



AI and family law: Breakfast meeting, Support through Courts, 8 October 2024

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This is the text of a talk given by David Hodson at the breakfast meeting at Herbert Smith, London, on 8 October 2024 entitled "AI and family law", hosted and raising funds for Support through Court (<https://www.supportthroughcourt.org/>). The keynote speaker was Sir Andrew McFarlane, President of the Family Division, with talks also by Mrs Frances Judd, Joe Rainer, Counsel of QED and Theresa Yurkewich of Microsoft.

AI has the real likelihood of transforming the practice of family law solicitors more than the major conceptual changes from the Children Act, the seismic shift from White or the speed of response needed from *lis pendens* of EU law. And a transformation which will happen fast even in the slow-moving, conservative legal profession.

So after that understated introduction, thank you for inviting me.

I speak from the perspective as a London family law solicitor specialising in complex finance and international cases, but also as a Deputy District Judge in the family court in London over many years and more recently also in Devon and Cornwall. I am not an AI expert but over decades I have pursued, often frustratingly, a vision for the application of digital opportunities for the improvement of the practice of law and justice. I am mostly optimistic about AI and that we can produce a better justice system for clients as a consequence. In this huge topic I touch here on 5 elements

Having started with optimism, why is it that revolutions never seem to be good for jobs. The agricultural revolution on farmworkers. The Industrial Revolution on skilled craft workers. The digital revolution on clerical workers. The AI revolution will be no different except this time the revolution is coming for us lawyers. In March 2023 Goldman Sachs reported AI could replace the equivalent of 300 million jobs. But that's not us of course. In the same month, 3 leading US academics wrote that of all the professions most at risk from AI, the legal profession was amongst the greatest. Now getting closer. So let's look at our parish. In 2021, in a paper which had little publicity at the time, the Law Society predicted *savage reduction* in legal jobs as a consequence of AI. Now getting a bit scary. But don't worry, obviously this will be amongst commercial contract lawyers. So what about us? Can

we necessarily presume we will be safe, cocooned by our discretionary finance system and working for the best interests of the individual child? I am certain the unwelcome answer is no, not safe. We should be planning for this and should have already been planning for this. We aren't

Secondly, presuming AI will be undertaking some of the work presently undertaken by us family law solicitors, it must cause us to ask ourselves the basic, quite ethical, question: what value do we, I, add to the resolution process? It clearly won't be explaining the basic law, an increasing AI function. Many letters will be AI drafted. Analysis of disclosure or statements will be summarised by AI. I am sure that within 18 months, preparation of Form E will be via an AI chat bot. Of course all of this will require experienced lawyer review and oversight. That apart, where and how do we bring value? I suggest strongly we need to have this conversation. It couldn't be more fundamental to why we are doing this area of work and what work will be needed. In addition, at which levels of the profession will that value added be brought and what will be expected of each level of the profession? Which is most at risk? Are we brave and bold enough to start this conversation?

Thirdly, I worry the present discussion in the legal profession about AI is coming only from the mega law firms. A Survey 10 days ago by LEXIS-NEXIS said 41% of legal professionals now use AI and a similar number have imminent plans to do so. Really? Have they spoken to the multitude of small practices around the country doing family law? 3 weeks ago, the Law Society Gazette carried a discussion of a roundtable meeting about use of AI. Everyone there was from a mega firm or an IT company. Family law was notably absent. We are at real risk of creating a 2 tier profession. The large firms are able to create their own bespoke AI programs, building upon existing public programs. The much smaller firms are simply unable to do so. Remember family law here and around the world is very often conducted in those relatively smaller firms. This is nothing new. I remember similar concerns about 30 years ago when personal computers came through and yet we family lawyers have thrived and have been ahead of the game e.g. during the recent lockdown. I'm not pessimistic but I am anxious. We have an interest in family law in making sure the law firms doing this work are up to pace, aware and embracing opportunities. We can but it won't be easy.

Fourthly, one short-term consequence of real concern is confidentiality. The breach of client confidentiality by using publicly available AI programs, as distinct from individual bespoke programs available to the mega firms. Some firms absolutely prohibit the use of AI by their lawyers for this reason. As judges, we have received helpful guidance such as not attempting to use a public AI program for assistance in writing our judgements! Breach of confidentiality. The SRA will be tough. But what can we do? If we won't have our own AI programme for our own firms for some time, do we abandon AI? Of course not but this is a major professional issue which needs early resolution. Inputting anonymously, as some have said and I know some are doing, is not the answer. This is no time for the regulatory luddites but it is definitely time for proper understanding of confidentiality in the AI program context and to find solutions

Fifth and finally, for now, in my career perhaps one of the biggest changes were the dramatic reforms of the Children Act 1989. Still one of England's best family law innovations, much copied around the world. But it came into force in October 1991. We specifically allowed 2 years for education,

training, adaption and preparation. Changes in law of course and also in the very new ways we approached cases and clients. AI will be as big or bigger in its dramatic changes in practice. Yet we have no training and are doing almost nothing. In fact, what we do have has come significantly from our senior judges in the guidance they have given and I feel far better prepared on ethics and conduct as a DDJ than as a solicitor. This is why I welcome the Law Society AI department setting up last month a family law working party with a view to our producing guidance for the profession. It cannot come soon enough. Watch this space and get in touch with me to know more

Brief conclusion. All of us here this morning know that family and parental breakdown is an appalling experience, having adverse consequences for so many. Our value-added role as family lawyers is to help people through this process as painlessly, constructively, fairly and collaboratively as possible; one reason why we fully support the marvellous work of Support Through Court. I am certain that AI will dramatically help us in this work, in partnership with our clients many of whom will undoubtedly be using AI already themselves. And ultimately this is why AI will be the game changer

The legal profession is ultraconservative and inherently cautious. If it worked in the 19th century, why change it? Yes, why? Because our public has changed. I suggest they are no longer willing to accept some of our ways of practising and work. They will be embracing AI long before most of us. The practice of family law has to change significantly, not least to meet the public in their digital lives using AI daily. I remain optimistic that in doing so we can thereby deliver a better, fair and good family justice system. Thank you

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