

CONSTITUTION COMMITTEE

EVIDENCE SESSION WITH THE MASTER OF THE ROLLS

Subject: The Rule of Law

on

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Rt Hon Sir Geoffrey Vos, Master of the Rolls, Judiciary of England and Wales

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CHAIR (THE RT HON. THE LORD STRATHCLYDE): All right, well, good morning and welcome to this meeting of the House of Lords Constitution Committee. Today we are hearing from Sir Geoffrey Vos, Master of the Rolls and Head of Civil Justice in England and Wales. You are extremely welcome, and thank you for taking the time to be with us today.

As I think you know, we have been carrying out an inquiry on the rule of law over the course of the last few months. We've seen many witnesses and we're delighted that you're coming up slightly towards the end of the process. It gives us more perspective and, hopefully, we'll be able to hone our questions rather more wisely than perhaps we've done in the past. We've seen many legal personalities, including the Lady Chief Justice and others. We've seen members of the police and we've seen what I might call "ordinary practitioners" in giving advice, solicitors, barristers and so on. So we have been getting quite a good view of what is going on, but this evidence taking session is obviously extremely important to us.

So let me start off with the first question, which is to ask you overall how would you assess the state of access to civil justice in England and Wales, and what impact does it have on the rule of law?

MASTER OF THE ROLLS: Thank you, Chair and thank you for the invitation to attend the committee. I wonder if I can just give you a two-minute introduction—

CHAIR: Please do.

MASTER OF THE ROLLS: —before I come to answer that question? I want to start with an anecdote, but I think it's extremely important. I attended a conference of judges in a South Asian country a few years ago, and that country had huge delays in civil justice. And an official from Gallup Poll explained that, in that country, more than 50% of those asked how they would resolve a civil dispute with a neighbour replied that they would use self-help. Now, self-help may involve threats or violence, and definitely lead to the breakdown of civil society, and it is for that reason that the state's provision of an efficient, quick, and economical dispute resolution process is a cornerstone of the rule of law.

I'm afraid civil justice is wrongly regarded by many as less important in rule of law terms than criminal or family justice. But, actually, more people in our society need to resolve civil disputes, large and small, than have any contact with the criminal or family justice systems. I often say that there are some 15 million such disputes every year. Some of these are very small indeed, but they all cause economic and psychological damage to those involved in them, and all of you will know how much less productive people are at work when they receive an unwarranted demand from their electricity or gas supplier as they tap away on their mobile phone in work time, trying to find ways to resolve that small civil problem.

Now, as head of civil justice, I have made it my very highest priority to support and promote modernisation of a system that is very hard to modernise. The large variety of case types which I put into the document I put in to you makes it difficult to apply a one-size-fits-all to streamlining and digitisation. But nonetheless, in my view, we must achieve the goal of bringing civil justice into the 21st century. We must create a system suitable for the people that we all serve, and those people were for the most part brought up with mobile phones, with tablets, with computers, and they expect justice to be delivered in the same way as the other services they use every day in online banking, online shopping, online utility bills to name but a few. To be really honest, the piles of paper in our County Courts are unacceptable and unsustainable for the future, and it's for that reason that I have three important priorities to achieve my goal of modernisation of civil justice. Just to head you off at the pass if I may, they all are achievable without massive government investment. What they need is dedication and collaboration between the Judiciary, HMCTS, the Ministry of Justice, and that is something that I now believe is achievable.

Those three priorities are as follows: First, we need to continue the process that was started with Reform so as to get paper out of the county court. We need to move more and more case types onto the new digital platforms we have already built. It can be done. Secondly, we need to replace a system called CE-File, which is currently used for complex cases in the High Court and the Business and Property Courts with a proper AI-enabled digital case management system fit for the future, and thirdly, and perhaps closest to my heart, we need to continue the creation of the pre-court digital justice system, which is being created by the Online Procedure Rules Committee, which will allow many more disputes to be speedily and economically resolved online before they enter the court systems at all.

Now, there are many other things that are being done and need to be done to modernise civil justice, including the rationalisation and digitisation of enforcement mechanisms, the expansion of alternative dispute resolution mechanisms – I'm sure we can discuss those too – but, in my view, we need to raise awareness of the importance of civil justice and the importance of access to justice for every person, every citizen, every small business in our country to the rule of law and to the wellbeing of our citizens at every level.

So that's the introduction. Now, I can come to your question.

CHAIR: Can I just quickly comment on your introduction?

MASTER OF THE ROLLS: Yes.

CHAIR: Which I thought was immensely interesting and extremely well put, and you come here with vast experience and knowledge in the judicial space. Of your three priorities... nobody's disagreeing with them, what's the blockage to achieving all of these?

MASTER OF THE ROLLS: A marvellous question, if I may say so, Chair. There is no real blockage. If you take the replacement of CE-File, there is a project to do so. There is only discussions as to how and how quickly it can be done. But it must be done, and it will be done by—

CHAIR: No, it is achievable?

MASTER OF THE ROLLS: It's achievable, and it will be done and there will be... and there is, I believe, funding for it. If you take getting paper out of the County Court, that is massively difficult because of the way in which Reform was undertaken. And if I had to identify a single reason why it's difficult, it's because nobody started from an understanding of all the multifarious, different, disparate kinds of cases we do in the County Court.

CHAIR: Mm.

MASTER OF THE ROLLS: And they're all different, they all take a different amount of time. In one county court, in Luton, for example, wherein is the home of EasyJet, they have lots of airline delay claims. It's not surprising, but they are of a completely different character from the County Court in Birkenhead, where they have what we call stage three personal injury claims in hundreds and maybe even thousands. So if you're trying to make a system that one-size-fits-all, you can't, and so you really need to tailor the process for civil justice in a very different way from the way we did it for family justice and the tribunals of various kinds where the cases tend to be homogenous, they tend to all be roughly the same with the same kinds of parties. So that's the problem. The solution to getting the paper out of the County Court is now on track, I believe, finally. We've created these two digital systems, OCMC, Online Civil Money Claims, which is for debt claims, effectively, and another very good system, they're both very good systems for damages claims. What we now need to do is to expand them because, as at today, only about 11% of cases started in the County

Court go through those systems. We need to expand them so that they can accept many more of the various different kinds of County Court cases. Again, it's doable. The reason why it's not been done to date in many cases is not indolence, not unwillingness, not even a lack of collaboration. But what it is is that all these different types of cases have different archaic rules that apply to them, they have different fees that apply to them, and the digital system was built for simple debt claims and simple damages claims and needs to be tweaked, adjusted, or the rules need to be tweaked and adjusted, or the fees need to be tweaked and adjusted, and then we can bring a whole raft of other types of claims on board.

CHAIR: Yes.

MASTER OF THE ROLLS: And the third one, the digital system, I would say I am most responsible for that in the sense that, you know, without being stupid about it, it's something that I've been working on for a number of years and it's happening. The Judicial Review and Courts Act 2022 gave the legislative background to the Online Procedure Rules Committee, which I chair, which Lord Burnett appointed me as the chair, and you'll be surprised or pleased to hear that I've been reappointed now for another couple of years. What we're doing there is we're starting to make rules. We've had a statutory instrument, we're going to have another statutory instrument I hope next year, and we're starting to make rules for the online space, which is going to be transformational, but the even more transformational and exciting thing is we're going to bring coherence and integration to pre-court dispute resolution.

All my 15 million cases I talk about, most of them have to be resolved without a judge. We haven't got enough judges to resolve those number of disputes. We have online platforms provided by the state, provided by private enterprise, provided by industry, but they're not connected, they're not integrated, and what the OPRC will do is provide guidance of framework so that if you go looking for a way of resolving your small dispute to the Housing Ombudsman, let's say it's a claim about a property, and the Housing Ombudsman, because of the statute under which he's created can't deal with it, at the moment he just leaves the claim and says, "I'm sorry, I can't help you." But what he ought to do, of course, and what has to be structured is to say, "Now, I know that the online official injury portal could help you, because actually your problem is a personal injury claim, so I'm going to direct you electronically to that portal," or, "I can see you need legal advice and I'm going to direct you to online legal advice," and once you get those interconnections, which digital makes very easy, in place, then you'll have a much better structure for resolving those disputes quickly and efficiently.

CHAIR: Thank you very much. All right. That's a very good explanation. Now we'll go back to the original question, please.

MASTER OF THE ROLLS: Well, the original question is how do I assess the state of access to justice?

CHAIR: Mm-hmm.

MASTER OF THE ROLLS: I think it is improving. I think people are surprised when they use the new systems we put in place which are available, how accessible they are, how easy to use they are, and how they work. We get very good consumer feedback from these new digital systems. They are much quicker than the old paper-based systems, but they're not extensive enough, so we need to do what I was saying earlier to make them much more applicable to everything else. So access to justice is work in progress.

There are problems, as I identified in my submission to the Committee. The main problems are delays in the South East of England caused by a lack of district judges. It's not the most popular place to work, South East of England and London, it's expensive to live. District judges who are on a second career often want to go and work elsewhere, but we're addressing that, and we should

have more judges appointed, I think it's slowly, slowly. So there are delays in some parts of the country.

But I think the Committee needs to understand that I go round, I have 140 County Courts I'm responsible for around England and Wales, and I'm actually the first Master of the Rolls to really make an attempt to go and visit them all, and I do it religiously, literally religiously. When I go round, I see some of those County Courts, many of those County Courts, running efficiently, providing dates for small claims within three, four, five or eight weeks of the case coming in. The delays are caused by things like central problems at the central Civil National Business Centre in Northampton where they had five floors of paper and it took weeks, months sometimes to get those cases out to the County Court. But once they get to those County Courts, they're dealt with efficiently, there are very harmonious relations, and we see everything working well. Not always in London, not always in parts of the South East where there are major delays within the court, but those are all being addressed.

So I would say that it's a patchy picture. I don't think anything is not being addressed, but obviously, you know, there are funding issues in every aspect of society. But then you ask what impact does all this have on the rule of law? Well, as I started by saying, if you can't get access to justice and the state doesn't provide a means of resolving your dispute properly and in the way people expect it to be resolved in the modern world, that is a very serious impediment to the rule of law.

I don't think we're in that position. We're not in a position similar to the delays in some other countries. We have a system which is functioning. It's too slow at the moment. Digitisation will make it much quicker. It will become much more accessible, and of course we will put in place mechanisms to make sure that those who are digitally disadvantaged and can't use the digital systems are assisted to doing so, so there will always be a paper alternative.

So, overall, I'm reasonably optimistic. If my three priorities are achieved in a reasonable timescale, which I'm looking at two to three years, I would say that that will make a meaningful contribution to access to justice and therefore to the rule of law.

CHAIR: That's extremely helpful. Thank you very much. I'm going to call upon Lord Beith.

THE RT HON. THE LORD BEITH: You've talked about getting the paper out of the County Court. Is it not also the case that you're really trying to get the County Court out of the courtroom, a far smaller proportion of hearings actually taking place, because you think there are better systems for handling the majority of complaints?

MASTER OF THE ROLLS: Yes. I think that's partly true. We always seem to find our courts are pretty full, and we even need more. Modern society is interesting. When you don't really have access to justice, people don't bring claims even though they should. But that creates social problems at another end of the spectrum. When you do have a functioning system, even if you resolve millions of claims pre-court, even if you resolve them online, even if you resolve them very early on, which is good for the economy and good for their people's psychological welfare, you still get quite a few that don't settle and do come through the system and do go to court. So, even within our digital justice environment, I would still expect the County Courts physically to be as busy as ever. But the system will work better, because I always looked at it as a funnel. So at the top, you have these 15 million cases, they work through the system, most of them settle, most of them resolve, hopefully quickly, with low cost. But there'll always be hard nuts to crack, and the better the system, funnily enough, the more eventually filter through. So you still need proper courts and physical courts. I mean, you can have remote hearings, and we do. We have a lot of remote hearings. But there are some cases that you need to see the judge, and it's only when you see the judge that the case can be resolved.

THE RT HON. THE LORD BEITH: A good district or County Court judge can actually winnow out some of the confusion that arises from a stack of paid lawyers on one side and an individual who doesn't understand the procedure on another.

MASTER OF THE ROLLS: Yes, or more often two individuals, neither of whom understand the procedure, and these days district judges are fantastically expert. I mean I never cease to be amazed at the quality of our district judges as I go round to these courts. They're committed, they're absolutely dedicated to the work they do, and they're jolly good at it, as you say. You know, what they have is something called a dispute resolution hearing in many small claims, and for the first time the parties, who are nearly always underrepresented, you know, it will be a claim for 900 pounds against a builder, and the parties hate each other because they've fallen out over, you know, whether the fence was grey or black, you know, something completely not relevant to the dispute, and they'll come in and the judge will say, in a dispute resolution hearing, "Look, have you thought that actually you only put in 50 metres of fencing and you're charging for 100?" You know, "Surely that's a problem for you?" And they'll say, "Oh really? Oh, you're probably right."

THE RT HON. THE LORD BEITH: How far can you encourage people to take earlier legal advice and from where in order to pre-empt some of these circumstances?

MASTER OF THE ROLLS: Let me say something about early legal advice. You probably know that the Legal Aid system in civil was reduced very significantly a few years ago, and that has caused problems. There are less lawyers in the County Court than there used to be, and when there are lawyers, they tend to be in a particular kind of case which is funded by industry, say, for example, personal injury cases generally, because of funding mechanisms, have lawyers, not always but sometimes. But a lot of other cases, small claims, don't frequently have them, and the problem that occurs with needing to go to the judge for that half-hour hearing to be told that you're claiming for twice as much as you did should be dealt with by a lawyer if it isn't obvious to the parties. You can't get Legal Aid funding for that. What I envision and what I've suggested and what I'm hoping will be picked up by government in a discernible period of time is the provision of legal advice online so that you will, first of all, probably use a legal advice chatbot, an AI-driven tool, which by the way works incredibly well. I've tried them myself, and I had a legal problem myself, and I went to a solicitor and I got the answer. Then I thought, 'Gosh, I'm talking all the time about AI, I think I should just see whether the same answer comes off my ChatGPT.' And I went into ChatGPT, I asked the question, I got the same answer, but for rather less money. So you can have such a chatbot, but many people won't ask the right questions of a chatbot. In many cases, it's not actually the answer that's lacking, it's the question, and although you can train chatbots to get to the right question, sometimes people just are not able to understand how to converse, and those people will need to be transmitted to legal advice. Often, I believe in half an hour, talking on a screen to a real human being, these problems will be resolved before even you get to court, and I think the best use of Legal Aid money for civil justice would be to provide such a service. It's not there yet, but I know it's being considered.

CHAIR: Lady Hamwee's got a quick supplementary.

THE BARONESS HAMWEE: Thank you. You talked about people needing... I may not have this verbatim, "needing to see the judge". In other contexts, we hear a lot about having the human in the loop. When you say that do you mean that they need to have the confidence that there is a human being involved, that they need the authority of a judge, or that they don't have confidence in the system getting the right legal answer? Or is it a mixture?

MASTER OF THE ROLLS: I think my answer is the first two. I think it is extremely important that they understand and have confidence in the court, in the authority of the court, and I think we're very lucky because I think in this country our court system and our judges are respected, I won't say universally, but in public surveys it normally comes out well over 70%, and better than many

other sections of society. So I think people do have confidence in the court, but people get very entrenched in dispute, and when I... years ago I used to think that this was only us here in the UK and that other countries were different and better, but actually, because I do quite a lot of travel and do a lot of international work judicially, and I've worked very closely with nearly all European countries because I've been president of the European Networks of Councils for the Judiciary and I'm now Vice President of the European Law Institute. So I go to lots of countries, they're all the same. Every country has the same problem.

People get entrenched in a dispute, and they can't see their way out of it, however simple it is. And if they can go to an independent, genuinely independent judge in whom they have confidence, and they are told something that is obvious to the judge, and maybe obvious to any independent third party observer, but not obvious to them, they will take it from the judge, but they may not take it from other people. They would take it from lawyers as well. The real question here is how we can get dedicated interventions at the right time quickly enough to resolve people's problems. Because, as I said at the beginning, if we don't, these problems get worse. They cause economic damage, economic drag, people are not productive, and they're worrying. I mean, the point about banging on the mobile phone when you get a problem, it's quite extraordinary. I'm sure you've all seen it in your offices, and it goes on for a considerable period of time to resolve the simplest problem.

So not everybody has to go to a judge. Most problems can be dealt with in many of the pre-court ways that already exist and are very, very effective, and provide really good solutions and happy solutions for lots of people. But they have to be quick, and then if you really are intractable, and the problem is really intractable, or the person is very entrenched, then, ultimately, there always has to be a judge available, and it's amazing how good those judges are.

THE BARONESS HAMWEE: Yes, I'd love to pursue this, but can I just ask one question for clarification on the note? You list 38 types of dispute. Can I just check, are those in order or is it... is there any ranking?

MASTER OF THE ROLLS: No.

THE BARONESS HAMWEE: Good. Because there were so many professional negligence claims at the top that I was quite worried.

MASTER OF THE ROLLS: The reason why negligence is at the top is the medical negligence, professional negligence and road traffic accidents are most of the things that people think come to the County Court. The real truth is the County Court time, judges' time is spent as much on property claims of various different kinds. Very small property claims, tenancies and other disputes about the ownership of property. TOLATA is one of the things, trusts of land. It doesn't sound very interesting. Trusts of Land and Appointment of Trustees Act claims but there's loads of them and they're very intractable. Inheritance Act claims, wills claims, all sorts of things, but no, they're not in any order. The thing to understand about this is that as society changes, so does this list. This is not a list that will be applicable in ten years' time. I mean, here we've got claims about travel claims, travel sickness claims, and those are really prevalent at the moment. We've got PPI claims, but they're going, but they'll be replaced by something else.

CHAIR: Lord Bellamy?

THE LORD BELLAMY KC: Yes, just if I may, Lord Chairman, following your remarks about an online legal advice system. We've had quite a lot of evidence to the general effect that when people have problems, many of them are not actually legal problems, they don't actually know what the problem is. So I'm just wondering whether, in terms of triage, you need a sort of first base advice facility online which can direct people somewhere, a sort of online Citizens Advice Bureau, as it

were, a sort of national service, which you might be directed to a legal problem, but in many cases it's a benefits problem or something that's not a legal problem at all?

MASTER OF THE ROLLS: I think it's not feasible for the Government to fund a universal point of entry to dispute resolution. The problem with it is it's too complex, and there are too many different kinds of disputes, and there are many, many providers that already exist. So the Citizens Advice Bureau is available online, Advicenow is available online, law centres are available online, there is legal advice, there are mediation, there is ombudsman, there's all sorts of people online already.

So the question is, how do you triage the people who come with a multifaceted problem? It is perfectly clear, and I always cite, because I find her work incredibly informative, Dame Hazel Genn, Professor Dame Hazel Genn, who's written about this extensively and she gave a Bentham lecture a few years ago in which she explained how every problem is interrelated. So when you lose your job you can't pay your rent, you lose your home, when you lose your home you lose your spouse, and then you're involved in a cycle of problems, some of which may be legal but many of which will be social.

Now, how do you resolve that? You need a lawyer sometimes to untangle, to find where the thread that first needs to be pulled is to be found, because otherwise you may try and address the possession problem which is not going to do you any good, when you ought to be addressing the problem with your employer, which might get your job back, which might then mean you are earning money again, for example. So you do need legal advice for that, or you may do. But the thing is so multifaceted that one size does not fit all, and my vision for this... and some work was done by the MoJ, which I think was really useful, on the digital justice system. What they found out was that people actually find it helpful, problems are resolved, when they can go to a site with which they're familiar, then get a bit of legal advice, then be directed to another site and the ecosystem is not as simple as my model of a funnel, where you sort of go through and get to the court if you really can't resolve it before, but the model is much more a whole ecosystem in which you should go for small inputs of legal advice, sometimes go to the resolution of this problem here, the resolution of that problem there. And you shouldn't underestimate the number of providers in the system who are doing brilliant work. You know, Advicenow is fantastic, CAB is fantastic, ACAS is fantastic, and so on and on. But they're not connected, and what we're trying to do is to create the integrated structure that will make sure that people don't fall through the cracks of the system's availability.

CHAIR: Lady Laing?

THE RT HON. THE BARONESS LAING OF ELDERSLIE DBE: Thank you, Lord Chairman. Sir Geoffrey has answered most of the questions that I was thinking of, most helpfully, and you've given us a very good picture of what is going on. I am a little bit sceptical about the idea that education, legal education could help, a general sort of telling people in schools how legal advice can be sought, et cetera, in trying to find... well, as you were talking about early legal advice. So I suppose my question is do you make a distinction between general legal education and specific early legal advice?

MASTER OF THE ROLLS: Yes, completely different things, I think. I think general legal education, what I think in the good old days we used to call "Civics" at school, was great, I'm sure, and I remember it, and maybe some of the members of this Committee will remember it. I don't think it happens in that way today. I think it's good. I think it's very good to teach children how life works, but I think you'll be amazed how quickly they find out, even if you don't teach them. They may not find out how life works in the way you'd quite like them to, but they certainly find it out from their mobile devices as soon as they're provided with one.

No, I think what I'm talking about is the very specific ability to access legal advice online at a point when you haven't worked out what your real problem is, and many people... an example is this:

people find it very difficult, they're not lawyers and they can't be expected to find it easy, but they will go online and they'll say, "I've got a pain in my foot and I don't know what to do about it, the doctor says it'll get better, but it's really upsetting me." And when you question, you'll find out they've got a pain in their foot because the bailiff slammed the door on their foot, injuring their foot as they were trying to be expelled from the house, and they've lost their home, and their real problem is nothing to do with the foot at all, and you may think it's a silly example, but it actually isn't. People do not describe a legal problem in the way that lawyers would like them to, and so it's diagnosis that is critically important for dispute resolution.

THE RT HON. THE BARONESS LAING OF ELDERSLIE DBE: If I may take you further down that line, as a Member of Parliament, I was for 27 years, holding regular constituency surgeries, people who practice the law at a certain high level would hardly believe the problems that people encounter in their everyday lives and which they think are a legal problem, and which they think can be resolved by going to court because they have watched some drama on TV or read a book about Perry Mason... That's a bit old-fashioned, whoever it is.

And they come to say, "Here is my problem. I want to go to court. Give me advice on this," and in all the years that I saw people coming to me like this, I didn't once – not ever – suggest that they go to court, because I could always see a better, simpler, cheaper, quicker way of resolving it or else, if it was irresolvable, tell them the truth: it's irresolvable. And you used the word "entrenched", and the way that people behave, which brings me to the point about the vexatious litigant, or almost vexatious litigant, because somebody wants their day in court. My understanding of it... I hope I'm not wrong on this. That the online system in the County Court, rather brilliantly, offers for small debt claims, offers a telephone consultation between the parties with a mediator.

MASTER OF THE ROLLS: Mediation.

THE RT HON. THE BARONESS LAING OF ELDERSLIE DBE: Mediation. Mediation at an early stage. The important point about this, Lord Chairman, is the early stage. Because, of course, if one... you've explained, Sir Geoffrey, if we clear the blockages at the early stage, then the later delays in court will be less of a problem. But the litigant can choose whether to have that mediation or not. I'm aware of a particular case where it was absolutely straightforward and should have been settled by telephone mediation. It would have been easy, but one litigant wanted his day in court no matter what and he took up an enormous amount of the court's time. I'm guessing that the example that I'm giving is not the only one. Is there a good reason for giving a choice about having telephone mediation?

MASTER OF THE ROLLS: Well, we don't anymore. There is now civil automatic referral to mediation. We call it CARM, a rather interesting acronym, Civil Automatic Referral to Mediation. Every small claim below £10,000 at the moment, but it'll shortly be extended, is automatically referred to mediation of the kind you describe on the telephone, both parties attending, banging heads together, and very successful. I mean, I haven't got the precise figures in my head, but when it was voluntary, we used to get an over 50% success rate, but now it's compulsory we still get a 37-or-8% success rate, which is fantastic considering that people who don't want to go to mediation are being required to go. So many more cases are settling by this HMCTS mediation process. As I say, you need multiple interventions because there are always some hard nuts to crack and there's always some who want their day in court, come hell or high water. But the truth is we're doing really well on mediation and you may also know of a case that I decided called the Churchill and Merthyr Tydfil Council case where we decided for the first time, I'm afraid in disagreeing with one of my predecessors, Lord Dyson, that it was possible for the court, as a matter of law, to order a party to go to mediation and now, rather to my surprise, that was two years ago, I sat with the Lady Chief Justice and we decided effectively to change the law which has been picked up in a way that none of us expected and there is now something called a Churchill Order which is regularly made in Business and Property Courts, in the High Court and in the County Court where the judge sees

that they've been through all these processes but they've not properly been engaging and he says no, or she says, "No before you have this case decided by me, which I will decide if you can't resolve it, you must go to mediation," and this is working all over the country. There are fabulous examples.

CHAIR: Interesting.

THE RIGHT HON. THE BARONESS LAING OF ELDERSLIE DBE: Such good news.

CHAIR: Yes, mega. Good question. Lord Burnett was going to ask quite a similar question.

THE RIGHT HON. THE LORD BURNETT OF MALDON: Yes, well I was going to ask about alternative dispute resolution and mediation generally and so we've moved into that area rather neatly already but I wonder, Sir Geoffrey, before I formulate a question whether we can just put the context a little more clearly. You mentioned in your opening remarks a total of 15 million civil and family disputes a year in the country, but in your note, for which many thanks, you break that down and one needs to remember that I think you say about five million of those are resolved by organisations like eBay and Amazon, I think another five million are actually in the Magistrates Court, not the County Court and it's something like a million and a half County Court cases that flow into the system and something over 90% of those settle in one way or another. So that's rather the context. Now in answering Lady Laing you've already explained, if I can put it this way, both ends of the mediation spectrum in the civil courts, there are the low-value claims that get an automatic mediation hearing, sometimes I think with a judge but sometimes with a court official.

MASTER OF THE ROLLS: CARM, Civil Automatic Referral to Mediation goes to an HMCTS official who's trained to mediate, it's one hour, it's on the telephone, if it doesn't work it doesn't work, but some courts, and we are now trying to harmonise the practice in all civil claims, order a half hour preliminary hearing, what they call a DRH, Dispute Resolution Hearing, where the parties come in and many of the experienced district judges will look at the papers and you only have to have one look at the papers and they'll say you're claiming for 100 metres of fence and you only built 50 and that'll be the result, the case will go away. So they'll be struck out sometimes in the dispute resolution hearing, judgment will be given sometimes by consent and so on. So there are two sorts in the low-value claims that are widely prevalent but there's also mediation of all types of private kinds online and elsewhere which people do use.

THE RIGHT HON. THE LORD BURNETT OF MALDON: Well that's really what I just wish to explore with you a little bit further, sort of crystallising my question in two parts, first where do you see mediation pushed by, sponsored by, ordered by the courts going in the immediate future in the next few years and how do you see that working with the commercial mediation and alternative dispute resolution systems which are operating in parallel and also from the very top scale down to fairly small cases as well.

MASTER OF THE ROLLS: I think it's a really interesting and quite difficult question. Mediation providers come in all shapes and sizes. In Ireland they have a Mediation Act which regulates mediators. We do not have a Mediation Act which regulates mediators and although most of them adhere to very strict rules provided by organisations like CEDR and the Civil Mediation Council, some don't, and one of the issues that has arisen is how do you know when you're having a mediator who is really accredited in an appropriate way so that they're going to adhere to proper professional principles. Now to come to your question, I think mediation is undoubtedly a critical tool in the box of dispute resolution and it will become more critical as time goes by.

Already there are providers of mediation at all levels. We've discussed the lower levels for small claims in the court, CARM and also DRH, dispute resolution hearings, but before court there are many structures that allow cases to resolve. So there is the Official Injury portal that is really

designed to resolve small personal injury cases, it does 600,000 cases a year online, only a very small proportion of which eventually go into the court at all. So that's a form of mediation because what it does is funnel cases by getting a medical report so that the insurer can look at the medical report, say, "I will offer you £2,000 for this injury," and it's resolved immediately. That's not mediation but it has the same effect. So you need to use every possible intervention.

One of the other things that people notice who've been involved in dispute resolution as long as I have, which is quite a long time I regret to tell you, is that cases can't all settle at the same point in the case. People are people and they are not all ready to settle a case at the same time. Okay, if the case is unwarranted or unreasonable it may be possible to settle it, provided you can get the answer and point out how unreasonable it is, but there are some cases where people fervently believe that something will turn up and they will win at the end of the day, even when they're wrong, and we all notice, I'm sure Lord Burnett has the same experience, that you need to repeatedly intervene and say, "What about mediation now? Okay, you wouldn't go to mediation then but maybe now we know more, we've got some more cards in our hand, let's do that."

So I think we as judges and as a judicial system and as a court system, we absolutely owe it to the parties to use every device, online and offline, to persuade people to settle because settling, as Lady Laing has said absolutely correctly, is the best advice in every case because the chance of winning is always going to be less than 100% and so settling and getting certainty and saving legal costs is for the benefit of all. So the system needs to be devoted to getting fair interventions at every stage to resolve as many cases as possibly can. There will always be some that don't resolve, some are difficult. I did a case in court yesterday, an appeal, which was difficult, and it raises a difficult legal question and judges have to decide. Maybe even the Supreme Court will have to.

THE RIGHT HON. THE LORD BURNETT OF MALDON: Chairman, I think I should perhaps make a couple of declarations at this stage just for certainty. The first is that Sir Geoffrey and I worked very closely on a lot of these issues for three years when you were Master of the Rolls, and I was Chief Justice, and even before that when you were Chancellor of the High Court, and secondly, I am, as it happens, a CEDR accredited mediator, which I should declare. But just to follow up, to what extent do you consider that a resolution of disputes through mediation and other forms of alternative dispute resolution affects the rule of law positively, and are there any negative effects on the rule of law that you can identify?

MASTER OF THE ROLLS: Well, I think it affects the rule of law extremely positively, because dispute resolution is good for our society in all the ways previously mentioned. It can be negative, mediation. All kinds of alternative dispute resolution can be negative, not generally in the contexts we're talking about, but you have to be extremely careful that people do not forgo real legal rights because they are not properly advised, because of the pressure to mediate and not to use the court system. This happens in family cases where spouses sometimes give up rights under pressure to mediate, to resolve, to get a solution, and the stronger partner will sometimes, I don't want to use emotional language, but sometimes put pressure on the other partner, and that partner will not be properly advised, and the solution will not be fair which is obviously something you have to be very careful about. But we're not talking about family situations, but even in civil situations, that can happen and if it happens, it's very negative and inappropriate, and we as judges, and in the judicial system, we have to be extremely careful to make sure that the effect of pushing everybody to mediation is not to create injustice and I'm very conscious of that. I am pretty clear that what we're doing at the moment has a very low risk of that occurring, but of course there will be cases. We cannot generalise and say there is no negative effect, so being conscious of it is critical. But, coming back to the positives, in my view, resolving civil disputes is incredibly important for our society. It's what I came back to right at the beginning.

People forget civil disputes, because they are so bound up, if I can say, with crime and family disputes. Now, there are many, many less family disputes than people who are engaged in civil.

People all have a problem with the Gas Board or the Electricity Board at some stage. They all have a problem with an online supplier. They all have a problem with their bank. They all have a problem with their builder at some stage and we forget the importance of those ordinary problems for ordinary people at our peril if we concentrate on criminal justice where very few people in our society are unfortunate enough to run into it and often they run into it because they're guilty of some crime. So I do think we need to shift the balance to really taking civil justice more seriously. The line that has always been said and often been true is that civil justice is the poor relation, and it's the poor relation, not because people are not really interested, but it's the poor relation because public focus always shifts to the more sensational bits of criminal justice and even family.

CHAIR: Thank you very much. Lord Murphy?

THE RT HON. THE LORD MURPHY OF TORFAEN: Yes, I think Sir Geoffrey's answered part of my question. However, there is perhaps a follow-on to that. You mentioned, touched on the idea that sometimes relationships in settling disputes are unequal and some examples, a landlord tenant, an individual and a local authority, an employer and an employee, and sometimes that isn't really fair relationship in terms of certain disputes. So you might settle it, but is it actually fair, because of the nature of that relationship? We were told a few months ago in this committee by an earlier witness, "Civil justice is not just about resolving disputes, but is also about vindicating legal rights and that not all ADR mechanisms actually allow that to happen."

MASTER OF THE ROLLS: Well, I agree. I think the most important thing to understand is that there are a vast range of different kinds of dispute with different kinds of social backgrounds, different societal backgrounds, and you cannot generalise. Of course, because we have these millions of disputes, which are about gas boards and online suppliers, which obviously don't give rise to the sort of imbalance, social imbalance you're talking about, we concentrate on the large numbers, but we need to be astute, as I said in answer to Lord Burnett, to understand when such problems do arise. You're right, employers and employees are unequal. Employers will nearly always have legal advice, employees will very often not. Landlords will normally have legal advice, tenants will often nearly always not and so we need to be conscious of that in devising our systems, but I do believe that digitisation and the digital justice system is creating equality rather than a lack of equality because I believe, and I said it in my introduction, I think it's really important to understand young people for whom we're creating this justice system, not for old people like myself, we're creating it for young people who are now coming into their adult lives with the background they've had in 2025, not the background I had being born in 1955. It's a very big difference and we have to create a justice system for the and they are used to getting everything they want.

I can't use this machine for everything because of my eyesight. I simply can't see it, even if I wanted to, but you'll be amazed at your children and grandchildren. They do everything on it, however close work, whatever the detail, whatever the spreadsheet. You know, I can't see a spreadsheet on one of these, so we need to adjust our horizons and be very, very clear that there are cases where imbalance exists, where injustice is risked, but that is not an excuse for not trying to solve the many problems that can be solved in the way I've described.

THE RT HON. THE LORD MURPHY OF TORFAEN: Thank you very much.

CHAIR: Lord Foulkes has got a quick supplementary.

THE RT HON. THE LORD FOULKES OF CUMNOCK: Geoffrey, I'm very encouraged by what you've said and your initial introduction and your answer to questions. At one point you said, "this country," but you're in charge of civil justice for England and Wales. Now you might guess that one or two of us here are from Scotland, we live in Scotland. This is a United Kingdom parliament. Are you able to tell us whether the situation in Sheriff Courts and the High Court in Scotland and the

Scottish Civil Justice Council and online, Civil Online, how that compares with the progress you're making in England and Wales?

MASTER OF THE ROLLS: I think we're probably ahead, but I don't know very much about it. I used to have a lot of contacts in Scotland, I don't have so many at the moment because I've been so busy with my 140 courts in England and Wales.

THE RT HON. THE LORD FOULKES OF CUMNOCK: Yes.

MASTER OF THE ROLLS: So I'm not going to be able to give you a good answer. I think the digital justice system is a little beyond the legislation and also the reality in Scotland and probably also in Northern Ireland, but I know that in Ireland they are very enthusiastic about digitisation, because I know the number of invitations I get to go over there to talk to them about it, and so I would guess that Northern Ireland is not far behind and I would guess that Scotland will not be far behind.

THE RT HON. THE LORD FOULKES OF CUMNOCK: What would be the protocol for you to advise your counterparts in Scotland and Northern Ireland about what you're doing and whether or not it would be useful from their point of view?

MASTER OF THE ROLLS: Yes, I think we have a fair amount of contact but it's mostly not where we discuss, for example, things like we've been discussing today. Probably it should be and I think I'll take away from this the possibility that we should make contact with a view to discussing it because, as you rightly say, we are a United Kingdom.

THE RT HON. THE LORD FOULKES OF CUMNOCK: Thank you very much. I'm very encouraged by your answer, very helpful.

CHAIR: Sir Geoffrey, we're going to slightly change tone. We've got a couple of different questions and I've got Lord Waldegrave who's going to ask a question.

THE RT HON. THE LORD WALDEGRAVE OF NORTH HILL: I've got a question about enforcement and the Enforcement Working Group of your Civil Justice Council. In fact, could I do a footnote? On the previous discussion, there are a lot of solicitors who are being replaced by chatbots, so are there any perverse incentives right at the bottom of people seeing fees foregone?

MASTER OF THE ROLLS: I don't think so. I think there'll be loads of work for solicitors. Life is becoming more complex every day and people find difficulty navigating the complexities, the legal complexities of life, and solicitors will be needed even when you can get the answer to the question if you ask the chatbot the right question, because people either won't accept it or they think they are an exception and they will need to go and see a solicitor to be told whether they are or they're not. I think that there will be additional work because, as I say with my sort of AI hat on, because I give, I'm afraid, rather too many lectures about AI and the use of AI in decision making and in the law, I think it will be in the future that we'll find that lawyers will be front and centre of new technology, because AI is being used in every consumer, financial and industrial sector. We know that, to do everything, engineering, design, building, everything you can think of, and that is going to give rise to liability claims, to more work, to new work for solicitors. So yes, when the Luddites were around and we started building railways and factories, everybody thought it was the end of life as we knew it. But actually, new opportunities are created by new technology.

So I'm personally not a believer that perverse incentives are created, but we all have to learn and some of the things I hear about new technology is quite ignorant because people say, you know, "I'm not learning about it, I'm too old." Nobody is too old, everybody has to learn, technology can help everybody in different ways, and you're perfectly entitled to say, "I don't want to use it, I've

tried.” But then you must accept the consequences in modern life, because we're living in a society where everybody else will be using it.

THE RT HON. THE LORD WALDEGRAVE OF NORTH HILL: Thank you. Back to my main question, which was the quotation from the Enforcement Working Group that enforcement is a seriously weak aspect of the service provided by the civil courts. I think most people will have had at some point in their life the experience of winning a case and then the enforcement is a different matter, and people are very good at evading and delaying and all the rest of it. How can we make this aspect better? It's very important to the rule of law that it's not just the system that works but you actually get your desserts.

MASTER OF THE ROLLS: Yes, I mean of course looking at the imbalance between the claimants and defendants, many of the defendants are weak and the claimants are strong, so the claimants are often utility companies or big corporations seeking to enforce debt, and obviously they must be able to enforce it, but if you're looking at Lord Murphy's imbalance between weak and strong, it's the person enforced against who's often weaker. No, the systems should be better. Don't get me wrong. That's what our Civil Justice report, Civil Justice Council report, says, and it's entirely true. Unfortunately, the systems have grown up over decades, actually centuries, and have not been rationalised because it's always been put into the “too difficult” box. So we have bailiffs in the County Court, we have bailiffs in the High Court. We have multiple enforcement systems, they have earnings attachments, we have charging orders, we have warrants of control, all of which are governed by different fairly arcane and historic rules, and were invented, by the way, for a different day. I mean, the idea that you can enforce a debt by going to take somebody's television away is a joke, because when that television's been taken out of that house, it's not worth anything, and the only thing you can do with it is take it to the dump. So, in the old days, if you took a television, if indeed you had such a thing as a television, it would be incredibly valuable second-hand, not so today. So we're looking at a whole panoply of enforcement which is completely different from what it used to be, but the rules were created for the old society in which we used to live, where it mattered if you had a television when you hadn't paid your debts.

Now, the way you do it, I'm afraid you'll think I'm a bit of a broken gramophone record, if you remember those, digitisation is the obvious answer. You should be able to get an Earnings Attachment Order digitally, you should be able to get a charging order digitally, you should be able to get a warrant of control if you really need one digitally. You can actually, funnily enough, on the legacy system called Money Claims Online, which was replaced by Online Civil Money Claims, and one of the reasons why we haven't moved yet, 1 million, 1.2 million, bulk claims brought by utilities and large companies against individuals from the Money Claims Online into Online Civil Money Claims is because we haven't got digital enforcement, which we need. So, absolutely we need it. We need a rational, reformed system, but the trouble is it does require quite a bit of funding because it's complex and it'll need rule changes, it probably needs legislative change.

So, I'm hoping that the government will pick this up and will start to devise a system for incremental reform of enforcement. I think, as far as the rule of law is concerned, it's a limited part of the problem, because once you've got your judgment, you can enforce it, it's slower than it should be, it takes much longer, it's extremely frustrating for the user, and it shouldn't be, but you do get there in the end. So I think for the rule of law, you've been through the process, you've got your judgment, justice has been done, now what you've got to do is make sure that you're paid.

THE RT HON. THE LORD WALDEGRAVE OF NORTH HILL: Are there any statistics? It would be difficult, I suppose, to find them, of how many cases where an order has been made and then given up by people or it just fails?

MASTER OF THE ROLLS: I don't know that answer, but I do know that in possession claims, where enforcement is very common, because bailiffs eventually have to go round and evict people

from their homes, which is an extremely, by the way, unpleasant part of the whole process, I do know that the court part of the possession claim is nearly always quicker than getting an appointment for the bailiff to enforce the judgment.

CHAIR: Lord Burnett?

THE RT HON. THE LORD BURNETT OF MALDON: Just following up, if I may, on Lord Waldegrave's question about how often do the problems arise, do you have a sense of what proportion of money judgments in the County Court actually then need enforcing? In other words, what proportion do people pay and what proportion there is a need to get an attachment of earnings or bank account or whatever? I just wonder if anyone has... I appreciate getting data out of the County Court systems is very problematic.

MASTER OF THE ROLLS: I have a sense of that, but figures are misleading, because the figures are only really relevant if you allocate them to the type of case you're talking about. So if you're talking about utility bills, for example, all those claims will either be brought in the Magistrates' Court or as a small claim in the County Court on Money Claims Online, I would have thought that those cases often require enforcement, because the reason why people don't pay their utility bills in most cases is because they can't afford to, and therefore they're not going to be able to afford to anymore when there's a judgment than when there isn't. And what generally happens there is that there is a warrant of control issued, which is a silly idea, really, because you're going to then take possession of chattels which have no value, as I explained earlier, but the warrant of control works, and I've found this out in my visits around the country in the following way: If you serve a warrant of control and an individual thinks that the television is going to be taken away, you get their attention even if you didn't get their attention when you were bringing the claim for the Council Tax or whatever it may be. We have County Court offices where there are six or eight people who do nothing else but take telephone calls from defendants who have received a warrant of control and they're terrified that the bailiff is going to come round and take their television, because it may not be very valuable to the bailiff but it's very valuable to them. So they ring up and they say, "How can I deal with this?" and then they make an agreement with the court office and an order is made that they are allowed to pay by instalments or however much they can afford.

So that's what happens with those kinds of cases very frequently. What happens with other kinds of cases is just different. So personal injury claims are always paid because there's an insurer on the other end. Boundary disputes orders are generally complied with because the people are engaged enough to have the money to fight and if they lose, they'll pay, TOLATA claims normally the same. Property claims often the same, because if there's a claim against the landlord the landlord can afford to pay. So you can only answer the question by reference to the type of claim, but where vulnerable people are concerned, vulnerable defendants will often not pay judgments and enforcement will be needed.

CHAIR: Lord Bellamy, a supplementary?

THE LORD BELLAMY KC: Thank you. So we've been thinking a lot about enforcement from a rule of law perspective, particularly in terms of the criminal law, but today, of course, it's civil law we're talking about. You describe the civil justice process as the poor relation. I'm just wondering if enforcement is not the poor relation of the poor relation, if you see what I mean? And, if I may rightly, I think, disclose my ministerial responsibilities in some of this area until the last election, one had some fairly hair-raising stories about how difficult enforcement was in some particular situations, or the bailiffs, there weren't enough bailiffs, or the van had broken down, or the body-worn cameras didn't work, or whatever it was. So is your general impression that the government is giving sufficient priority to this aspect of the legal system?

MASTER OF THE ROLLS: I think to describe it as the poor relation of the poor relation is not right, only because we talk about civil justice as being the poor relation because of the comparison to the public attention that is focused on crime and family, not because of money really, it's because of the attention to achieving the reforms that are necessary, which I think would be achieved more easily if there was the public focus that there is on crime and family. So I don't think that's fair, but it is in the "too difficult" box. Lord Briggs made a report on civil justice in 2016 in which he recommended that the enforcement system should be completely overhauled and modernised. He was right, in my opinion. The government was interested back in 2016 in doing something and then, as with all initiatives that cost money, somehow it wasn't prioritised over other things. I have no idea why. So I think it's always been too difficult. I think it's very dissipated, it's very disparate, and it needs quite a lot of things done which require legislation, which require investment, which require people, and all of those things are in very short supply. So yes, I'd love to see it done. The Civil Justice Council has started the ball rolling. We haven't had a formal response, have we? Oh, we've had a letter, I think. Well, anyway, I don't know what that letter says so I'm not going to tell you what we've had, but certainly we're not clear as to how things are going to go forward. I know that the government is thinking of regulating enforcement operatives, bailiffs, and so on. But no, I think there's still more work to be done.

CHAIR: Lord Griffiths, you've been very patient, and we've covered a lot of what I think you're going to ask.

THE LORD GRIFFITHS OF BURRY PORT: Indeed, indeed.

CHAIR: But there may be some more.

THE LORD GRIFFITHS OF BURRY PORT: Patience isn't my strongest suit, but... today anyway. I just wanted to say that a sprightly young man from the 1955 era lecturing old codgers like Lord Foulkes and myself about what old people can and can't do, I'll go away and think about it. Two Luddites, really. But there's a reference in the papers we received to Wales – he wanted Scotland brought into the picture – and this single advice fund, which has had such significant success, it seems to me, in Wales, "Advice towards strategically planned services provided access to all the advice a person requires to resolve their social welfare problems," and the rest of it. 280,000 people sort of have been helped, with 1.1 million social welfare problems since January 2020. I mean, Wales only has 2 million people in it, so it does seem to me that that's worth noting from the distant sort of fastnesses of the England and Wales province, as possibly a learning thing that we might pick up on. But my question really ought to be about artificial intelligence. You've been so positive about it, and Lord Briggs and I have been in touch with each other, and I've read his 2016 report, and from what I remember from that reading, it was the funding that became problematic, but then Covid came and it got lost in the woodwork, as it were. But I was on the Communications and Digital Committee before I sat on this one and we did do a report on digital exclusion, and it is a very serious aspect and well worth bearing in mind as we go to digitise the various things.

So I just wanted to say that not only are Luddites of my age finding it difficult to cope with the advances, but what we discovered in our discussions of that was that young people, whom we assume, as you rightly said, that they live in the digital age, they're born in it, it's natural to them, they only use it for things that they're interested in, like music and various streams. In other words, they have no familiarity with exploiting its possibilities and making use of them in terms of enhancing the quality of their lives or defending their rights. So I think that we need to... it's a word of caution really about an assumption we can make that because everything is digital now, that has got to be the only colour we paint the future with. Would you feel that I'm going somewhere with all of this, or is it just the ramblings of a very old man, born in the year that King Uzziah died? *[Laughter]*

MASTER OF THE ROLLS: Thank you for that. I accept the admonition willingly. I sometimes do suggest that there are people who are not getting with the programme of modernity, so possibly you're right. As for digital disadvantage, we have done our own work on that in the Civil Justice Council and we are very concerned to make sure that we are not running away with ourselves in digitising stuff and leaving people behind. But the OPRC, the Online Procedure Rules Committee, is governed by a statute that makes it clear that you must provide alternative methods for people who are digitally disadvantaged. The only area in which I would disagree, respectfully, is that I do not think that all young people only use digital methods for streaming music and films. I think they are perfectly capable of using ChatGPT extremely effectively, and probably more so than Google and do, and even use it to see how they can protect, vindicate their legal rights.

But of course there's all sorts of different people in our society, and it's my job as Head of Civil Justice, your job as parliamentarians, to protect the rights of all, not to select people we think are worthy of being protected. We must protect the weak in the way that Lord Murphy was talking about people who are vulnerable, who have less economic and social power than others in society. We must protect the strongest, Lord Waldegrave was saying, who need to enforce judgments because they've been given those judgments because they are owed the money.

So I am concerned to ensure that we digitise as much as we can because it provides a quicker, more efficient, more effective and at more proportionate cost resolution of people's disputes. But where that is not just, where that is not appropriate, then we should take other steps. You know, I have not come here and said, "I want to abolish judges, I want to abolish courts, I want to have a situation where people can never see a judge." Quite the reverse. Judges are essential to the system that I'm seeking to create. But what I do want is a quicker system because speed of resolution will create massive advantages for our economy. Speed and fairness. Justice. That's why I went into this job.

THE LORD GRIFFITHS OF BURRY PORT: You've sold the argument, and I do accept it, It's just the caveats and the things on the edges of it. It's very interesting though, until I joined this committee there are aspects of everyday law and everyday life that I'm learning but only by being a member of this committee and I'm thinking of the general public at large, what chance have they got?

CHAIR: I've got Lord Beith.

THE RT HON. THE LORD BEITH: One thing we haven't mentioned is no win no fee, which following LASPO has become extremely significant in whether people have access to civil justice. Anything you want to say about it?

MASTER OF THE ROLLS: Well we did a big report from the Civil Justice Council on litigation funding which dealt with the question of litigation funding by investors, by litigation funders, but also with litigation funding by lawyers which is really no win no fee and damages based agreements that are funding most personal injury and much other litigation in this country. It is very important but there is a balance to be struck between the funders and the people who are funded and our report at the Civil Justice Council which I commend to this committee because it's a really detailed and very balanced report recommends a level of light touch regulation of litigation funding including those that fund litigation by no win no fee or by Damages-Based Agreements that the whole litigation funding scene has been very complex, very difficult to understand, and beset by litigation itself, as you know, culminating in the PACCAR case, which the Civil Justice Council report recommends should be reversed by statute.

But I think it is all part of the dispute resolution scene, I don't think it is the only game in town. I think there are... we have to be very careful to balance the interests of funders and funded, the interests of claim farmers, if I can call them that, claim managers and claimants, because there are perverse

incentives caused by that process. So I commend our report on litigation funding, and I think changes are necessary, but they will all be directed at what I was saying earlier, which is making sure that we don't try and fit everybody into the same box and that we protect the weak. **CHAIR:** Thank you very much. Lady Hamwee has got a quick supplementary.

THE BARONESS HAMWEE: Yes. Very often when one starts a conversation about AI, a distinction is made between using it for administrative purposes and substance separately and it has struck me this morning that you don't seem to make that distinction. Am I right in thinking that that's your approach?

MASTER OF THE ROLLS: I think that would be a little oversimplified. I think there isn't such a bright line distinction, and even if there were, you would quickly cross the line into using it for substantive purposes. I think the use of AI is unbelievably complex in the law. I think it is actually less complex in some other areas. It is perfectly obvious that if you're an engineer and you can design, do the calculations for your bridge by using AI, then you will learn from experience whether you need to check them or whether they are reliable, and if they're reliable, what you need to do before you build the bridge to make sure that it doesn't fall down. But in justice, it's rather different. Now, we can use AI as lawyers to get an answer to the problem, "Can I defend the possession claim brought by my landlord because the house has got mould?" We can put that in into ChatGPT and it'll give you a generic answer then you can give it more facts and probably if it's trained on legal materials, it will give you quite a good answer.

Even legal advice which will be obtained by AI is in a different category from legal decision-making. Now non-legal decision-making is used an awful lot already so I'm sure our pensions, our benefits are calculated using an AI programme already and nobody much objects to that, but again when you come to judicial decision-making I think people would be very surprised to hear that decisions were ever made by an AI programme instead of a judge. Now I think this throws up a number of philosophical problems and also legal problems. The first legal problem is whether, if ever, and I emphasise it has not happened and is not proposed to happen, a decision were ever taken by a machine rather than a judge, would that be compliant with Article 6 of the European Convention on Human Rights, which requires the state to provide a decision by an independent and impartial tribunal. Is a machine ever capable of being an independent and impartial tribunal? Discuss. That's the first question for homework. Now, so when you say, "Well, is there a difference between substantive and administrative?" there really is such a difference, but in different fields, it's a different concept.

CHAIR: Thank you. Sir Geoffrey, that brings our session, essentially, to an end. So can I thank you very much indeed on behalf of the committee for dealing with our questions so thoroughly and so candidly and to some extent, we've gone a bit beyond just the rule of law, but it's been most interesting, and thank you very much. I'm now going to call the public session to a close, and we'll go back into that.

[Ends]