical change, to have modern IT and processes and to be located in buildings which are fit for purpose. The reforms outlined here will achieve that by combining our respected traditions with the enabling power of technology".[5]

11. However, despite securing the necessary investment to effect the change to digitisation, the procedural groundwork was not carried out *in advance*. It took until 2022, a full 6 years after my Report, before the necessary primary legislation for an Online Rules Committee was even passed. This meant that procedural rules to accommodate digitisation were developed in a piecemeal and *ad hoc* manner, under the overall authority of the CPRC. Often, the new rules were introduced as 'pilot scheme practice directions' – temporary procedural rules designed to accommodate new electronic/digital methods which were adopted *contemporaneously* with the relevant development.

12. For instance, in 2015, a new electronic system called CE-file was introduced for specific courts in the Rolls Building. Its purpose was to enable parties to issue proceedings and file documents with the court online on a 24/7 basis. Of course, procedural rules were required to govern the use of the new system, which were introduced as a pilot practice direction under Part 51 CPR: namely PD 51O (titled "The Electronic Working Pilot Scheme").

13. Lord Justice Birss has recently pointed out that the implementation of this new system meant that PD 51O was

[5] Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals, Transforming Our Justice System' (Policy Paper, Ministry of Justice and HM Courts and Tribunal Service, September 2016) <https://assets.publishing.service.gov.uk/media/5a803d9ae5274a2e8ab4f019/joint-vision-statement.pdf>.

"drafted in a hurry".[6] Nevertheless, as the CE file system was expanded to other courts, the "pilot" practice direction was also extended, and remained substantively unamended until its drafting errors were finally addressed in 2025 when PD 51O was retired. In the meantime, PD 51O had stayed in force for almost 10 years.

14. In the years that followed, several other "pilot" practice directions were introduced to accommodate digital innovations in a similar way (under CPR rule 51):

- **7 August 2017:** first pilot PD for the Online Civil Money Claims (OCMC) pilot scheme - PD 51R. This PD established a pilot scheme to test an online claims process for small claims in the County Court.[7]
- **28 May 2021:** PD 51ZB introduced a pilot scheme to test an online claims process for County Court damages claims where parties are represented by a legal representative (the "Damages Claims Pilot Scheme"). This involved managing claims using an online portal called the Damages Claims Portal.[8]
- **1 January 2026:** PD 51ZH introduced the "Access to Public Domain Documents pilot" to help provide easier access to documents deployed by parties in court proceedings.[9]

15. Now there are certainly some advantages to using PDs to govern pilot schemes instead of rules, particularly where

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[6] Birss (n 1).

[7] https://www.justice.gov.uk/courts/procedure-rules/civil/rules/practice-direction-51r-online-court-pilot

[8] https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part51/practice-direction-51zb-the-damages-claims-pilot

[9] https://www.justice.gov.uk/courts/procedure-rules/civil/rules/practice-direction-51zh-access-to-public-domain-documents. This pilot has been launched to operate in: the Commercial Court and London Circuit Commercial Court of the King's Bench Division; the Financial List (Commercial Court and Chancery Division). See: New pilot to provide greater access to Commercial Court case documents - Courts and Tribunals Judiciary

the underlying technology is ever developing and the system is prone to change. Speaking in June 2019, at a time when the digitisation of dispute resolution was focused on the Online Civil Money Claims project, the late Sir Terence Etherton MR recognised that an important advantage of CPR rule 51.2 is that it allows PDs to override the CPR as part of a pilot scheme, and PDs can be made and amended relatively simply in contrast to rule changes which require a statutory instrument to be laid before Parliament.[10] This is particularly useful where the drafting of the rules is expected to go hand in hand with the construction of the underlying computer system – because it allows procedural rules to be adapted more quickly and easily in response to changes in how the system operates in practice.

16. However, as the experience with PD 51O reveals, it is clearly *not* desirable for a PD to remain in force as a PD for such a long time (certainly not for 10 years), apparently on the basis of convenience, especially where it was thought to contain some unsatisfactory provisions.[11] Clear and predictable rules are to be preferred wherever possible.

17. A more fundamental question is whether this hand to mouth way of making procedure rules is itself fit for purpose. In asking this question I mean to imply no criticism at all upon the skilled and hard-working teams (led by Birss LJ) which actually produced the pilot PDs. They did a fantastic job under grave pressures of time, (not to mention the Pandemic) and with no overarching guidance from a suitably constituted rule-making body. It was not until the Judicial Review and

[10] Sir Terrence Etherton MR, 'Rule-Making for a Digital Court Process' (The Civil Procedure Rules – 20th Anniversary Conference, Oxford, 10 June 2019) <https://ww.judiciary.uk/wp-content/uploads/2019/06/mr-oxford-cpr-conference-june-19.pdf>

[11] Birss (n 1).

Courts Act 2022 (and a formal launch in June 2023)[12] that the Online Procedure Rules Committee (OPRC) was introduced. It took around another two years for a statutory instrument to be enacted confirming and delimiting the scope of OPRC's power to make rules for specific kinds of online proceedings.[13] Now, in May 2026, although the OPRC has now produced some draft Online Procedure Rules[14] - which appear to have attracted broad support from respondents to a recent consultation[15] - the OPRC is still yet to finally issue any rules. It is now a full 10 years after I published my report.

18. It is difficult to countenance employing PDs to govern technological developments in civil process on an indefinite and ever-increasing basis. But it is also necessary for the process of rule-making to be swift enough to keep pace with those developments. My concern is not that the rate of production of the successive PDs was too slow, but rather that it proceeded in a vacuum of governing objectives and principles, and was in effect just driven along by the detail of the technological developments as they came off the digital production line. There were of course committees and working groups of civil servants and judges supervising the technological advances (on several of which I served), and they did look at the underlying objectives, but they were entirely private, behind closed doors, whereas the rule making process is, and should be, essentially public.

19. But I wish to highlight a slightly anterior point. That is that when one can see a ground-breaking technological

[12] https://www.gov.uk/government/news/new-online-procedure-rule-committee-launched.
[13] The Online Procedure Rules (Specified Proceedings) Regulations 2025 (SI 2025/536) (in force 1 May 2025).
[14] https://assets.publishing.service.gov.uk/media/6929acc8a245b0985f0342a8/Annex_A_OPRC_draft_rules.pdf
[15] The Online Procedure (Core Rules and Pilot Schemes) Rules 2026 - GOV.UK

development looming on the horizon, and it is reasonable to predict the sorts of innovations which that development will bring about, then it is a good idea to begin thinking critically about what should be the objectives and principles behind the rules which might need to be developed before those developments start to become absorbed into civil practice.

20. That does not mean we must have all the answers upfront. We cannot hope to anticipate the detail of the rules that will be required to accommodate technological systems which are yet to materialise. However, it *is* prudent to begin thinking prospectively about how we plan to go about defining objectives and principles to inform and inspire the rules needed to govern technological advances in civil procedure that we can foresee, rather than waiting until those developments take hold and compel rules to be formulated rapidly, reactively and without the guidance of clear-cut objectives and principles, worked out in a transparent environment which is open to public scrutiny. It may have been no-one's fault, but unfortunately that is not what happened when digitisation was around the corner, and we should be careful not to make the same misstep again now that we are on the verge of another technological revolution which is likely to impact civil justice even more than did digitisation.

The AI revolution

21. That revolution is of course AI. Its influence on the justice system was long forecast by the lone voice (crying in the wilderness) of Prof. Richard Susskind – but did we believe it? When I completed my report in 2016, AI was still over the horizon, or maybe just a little cloud on the horizon, no larger

than a man's hand. At that time, the general feeling was that robots would never replace judges, nor advocates.

22. Now AI has rapidly gained prominence within the legal profession, emerging around 2023-2024 and becoming increasingly normalised from around 2025.
    - Now virtually every law firm – and perhaps also most barristers' chambers – are embracing some form of bespoke legal AI tool.
    - And the courts are just starting to follow suit.

23. AI is also developing at breakneck speed, and it is available (at least in basic form) **for free**. Indeed, some form of AI is now embedded in most apps (e.g. Google, Microsoft 365, Lexis, Westlaw and so on).

24. AI is certainly going to revolutionise access to justice for litigants in person ("LIPs"). However, the same attributes which make it such a valuable tool for enhancing access to justice also give rise to two difficult and interlinked questions: one practical and the other democratic.

The Tsunami

25. Let me first explain the **practical** question.

26. As I mentioned, there are now a group of competing open AI (LLM) platforms available to the public, either for free or a very modest subscription. When in the hands of a non-legally qualified complainant with reasonable computer skills, those platforms can be used to generate passable Particulars of Claim from the user's stream of consciousness description of their grievance. It may not be as good as a draft prepared by a qualified lawyer, but it will certainly be sufficient to get the complainant through the court door as a LIP.

27. Of course, it won't yet be quite as good as a professionally prepared claim, and it may initially contain fakes, mistakes and hallucinations[16] – although we can expect that the development of AI technology will eventually iron out those issues. But critically, it involves no input from a lawyer, and apart from a modest subscription and court issue fee, **it's free!**

28. And would be LIPs can also get legal advice from AI platforms, also for free. I know, I've done some experimenting.

29. Now it is obvious that this development could, and probably will, have seismic effects on access to justice. I have described it on other occasions as likely to lead to a tsunami of small to moderate value civil claims, once litigants are enabled by Open AI to formulate them and get basic legal advice about them without the assistance of lawyers. And given the huge sums being invested in the development of this type of AI, its performance is only going to improve.

30. So, in principle, AI promises to be a boon for access to justice. However, the practical problem is that the big increase in the numbers of claims will only produce better access to justice if the courts, staff and judges, have the capacity to manage and adjudicate on them within a reasonable time, rather than (as for criminal cases in the Crown Court) just add them to an ever-increasing backlog. And there the equation starts to get rather complicated…

    - At present the civil courts use humans both for case management and adjudication, with some help from

[16] See, e.g., *Harber v Revenue and Customs Commissioners* [2023] UKFTT 1007 (TC); *R (on the application of Ayinde) v Haringey LBC* [2025] EWHC 1383 (Admin).

digitisation, but almost none from AI, although that might be about to change.

- The problem is that an AI platform may take seconds to advise upon and to draft a civil claim, but court managers and judges will typically take more time by orders of magnitude just to read and respond to it – let alone to adjudicate on it.
- Ten years ago, when the civil courts made a healthy annual operating surplus (approx. £100 million a year), it might have been thought that more court staff and judges to handle an increased profitable workload was an economically viable option. But the surpluses were all swept away by the Pandemic, and have still not returned. So civil justice improvements within the courts are going to have to be funded by Government, at the expense of the taxpayer.
- Art present, it seems unlikely that the taxpayer will wish to fund a big increase in the staff and judges of the civil courts (not least because the awful backlog in the criminal courts is probably, (most people would say rightly) going to command a higher priority for scarce MoJ funds.

31. So, the practical question is: how can the civil courts prepare themselves to cope with the impending tsunami of civil litigation?

32. In my view, it is inevitable that AI is going to have to come to the rescue of court staff and judges in increasing their productivity. In fact, this has already started to happen and

the MoJ[17], the Court Service [18] and even some judges make no bones about it.

33. While state-funded institutions are unlikely to invest anywhere like as much in AI as do the big law firms and chambers, the robotisation of the courts' response to incoming AI-prepared claims is just going to have to proceed apace, if the civil courts are not going to sink under the burden of the tsunami.

34. Naturally, however, this begs the question: what precisely are the courts going to use AI for? In my view, that is ultimately a democratic question. It really isn't for judges to decide whether they or robots should adjudicate upon peoples' disputes.

<u>The democratic question</u>

35. It is well known that one of AI's great strengths is its capacity for streamlining (and therefore speeding up and making cheaper) processes that would otherwise have to be performed manually, or mentally, by a slow and expensive human brain. Senior members of the judiciary[19] have recognised that AI can be harnessed as a "labour-saving device" to assist with tasks such as:
    - Summarising lengthy legal documents or court files.
    - Conducting legal research (particularly at the initial stages).
    - Checking grammar and spelling in draft judgments.
    - Streamlining case management.

[17] Ministry of Justice, *AI action plan for justice* (Policy Paper, Ministry of Justice 31 July 2025).
[18] See, e.g., *VP Evans (as executrix of HB Evans, deceased) & Ors v The Commissioners for HMRC* [2025] UKFTT 1112 (TC) [42]-[49], where Judge McNall stated expressly that he had used AI to assist in producing his decision.
[19] Vos MR (n 2).

36. So long as AI (or robotisation) is confined to performing these kinds of tasks at the edges of the process for the determination of civil claims, one might fairly ask: what's the problem? You might say, as Sir Geoffrey Vos MR has recently put it, that "AI is just a tool like so many other tech tools we use every day."[20]

37. I would agree, but only up to a point. The trouble is that while this sort of assistance will speed up what is essentially still a human-run process, it is not going to increase productivity by anything approaching the necessary amount to cope with the tsunami. And we can't and shouldn't try to control it by increasing court fees to stem the tide: see the *Unison*[21] case.

38. So, the big question is: can or more importantly <u>should</u> AI replace the human element which currently lies at the heart of judging – and if so, for what kinds of cases?

39. I have described this as a 'democratic question' because it ultimately boils down to what the public want, or are prepared to accept and pay for. Should, <u>or should not</u>, AI be used by the courts <u>instead of</u> judges? Who or what does the public want as the arbiter of their disputes? And how much will they be prepared to pay out of their taxes for the expensive human elements in the process if robots can do it on a limitless scale, more quickly, more cheaply and (perhaps eventually) almost as well?

    - My guess (informed from discussion during my CCSR 10 years ago and unshaken since then) is that the average taxpayer may be happy for a robot to decide small disputes (e.g. about the sale a second-hand kettle on

[20] ibid.

[21] *R (on the application of UNISON) v Lord Chancellor* [2017] UKSC 51

EBay). But if the dispute is going to put at risk their liberty, their home, their access to their children or bring about their financial ruin or bankruptcy, then they would, *at the moment*, prefer such matters to be decided by a human rather than by a robot. Judges dispense justice, equity and mercy. And it may be said, at a more theoretical level, that humans are at least better at dispensing equity and mercy than robots, and at the moment (though this may change) better at reasoning.

- My current view is that there is probably a hard-to-define threshold or spectrum between those cases which the public may be happy to have resolved by a robot (usually on the grounds of speed and proportionality) and those for which they would still prefer a human, i.e. a judge. That line may well shift over time.
- A critical question is how far AI is to be allowed into the currently sacrosanct space of judicial decision-making and judgment drafting. The recent arrival on the scene of Agentic AI makes it by no means implausible that an AI platform could soon be tasked with the whole process of coming to a decision on a case and then doing at least the first draft of a judgment setting out the reasons. If the only role of the judge was to approve the AI's plan of action and then to review the draft judgment, would the current public expectation that the litigant is getting a human judge to decide the case really be fulfilled? And if the typical judicial role in the future became that of a reviewer rather than an initiator, how good would that be in developing, or even maintaining, their judicial skills?

40. So, the integration of AI into legal practice is likely to generate difficult practical and democratic questions to be answered about the extent to which the courts use AI to meet the challenge. And there will also need to be complete transparency about just how far AI is assisting, or in certain areas replacing, the work of human judges, so that the truth about what is going on behind the scenes does not get out of step with public expectations.

41. And if human judges want (like me) to preserve their usefulness in upholding the rule of law, then we are going to have to think hard about what human qualities are never going to be supplanted by robots. The fact that whether they are or are not to be supplanted is a democratic question does not mean that judges should maintain a stoic silence about the possibility of their impending doom.

How should the courts prepare?

42. So, what does all this mean for our approach to civil procedure? I suggest three things.

43. Firstly, to begin the process of designing procedural rules to govern the AI-based innovations that will become absorbed into the civil justice system, we should start thinking now about the probable applications of AI. This means considering what litigants and the courts could be enabled to use AI *for* (at least in the foreseeable future), and how the sorts of risks that are known to be associated with AI – at least at present – might be addressed. Examples:

    - If AI is going to be used regularly by LIPs or counsel to draft applications or written submissions, should there be procedural rules mandating the disclosure of their use of AI? Should the current expectation that counsel checks every bit of AI input into (e.g.) their legal research

and written submissions be transformed into a firm procedure rule?

- Similarly, if judges are to begin routinely using AI to assist in the drafting of draft judgments, must this also be disclosed? Should such use be restricted to checking a draft that the judge has prepared, or can the judge ask the AI tool to prepare a first draft that he or she will amend or approve? This takes us back to the democratic question.

44. Secondly, in considering how the courts might prepare for the tsunami of AI generated cases, it is instructive to consider the approaches of other jurisdictions which were early adopters of AI. For example, it is well-known that Brazil has struggled for some years with a staggering backlog of cases (approx. 80 million). According to one study published in December 2025, Brazilian judges render an average of nine decisions per working day. [22] So it is no surprise that AI has gained traction there as an attractive tool for speeding up court processes. But Brazil has also regulated judges' use of AI in certain ways:[23]

- It adopts a "dual track" approach in which the use of court-provided AI tools is strongly preferred (Art 19, §1 of Resolution 615). Judges can use subscription LLMs, but if they choose to do so, the law dictates that they are personally and entirely responsible for the decisions made and the information they contain (Art 19, §3 II). In contrast, there is no equivalent liability arising in

[22] https://www.techandjustice.bsg.ox.ac.uk/hubfs/Isabella_Dec2025_merged.pdf
[23] ibid. This regulation is primarily contained in Articles 19-21 of Resolution No. 615 of March 11 2025: https://atos.cnj.jus.br/files/original1555302025031467d4517244566.pdf.

connection with the use of approved institutional AI tools.

- Judges must undertake mandatory AI training if they wish to use AI products in their work (whether institutional AI tools or private subscription tools) (Art 19, §3 I).
- Data protection laws generally prohibit using private LLMs to process confidential documents or data (Art 19, §3 iv).
- Judges *may* choose whether or not to disclose their use of AI in written decisions, but the court's internal system *must* automatically register such use (Art 19, §6).
- This is all enshrined in regulations enacted and published by an administrative / quasi judicial body.

45. Of course, I do not intend to say anything here about whether the rules in force in Brazil are effective or sufficient to govern the use of generative AI by judges. For present purposes, however, what the Brazil framework does highlight are the kinds of policy choices and problems that rules will be required to address if the civil courts and judges are to use AI platforms to meet the challenge posed by the tsunami in a transparent way which will command public approval. These are things that we really ought to begin thinking about in earnest now.

46. Thirdly, given how rapidly AI is advancing, it will also be necessary to think about whether our current system for producing rules of civil procedure is sufficiently agile to keep up with the technological advancements in civil process that AI is likely to produce. It struggled to keep up with digitisation, but AI is now developing at a much faster rate than ever did digitisation.

47. There is another way in which confining one's gaze to procedure rules may miss the point in establishing democratic control over the use of AI in maintaining the rule of law. At present we enjoy a justice system in which those who intermediate by presenting and deciding cases (human lawyers and judges) are all practicing a vocation (i.e to perform a public service), and subject to professional ethical standards and regulation. In addition the judges take an oath of loyalty, to deliver justice, equity and mercy without fear or favour, affection or ill-will. But the platforms which deliver AI-generated legal services are all owned by a very small number of large mainly USA-owned corporations which are neither regulated by, nor bound by any kind of loyalty to, the UK. Nor, however friendly the robot voices may sound, are they in any sense performing a vocation. They are just there to make money, and maybe one day to rule the world. It may well be that procedure rules are not even the main way of keeping AI in the civil legal arena within democratically acceptable bounds. Other forms of regulatory discipline may need to be contrived, starting from ground zero rather than from the familiar confines of the CPR.

Conclusion

48. In conclusion, AI, like digitisation before it, has the potential greatly to enhance access to justice. Never will it have been so straightforward, and cost effective, for litigants seeking to bring small to medium civil claims to get through the court door, quickly and at negligible cost, without needing any recourse to lawyers.

49. The problem is that the door may very well burst off the hinges if the civil courts become inundated by a tsunami of

claims without adequate mechanisms in place to cope. I have suggested it seems inevitable that the courts themselves will have to harness AI platforms if they are to avoid sinking under the burden of the tsunami. That gives rise to both practical and democratic questions. How can courts and judges use AI to effectively manage their workload – what AI tools exist or could be adopted at acceptable cost? Would those tools be useful? *Should* judges use AI tools in their work – and if so, for what purposes? How do those suggested uses cohere or conflict with public perceptions and expectations about the role of judges?

50. When digitisation occurred, we were slow to adopt the necessary procedures to adapt to the change. I hope that, this time around, we begin much earlier to do the vital blue-sky thinking. What are the objectives which the greater use of AI would serve? What are the currently valued contributions which human judges and court staff currently make to the justice process? What red lines need to be put in place to ensure that AI does not trespass into or undermine that human contribution? If we don't do that thinking up front, then we may very well open a path to the elimination of judges from the process of maintaining the rule of law, or at least from much larger parts of it than the public would wish. And if we replace the judge with a robot, then why should there need to be a human lawyer intermediating at all between the robot drafter of the claim (or the defence) and the robot adjudicator of it? Who knows, if the judges and the lawyers become expendable as being too slow and too expensive, the only human survivors in the brave new legal world might be academics. But who would they have to talk to about the law, other than themselves?

51. Make no mistake, I firmly believe that both human judges and human lawyers have a central, vital and mainly irreplaceable role in maintaining the rule of law and providing access to justice, which isn't going to be outperformed, or even equalled, by AI any time soon, if ever. But I do think that we should now recognise the increasingly urgent need to identify just what those irreplaceable human qualities are, to polish them so they shine brightly in what some may regard as the gathering gloom, and to sell them to the public, who we rely upon to pay for them. And in that endeavour academic lawyers are going to be central to the task.