

### **AI: opportunity or threat for the legal profession?**

He was a counsel so learned in the law, that there was no question [...] that he could not answer with the aid of his books. — Anthony Trollope, *The Eustace Diamonds*

Discovering an unarguable precedent that stumps your opponent might feel like pulling a rabbit out of a hat. Yet in Felicity Harber’s case, that was all it was: a magic trick that, once realised, cost her a £3,265 penalty.<sup>1</sup> Diverging from the traditional legal research methods that Trollope praises, Harber’s mistake was to rely on ChatGPT while preparing submissions as a litigant in person. The AI platform fabricated legal authorities that simply did not exist. Her case demonstrates some of the revolutionary yet dangerous effects AI could have on the legal profession: fast and directly accessible but at the expense of accuracy and accountability.

AI has already been implemented in advantageous ways for lawyers, undertaking menial tasks like document review and due diligence. Many law firms use in-house AI, such as Slaughter and May’s Luminance. Replacing people with AI for low-level work can be cost and time efficient, liberating lawyers to focus on legal analysis.

Predicted by Goldman Sachs to automate potentially 44% of legal tasks, generative AI could provide opportunities for more substantial innovation.<sup>2</sup> Allen & Overy are ahead of the game with ContractMatrix, which can save approximately seven hours in contract negotiations — a considerable impact on a billable hours model.<sup>3</sup> On the contentious side of the profession, generative AI is also a ‘jolly useful’ tool, used by

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<sup>1</sup> *Felicity Harber v HMRC* [2023] UKFTT 1007 (TC)

<sup>2</sup> <https://www.judiciary.uk/speech-by-the-master-of-the-rolls-to-the-bar-council-of-england-and-wales/>, [7].

<sup>3</sup> <https://www.ft.com/content/f1aff4d0-b2c5-4266-aa0a-604ef14894bb>

Lord Justice Birss to write part of a judgment.<sup>4</sup> There is reason to believe that resources like ChatGPT could be helpful not just administratively, including in judicial statute search tools or drafting assistants, but even for case prediction and strategy.<sup>5</sup>

AI could also increase access to justice. Harber is not the only layperson to resort to AI — tools such as Grapple and DoNotPay demonstrate the need to ‘democratise the legal profession’, making it easier to afford legal input.<sup>6</sup> In a legal aid crisis, AI might be the financial solution required. Rather than being replaced, AI-supported barristers could offer more services for less time — a mutually beneficial model for clients and advocates. With the evolution of the digital justice system, AI could facilitate the automated proceedings envisaged by Sir Geoffrey Vos.<sup>7</sup> Such a system would reduce the pressure of case management and backlogs of over 65,000 on judges, as well as providing efficient resolutions for individuals.<sup>8</sup>

However, AI’s incursion comes with caveats, recognised in international agreements like the Bletchley Declaration. One of the biggest problems with current AI is its inaccuracy. It relies on limited resources with often outdated information, such as on case law. In an attempt to fill these gaps, the propensity of platforms like ChatGPT and Bard to ‘hallucinate’ is a threat to the integrity of the justice system.<sup>9</sup> Numerous examples of AI’s outright lies include Steven Schwartz’s use of ‘bogus decisions with bogus quotes and bogus citations’,<sup>10</sup> as well as false accusations against KPMG.<sup>11</sup> Similarly, the rise of deepfakes puts future reliability of digital court evidence in jeopardy. If superficially plausible content can be generated by AI,

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<sup>4</sup> <https://www.theguardian.com/technology/2023/sep/15/court-of-appeal-judge-praises-jolly-useful-chatgpt-after-asking-it-for-legal-summary>

<sup>5</sup> <https://enyolaw.com/news/chatgpt-and-the-future-of-dispute-resolution-the-benefits-and-risks-of-using-ai/>

<sup>6</sup> <https://www.bbc.co.uk/news/business-67121212>

<sup>7</sup> <https://www.judiciary.uk/speech-by-the-master-of-the-rolls-to-the-bar-council-of-england-and-wales/>, [19]-[24]

<sup>8</sup> [https://assets.publishing.service.gov.uk/media/657999910467eb000d55f6c7/ccsq\\_bulletin\\_jul\\_sep\\_2023.pdf](https://assets.publishing.service.gov.uk/media/657999910467eb000d55f6c7/ccsq_bulletin_jul_sep_2023.pdf), p. 6.

<sup>9</sup> <https://dictionary.cambridge.org/editorial/woty>

<sup>10</sup> <https://www.legalfutures.co.uk/latest-news/mr-regulators-and-courts-need-to-control-use-of-chatgpt-in-litigation>

<sup>11</sup> <https://www.theguardian.com/business/2023/nov/03/kpmg-ai-complaint-non-existent-scandal-ai-case-studies-google-bard>

then the credibility of photos and videos used in trials may become more uncertain. Finally, AI's erroneous conclusions could pervert the course of justice during suspect identification. The facial recognition systems implemented by the Metropolitan Police are demonstrably poor at identifying BAME individuals. In reduced sensitivity settings, false positives are disproportionately higher for black people — at the lowest setting tested, seven times more likely than for white people.<sup>12</sup> Such fallibility means that AI is not yet equipped to be legally dependable, being more of a hindrance than a help.

There are also significant issues concerning privacy and intellectual property. Core Duty 6 for barristers and the SRA Code of Conduct require a client's affairs to be confidential. As Professor Michael Wooldridge warns, data fed to ChatGPT is impossible to retract from future versions.<sup>13</sup> Inputting client information into a generic AI platform would compromise these duties. Moreover, the subsuming of private data has implications for intellectual property rights. Concerns regarding the infringement of IP rights led some sites, such as The Guardian, to block generic AI like ChatGPT from using its content<sup>14</sup> or to bring proceedings against it.<sup>15</sup> AI could wreak IP havoc for the legal profession if left unchecked.

When things go wrong, who is to blame? *Thaler v Comptroller General* confirms that AI technology is legally 'not a person'.<sup>16</sup> Consequently, it is difficult to hold AI legally responsible for wrongdoing. AI does not have empathy or a moral conscience that might allow it to self-regulate its actions, nor does it sufficiently adhere to formal codes in legal and professional contexts. It is easy enough to find *someone* to blame — of course, Felicity Harber and Steven Schwartz should not have relied on false precedents. But

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<sup>12</sup> [https://science.police.uk/site/assets/files/3396/frt-equitability-study\\_mar2023.pdf](https://science.police.uk/site/assets/files/3396/frt-equitability-study_mar2023.pdf), p. 19.

<sup>13</sup> <https://www.theguardian.com/technology/2023/dec/26/ai-artificial-intelligence-secrets-chatbots-chatgpt--mike-wooldridge>

<sup>14</sup> <https://www.theguardian.com/technology/2023/sep/01/the-guardian-blocks-chatgpt-owner-openai-from-trawling-its-content>

<sup>15</sup> <https://www.thetimes.co.uk/article/new-york-times-sues-openai-and-microsoft-for-scraping-content-kfc99ck3k>

<sup>16</sup> *Thaler v Comptroller-General of Patents, Designs and Trade Marks* [2023] UKSC 49 at [73].

should there come a time where the regulatory impulse of the legal profession wishes to hold AI itself responsible, the forecast is less clear.

Yet a binary distinction between the positives and negatives of AI is unhelpful. Each facet can be turned on its head: for instance, the inaccuracy and indiscretion of generic AI can be countered by specialised AI, whereas widening access to digital justice could entail a lack of scrutiny. Like any tool, the Promethean revolution of legal AI will depend on the specifics of how we use, develop, and regulate it. Misuse of technology is not a new phenomenon, and regulation like the EU AI Act must be created to conserve the English system's prized legal certainty.

At present, though, AI does not pose an ultimate threat to Trollope's revered lawyers — with or without their books. When questioned on the subject of this essay, ChatGPT's answer remained indecisive because it does not 'have personal opinions or conclusions'. Where uncertainty, critical analysis, or human relationships come into play, our faculties of judgement and advocacy are irreplaceable. Like real magic, sometimes there are no rules that can be programmed.

**(995 words)**