JUSTICE COMMITTEE

WORK OF THE COUNTY COURT

on

Tuesday, 18th March 2025

Witnesses:
Rt Hon Sir Geoffrey Vos, Master of the Rolls and Head of Civil Justice
Lord Justice Colin Birss, Deputy Head of Civil Justice

Chair:
Andy Slaughter MP

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CHAIR: Order order, and welcome to this afternoon's session of the Justice Select Committee where we have the pleasure and privilege of the Master of the Rolls and the Deputy Head of Civil Justice, that is Sir Geoffrey Vos and Lord Justice Colin Birss giving evidence as part of our inquiry into the County Court. Just before I ask our distinguished guests to introduce themselves, we need to do our declarations of interest so if we can do that beginning with Linsey Farnsworth?

LINSEY FARNSWORTH MP: Good afternoon, my name is Linsey Farnsworth. I am the Member of Parliament for Amber Valley. My declaration is as per the website. I am a non-practicing solicitor formerly of the Crown Prosecution Service.

PAM COX MP: Good afternoon, I am Pam Cox, MP for Colchester. My interests are as declared.

CHAIR: Andy Slaughter, I am the Chair of the Committee. I am a non-practicing barrister. I am a patron of two justice-related charities, the Upper Room for Ex-offenders and Hammersmith and Fulham Law Centre and a member of the Unite and GMB trade unions.

SARAH RUSSELL MP: Hello, I am Sarah Russell. My interests are per the register. I am a member of USDAW and Community Trade Unions. I am a solicitor. I hold a practicing certificate, but I am not in fact currently practicing.

TESSA MUNT MP: My name is Tessa Munt. I am the Member for Wells and Mendip Hills in Somerset. Everything is declared on the register, but I would just add to the fact that I am a director of Whistleblowers UK, which is a not for profit organisation.

WARINDER JUSS MP: Hello, I am Warinder Juss MP from Wolverhampton West. I specialised in personal injury and clinical negligence claims working for Thompsons Solicitors before becoming an MP. I hold a practicing certificate, but I am not practicing at the moment. I am a member of the GMB trade union and executive council member, and also a member of various APPGs.

CHAIR: Thank you very much, and just for the benefit of our guests and audience, this session is part of the County Court inquiry. It's slightly different from most inquiries in that our predecessor committee had begun this last year. The interruption of the general election means that we have decided to pick it up and to complete it and, therefore, as part of that, we are, as I said, pleased to have the senior members of the judiciary to talk to those issues. I am very happy if either of you wish to make an introductory statement, or we can go directly into questions on that basis.

MASTER OF THE ROLLS: Two minutes?

CHAIR: Please.

MASTER OF THE ROLLS: Thank you. Well, it's very kind of you to invite us. We are very pleased to be able to talk to you. I have been Master of the Rolls and Head of Civil Justice since January 2021, and I was previously Chancellor of the High Court, which meant that I had responsibility for the Business and Property Courts between 2016 and 2021, and I have been a member of the Judicial Executive Board since 2016 and, as you probably all know, the Master of the Rolls is *ex officio* head of the Civil Division of the Court of Appeal.

As Master of the Rolls, I am also Chair of the Civil Procedure Rules Committee, though Colin does most of the heavy lifting on that committee, and I am Chair of the Civil Justice Council. I am also Chair of the Online Procedure Rules Committee, something that I am very committed to, because I was heavily involved in its creation by legislation in 2022. I am also a second Vice President of the European Law Institute, and I sit on the Steering Committee of the Standing International Forum of Commercial Courts, and I just say that because I have wide international activity and engagement.

I have been a member of the Lawtech UK panel since it was started in 2018, and I chair something called the UK Jurisdiction Taskforce, which issues legal statements on the English law legal position affecting digital assets and smart contracts. So you may think I am a bit of a techy, and that may come through in some of the things I say today.

The UKJT is currently preparing a legal statement on liabilities for harms caused by AI, and I should say that I take my role as head of civil justice very seriously, and I aim either personally or via my civil leadership team, which includes Colin, to visit all or most of the 140 civil courts in England and Wales every two years, but I have a day job in the Court of Appeal.

It might be helpful if I made clear at the outset that senior judges are not responsible for running the court service, that is the responsibility of HMCTS. HMCTS, from whom I know you have heard, is organised according to a framework document of July 2014 that provides for a partnership between the Lord Chancellor and the Lady Chief Justice in relation to HMCTS's effective governance, financing and operation, and the framework states that the aim of HMCTS should be to run an efficient and effective courts and tribunals service which enables the rule of law to be upheld and to provide access to justice for all, very important aims.

And if I have three priorities, finally, in relation to civil justice, just to lay my cards on the table at the outset, they are first to ensure that paper is removed from the County Court as soon as possible, as it has been in family, so that we can provide accessible digital court-based dispute resolution for citizens and businesses, for those are who we serve. The second aim is to create an integrated pre-court digital justice system that makes maximum use of the existing public and private dispute resolution and advice portals to allow for widespread pre-court, speedy, effective and economical dispute resolution for those same citizens and businesses and, thirdly and finally, that there is a better understanding across government of the huge value of accessible dispute resolution, both to the economy of England and Wales and to the well-being of the same citizens and businesses that I have referred to now three times, justice really should be front and centre in government. I'll hand over to Colin.

DEPUTY HEAD OF CIVIL JUSTICE: Well, thank you, thank you, MR. I have been Deputy Head of Civil Justice since January 2021, when I joined the Court of Appeal. I started my full-time judicial career in the County Court in 2010 as a specialist circuit judge. I helped set up the Intellectual Property Enterprise Court, which is a forum for small and medium-sized enterprises to bring and defend intellectual property claims. I moved to the High Court in 2010. I had responsibility for the Business and Property Courts in Wales, the West and the Midlands from 2017 to 2019, and then I became judge in charge of the Patents Court. I started attending the Judicial Executive Board last year. As Deputy Head of Civil Justice, I am the Vice Chair of the Civil Procedure Rules Committee and the Civil Justice Council that you have heard the Master of the Rolls mention already. In fact, I joined the Rule Committee in 2014 and, as the MR mentioned, in practical terms, my role really is to be the day-to-day chair of that committee.

Since 2016, in the international positions, I have served as an international judicial member of the Boards of Appeal of the European Patent Office and, since 2023, I have chaired the judicial advisory group on artificial intelligence here. The role of Deputy Head of Civil Justice involves a specific focus on the county court. This involves visiting courts, as the Master of the Rolls has mentioned, but also working with the presiding judges who are the judicial leaders on the circuits, and the designated civil judges who are the local leaders of the County Court. I also run the Civil Executive Team, and sit on a number of other committees to work closely with judges and with HMCTS to help run civil justice. As DHCJ, I see my role in particular as to make every effort to listen to our excellent judges and the staff and to support them in the hard work which they do.

In terms of priorities, I support what the MR has said wholeheartedly. The work of the County Court is of real importance to the economy and to the well-being of particularly vulnerable people. We do need to ensure that paper is removed from the County Court to make our courts as efficient and effective as possible. A pre-action digital justice system is within reach, not as a monolithic system but by the imaginative use of rules and data standards to allow existing providers to integrate the provision which already exists. Thank you.

CHAIR: Thank you very much, for both our witnesses. As I say, we are going on in due course to talk about some of issues you have raised around AVR and mediation, around AI, and also some of the progress that has been made, for example, under the reform programme. But I think that it is only right that we start with just a few questions about our own experience from the evidence we have taken and the visits we have undertaken, and also the evidence which has been coming in in response. Perhaps the easiest way to do that is for me perhaps just to read I think a fairly typical submission that we have had, or a few sentences from it, to give an idea about what some court users think about the County Court at the moment. It is from a very long-standing housing practitioner of over 30 years, over 10,000 cases under her belt.

> *"There's very little research on the County Court. Cases are not reported, and there's a lack of usable data on a range of important issues, including attendance, representation and outcomes. The County Court has poor management systems and block listing of cases which is predicated on most defendants not attending their hearing. Between 2010 and 2018, the government embarked on a reform programme which resulted in almost half the courts in England and Wales being closed. Courts are now located further apart and often combined, creating huge criminal and civil justice centres. Cuts to the justice budget resulted in the closure of court information counters, reduced administrative staffing and judicial sitting hours. The buildings that remain after the court reform programme are often poorly resourced and dilapidated. The evisceration of Legal Aid, the enactment of the Legal Aid, Sentencing and Punishment of Offenders Act means people now struggle to find representation."*

I think that's a pretty typical response. We have seen a lot more trenchant than that as well, and if you were a user of a lot of services and you were getting reviews like that online, you'd be concerned. Do you recognise that picture, and what's your route away from that, insofar as it is accurate?

MASTER OF THE ROLLS: Well, of course, I recognise all of that. We get it in different ways from different people some of the time. I do not think it's entirely fair, I do not actually think it is entirely accurate either, and I think it takes no account of the depredations of Covid and the strenuous work that has been done by judges and also by HMCTS and MoJ to recover from Covid. So probably no profit in saying how we recovered out of Covid or did not recover quite completely. I think, more importantly than that, it really is not fair to say that the County Court is a terrible place where you get no response and nothing is dealt with efficiently, because that is not correct. There are parts of the County Court where things are slow, inefficient, and in some cases it is true that people are… well, it is true that there is less Legal Aid available in civil justice now almost than ever before, and that is as much a problem for judges who have to deal with many much larger numbers of litigants in person than they did in previous times, and that creates a problem for the efficiency of the court. But that piece that you read actually raises almost every problem the County Courts have. It raises the problem of buildings, of staff, of the accessibility of the courts themselves, delays, almost everything we could talk about for the whole afternoon, and what I would say is that we are moving away from that, actually in most parts of the country the county courts are running efficiently. I would say there are three hot spots of inefficiency and we are addressing them, but I think they need further addressing. One of them is Northampton, which I know you, Chair, visited yesterday, the Civil National Business Centre. The second is the Central London County Court, which I know you visited a month or two ago, and certainly requires interventions, and the third is the problem of

a lack of district judges, salaried district judges, in the south east of England and in London. But if we were to ignore all those and look at the position in the west of England, the north of England, the north east of England, in Wales, we would find most courts, and I visit them everywhere, we would find most county courts delivering a reasonably good service.

The problem are things like Northampton, which delays getting the cases to the County Court. So when the County Court gets a case, a small claim for example, it will list it in a matter of weeks. But if it doesn't come out of Northampton, as was historically the case but is better now, historically they were sitting there for six months or more, well, that's quite unacceptable. But it is being addressed, and it is very important that it is, and the solution to many of these problems is in fact taking the paper away and ceasing to move around files, which delays everything by weeks and weeks.

CHAIR: Thank you. Do you want to add anything to that?

DEPUTY HEAD OF CIVIL JUSTICE: Just one thing, I agree of course with what the Master of the Rolls said. I think a critical thing, which is what has been said, but if I can just emphasise it, is the diversity of the County Court itself. It is not the same, it is not a monolith, and there are problems in some places which are not in others, and just taking… the problem cases are the ones that the Master of the Rolls identified, but just putting some colour on it, the listing thing, if you have a case that comes out of Northampton and it goes to a court outside of the South East, it is listed pretty quickly as a small claim. But there's a huge difference, there's a big difference, maybe I shouldn't exaggerate, there's a big difference between the time you can list a case, once it has come out, outside the South East and in the South East and London. We can see that in the management information, and that is part of the problem that the Master of the Rolls is talking about.

SARAH RUSSELL MP: You mentioned small claims get listed pretty quickly. What about bigger ones?

MASTER OF THE ROLLS: Well, perhaps I can deal with that. Small claims are generally dealt with quicker now than they were last year, so the average time to a hearing is 50 weeks, whereas it was 55 I think, or 54 a year ago. Big claims take longer, but you need to understand about civil justice that the speed at which civil justice goes, particularly with big claims, is nearly always determined by the parties. The parties are often not ready for cases to be heard, and so you cannot really judge how efficient justice is by the bald statement of the number of weeks of the average from start to finish. 90 percent – 90 percent – of civil claims settle before they get anywhere near a judge, and so you can look at the 77 weeks, I think it is, from beginning to end for a multitrack case, but that doesn't tell you that there were nine other cases which settled satisfactorily before that, and so the data that is kept is generally inadequate, and there's two or three reasons for that, but one of them is that it takes no account of the type of case and it's really, really important to understand, as I gave you in my evidence, the very, very diverse range of cases the County Court deals with.

CHAIR: Yes, and indeed in your evidence you said it was a patchy picture.

MASTER OF THE ROLLS: Yes.

CHAIR: We did, as you say, go to Northampton, both to the Business Centre and to the County Court yesterday, and to central London, and it's right to say that I think one or two of my colleagues used the phrase “Dunkirk spirit” to describe the staff at both, in a complimentary way, that they were coping with difficult circumstances in a fairly heroic manner. Paper certainly was the predominant material that we saw and as far as… we'll come back onto this perhaps when we talk about the reform programme in a moment, but yes, they may be some of the more difficult nuts to crack at

the moment, but what would you say to the fact that much of the systems here are still paper-based at the moment, or go from digital to paper in the process?

MASTER OF THE ROLLS: I think it's a terrible shame. I think the reform programme… I was in on the ground floor of the reform programme, I was just becoming Chancellor when it was initiated, and I vividly remember a meeting of the Judges' Council where the head of HMCTS, I cannot remember who was chair or chief executive, it doesn't matter, said in the end of the reform programme, I think it was four years, every judge will open their computer in the morning, it'll say "Good morning, judge," and the papers for the day will be on your computer.

Now, in family and in other parts of the system, that to a large extent happens now. Unfortunately, in civil it has not happened. I think the reason partly is because of the large variety of cases and the fact that it has proved ambitious to digitise everything with multi-parties, different types of cases with different requirements. In fact, I think that problem can be overcome and I am very disappointed that we are going to reach the end of reform with only 23 percent of cases beginning and ending with digital, and all the rest ending up on paper. The worst of that is that we have overlapping systems, so every case in the County Court, or nearly every case, will have some paper, will have some digital or will have been on digital on the modern system, and will also be recorded on what is called CaseMan, which is a legacy system, very, very old fashioned, been there for donkey's years, literally, and it simply cannot interact with the other digital system. In fact there is a fourth, because people are so frustrated in the county courts these fantastic staff that you talked about, Chair, which I must say I would reiterate are truly heroic in many, many cases, many of the HMCTS staff have been in the same court for 30 years and they have battled through thick and thin to make the system work and they are deserving of great commendation. But they are fed up with the paper and they digitise locally on a fourth system which is simply a pdf file that they have scanned some documents into the system. But of course that does not communicate with the digital system, that does not communicate with CaseMan and you've got to have some paper.

To give you an example, one of the worst iniquities which I highlighted, I go on a tour about 20 courts every September, is that the new digital system had no means by which the correspondence could be uploaded, and when the judge looks at a case for trial the first thing the judge wants to know is has the case settled, and the correspondence tells you that and nothing else. So the judge has to ring up the office and say is there a letter somewhere in the office saying the case has settled, because otherwise I will be reading the case and there will be no need to have done so. So there is… the answer is we are in a terrible twilight situation and we must do better in the next four years through the instrumentation of the spending review that is coming up.

TESSA MUNT MP: Thank you. You were talking about the array of cases and you said, I think in your evidence you gave us a list of non-exhaustive list of, as you described it, of 37 most common types of dispute resolved in the County Court. I just wondered, could I ask you to consider whether the role of the County Court within the civil justice system should have been reformed before anyone attempted to digitise all of the work that is attached to it?

MASTER OF THE ROLLS: Funnily enough, I do not think so. The County Court deals with every civil dispute, quite properly, that citizens and small businesses need to have resolved. Much of the jurisdiction is provided by new statutes, so antisocial behaviour orders, non-molestation orders are examples, and they have of course become extremely prevalent due to the societal problems that we face. So I do not think you could have a wholesale reform that would change that range, that spectrum of cases. There is a problem which you may be alluding to, which is the intersection between the County Court and the High Court, and that has been problematic for a very long time. We thought when reform started, and I am sorry, tell me, shut me up if I am trespassing on reform before you want me to, but we thought when reform started that we were going to have one system, one digital system across the entirety of the courts and tribunals, which was going to be what we call CCD, which stands for Core Case Data, which is what we call now the basic County Court

digital system, which already covers all the family cases, some of the civil cases, and some of the tribunal cases, and you have seen that in the letter that Nick Goodwin wrote to you from HMCTS a couple of days ago. Unfortunately, when they introduced CCD, it was very ambitious to cover every kind of case, however complicated and it has not proven easy to extend it to complex cases, particularly with multi-parties. It is not certain it will not be possible. It may be possible. We will have to see, but certainly in the four or five years that was expected, it has not been possible to extend it to everything.

So at the moment, we have got these multiple digital systems. We have got something called CE-File in the High Court, which is a fairly basic data filing system. In the High Court, the Business and Property Courts, we call it 12 jurisdictions.

CHAIR: Everyone spoke highly of that to us.

MASTER OF THE ROLLS: Well, it is great, but it is simple and it is not fit for the future, and it does not produce any machine-readable documentation, so it is not a smart system. It is not a modern system, but it is incredibly serviceable, as I said in my evidence. So we have got that at the top dealing with the complicated cases, but its life expires in three to four years, it will have to be replaced. We thought it was going to be replaced by the CCD system coming up from the County Court, but that looks less likely now, and so we are going to have the intersection that you were alluding to, I think, between the complex and the simple, and that is a shame because we hoped one size would fit all.

The problem with civil litigation is it is very disparate. It ranges from a case in the High Court that may go on for three months and be worth billions of pounds to a case in the County Court that takes ten minutes for possession of a home, and both are very important and require justice, and they have parties who really care, and if there be any doubt, we as judges, really care about the outcomes in every type of case.

TESSA MUNT MP: Thank you.

PAM COX MP: I am just wondering whether we continue the reform discussion, since we are on that vein and then move to the other areas.

CHAIR: We can do if colleagues are happy with that.

MASTER OF THE ROLLS: Do not mind.

PAM COX MP: You just seem to follow on from what you were saying there, Sir Geoffrey.

PAM COX MP: So this is the HMCTS reform programme. I understand it is cost a billion pounds and it sounds like it is not delivered anywhere near the kind of change everyone was hoping. How do we get a grip of it, would you say?

MASTER OF THE ROLLS: Okay, well, I am talking about civil. I think there are different issues in crime and there are different issues in family, and I would not want anything I said to be taken as applying to those, although civil, family and tribunals are connected because reform built a platform called the CFT Platform, Civil, Family and Tribunals Platform, and that is what was the main outcome for those jurisdictions. Now, how do we get a grip of it? The answer is family, which I am not talking about, seems to largely be conducted in a digital system at the moment. It has got problems, I know, but you will hear about that. Well, you may not, but there are problems, but it is not insuperable probably, or it may not be. Tribunals, some of the tribunals have been digitised, some not, and that job needs to be completed.

So let us come to what I really know about, which is civil. We are in a position where half the job has been done, and it is not sustainable for all sorts of reasons to do half a job, because you have got these multiple data sources that simply do not speak to one another. So we absolutely have to complete reform, first of all, which is what was intended to be done, but even that was not everything. So, you know, I vividly remember four and a half years ago, when I was appointed as Master of the Rolls, being shown a document that said reform will deal with every case in the County Court except Appendix B, I think it was called, and that was a whole host of cases, like insolvency cases, like boundary disputes, like TOLATA cases, Part 8 cases, which are sale of property cases, and I said, why are you not digitising those? They said, "Oh, well, it is out of scope." As the reform programme continued in civil, they took more and more things out of scope, and thereby really hollowing out the facility of what it was doing.

What is my solution, because there obviously is not enough money to carry on throwing endless money at the same thing. First of all, I think it is this, I think they should re-scope, which is really not all that much money, doing what they took out very recently. So they should re-scope enforcement, they should re-scope bulk claims, which is 900,000 claims a year brought in the County Court, mainly by utilities and big companies, which are on a legacy system called Money Claims Online, which is totally outdated, and right at the beginning, four and a half years ago, I was told they were going to move those into OCMC, Online Civil Money Claims, but they de-scoped it at the last minute. They should re-scope that. It is not a costly exercise, it needs to be done. We would then have most claims in the County Court, except the tricky ones, started digitally and proceeding digitally. So when they complete what I think is imperative, to complete what they were going to do in civil, in reform, they then have to find the solution to how you are going to digitise complex County Court claims. Some are, you take boundary disputes, that is a good example, they take two or three days, they are very complicated, sometimes they have multiple parties, and you have to find a way of digitising that.

My solution would be to use the same solution as they use, they are going to use in the High Court to replace CE File. That is what I think they should do, I think it is obvious, and to draw a line, a very clear line, between what you are using CCD for and what you are using CE File for. You still have two systems, but everything will be digital.

PAM COX MP: Thank you, I think as a new member of this committee, I find it quite frustrating to hear all of that, I am not a lawyer, and I am sure the public would also, and the users of the court, all the professionals involved find this incredibly frustrating. You are both leaders in this aspect of the judicial field, how are you contributing to this urgent need for re-scoping bulk claims and enforcement?

MASTER OF THE ROLLS: Well we are at the moment contributing urgently in the MOJ's bids to Treasury in SR2, because it is all dependent on money, and I can tell you we talk of little else, but how we are going to progress and make sure that we deliver a proper service in every kind of case to the public. But let me tell you, we will not be able to do that whilst five floors of paper continue to be hoarded. I am not being rude about it, because it is nobody's fault, but while you have got a paper system, you have a big almost paper warehouse in Northampton, and we have to stop that, put it online, it saves, every time you put a case online instead of into Northampton when it is issued, it saves weeks, and I cannot give you the number, ten weeks for the parties in getting that case resolved.

CHAIR: I suppose the issue, you mentioned the figure, Master of the Rolls, of 23 percent for the success, put it that way, of reform. I think the original target was over 80 percent—

MASTER OF THE ROLLS: Yes.

CHAIR: —and the evidence we heard from the Chief Exec of HMCTS a couple of weeks ago was that it would achieve in its revised form 61 percent. So we are a little at sea there, we are not asking you to count for other people's figures, but where did your own figure come from?

MASTER OF THE ROLLS: Let me just explain that 61 percent. 61 percent is calculated on the basis of the number of tasks that a judge undertakes. But a task for the purpose of the 61 percent could be a two minute application dealt with on the screen, or a three day trial, so they are not the same, and you cannot say that 61 percent of judicial work is digitised by giving one point to a three day boundary dispute, and one point to a two minute application online. So unfortunately the 61 percent does not really mean anything, what does mean something is this: 23 percent will be the number of cases on completion of current reform that will be digital end to end, or can be digital end to end. We will then add to that possession and property claims that are being digitised with money provided by MCHLG, which is about eight to nine percent of County Court claims, possession claims, about 120,000 claims a year, so that brings you up to about 31 percent, and then if you were to put bulk claims, that is the 900,000 that go through MCOL into the digital system, which is what was proposed, you would come up to the 80 or 90 percent level. But you would still be not making judges use digital 80 or 90 percent of the time, because those bulk claims very rarely go to judges, they are normally the subject of default judgements. So unfortunately the ones judges see are that stubborn ten percent that are the more complex claims, and you will only get paper out of the County Court and out of the judge's inbox when you find a way of digitising those.

DEPUTY HEAD OF CIVIL JUSTICE: Can I just add a couple of points of detail, first of all, the Master Rolls was talking about completion, the date is September of this year, that is when the 23 percent becomes true. The second one, the critical thing which took me a long time to get my head round as well, is you have to work out what number we are talking about. If you are counting issued claims then you are including this million number of claims that are issued in the bulk system, most of which go nowhere near a court, so when you hear numbers like 80 or 90 percent, that is the denominator, if you like, is issued claims, total issued claims. The claims that get into a judge or for that matter staff in our local courts are mostly not those bulk claims, and that is why as soon as you start having numbers when you are looking at what is going on in the courts, the numbers start dropping, because the claims the judges are dealing with are much, much not those bulk claims, and the proportion which is digital is much smaller.

The other thing I want to just pick up, if I may, just something that Tessa Munt MP mentioned a minute ago, this thing about complexity. It is important to understand that complex claims are still appropriate in the County Court, they are not complex because they should not be County Court claims, they are just complex from the point of view of our rather simple IT system that cannot cope with them.

MASTER OF THE ROLLS: Maybe multi-party.

TESSA MUNT MP: Thank you.

PAM COX MP: Yes, thank you very much.

SARAH RUSSELL MP: I mean multi-party does not of itself sound terribly complex to me, and to be honest I am quite staggered. Like the idea that judges habitually cannot see emails between the parties, and this cost a billion pounds, sorry one and a half billion pounds, the idea that I could go back to my constituents and explain that to them.

MASTER OF THE ROLLS: They can in family.

SARAH RUSSELL MP: In terms of how that sort of pans out for litigants, sorry, I am just so staggered, how did that come about? How do you have an IT system that is set up with cases

where the judges cannot see the emails? What was the commissioning process? How did we come to be in this position?

TESSA MUNT MP: Who done it?

MASTER OF THE ROLLS: I do not know whether Colin wants to answer that. I can perhaps help, but I think your view may be more accurate.

DEPUTY HEAD OF CIVIL JUSTICE: Well I can say that, first of all, I think it would be, I do not want you to get the impression the judges cannot see the emails, of course they can, the staff can show them to them, what does not happen is that they are not part of the IT system, and that is very significant, I mean it is very, very significant. I am not trying to underplay its significance, but I do not want you to get the impression that they just cannot be seen at all, that is certainly not right. But of course what you want is everything to be there, and the approach has been to make… the way the civil system was set up was to try and make it to take the easiest cases, that is how the whole project was run, it was taking the simplest cases to digitise and do that, and that is where we have come from.

To be fair, right now the system does allow a fair bit of correspondence on this, on the actual digital file, it just does not include email, so there are some documents now on the digital file will be coming out in September.

MASTER OF THE ROLLS: But the answer, could I just try and answer your question about how it came about. The judges, I mean we are not, I am not here to try and exempt myself from blame, the judges could not possibly design a system of this complexity. What happened was it was designed by coders and they probably took a sensible decision for the kind of common or garden case that is most of the cases. The small claims, the bulk claims, when they come in, the personal injury claims that are just a road traffic accident between A and B, and they though, well, we'll start with that. The other thing they did, which has proved to be problematic, it is not fatal but it is problematic, is the whole case, and the whole system operates on a case status basis. That means that every case has a status: it is at the stage of claim; it is at the stage of defence; it is at the stage of disclosure, or whatever else is going to happen during the case. But it can only have one status. Now, if you have got two parties, you may have one defendant against whom judgment has been given, so that is the status for that defendant, and for the other defendant it is at another stage. The system struggles with that. That is why it cannot deal very easily either with multi-parties or with high complexity. But I can see how it happened. I did not do it. I can see how it happened because it was trying to crack the biggest nut first and assuming that technically it would be possible to crack the smaller nuts by additional devices, and by the way that may well be plausible in the future, but we have had to focus on getting the existing simplified system working properly, and that is what they have been doing. And it does work very well. I do not want anybody to go away with the idea that this is an absolutely terrible system – it is a good system and the users are very pleased with it.

DEPUTY HEAD OF CIVIL JUSTICE: If I may, just picking up on something that the Master of Rolls has just said, the other answer to your question is that the focus at the beginning was on litigants, and really hard to say that is a bad idea. I think, to be fair, that was a really good idea. HMCTS with the judiciary worked extremely hard on the interface that is the user interface between the litigants in person dealing with the system and the system itself. One of the ways in which we know that has paid dividends is that the response rate for defendants in the reformed digital systems compared to the old fashioned systems we have is much, much, much higher. It is quite astonishing actually and it shows you that it is an extremely well-designed system from the point of view of litigants in person to get them to engage, because one of the hardest things in civil justice is getting people to engage. We do not want them to not engage and so things like the level of default judgments is much, much lower in the online civil money claims system than it is in our bulk MCOL

system, and that is because actually the focus was on that, that was what everyone was looking at. I think that is actually one of the main reasons, but the state, the thing that the Master of Rolls mentioned about this case state, that is actually part of it too.

SARAH RUSSELL MP: Thank you.

CHAIR: Nonetheless, the money has been spent that was there, I think all but a very small proportion of it, and there does not appear to be a lot of resource available now to continue. Have I understood correctly, Sir Geoffrey, that you are saying that you believe there is merit in pursuing the reform programme notwithstanding the fact that it has only been partially successful?

MASTER OF THE ROLLS: It does not matter what you call it. I think everybody is very keen to stop the reform programme dead in its tracks at the 31st of March, that is fine. I think it is very important that the work that was within scope previously of civil reform should be completed, and that would not be hugely expensive. It does not matter what you call it or as part of what programme it is. No, it has not been unsuccessful. What has, I think, has been underestimated, I would say, is the problems that would be thrown up by the complexities of the number of different kinds of case you have in civil, and every other part of the system has not had that problem. So employment tribunals, they have a system that works very well because all the cases are between an employer and an employee, so it is fairly straightforward. The same in the social security tribunal and so on, but in civil you may have endless different permutations and combinations, and that is what is throwing up the problem. I think the problem can be solved fairly easily and with not vast amounts of money. I mean, you know, we talk to HMCTS, Colin and I, all the time, and we do not get involved in the figures because we cannot, it is up to them to decide if they have got the money, but the figures we are talking for various bits of de-scoping are small, in the context of what we are talking.

CHAIR: Thank you. We have the minister coming to see us in a couple of weeks, and we can perhaps take that a bit further with her.

MASTER OF THE ROLLS: Well, you know, it is small, I mean, in the millions, but it is not hundreds of millions.

DEPUTY HEAD OF CIVIL JUSTICE: Maybe, if I may, just picking up on what the Master of the Rolls said, which I, of course, agree with. What is needed to finish it is a simple system for complex cases. What did not happen, because it turned out not to be possible, was to build a complex system to deal with the complexity of complex cases, it is just not sensible. But if we build a really simple system, we can accommodate all the complex cases. That is what needs to be done.

MASTER OF THE ROLLS: And one other thing that is worth mentioning, which it would be great to propagate around the place, this is a digital system where you go online and it says, "What is your name? What is your claim? Where do you live? Have you got a solicitor?" Blah, blah, blah. If it only had a… and the main program is called Damages Online, because it is created for people who want to claim damages, mostly in personal injury cases. But if it had another page that said, "Do you want to have anything else, any other kind of relief?" it could then cover injunctions, declarations, orders for sale, other kinds of case, and that would bring into the digital environment a lot of cases. Now, they did not want to do that originally because the information put on a text document would not be machine-readable, and would not be smart in the way that the rest of the system is. But if we have not got any money, that should be a relatively economical way of doing a large amount of what needs doing.

CHAIR: Anybody else want to come in on reform?

WARINDER JUSS MP: Just very quickly, Sir Geoffrey, you mentioned employment tribunal claims, you can get multi-party claims in ET claims as well. So have you had similar difficulties when there have been multi-party ET claims?

MASTER OF THE ROLLS: I am not familiar with the employment tribunal digitization, but it is on the same platform and it is built in the same way. So I am sure that anything more than two parties on one side will create the same problems there. I say I am sure – I think.

DEPUTY HEAD OF CIVIL JUSTICE: Just to explain, the problem is it is possible to cater for that, but the resource cost of doing it multiplies as you add more people. That is the difficulty. So I cannot tell you what happens in the Employment Tribunal, but as soon as you deal with two people, you have to have a whole lot of extra stuff, then three, a whole lot more… do you see what I mean? That is the difficulty. It can be done, but it just ends up adding enormous complexity to do it.

CHAIR: Can we just go back to staffing issues and judicial capacity? Linsey.

LINSEY FARNSWORTH MP: Yes, thank you. My children will attest that digitalization is not my forte. So I would like to talk about the human side of the court system. We are starting with judicial capacity, really. The recent Judicial Attitudes Survey, produced by the University College in London, concluded that the judiciary was facing, and I quote, "looming retention and recruitment crisis," which sounds very worrying to me. So, could you explain what is driving that, if indeed it is correct, what they are saying?

MASTER OF THE ROLLS: I think it is only partly correct, actually. There is always, or not always, but in my judicial career, which now spans, I do not know, 16 years, there has always been some recruitment problems at different levels. So, we went through a period in the last decade where the pensions were changed and senior judges were not attracted to the judiciary. So there was a recruitment problem in the High Court. That was resolved about four years ago, and now we seem to have far less problem recruiting High Court judges than we did.

There are problems recruiting circuit judges, probably to a lesser extent than the problems recruiting district judges, but the main problem is recruiting district judges to serve in London and the South East. I suppose we could all use our own insights to say why that might be. London is expensive to live. The people taking the jobs are not, perhaps… they are probably 40 and over in most cases, and therefore they are looking perhaps for more pleasant places to live. They may have worked in London and lived in an expensive place for some time, and parts of the South East are more deprived than other parts of the UK.

There are all sorts of possible reasons, we do not know. There is a competition going on to recruit district judges only in the South East and London, and I believe they have had a fairly healthy number of applications. So we will have to see what happens at the end of the year when they reveal how many they have been able to appoint.

It is a problem, but I do not believe one should exaggerate it. I think maybe it is slightly… you have to understand what you are talking about. Being a district judge is a great job. Our district judges do a fantastic job. The reason why they do is because they do such a wide variety of work. So, mostly, they do family and they do civil, and that is, you know, a pretty tall order. You have to know two whole areas of expertise. They have got to be able to tackle all those 38 kinds of cases that I mentioned in civil, and they have got to be able to do financial remedies in family, they have got to be able to do care work, they have got to be able to do private law family work. It is a big range, and some solicitors and barristers just do not want to do that as they get older. So, we have to make it as attractive as we can.

There have been all sorts of other issues that you have covered in some of the questions you have posed, like the working environment. They have had a lot of leaks in the roof of the buildings, but HMCTS is really tackling that now, and I believe the programme for repairs is well advanced, but that does not make life very easy for judges.

So I do not think it is monodimensional. I think you have to look at the whole of the Judicial Attitude Survey. I can say this; I started the Judicial Attitude Survey back in 2014. I have been working with UCL, Professor Cheryl Thomas, for all those years in putting it together, and we now ask lots and lots of questions we would never have dared ask back in 2014, and the information, we get 99 or 98 percent of judges, salaried judges, responding and so we know exactly what everybody thinks. I think you have to you have to really look quite deeply at it to work out what they are unhappy about, and what they are happy about. You know, judges really still love their jobs, almost universally, because it is a very rewarding contribution to society.

LINSEY FARNSWORTH MP: Thank you. You have mentioned that the issue in London and the South East in terms of recruitment, and I know you have said that there is the application process at the moment, but I think in evidence previously you have said that because of that problem in recruiting in those areas, there has been an over-reliance on fee-paid deputy judges. Is that still the case until this is resolved, and if so, what problems does that bring to those areas?

MASTER OF THE ROLLS: It is really a problem. Civil has always been the jurisdiction which has over-relied on fee-paid judges, and that is mostly because family cases require a salaried judge who is there and can adjourn the case till two weeks time, and will be there again in two weeks' time, whereas civil cases generally, small claims, you can take a list of small claims and they will all be finished that day, and it does not matter if you are going to be there in two weeks' time.

So, we have always in civil relied… as many as 50 percent of civil cases in the County Court historically have been heard by fee-paid judges. Now, do not get me wrong, fee-paid judges are great, they are extremely able, they are extremely committed, and some of them want to become salaried judges. But we would prefer, and when I say 'we', we the senior judiciary – it sounds very grand, it is not intended to – would prefer that the fee-paid judiciary was there for really two reasons. One, where we have a problem like we have got in London and the South East with district judges at the moment, and two, as a channel to entry to the salaried judiciary.

Unfortunately, the people in the legal profession find it attractive to have a bit of variation in their middle years, and they enjoy sitting as a judge for 30 days, sometimes 60 days a year, and carrying on with their career. So, as we see from the Judicial Attitude Survey, not everybody comes into the fee-paid judiciary and then moves through to the salaried judiciary. That is a problem, we are trying to deal with it, we are trying to make it a little bit less attractive in the sense that you can no longer sit 180 days as a fee-paid judge, which you used to be able to do, but on the other hand we need them when we need them.

The second part of your question – sorry to be long-winded about it – the second part of the question is what are the problems that it causes? Well, fee-paid judges who do not sit every day tend to be a bit slower. This is not a criticism. They are making sure they are doing the job right, but they do not have the vast experience that district judges who have been there 20 years do. So, they do not do things quite as quickly. They do not do as much box work because they sort of come in, read the papers for the day, hear the cases and go home. If the case goes short, they will do box work, but sometimes it is not available or the IT is not in the right form for their computer or there is not a borrowed computer available. So, there are problems of that kind and basically it creates, I would say, a less smooth disposition of justice where you do not have enough salaried judges. Actually, salaried judges in a court make it run smoothly.

The relationship, and I should say this, the relationship between judges in courts and their staff is, almost universally, I can give you two examples where it is not the case, but of the 140 courts is absolutely incredible. They are so loyal, the one to the other, and that makes the system work.

So if you are salaried, that works, but if you have not got any salaried judges it makes it problematic.

DEPUTY HEAD OF CIVIL JUSTICE: Just, if I may, add one more thing to answer your question directly. One of the things which when you have a good relationship, as we really do a lot between the listing staff and the salaried judges, the listing staff know who they can give things to and you can, as an experienced listing officer, you have a cadre of salaried judges and you can just be more efficient because you know who you are dealing with and you get to know your fee paid judges too. That is also true. I do not want you to think that is not true, but it is not the same and that is just one other dimension to this issue. So, we are over-reliant on fee paid judges and until we can recruit enough DJs in London and the South East that is going to be a problem.

MASTER OF THE ROLLS: We have got the virtual pilot, which provides two or three thousand days a year with judges sitting from the North and the North East and the West and other places to try and clear backlogs in London, and they sit remotely and that has been very successful actually.

LINSEY FARNSWORTH MP: That is really interesting. Thank you, and my optimistic nature is hopeful from what you have just said in going forward. What would the appropriate balance be? What would you like to see between salaried judges and fee paid judges?

MASTER OF THE ROLLS: We have always said 80:20.

LINSEY FARNSWORTH MP: What is it at the moment?

MASTER OF THE ROLLS: 80 percent salaried and, well, in family it is 80 percent salaried and 20 percent fee paid. In civil, it is 60:40 or 63:37, I do not know the exact figures. I would much prefer to see 80:20.

LINSEY FARNSWORTH MP: Across the board.

MASTER OF THE ROLLS: Yes.

LINSEY FARNSWORTH MP: Thank you. You have mentioned the recruitment process, the recruitment campaign that you have running at the moment, and applications are starting to come in and you will know more by the end of the year. Are you optimistic? Do you think that that is going to reap some benefits and rewards?

MASTER OF THE ROLLS: Yes, cautiously optimistic. Last year we did a competition nationwide for 100 district judges and only got 50, I think. This is a competition for 80 district judges but limited to London and South East, and one of the problems has been that when you advertise for district judges people do not really want to move. They have children, they have families, they have commitments and so on. People do not really want to move when they become a judge, and what was happening was they would advertise a particular circuit and the South Eastern circuit comprises places as far apart as Ipswich and Brighton and so you would apply, if you lived in Brighton, to become a district judge on the South Eastern circuit and they would offer you Ipswich. Well Ipswich is not really in the south east, in the same part of the world as Brighton, you certainly cannot commute, and so that was causing problems and now we are trying, or not me but the JAC is trying to be clear about where the vacancies are so that you can apply if you live in Brighton knowing that there will be vacancies in Brighton or Hove or Worthing or somewhere relatively close.

DEPUTY HEAD OF CIVIL JUSTICE: One thing you ought to be aware of is that this 80 number, that is the vacancy request. It is important to understand that that is not the same as the business need, because the vacancy requests also take into account the capacity of the recruitment exercise. There is no point in having a vacancy request of 200 and then resourcing a recruitment exercise for 200 when you know you're never going to get more than, for the sake of argument, 80 people. So one needs to be a little bit careful with what these numbers are. We actually need more judges than that, but we know we are not going to be able to recruit more. So that is a factor that goes into these vacancy request numbers. You just need to be aware of that.

PAM COX MP: Can I ask a practical question? Speaking as an eastern MP, how difficult would it be to separate those circuits, have a southern circuit and an eastern circuit?

DEPUTY HEAD OF CIVIL JUSTICE: London and the southeast.

MASTER OF THE ROLLS: It is not really a question of separating the circuit, it is really a question of saying, "I have got a vacancy in Brighton," and that doesn't sound too complex to me, but for some reason it has proved a little more complex than you might think but we're doing it better now.

DEPUTY HEAD OF CIVIL JUSTICE: We are doing it. I mean it is fair to say we have been wanting to do something like this for quite a long time, because I suspect it seems blindingly obvious, if I may say so to you, that we should be trying to do something like this. There is lots of problematic bits, but we are now doing it, and it is really worthwhile.

MASTER OF THE ROLLS: And I am optimistic.

DEPUTY HEAD OF CIVIL JUSTICE: Yes, I am too.

CHAIR: Can I bring in Warinder?

WARINDER JUSS MP: Thank you for that, Sir Geoffrey. So the recruitment crisis is with salaried district judges in London and the southeast. Somebody like me who lives in Wolverhampton, it could be quite possible, could it not it, for me to apply for a district judge's job in London, because travelling is not that bad, would you agree with that, and the other question I have is that, is there anything proactive done to encourage more solicitors and barristers to become salaried district judges in London and southeast?

MASTER OF THE ROLLS: Yes. Yes. I sort of do not agree that it is necessarily easy to travel from Wolverhampton to London, because the train fare is so expensive, as I think you may have noticed, but district judges don't really want to live in Wolverhampton and work in London. History has shown that to be the case. They want to be able to travel a few, maybe 20 miles, but not 120 miles.

Yes, a lot is being done to encourage and recruit in all sorts of ways. It is tricky, but the main route is to encourage our cadre of 800 deputy district judges, who are themselves fantastic, to apply for the full-time job, and I mean, I personally go to every…, well I or Colin or one of our civil leadership group, often me, go to every continuation course, and I speak to 60 or 80 mostly deputy district judges, and the whole purpose of that is to make them love us, to make them want to become full-time district judges and it's getting more successful, but it makes a lot of excursions for me.

SARAH RUSSELL MP: On the recruitment that you talked about, do you think that the practice of having judges cover such a wide scope of activity reflects quite an outdated idea about how solicitors in particular come up through? So you would not now find a solicitor who is jack-of-all-trades in that way, and then they cannot get through the judicial assessments because they don't

have the skills to. Do you think that you are unduly limiting your potential pool of applicants by making the requirements so incredibly broad?

DEPUTY HEAD OF CIVIL JUSTICE: Well, I doubt actually that that is causing people who have got the right skills to be appointed and the reason I say that is because we are absolutely seeing exactly what you are talking about, because what is happening now is that the new cadre of deputy district judges, which both, if I may say, the Master of the Rolls and I go and talk to on a fairly regular basis, are not as familiar with large areas of civil and family justice as if you had imagined the situation 20 years ago, and it's not just solicitors, that's the bar just as much. The world is much more specialised now than it used to be, and what has been happening, and I think it is a good news story, if I can put it this way, what we've realised, and this is the Judicial College and the work that we are supporting them in, and which they do a fantastic job, and the judges who help the Judicial College and run those courses also do an incredible job, is we have realised this and so we are now working on ideas for dealing with the fact that the judges who are coming in, the new judges, do not have that kind of experience and they need more. They need more training, they need to be helped to be able to do that diversity of work. It is really important, but that is what we're doing.

MASTER OF THE ROLLS: But one of the functions of having a local court where you can go and have your case tried locally, is that the judge can deal with a fairly wide range of stuff, and if they could not then you would be pushing them off to Manchester or to Birmingham or to London to find a specialist judge. So I think it is desirable. This is not unlearnable, it is a bit of a challenge for a solicitor who has done takeovers to become a district judge doing family cases and doing cases for possession of property, but it is not impossible.

DEPUTY HEAD OF CIVIL JUSTICE: No, not at all.

TESSA MUNT MP: Just to pick up on what you said, I would just gently challenge that. I live in Somerset. If I want to access specialist health facilities, for example, I have to travel generally to Bristol, sometimes to Birmingham, depending on what sort of specialism I am looking for, and because that is where the specialists are, and certainly having worked within legal firms, I recognise that some of the work that I did for the legal firms for which I worked would only have been found in the cities, the big cities perhaps, five or six cities, and so anybody, wherever they lived, if they were out in the sticks where I live, they would have to go to Bristol, to Leeds, to London, to Manchester, Birmingham. So I do not know that it is actually so peculiar that one would recognise the need to travel some distance to find your specialism. The other thing I would say is that in an area where I have almost no public transport, those of us who do not have cars, if we wish to go to Taunton, which is my local court, you have to leave the day before and stay overnight if you wish to travel by public transport in order to be there for ten o'clock in the morning. So I think probably the difficulties of either travelling to a local, my local court is 25 miles away, or finding specialism, one would have to travel. I do not think anything of travelling 25 miles or indeed 50 or 100.

MASTER OF THE ROLLS: It used to be said that there had to be a court within one day's ride on a horse for every citizen in our country.

TESSA MUNT MP: Yes, we do not even have horses I am afraid.

MASTER OF THE ROLLS: For every citizen in our country, but the reason I would push back in return is that the people that are involved in county court cases are often the most vulnerable—

TESSA MUNT MP: Indeed.

MASTER OF THE ROLLS: —in our society who have the least money. Colin said earlier we want them to engage with the case, we do not want justice done to them, we want there to be justice for

them and to do that they have to engage and to do that they have to be there and if they have no money and sending them to a big town is not really desirable, it is really, really important that we have local judges. Now these cases are not hugely complicated, you can do a possession case as a lawyer, having done a few and observed a day in court, it provided you the right standard of lawyer. So I personally think we should keep local courts to serve the public.

TESSA MUNT MP: Thank you, sir. I just would say that our local courts are not terribly local for most of the impoverished population.

DEPUTY HEAD OF CIVIL JUSTICE: Sorry, forgive me, can I just say one thing to answer your question?

TESSA MUNT MP: Of course.

DEPUTY HEAD OF CIVIL JUSTICE: It actually ties in with the point before about salaried and fee paid judges because actually it is the salaried judges who get the experience that can deal with all the standard kinds of complex middle complexity cases. They can do possession lists, they can do personal injury cases, that is what they do and actually that is why there is such a value in having salaried judges because the salaried district bench actually they can handle that stuff, that is what they do and they are good at it.

TESSA MUNT MP: Thank you. Can I ask you, thank you very much, thanks for your tolerance, I wondered if we could just, you were talking about the relationship between judges and their staff and I wondered about the impact perhaps of staff who are agency or are just inexperienced and maybe there is a relatively high turnover, what impact that has on the operations of court, and I know that this came up in the Judicial Attitude Survey in relation to concerns about staffing reductions, so might I ask you to comment on that?

DEPUTY HEAD OF CIVIL JUSTICE: I mean, we have fewer agency staff now.

TESSA MUNT MP: Fewer?

DEPUTY HEAD OF CIVIL JUSTICE: Fewer.

TESSA MUNT MP: Yes.

DEPUTY HEAD OF CIVIL JUSTICE: So I believe. I mean that is really a question for HMCTS but that is my understanding. Experienced staff are of course more valuable and at the time when there were a lot of agency staff, I am thinking of a few years ago, it was a problem but when you go to a county court with experienced staff you can tell the difference. So of course we want to have experienced staff and we need to retain them and one of the problems in our system actually is the retention of staff because we often have a difficulty, I am thinking of Cardiff as an example, where there are other bits of the public sector who can recruit, who will recruit people from inside the public sector, inside HMCTS at a certain band and the staff will go because they get paid more money for the same band in another part.

TESSA MUNT MP: Indeed.

DEPUTY HEAD OF CIVIL JUSTICE: It is, I will say, a constant frustration for us in our system to see our good staff going to other parts of the public sector.

TESSA MUNT MP: Yes. Thank you. Can I also ask you about the block listing in certain courts as a way of addressing the backlogs and what your views might be on that?

DEPUTY HEAD OF CIVIL JUSTICE: Yes. Block listing, so block listing is a fundamental part of the way our civil system works and we do it and we do it carefully and we do it, try and do it right. The point is that because of the thing that the Master of the Rolls has mentioned already, many, many cases will ultimately not come to a final hearing and that might happen the day before, it might happen on the morning of the final hearing. Sometimes it is because they settle, sometimes it is because sadly somebody does not attend the court but there are all kinds of reasons for that. So in order to be efficient, the way in which all our courts work is that we will block list, in other words, for the sake of argument, you will have two district judges available on Thursday and you will list four or five small claims, probably actually if you have got two district judges on a Thursday in a middle-sized court, it is probably four or six small claims, maybe even eight, and normally that will be fine and that is how it's done and if we did not do that, we would have even longer delays. So, block listing per se is not a bad thing.

One of the things that we have done recently is we have had a civil listing project which the Civil Executive Team which our chair has run and led by a designated civil judge in Birmingham called Emma Kelly, Her Honour Judge Kelly, who has really been brilliant and that listing project has tried to identify the best practice for block listing for different kinds of case. So it has details for things like how many, for a big court, how many cases can you block list if they are small claims, how many possession cases of certain kinds, how much time do you give to them and that is the way in which we have an efficient system. The way judges who run block lists work is they know that they have got how many cases they have to deal with, they manage their list and by and large it works very well. Now, of course, occasionally you have to cope for the possibility that more people attend than you were hoping for and that is where the flexibility comes in because if you can get it right, you have a judge somewhere else, you have another judge in the building and by juggling and by good listing officers and experienced listing, most of the time block listing works. Now, I'm not going to pretend that there will not be times because there will be when, of course, I mean I am going to say it as if it is, say it sounds odd, unfortunately too many people turn up and I mean I don't mean that really but you understand what I'm trying to say—

TESSA MUNT MP: Yes, yes.

DEPUTY HEAD OF CIVIL JUSTICE: —and then you have to find a way of dealing with it and occasionally that is a problem but actually, to not do it would be far worse than to do it.

TESSA MUNT MP: So we have had highlighted the matter of late adjournments and so what is the ideal time for someone to be informed of an adjournment?

DEPUTY HEAD OF CIVIL JUSTICE: Gosh, well, I mean the ideal time would be as early as possible but we know in the real world, I mean we know, for example, that in the reality in civil justice is that the court door is a place when many people settle and actually a physical courtroom is a great tool for settling and that is the reality of the work we do and we know that and of course it would be delightful if everyone could and we have tried, we have got compulsory mediation, perhaps we will talk about that later on but you know we have ways of trying to do that but that is answer to your question.

CHAIR: Thank you very much. Could I… I moved on without taking questions.

LINSEY FARNSWORTH MP: No, it is fine.

CHAIR: Are you sure?

LINSEY FARNSWORTH MP: Yes.

CHAIR: Could I briefly return to digitalisation because we believe that salvation that way may lie. Could you explain how your vision for the digital justice system has evolved from a single point of entry to a data standards approach?

MASTER OF THE ROLLS: Well, I think they are two different things actually. The digital justice system is something that deals with the pre-court environment, so my 15 million cases. There are literally almost, you know, half the adults in the country are involved in some kind of dispute often, and will have familiarity with some kind of dispute, whether it is family, a tribunal or simply a gas bill or something on eBay or something on the internet. They will have had some kind of dispute and my vision was that the online environment allows people to go online and to find the dispute resolution process that suits that querying the gas bill, having an argument about a tenancy, having a housing dispute, etc, making a personal injury claim without needing to go to court and the idea that I expressed five years ago was of a funnel where lots of people had a problem, they went online, they got directed to the right place to resolve the dispute and the funnel got smaller until at the bottom of the funnel the cases were transmitted, the data concerning the dispute was transmitted by API, Application Programming Interface, into the court system for final resolution but there would be 15 million at the top and a million at the bottom. All those would have been resolved satisfactorily, very quickly by a system of signposting.

Now that has become a sort of reality, I am not going to claim it is quite in place yet but there are at least a hundred portals that aim to resolve disputes or give people advice who are in dispute about getting a resolution and the digital justice system is going to be organised, or rules are going to be made for it, by the Online Procedure Rule Committee which is the committee I chair and is empowered by section 24 of the Judicial Review and Courts Act of 2022 and only yesterday, Chair, both houses of parliament passed a positive resolution endowing the Online Procedure Rules Committee with the power to make rules for property cases, which is fantastic, and that means that not only can we make rules that concern the court space but we can also make rules that have some bearing on the pre-court space. Now the data standards question is really there are two things that limit the way people navigate the internet. The first is that they may go on a site and get dispute resolution but then have the data untransferable to another site or to the court. So one of the rules that the Online Procedure Rules Committee is likely to make is to say you really have to adhere to these simple data standards so that if you do not resolve the dispute in the housing ombudsman portal you can send the data to court, say.

The second thing that is a limiting factor is the absence of interconnections. So many people, ordinary people, often vulnerable people, they can go online, they are not digitally disadvantaged in that sense but they don't know what their problem is and they don't know where to go and the idea of the digital ecosystem is to make it a rule, effectively, that anybody who runs a site like, for example, Advice Now, the Citizens Advice Bureau or the Personal Injury Portal or the ombudsman for financial services or for housing or for retail or for anything, if somebody comes to them and says, “Can you sort out my problem?” Instead of saying, “No, we do not have the statutory power to do that,” they say, “We do not, but we suggest you go somewhere which will and, if not, if they do not know of the place to go, they will direct them to advice and we think it would be – I think it would be marvellous if Legal Aid were provided in the digital environment so that people could simply go online to a solicitor with or without the use of AI and get directed to the place to resolve their problem. Its diagnosis is a very large part of the cure. Once you know, I always give this example, but many people do not understand the law, they are completely ignorant of it. Some of them regard that as a badge of office and they may go online and say, “I have got a bad foot,” and when you actually interrogate, they have got a bad foot because the bailiff came and slammed the foot in the door and they got injured, but their problem is defending the possession claim and not being thrown out of their home, not their foot, which will heal over time. The difficulty is that people need… this is a time of trouble for people, and people in time of trouble need help, and the digital environment is uniquely well placed to give them that help.

So I am… you know, I am an optimist. I have already said that, and it is true, and I think it is a long project, but we have got the Online Procedure Rules Committee. The objective must be to resolve all our millions of disputes quickly, economically and efficiently so that people can get back to work, and one of the things that I really do want to say is that there is a really poor understanding of the value of getting people's disputes resolved. You know when you go to work you see people in the office who are texting away madly on their mobile phone instead of working, often that is because they are solving a personal problem, which will be some time of dispute, which is obsessing them. It makes them lack productivity, so they are not contributing to the productivity of the workplace, and they are also suffering often psychological damage as a result of dispute.

So the more we can use our technical tools of the modern era to get people into the right place, to get the thing resolved without the need to go to court, court should be really the last resort, and we can use these tools… and I think it is a vision which has legs, I hope so, and, you know, I think that's what I call the digital justice system.

CHAIR: And you would see the Online Procedure Rules Committee as the midwife to that, would you?

MASTER OF THE ROLLS: Absolutely.

CHAIR: Is it sufficiently resourced to do that?

MASTER OF THE ROLLS: At the moment we have support from the Ministry of Justice, we have an incredibly committed team working with us. We have just appointed 20 members who do not get paid, I think?

DEPUTY HEAD OF CIVIL JUSTICE: No, that is right.

MASTER OF THE ROLLS: To the subcommittee of the OPRC, the Online Procedure Rules Committee, and they are all incredibly committed to this vision and they are all working hand over fist to see it work. I do not think it is tomorrow, Chair, I am sorry, I think it will have to develop over time, but it is an objective which is genuinely providing, bringing justice to the people in the modern era, which is something that I think, you know, lawyers tend to be conservative, they tend to be, not politically, but conservative and they do not like change. But I have never been like that, I believe we need to think out of the box to create solutions for the resolution of people's problems in the digital age, and the other thing we need to make sure about is that we do not assume the problems for the digital age are going to be the same problems as they were 20, 30 or 40 years ago when we were brought up as young lawyers. That is a tremendously stupid thing to do. The County Court changes, the people's problems change, actually many of the problems are online problems, eBay problems, you know, people spend a lot of money online, and they lose a lot of money online, and they have legal rights online, which need to be rectified and the rights need to be vindicated.

So I mean, it's a big project, but I think it's the only way forward for justice in the future. And we should raise our eyes from everything that is just possession claims or just personal injury claims, which was what it was in the past.

PAM COX MP: A factual question on that. That sounds very encouraging, and congratulations on the result yesterday of having the property cases brought into scope. What is the strategy for bringing further cases into scope of that committee?

MASTER OF THE ROLLS: Further…?

PAM COX MP: Further kinds of cases.

MASTER OF THE ROLLS: Well, the strategy is to gradually transfer as many types of case into the purview of the Online Procedure Rules Committee as they are digitised. So at the moment, for example, in civil we have the OCMC, the Online Civil Money Claims, but the rules are made by the Civil Procedure Rules Committee, and that's illogical because it is a digital smart system, and so the rules should really be made by the Online Procedure Rules Committee. Let me explain the difference between the rules. The CPRC, the Civil Procedure Rules, are contained in 6,000 pages in two huge books called the White Book, something that I had the good fortune to edit for some years. It's absurdly long, completely impenetrable for ordinary people, and doesn't really meet the standards despite the fact that it was reformed by my predecessor, Lord Woolf, in 1999, unfortunately before the digital age had really taken hold.

The idea of the OPRC is that the rules will not say things like, "You have to go online and give your name," because you won't be able to start the process without giving your name and you do not need to make a rule to say, "Give your name to the programme." Instead it will say, if you go online and bring a claim for damages in Damages Online, you will not have an order made against you without being asked to make submissions, and that is a basic premise of natural justice. So that will be the rule. It will be a high-level rule, and it will ensure that the whole system is operating within Article 6, within the right to a fair trial, and to ensure that justice is done on the system. Now, Colin will be able to give you a lengthy discourse on the difficulty, because Colin is our rules supremo, if I may respectfully say so, but he will give you a discourse on how difficult that is, because it is imperative that a justice system that operates in the name of the state does not do anything illegal and it has to have a legal foundation for the way it resolves disputes. One of the difficulties is that the program is created by programmers who are not lawyers and probably do not have the rules embedded in their head, and so we as judges have to make sure that this platform is operating in a just and appropriate way throughout. But the objective is to have simpler rules for the court online process, to transfer all the online systems to the purview of the Online Procedure Rules Committee, and eventually to leave the Civil Procedure Rules for complex cases in the High Court and things that actually get into a real battle in court.

DEPUTY HEAD OF CIVIL JUSTICE: May I just… having been mentioned, I feel that… can I just add one more thing to what the Master of the Rolls said, which I hope is helpful. The way in which we can make that happen, by having what we want to do and have high level rules in this online procedural concept, but still have an IT system which does justice and does the right thing in the right way, one of the most important pieces of that is to have a system, you could call it a dummy system, you could call it a sandbox, there's lots of different names for it, but being able to find out how the system works without suing somebody. One of the difficulties we have at the moment is the existing digital systems, if you want to ask the question, "What happens when I get to this point in the system?" The only way to find out the answer to that question is by litigating, by suing someone, working your way through the system and eventually you'll come to a screen and you'll see what it says. Now, that does not work as a way of governing an IT system, so what we need to do, and this is what we are discussing, is making sure that there is if you like a… call it a "dummy version" of the real thing that allows everyone to see how it works, to try it out, find out what happens at this stage or that stage of the system, so that you can be sure that it is doing the right thing, and that is not a trivial task, to build something like that, but that is a crucial piece in this whole endeavour.

MASTER OF THE ROLLS: And that is transparency.

DEPUTY HEAD OF CIVIL JUSTICE: That is transparency.

MASTER OF THE ROLLS: And it allows for simplicity of rules, so it has a double whammy of efficacy.

DEPUTY HEAD OF CIVIL JUSTICE: And maybe, if I may, one more thing, just going back a little, data standards: one of the really important reasons why the Master of the Rolls is talking about data standards is that they are not difficult to make, and they are not expensive. They are rules. We make rules and rule committees, that we can do. Somebody else makes the IT systems. You do not have to build a monolithic computer system by setting a series of data standards to allow all these pre-action things to interact with each other, and that is a really important aspect of why this vision makes sense.

SARAH RUSSELL MP: So I have a couple of different sort of thoughts or concerns, although possibly this just makes me the small c member of the legal profession that you were imagining *[laughs]*. But one of which is doing justice is one thing, people feeling that they have had justice is a completely and utterly different thing, and I have concerns that both of the systems that you are talking about have more scope to deliver justice than to deliver a feeling of having received it. But, in terms of looking at the online rules, I mean the employment tribunals, we just do not have anything like the volume of rules that you do in the White Book. I have always found it completely bizarre. We do not have to be told that you do not give out an order until you have had some submissions. I doubt that is in the Employment Tribunal Rules. We just do not do it. It is just not a done thing. It is just not something that happens. So I appreciate you have got a wide variety of different case types,but some of this I am just like…. can you not just have the overriding objective to achieve justice and then crack on? *[Laughs]* So could we get to some of that? But, in terms of the online stuff, have you got, looking at this, an equal number of men and women, and what do you do about engaging with people who are actually court users? Because you have got a lot of litigants in person out there, and rules that solicitors can use are not helpful.

MASTER OF THE ROLLS: Well, we are doing a lot of… well, you start and I will come back to whether we do justice.

DEPUTY HEAD OF CIVIL JUSTICE: Well, the short answer to your question is, as to the numbers, I do not know, but we have one of the members of the OPRC, the Online Procedure Rule Committee, specifically her focus is on inclusion, and one of the major work streams of the subcommittee that we have been talking about is an inclusion work stream, which is exactly on the point. So that is front and centre of the work that is being done. So that, I hope, is a positive answer to your question. Absolutely yes.

MASTER OF THE ROLLS: Can I come back to whether justice is being done?

SARAH RUSSELL MP: May I just address that point a minute?

MASTER OF THE ROLLS: Yes, sure.

SARAH RUSSELL MP: May I gently suggest that if you are not sure whether or not your committee is demographically representative in a variety of different ways in terms of disability, ethnicity and gender, if you are not sure, then it probably is not, and it might be worth checking.

MASTER OF THE ROLLS: I think it is, actually. I think he is doing himself down. But I think the subcommittee is pretty demographically balanced.

DEPUTY HEAD OF CIVIL JUSTICE: I think it is.

MASTER OF THE ROLLS: I mean I cannot tell you the numbers either, but it was certainly intended to be. I really want to come back to your point about justice. People need to feel they have had justice, not just that there has been justice. I mean I spent a lot of time trying to identify why people come to court, why people need disputes resolved. A very large number of people have a dispute that they simply want to be finished. They want the money, but they want to be

finished, and they do not spend all their time thinking that the judge has done them down or not done them down. They would much prefer to go nowhere near a court, but to have a quick, economical, effective resolution of their dispute. Of course there are people who actually require to see justice done and are sensitive to whether it has been done. Nothing I have said stops people going to court and engaging in exactly the same process as they do or did in the past to get a dispute resolved. What I am trying to do really is pick off a series of low-hanging fruit so that actually the justice system, which is jolly expensive, is resolving disputes that have no other way of resolution.

Because mediation, arbitration, ombudspeople, and a whole series of portals are incredibly successful. We have not discussed automatic referral to mediation, but in the County Court, with cases that have actually got to the bottom of the funnel, even now we force them to go, 32% still settle their cases when they thought they probably did not want to go in the first place to mediation, and when they went voluntarily, it was nearly 50%. So mediation is a fantastic tool and people come away from a mediation normally pretty happy because they've agreed to the outcome. So you are quite right, people do have to be satisfied that justice has been done and seen to be done, but I think this system achieves that for the most part, and where it does not, we will make sure we do something about it.

Now, can I come back to the rules? This business of "Why do you need so many rules?" I could not agree with you more. The idea of the CPR reforms in 1999 was to cut the White Book in quarters. It did not work. It simply replaced Rules of the Supreme Court with parts of the Supreme Court Rules, which are, truthfully, the same thing. They are written in slightly more simple language. I agree with you, you do not need all those rules, but it is a work in progress getting rid of them. But as more and more cases move across to the OPRC, and the OPRC has the kind of rule type that you're talking about, the problem will start to resolve.

CHAIR: Thank you very much. We have got two or three more issues, one of two of which you mentioned, which are mediation and CPR, and then we will end up on AI. So if you could bear with us for another 10, 15 minutes, that would be very helpful. Warinder?

WARINDER JUSS MP: Yes, Sir Geoffrey, you mentioned the White Book. I agree with you. You have described it as being too long and cumbersome. I never enjoyed reading the White Book, even though I had to to do my job. So you have suggested a foundational reform. What would that involve? So what is going to be that foundational reform? Also, do you think that reform of the CPR should precede any further digitisation?

MASTER OF THE ROLLS: No, I think the CPR is going to remain for the non-digital environment, but more and more cases will be brought and resolved in the digital environment, subject to the APRC rules, which will be simpler and easier to follow. I have not suggested abolishing the CPR for non-digital cases. I think that is a big job. Personally, I think, actually, the problem with the White Book is that it has too many things that are not rules. So it is very useful for somebody who is looking at it every day and knows where to find everything, except that it is written in ten-point, which I personally cannot read, but apart from that, it is very useful, but it should be arranged in a quite different way. What most people want to see is the rules. Now, the rules are only a book, a small book. They are not huge, but they are too big, probably. I do not think we should engage in a foundational reform. What we are doing, what Colin is doing, is cleaning them up. We are… what is it called? The…?

DEPUTY HEAD OF CIVIL JUSTICE: Simplification.

MASTER OF THE ROLLS: Simplification. So, we are simplifying and removing redundant rules all the time. Unfortunately, the White Book is published by a commercial publisher, and they include

all those notes, because it is their view that those notes are wanted by the people who buy the book. But, actually, the rules are getting simplified all the time.

DEPUTY HEAD OF CIVIL JUSTICE: If I could just mention that? So we started a project to do that four years ago, and we are working through, and we have been working through the rules, to identify bits that we can get rid of from the main rules.

First of all, the White Book is not the rules, as the Master of the Rolls said. It is a constant frustration, frankly, for me, in working in the CPR, to be criticised about the White Book, because the White Book is full of all this stuff which is not the CPR. It is useful stuff, I am not saying it is not, but it is not the CPR.

And the CPR is really in two parts. It is not written this way, but it is. There is the central rules which govern civil justice and there aren't that many of them. There is about 40. And then there is extra stuff about enforcement which is very important but rather different. And then there is a whole lot of other stuff about special cases and everybody wants a special case and every time somebody comes along, if I may say sometimes government, often government, comes along and says we have got this special case, we need special rules for this special case, instead of fitting it into the existing rules we end up with a whole new practice direction to deal with some special case. And then there's another special case and another special case.

And that's the explanation for why the rules are in the state they are in, because if you're dealing with anything other than the very ordinary case, you're flicking back from part so-and-so and part such-and-such. But we have for rid of, I cannot remember the numbers now, but we have certainly got rid of about 6 whole practice directions. Which I get very excited about. It is a bit nerdy and I apologise for that, but those are great long chunks of text which when somebody actually sat down in a rule committee, looked at the rule and look at the practice direction and realised that most of what was written in the practice direction was sort of the same thing that was written in the rule and if you change the rule a little bit you could get rid of it altogether. And that has got to be worthwhile and we are doing that.

WARINDER JUSS MP: Thank you for that. Can I ask you about fixed recoverable costs? In more than 30 years of practicing as a PI and clinical negligence lawyer, I absolutely agree with you. I think every single one of my clients wanted an early resolution to their claim, a quick settlement, and you did mention that legal aid is much less than it was before with an increase in litigants in person. I have always felt that having more litigants in person is not necessarily a good thing because judges and courts spend longer trying to help them out so that they can deal with their cases, which is why I have always felt that legal representation, in certain types of, certainly the kind of cases that I dealt with, was always necessary. So I think fixed recoverable costs actually leads to access to justice as well, because there have been cases where, for example, birth trauma cases, mental health cases resulting in suicide, fatalities in older people, younger people, where the claim is worth less than £25,000 those cases have been subject to fixed costs, and I have had the Society of Clinical Negligence Lawyers contacting me saying that they have put forward proposals as to what could be an alternative, such as having a roadmap and then having an agreement with the other side as to how the case is to be dealt with. I am particularly concerned about claimants who are going to be vulnerable when they seek legal help, when defendants will always have qualified lawyers representing them. So I just wanted to know from yourself, Sir Geoffrey, what is the rationale behind the reforms to the fixed recoverable costs? I know it is to save costs, but, you know, are we actually saving costs, and is that at the expense of access to justice? Do you believe that fixed recoverable costs have been successful in encouraging access to justice?

MASTER OF THE ROLLS: First of all, it was not the judiciary that introduced fixed recoverable costs, it was the last government, and I think it is too early to say how successful it has been or

indeed what the access to justice issues thrown up by it have been. I think one of the problems, particularly with personal injury litigation, is that it is been very expensive relative to the amount of damages recovered at the end of the day, and that is obviously not a good thing, because one of the central parts of justice has to be proportionality, and you cannot spend, you simply cannot justify spending an endless amount of money, however seriously the parties regard the case, if the case itself is only worth a very small amount of money. So you have to have a proportionate system, and I think fixed recoverable costs attempts to achieve proportionality. I think we have to wait to see whether it does that, or whether the concerns you are raising are valid on the evidence. So I would leave it a year, and then look again, and I would happily come back and talk about it when I have had an opportunity to think about it. What do you think, Colin?

DEPUTY HEAD OF CIVIL JUSTICE: Just to add, I mean, we could discuss the detail of fixed recoverable costs, if you would like, we can do that but I am not sure it is necessarily all that productive. But the important thing to pick up what the Master of the Rolls just said is that when the Rule Committee passed the rules to bring in the new fixed recoverable costs scheme, we, the Rule Committee, specifically said that we wanted to have a stocktake, once it had been going, which is not something the Rule Committee itself has ever done before, as far as I know. And the stocktake was originally going to be scheduled for the beginning of this year, but the number of cases going through the intermediate track, which is part of the fixed recoverable costs, as I expect you know, is still relatively small, and so the decision was made at the meeting in March, to say that the stocktake would take place in the summer, and probably in the autumn, October, just to make sure that there is actually some information about what is happening.

So to exactly the point that the Master of the Rolls and you have just made, we need to look at it. We absolutely know that.

WARINDER JUSS MP: Yes, I mean, and I totally take on board the point about proportionality, I think that is important. But my concern is about access to justice, and with, again, you know, looking at all the clients that I have dealt with in the past, a lot of them just want justice, they want an acknowledgement of the fact that they have been wronged. They are not necessarily wanting to have huge amounts of compensation, and a lot of these claims that are considered to be low value are quite complex claims, where you do need legal expertise to represent the claimant well, and to achieve a resolution of the claim quickly, using legal expertise. So I think that is perhaps overlooked. But I do, again, appreciate, it was the previous government that brought these rules in.

So as a final question, I just want to put this forward that we do, we have spoken about delays in the County Court, do you think that delays in the County Court have reduced, undermined the effectiveness of fixed recoverable costs?

MASTER OF THE ROLLS: Probably not yet, and I do not think enough cases have gone through to see that. I think it is absolutely imperative that we exclude delays and we will only do that by digitising and putting things online, and the sooner we do that, the better. Unfortunately, it is many of the smaller cases and cases brought by vulnerable people that are not digital, because they will bring things on paper, litigants in person, particularly. So that makes it worse.

DEPUTY HEAD OF CIVIL JUSTICE: Clin neg would be brought by a solicitor, you would expect, normally, and they would be damages claims that should be in the damages online system, and I think if I am right, for clinical negligence, specifically, the only fixed recoverable costs, they only apply if causation is admitted.

UNIDENTIFIED: Yes.

DEPUTY HEAD OF CIVIL JUSTICE: Which is an exception for other things. But that does not… Yes, I am not… Yes.

CHAIR: Thank you very much. Linsey.

LINSEY FARNSWORTH MP: Thank you. Away from rules and back to humans, if we may, I'd like to talk to you about mediation and alternative dispute resolution, and I think since you last appeared to the committee in June 2023, there has been major developments in the use of mediation for civil justice, and I know we were learning about that yesterday in relation to the mandatory requirement for mediation for civil claims under £10,000 when we were in Northampton, the business centre, that they were teaching us about that yesterday. I found that really interesting. I am just wondering whether you think that mediation is being used in the County Court enough at the moment, and whether mandatory mediation should be expanded for any particular parts of the system?

MASTER OF THE ROLLS: I do, actually. I think mediation is something that should be tried, and what I used to call repeated attempts to settle, interventions to try and persuade people to settle, try and get them to reach agreement without the need to spend more and more money, and take more and more time, and cause more and more upset, is a jolly good thing. I will give you one example, a case in the High Court where mediation has been prevalent but not much used for many years, a judge ordered mediation under the new jurisdiction established by the case of Churchill, in which both Colin and I sat, where we said it was open to the court jurisdictionally to require parties to mediate their case. The parties were outraged by his intervention and said that they had no intention of settling the case, the case was unsettlable, and it required judicial resolution, and it was completely outrageous that he was even having the temerity to suggest that they should go to mediation. He said, "Well, you may say that, but I am saying that you should go to mediation," and he ordered them to go to mediation, and the case settled, and both parties were saying exactly the same thing. A long trial was averted by this settlement.

So mediation is something that people should, I think, be required to consider, and in small claims, it is also very successful. The kind of mediation we are talking about is an hour on the telephone, not to a lawyer, but to an HMCTS mediator who is trained. It is really not going to be, I think, deleterious to the interests of justice to require warring parties to spend half an hour on the telephone, or an hour, and having it suggested to them that they might actually have been unreasonable in demanding £1,000 when their claim was only £500. So, yes, I do think we should have more of it.

It is something that is always controversial, because we have this idea that every case should be resolved by a judge in a court, a lovely panelled court, as it was in the 19th century. But the truth is that is very expensive, and people sometimes can be brought to a satisfactory resolution by a whole variety of mechanisms, and particularly in the modern environment, you can use digital interventions, you can use even AI potentially in the future, and I think we should open our minds to every possible way, early neutral evaluation, mediation, consensual arbitration, any kind of way of bringing speedy resolutions so people can get on with their lives. Sometimes dispute becomes an end in itself, and we as lawyers must not make that worse, we must make it better.

LINSEY FARNSWORTH MP: Do you think there are any... Do you have any concerns about the access to justice side of things in terms of mediation, if one party has had the benefit of legal advice before going into mediation and the other has not? Are there any safeguards if you do have any concerns?

MASTER OF THE ROLLS: Well, the mediator has to be properly trained so they understand that. I think it is very problematic in family cases where sometimes a vulnerable spouse, often a woman, will not have legal advice and will effectively in mediation be bullied into giving up property rights

that should not happen. But that is not what we are talking about here. Here we are talking about probably two litigants in person, both of whom have very fixed ideas about their case, and somebody standing in between and saying, 'Come on, do not be stupid, £500 was the amount you were due, not £1,000, why do not you settle?' Of course there should be no bullying, of course there should be no pressure, and of course there should be no inequality of arms, and mediators must be very clear about that.

LINSEY FARNSWORTH MP: If it was to be expanded, you would want to see some safeguards—

MASTER OF THE ROLLS: There already are.

LINSEY FARNSWORTH MP: —for the sorts of cases that would be [inaudible]?

MASTER OF THE ROLLS: Yes, I mean just because they are being forced to go does not mean they are being forced to settle.

LINSEY FARNSWORTH MP: Thank you. You mentioned the use of early neutral evaluation within the County Court, you touched on that a moment ago, I am really interested in that. I am just wondering whether you think that should be used more, and if so, how it should be used, and again, whether that in itself would be a useful tool in terms of access to justice, where somebody isn't represented?

MASTER OF THE ROLLS: I close my mind to no kind of dispute resolution. I think early neutral evaluation is excellent in some cases. Two, three, four years ago, the Civil Justice Council made a report about small claims, and there were a lot of pilots in some County Courts basically suggesting that all small claims should be listed for half an hour in front of another district judge, for the district judge to suggest early neutral evaluation, or perhaps put more robustly, bang the heads of the parties together in a non-physical way to suggest a settlement. That worked in a large number of cases, but it is very judge heavy in terms of resources, and the problem was that it also had the effect of entrenching some of the people who did not settle, and making the dispute even more difficult to resolve. I think it is good for some cases, and probably not for all cases.

One of the important things about dispute resolution is to understand that it is horses for courses. I am perfectly comfortable with requiring parties to go and spend an hour on the phone to a mediator, at which they are perfectly capable of saying no. I am less comfortable with saying that every case should be listed for a second hearing, which bungs up the courts. It has to be shown on the evidence then that it really is valuable, and an appropriate course. It could be there were people who thought it was, but some of the outcomes were not as exactly as we had expected.

DEPUTY HEAD OF CIVIL JUSTICE: Just to elaborate on that, the thing that made it complicated is that it was not clear that the cases which did settle at that stage were the ones that would have settled anyway, and so the question then becomes a resource allocation question, because was it worth the resource? If you look at it — and this is depersonalising it, which I do not think is acceptable, just to be clear about, but just at that level of resource allocation, that was a question, whether it was actually worth that kind of resource. Maybe the answer is yes, because ultimately settling earlier is better, but that is the sort of difficulty which these things throw up.

LINSEY FARNSWORTH MP: How would we decide which cases were suitable and which cases were not suitable for certain types of court resolution?

MASTER OF THE ROLLS: Particularly with small claims, it is very difficult, because basically you have to have a system in a court that says every case is going to be listed or not, and overall the outcomes that we saw in the pilot was not absolutely clear that that was a good use of judge time.

But yes, I mean, of course judges should have in their minds the possibility of early neutral evaluation for particular cases that they see, and you should be able to do anything that is appropriate to reach resolution if you can.

LINSEY FARNSWORTH MP: Judge-led then, on a case-by-case basis.

MASTER OF THE ROLLS: When it gets to a judge. I mean, my digital justice system has hundreds and thousands of cases that resolve long before you get anywhere close to a judge. The problematic ones are the ones that get into court.

CHAIR: Do you think the professions are signed up to your vision of the widest possible dispute resolution? I am conscious we are celebrating tomorrow night here the 200th anniversary of the Law Society, and lawyers are sometimes wedded to their histories.

MASTER OF THE ROLLS: I hope so, is my answer.

CHAIR: I will not press that any further. The very last question. You mentioned just there in the context of dispute resolution, artificial intelligence. How do you think artificial intelligence can affect the work of the County Court and improve it in the near future?

MASTER OF THE ROLLS: I am going to let Colin start.

DEPUTY HEAD OF CIVIL JUSTICE: Well, there is two different things. Artificial intelligence as an assistance, not about artificial intelligence deciding cases, but just as a tool, and it seems pretty clear that it is well worth looking hard, and we are looking hard, starting very baby steps, small steps, to see if we can use artificial intelligence to help judges. So, for example, the thing which I would really love to do is this. If you are a senior judge, most of the cases, almost every case you get, comes to say me with a piece of paper on the front page in which someone has written a summary of what this case is about, and those summaries are very good. They are not perfect. They do not have to be perfect, because I am not going to decide the case reading the summary. The point of the summary is it makes it quicker for me to read into the case, but we do not have the resources to provide that service for our district judges or even our circuit judges. It takes resources, but we know that these AI machines are good at summarising, so there does not seem to be any technical reason why we could not have a system in which for every case a judge had in the County Court, they were presented with a summary of the same kind for the same purpose, and it will not always be perfect, but it will orient them in what the case is about. They can see it.

If you imagine, I will tell you another sort of war story, if you like. It is five o'clock in the afternoon, you want to go home at half past five – and take a paper world — there are five piles of paper on your desk, and this is a real example, and you are a good person, and you want to do one before you go home. The problem is you do not know without opening the blessed file which is which, but if you had a summary on the top, you would, and it is as simple as that, and that is the kind of thing that we could use AI for, and we are looking at trying to see if we can use it to summarise cases. That is just one. Transcription is another one. If we could use AI to transcribe material from oral hearings that would be really, really helpful, and we are looking at that.

MASTER OF THE ROLLS: Let me tell you one thing that I was very taken by. I gave a speech on AI at a Lawtech conference a month ago, and a young woman barrister practicing in the Employment Tribunal gave a speech about how she used AI in every single one of her cases to create chronologies and lists of participants for the court. She checked them over, they were done by AI but she then checked them over. She said, “I have set all this up on my computer because AI is not something that is done to you, AI is a tool that you have to use for the kind of work you do in an appropriate way,” and she said, “I am an employment barrister, I do a lot of cases that are

quite similar. I have set up tools using ChatGPT and I save, every week of my life, five hours of my time by doing those things that give me a head start in my cases." And that is not risky because she has checked everything, it is not dangerous, because she has checked everything, it is just time saving, and we would all use a hoover instead of sweeping the floor with a dustpan and brush, and so we should consider how we can use AI to save time and to make sure we get better, cheaper outcomes for the people we serve. We are not here to do justice for ourselves as judges, we are doing justice for the people, for the citizens, and for the business of this country and I think it is incredibly important with AI actually with everything that we have talked about to understand that.

CHAIR: Thank you very much, that appears to be—

WARINDER JUSS MP: Yes, I will make it really quick, thank you, Chair. So we did have a presentation at one of the previous Select Committee meetings of how lawyers can use AI to make their job really easy, because AI would tell you what the next step you need to undertake in your case. Do you foresee judges using such a facility in the future?

MASTER OF THE ROLLS: Well, I think judges will use AI for all sorts of things. Different judges will use it for different things. The critical thing is they follow the guidance that we have issued as to what you must not do, and what you must not do is write a judgment with AI and then give it out as your judgment. You must write your judgment yourself. But it can save time, and if it can save you time in the particular work you do, in an appropriate way, then by all means. I think it will come more and more, and there will be greater acceptance and understanding of how to use it. I think it is terribly important with these things not to be frightened of the future, not be frightened of our own shadows, because in life, you know, worlds have changed, commercial situations have changed, everything changes. We are all still here, luckily, and I think we will still be here when we use AI, and we will still be sensible when we use AI, as we have been in the past. So I just caution against dramatic prognostications as to the future when we talk about AI.

CHAIR: Leave that to foreign affairs, yes. *[Laughter]* Thank you very much, both of you, for attending today. That was a suitably positive note to end on and you have given us a lot to think about and a lot to question the MoJ ministers with when we next see them. Thank you very much indeed for your time and your expertise this afternoon. I am going to close this afternoon's session there. Order, order.

[Ends]