HOUSE OF COMMONS

Justice Committee

Oral evidence: Work of the County Court, HC 677

Tuesday 18 March 2025

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Watch the meeting

Members present: Andy Slaughter (Chair); Pam Cox; Linsey Farnsworth; Warinder Juss; Tessa Munt; Mrs Sarah Russell.

Questions 32 - 78

Witnesses

I: Rt Hon Sir Geoffrey Vos, Master of the Rolls and Head of Civil Justice in England and Wales, Courts and Tribunals Judiciary; Lord Justice Colin Birss, Deputy Head of Civil Justice in England and Wales, Courts and Tribunals Judiciary.

Written evidence from witnesses:

The Rt Hon Sir Geoffrey Vos and Lord Justice Colin Birss (WCC0119)

Examination of witnesses

Witnesses: Sir Geoffrey Vos and Lord Justice Colin Birss.

Chair: Welcome to this afternoon's session of the Justice Committee, where we have the pleasure and privilege of the Master of the Rolls, Sir Geoffrey Vos, and the deputy head of Civil Justice, 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 we will do that beginning with Linsey Farnsworth.

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

Pam Cox: Good afternoon. I am the MP for Colchester, and my interests are as declared.

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

Mrs Russell: Hello, my interests are per the register. I am a member of USDAW and Community trade unions. I am a solicitor and hold a practising certificate, but I am not, in fact, currently practising.

Tessa Munt: I am the Member for Wells and Mendip Hills in Somerset. Everything is declared on the register, but I would just add the fact that I am a director of WhistleblowersUK, which is a not-for-profit organisation.

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

Q32 **Chair:** Thank you very much. Just for the benefit of our guests and audience, this session is part of the county court inquiry. It is slightly different from most inquiries in that our predecessor Committee began this last year. After the interruption of the general election, we have decided to pick it up and complete it. As part of that we are therefore, as I said, pleased to have 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.

Sir Geoffrey Vos: It is 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. I have been a member of the Judicial

Executive Board since 2016 and, as you probably all know, the Master of the Rolls is the 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 Rule 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 Rule Committee, something that I am very committed to because I was heavily involved in its creation by legislation in 2022.

I am second vice-president of the European Law Institute, and I sit on the steering committee of the Standing International Forum of Commercial Courts. I just say that because I have wide international activity and engagement.

I have been a member of the LawtechUK 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.

I take my role as head of Civil Justice very seriously. 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, and I have a day job in the Court of Appeal.

It might be helpful if I make it clear at the outset that senior judges are not responsible for running the Courts 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 its effective governance, financing and operation. The framework states that the aim of HMCTS should be, "To run an efficient and effective courts and tribunals system, which enables the rule of law to be upheld and provides access to justice for all." Those are all very important aims.

Finally, I have three priorities in relation to civil justice, just to lay my cards on the table at the outset. The first aim is to ensure that paper is removed from the county court as soon as possible, as it has been in the family court, so that we can provide accessible digital court-based dispute resolutions 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. The third and final aim is to achieve a better understanding across Government of the huge value of accessible dispute resolution, both to the economy of England and Wales and to the wellbeing of the same citizens and businesses that I have referred to now three times. Justice really should be front and centre in government. I will hand over to Colin.

Lord Justice Colin Birss: Thank you. 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 the 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 Rule Committee and the Civil Justice Council that you have heard the Master of the Rolls mention already. I joined the rule committee in 2014 and in practical terms, as the MR mentioned, my role is to be the day-to-day chair of that committee. I have served as an international judicial member of the boards of appeal of the European Patent Office since 2016, and I have chaired the judicial advisory group on artificial intelligence here since 2023.

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 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 wellbeing, particularly, of vulnerable people. We 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 that already exists.

Q33 **Chair:** Thank you very much to both our witnesses. As I say, we are going on in due course to talk about some of the issues you have raised around ADR mediation, AI, and some of the progress that has been made, for example, under the reform programme.

But it is only right that we start with just a few questions about our own experience from the evidence we have taken, the visits we have undertaken and the evidence that has been coming in response. Perhaps the easiest way to do that is for me to read a few sentences from a fairly typical submission that we have had to give an idea about what some court users think about the county court at the moment.

This is from a long-standing housing practitioner of over 30 years with 10,000 cases under her belt: "There is very little research on the county court. Cases are not reported and there is 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 with the enactment of the Legal Aid, Sentencing and Punishment of Offenders Act means people now struggle to find representation".

That is a pretty typical response; we have seen some a lot more trenchant than that as well. If you were a user of a lot of services and you were getting reviews like that online, you would be concerned. Do you recognise that picture, and what is your route away from that, in so far as it is accurate?

Sir Geoffrey Vos: I recognise all of that, of course. We get it in different ways from different people some of the time. It is not entirely fair, neither is it entirely accurate. It takes no account of the depredations of covid and the strenuous work that has been done by judges, HMCTS and MOJ to recover from covid. So there is probably no profit in saying how we recovered out of covid, or did not recover quite completely.

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 and inefficient, and it is true that there is less legal aid available in civil justice now than almost ever before. That is as much a problem for judges, who have to deal with 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—the buildings, the staff, the accessibility of the courts themselves, the delays—almost everything we could talk about for the whole afternoon. 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, but there are three hotspots of inefficiency, and we are addressing them, but they need further addressing.

One of them is the Civil National Business Centre in Northampton, which you visited yesterday, Chair. The second is the Central London county court, which you visited a month or two ago, which certainly requires

interventions. The third is the problem of a lack of 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, north and north-east of England and in Wales, we would find most county courts delivering a reasonably good service, and I visit them everywhere. The problem is things like Northampton delaying getting the cases to the county court.

When the county court gets a case—a small claim, for example—it will list it in a matter of weeks. But if it does not come out of Northampton, as was historically the case, they would be sitting there for six months or more, which is quite unacceptable. It is better now, as it is being addressed, and it is very important that it is. The solution to many of these problems is, in fact, taking the paper away and ceasing to move files around, which delays everything by weeks and weeks.

Q34 **Chair:** Thank you. Do you want to add anything to that?

Lord Justice Colin Birss: There is just one thing, and of course I agree with what the Master of the Rolls said, but if I could just emphasise that 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 that there are not in others. The problem cases are the ones that the Master of the Rolls has identified, but I am just putting some colour on it.

On the listing thing, if you have a case that comes out of Northampton and goes to a court outside of the south-east, it is listed pretty quickly as a small claim. But there is a big difference between the time you can list a case in, 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.

Q35 **Mrs Russell:** You mentioned that small claims get listed pretty quickly, but what about bigger ones?

Sir Geoffrey Vos: Perhaps I can deal with that. Small claims are generally dealt with quicker now than they were last year. The average time to a hearing is 50 weeks, whereas it was 55 or 54 weeks a year ago. Big claims take longer, but you need to understand 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, so you cannot really judge how efficient justice is by the bald statement of the number of weeks of the average time from start to finish. Some 90% of civil claims settle before they get anywhere near a judge, so you can look at the 77 weeks, I think it is, from beginning to end for a multi-track case, but that does not tell you that there were nine other cases that settled satisfactorily before that.

The data that is kept is generally inadequate, and there are two or three reasons for that. One of them is that it takes no account of the type of case and, as I gave you in my evidence, it is really important to understand the very diverse range of cases the county court deals with.

Q36 **Chair:** Indeed, in your evidence you said it was a patchy picture. We did, as you say, go to Northampton, both to the business centre and to the county court yesterday, and to the Central London county court. It is right to say that one or two of my colleagues used the phrase "Dunkirk spirit" in a complimentary way to describe the staff, because they were coping with difficult circumstances in a fairly heroic manner. Paper was certainly the predominant material that we saw, and we will come back to this perhaps when we talk about the reform programme later. Yes, they may be some of the more difficult nuts to crack, but what would you say to the fact that many of the systems there are still paper based at the moment, or go from digital to paper during the process?

Sir Geoffrey Vos: It is a terrible shame. I was in on the ground floor of the reform programme; I was just becoming chancellor when it was initiated. I vividly remember a meeting of the Judges Council where the head of HMCTS, I cannot remember if it was the chair or the chief executive, but it does not matter, said, "In the end of the reform programme"—it was four years—"Every judge will open their computer in the morning and it will say, 'Good morning, judge', and the papers for the day will be on your computer." In family and in other parts of the system, that happens to a large extent now. Unfortunately in civil, it has not happened.

The reason is partly because of the large variety of cases and the fact that it has proved ambitious to digitise everything with multi-parties and different types of cases with different requirements. In fact, that problem can be overcome, and I am very disappointed that we are going to reach the end of reform with only 23% of cases beginning and ending with digital, and all the rest ending up on paper.

The worst of it is that we have overlapping systems, so every case in the county court, or nearly every case, will have some paper and some digital—or will have been on digital on the modern system and will also be recorded on what is called CaseMan. That is a legacy system that is very old fashioned, has been there for literally donkey's years and simply cannot interact with the other digital system.

In fact, there is a fourth system because people are so frustrated in the county courts—the fantastic staff who you talked about, Chair, who I would reiterate are truly heroic in 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 are deserving of great commendation. But they are fed up with the paper so they digitise locally on a fourth system, which is simply a PDF file after they have scanned some documents into the system. But, of course, that does not

communicate with the digital system or with CaseMan, and you have to have some paper.

I will give you an example. I go on a tour of about 20 courts every September and one of the worst iniquities, which I highlighted, is that the new digital system had no means by which the correspondence could be uploaded. When a judge looks at a case for trial, the first thing they want to know is whether the case has settled, and only the correspondence will tell you that. So the judge has to ring up the office and say, "Is there a letter somewhere in the office saying the case is settled? Otherwise, I will be reading the case, and there will be no need to have done so."

The answer is that we are in a terrible twilight situation. We must do better in the next four years through the implementation of the spending review that is coming up.

Q37 **Tessa Munt:** You were talking about the array of cases, and in your evidence you gave us a non-exhaustive list, as you described it, of the 37 most common types of dispute resolved in the county court. 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 the work that is attached to it?

Sir Geoffrey Vos: Funnily enough, I do not think so. The county court deals, quite properly, with every civil dispute that citizens and small businesses need to have resolved. Much of the jurisdiction is provided by new statutes—for example, antisocial behaviour orders and non-molestation orders, which have of course become extremely prevalent due to the societal problems that we face. I do not think you could have a wholesale reform that would change that range or spectrum of cases.

You may be alluding to the intersection between the county court and the High Court, which has been problematic for a very long time. Tell me if I am trespassing on reform before you want me to, but when reform started we thought that we were going to have 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, as we now call the basic county court digital system that already covers all the family cases and some civil and tribunal cases. 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—we will have to see—but certainly it has not been possible in the expected four or five years to extend it to everything.

At the moment we have multiple digital systems. In the High Court, we have something called CE File, which is a fairly basic data filing system. In the business and property courts, we call it—

Chair: Everyone spoke highly of that to us.

Sir Geoffrey Vos: It is great, but it is simple, and it is not fit for the future. It does not produce any machine-readable documentation, so it is not a smart or modern system, but it is incredibly serviceable, as I said in my evidence. We have that at the top dealing with the complicated cases, but its life expires in three to four years when 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. We are going to have the intersection that I think you were alluding to between the complex and the simple. 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 10 minutes for possession of a home. Both are very important and require justice, and have parties that really care. If there is any doubt, we as judges really care about the outcomes in every type of case.

Pam Cox: I am just wondering, since we are in that vein, whether we continue the reform discussion and then move to the other areas?

Chair: We can do it if colleagues are happy with that; I do not mind.

Q38 **Pam Cox:** It just seems to follow on from what you were saying there, Sir Geoffrey, to ask about the HMCTS reform programme. I understand it has cost £1 billion, and it sounds like it has not delivered anywhere near the kind of change everyone was hoping for. How should we get a grip on it?

Sir Geoffrey Vos: I am talking about civil; there are different issues in crime and family, and I would not want anything I say to be taken as applying to those, although civil, family, and tribunals are connected because reform built a platform called the CFT—Civil, Family and Tribunals—Platform that was the main outcome for those jurisdictions.

How do we get a grip on it? Family—which I am not talking about—seems to be conducted largely in a digital system at the moment. It has problems that you may hear about, but they are probably not insuperable. Some of the tribunals have been digitised but that job needs to be completed.

Let us come to what I really know about, which is civil. We are in a position where half the job has been done. For all sorts of reasons it is not sustainable to do half a job as you have multiple data sources that simply do not speak to one another. We have to complete reform first, as was intended, but even that is not everything.

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. That was a whole host of cases: insolvency cases, boundary disputes, TOLATA cases and part 8 cases, which are sale of property cases. I asked why they were not being digitised, and 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, thereby really hollowing out the facility of what it was doing.

Because there is obviously not enough money to carry on throwing endless amounts at the same thing, my solution would first be this: they should rescope what they very recently took out, which would not be all that much money. So they should rescope enforcement and bulk claims, which are 900,000 claims a year brought in the county court, mainly by utilities and big companies. These are on a legacy system called Money Claim Online, which is totally outdated. 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 were de-scoped at the last minute. To rescope that would not be a costly exercise, and it needs to be done. We would then have most claims in the county court, except the tricky ones, started and proceeding digitally.

When they complete what they were going to do in reform, which is imperative, they then have to find the solution to how to digitise complex county court claims, which some are. For example, boundary disputes take two or three days, are very complicated and sometimes have multiple parties. You have to find a way of digitising that. My solution would be to use the same solution they are going to use in the High Court to replace CE File. It is obvious that is what they should do, and to draw a very clear line between what you are using CCD for and what you are using CE File for. You would still have two systems, but everything would be digital.

Q39 **Pam Cox:** I am a new member of this Committee, and I am not a lawyer, but I find it quite frustrating to hear that. I am sure the public and all the users of the court and the professionals involved must also find this incredibly frustrating. You are both leaders in this aspect of the judicial field. How are you contributing to this urgent need for rescoping bulk claims and enforcement?

Sir Geoffrey Vos: At the moment we are urgently contributing to the MOJ's bids to Treasury in SR2 because it is all dependent on money. I can tell you that 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 while 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 a paper system you have almost a paper warehouse in Northampton. We have to stop that and put it online. Every time you put a case online when it is issued instead of into Northampton it saves weeks—I cannot give you the number; maybe 10 weeks—for the parties in getting that case resolved.

Q40 **Chair:** You mentioned the figure, Master of the Rolls, of 23% for the success, to put it that way, of reform. The original target was over 80%, and the evidence we heard from the chief executive of HMCTS a couple of

weeks ago was that in its revised form it would achieve 61%, so we are a little at sea there. We are not asking you to account for other people's figures, but where does your own figure come from?

Sir Geoffrey Vos: The 61% is calculated on the basis of the number of tasks that a judge undertakes, but a task for the purpose of the 61% could be a two-minute application dealt with on the screen, or a three-day trial. They are not the same. You cannot say that 61% 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% does not really mean anything.

What means something is that 23% will be the number of cases on completion of the current reform that can be digital end-to-end. We will then add to that possession and property claims that are being digitised with money provided by MHCLG, which is about 8% to 9% of county court claims or 120,000 claims a year, so that brings you up to about 31%. Then, if you were to put bulk claims—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% level, but you would still not be making judges use digital 80% or 90% of the time because those bulk claims very rarely go to judges. They are normally the subject of default judgments. Unfortunately, the ones that judges see are that stubborn 10% that are the more complex claims, and you will only get paper out of the county court and the judge's inbox when you find a way of digitising those.

Lord Justice Colin Birss: May I just add a couple of points of detail? First, the Master of the Rolls was talking about completion. The date is September of this year; that is when the 23% becomes true. Secondly, the critical thing that took me a long time to get my head around as well is that you have to work out what number we are talking about.

If you are counting issued claims, you are including the million claims that are issued in the bulk system, most of which go nowhere near a court. When you hear numbers like 80% or 90%, the denominator, if you like, is total issued claims. The claims that get to a judge or staff in our local courts are mostly not those bulk claims. That is why as soon as you start looking at the numbers of what is going on in the courts, the numbers start dropping because the claims that judges are dealing with are not those bulk claims, and the proportion that are digital is much smaller.

The other thing I want to pick up, if I may, is just something that Tessa Munt MP mentioned a minute ago 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.

Sir Geoffrey Vos: Maybe multi-party.

Q41 **Mrs Russell:** Multi-party does not, of itself, sound terribly complex to me.

To be honest I am quite staggered by the idea that judges habitually cannot see emails between the parties, and by the cost of £1.5 billion. How can I go back to my constituents and explain that to them?

Sir Geoffrey Vos: They can in family.

Q42 **Mrs Russell:** In terms of how that pans out for litigants, sorry; I am just so staggered. How did that come about? How can 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?

Sir Geoffrey Vos: I do not know whether Colin wants to answer that one. I can perhaps help, but your view may be more accurate.

Lord Justice Colin Birss: First, I do not want to give the impression that the judges cannot see the emails; of course they can, the staff can show them to them. What happens is that they are not part of the IT system, and that is 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 as that is certainly not right. But, of course, what you want is everything to be there. The way the civil system was set up was to try to make it take the easiest cases. That is how the whole project was run. It was taking the simplest cases to digitise and do that which is where we have come from. To be fair, right now the system allows a fair bit of correspondence on the actual digital file, but it does not include email. So there are some documents now on the digital file that will be coming out in September.

Sir Geoffrey Vos: Could I just try to answer your question about how it came about? I am not here to try to exempt myself from blame; the judges could not possibly design a system of this complexity. 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, or the personal injury claims that are just a road traffic accident between A and B—and they thought, "Well, we'll start with that."

The other thing they did, which is not fatal but is problematic, is that the whole system operates on a case status basis. That means that every case has a status. It is at the stage of claim, defence, disclosure, or whatever else is going to happen during the case, but it can have only one status. If you have 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 which is why it cannot deal very easily with multi-parties or with high complexity.

I did not do it, but 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. By the way, that may well be possible in the future, but we have had to focus on getting the existing simplified system working properly, which is what they have been doing.

It works 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.

Lord Justice Colin Birss: If I may pick up on something that the Master of the Rolls just said, the other answer to your question is that the focus at the beginning was on litigants. It is really hard to say that was a bad idea because, to be fair, it was a really good idea. HMCTS worked extremely hard with the judiciary on the user interface between the litigants in person dealing with the system and the system itself.

One of the ways we know that it has paid dividends is that the response rate for defendants in the reformed digital systems is astonishingly higher compared with the old-fashioned systems we have, which shows it is an extremely well-designed system from the point of view of getting litigants in person to engage. One of the hardest things in civil justice is getting people to engage. We do not want them to not engage, so things like the level of default judgments are much lower in the Online Civil Money Claims system than in our bulk MCOL system, because the focus was actually on that. That was what everyone was looking at. That was one of the main reasons, but the case state that the Master of the Rolls mentioned is part of it too.

Q43 **Chair:** None the less, all but a very small proportion of the money that was there has been spent, 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 is been only partially successful?

Sir Geoffrey Vos: Everybody is very keen to stop the reform programme dead in its tracks on 31 March. That is fine. It is very important that the work that was previously within the scope of civil reform should be completed, and that would not be hugely expensive. It does not matter what you call it or the part of what programme it is in.

No, it has not been unsuccessful. The problems that are thrown up by the complexities of the number of different kinds of cases you have in civil were underestimated, but not every other part of the system has had that problem. Employment tribunals have a system that works very well because all the cases are between an employer and an employee, so it is fairly straightforward. The situation is 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 has thrown up the problem.

The problem can be solved fairly easily and without vast amounts of money. Colin and I talk to HMCTS all the time. We do not get involved in the figures because it is up to them to decide if they have the money, but in the context of what we are talking about, the figures for various bits of de-scoping are small.

Q44 **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.

Sir Geoffrey Vos: It is small; it is in the millions but not hundreds of millions.

Lord Justice Colin Birss: If I may just pick up on what the Master of the Rolls said, which of course I agree with, we need a simple system for complex cases to finish it. 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. That 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.

Sir Geoffrey Vos: One other thing that is worth mentioning, which it would be great to propagate around the place, is that this is a digital system where you go online and it says, "What is your name? What is your claim? Where do you live? Do you have a solicitor?" and so on. The main programme 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 any other kind of relief?", it could then cover injunctions, declarations, orders for sale and other kinds of cases, which would then bring a lot of cases into the digital environment. They did not want to do that originally because the information that is put in 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 do not have any money that should be a relatively economical way of doing a large amount of the work.

Chair: Does anybody else want to come in on reform before we move on?

Q45 **Warinder Juss:** 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?

Sir Geoffrey Vos: I am not familiar with the employment tribunal digitisation, but it is on the same platform and built in the same way, so I think that anything more than two parties on one side will create the same problems.

Lord Justice Colin Birss: It is possible to cater for that, but the resource cost multiplies as you add more people. That is the problem. 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, and then if you have three you need even more—do you see what I mean? That is the difficulty. It can be done, but it just ends up adding enormous complexity.

Chair: Can we go back to staffing issues and judicial capacity, Linsey?

Q46 **Linsey Farnsworth:** My children will attest that digitalisation is not my forte, so I would like to talk about the human side of the court system,

starting with judicial capacity. The recent judicial attitude survey produced by University College London concluded that the judiciary was facing, "A looming retention and recruitment crisis," which sounds very worrying to me. If what they are saying is correct, could you explain what is driving that?

Sir Geoffrey Vos: It is only partly correct. In my judicial career, which now spans—I do not know—16 years, there have always been some recruitment problems at different levels. In the last decade, we went through a period when 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 fewer problems recruiting High Court judges than we did.

There are problems recruiting circuit judges, probably to a lesser extent than the problems of 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. It is expensive to live in London, and the people taking the jobs are probably 40 and over in most cases, and therefore they are perhaps looking 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; you have to understand what you are talking about. Being a district judge is a great job, and our district judges do a fantastic job because they do such a wide variety of work. It is mostly family and civil which is a pretty tall order as you have to have two whole areas of expertise. They have to be able to tackle all of those 38 kinds of cases that I mentioned in civil, financial remedies in family, care work, and 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 have been covered in some of the questions you have posed, like the working environment: they have had a lot of leaks in the roofs of the buildings. 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.

I do not think it is mono-dimensional. You have to look at the whole of the judicial attitude survey. I started the judicial attitude survey back in 2014, and I have been working with Professor Cheryl Thomas at UCL for all those years putting it together. We now ask lots and lots of questions we would never have dared to ask back in 2014. As for the information, we get 99% or 98% of salaried judges responding, so we know exactly what everybody thinks. You have to look quite deeply at it to work out what they are happy

and unhappy about. Judges almost universally really still love their jobs because it is a very rewarding contribution to society.

Q47 **Linsey Farnsworth:** You mentioned the issue in London and the south-east in terms of recruitment and that there is an application process at the moment. In previous evidence you said that because of the recruitment problem in those areas, there has been an over-reliance on fee-paid deputy judges. Will that still be the case until this issue is resolved? If so, what problems does that bring to those areas?

Sir Geoffrey Vos: It really is a problem. Civil has always been the jurisdiction that 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 until two weeks' time and will be there again in two weeks' time. With civil small claims cases generally, however, 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. In civil, we have always relied on, and as many as 50% of civil cases in the county court historically have been heard by, fee-paid judges.

Do not get me wrong: fee-paid judges are great. They are extremely able and committed, and some want to become salaried judges. But we, and by "we" I mean the senior judiciary—it sounds very grand but it is not intended to—would prefer that the fee-paid judiciary was there for two reasons: where we have a problem like we have in London and the south-east with district judges at the moment, and as a channel to entry to the salaried judiciary.

But unfortunately, 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 or sometimes 60 days a year, and then carrying on with their career. 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. We are trying to make it a little less attractive in the sense that you can no longer sit 180 days as a fee-paid judge as you used to be able to do. On the other hand, we need them when we need them.

The second part of your question, and I am sorry to be long-winded about it, is what are the problems that it causes? 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 come in, read the papers for the day, hear the cases and go home. If the case goes on for a shorter time 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.

Basically, it creates a less smooth disposition of justice where you do not have enough salaried judges. Actually, salaried judges in a court make it

run smoothly. I should say this: the relationship between judges in courts and their staff is almost universally—I can give you two examples out of the 140 courts where it is not the case—incredible. They are so loyal to each other, and that makes the system work. If you have salaried, that works, but if you do not have any salaried judges, it makes it problematic.

Lord Justice Colin Birss: May I just add one more thing? To answer your question directly, when you have a good relationship, as we do a lot, between the listing staff and the salaried judges, the listing staff know who they can give things to. 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. It is also true that you get to know your fee-paid judges—I do not want you to think it is not—but it is not the same. That is just one other dimension to this issue. 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.

Sir Geoffrey Vos: We have the virtual pilot as well, which provides 2,000 or 3,000 days a year, with judges sitting from the north, the north-east, the west and other places, to try to clear backlogs in London. They sit remotely, which has actually been very successful.

Q48 **Linsey Farnsworth:** That is really interesting, thank you. My optimistic nature is hopeful from what you have just said about going forward. What is the appropriate balance that you would like to see between salaried and fee-paid judges?

Sir Geoffrey Vos: We have always said 80/20.

Q49 **Linsey Farnsworth:** What is it at the moment?

Sir Geoffrey Vos: In family, it is 80% salaried and 20% 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.

Q50 **Lindsey Farnsworth:** Would that be across the board?

Sir Geoffrey Vos: Yes.

Q51 **Linsey Farnsworth:** You have mentioned the recruitment campaign that you have running at the moment. You said that 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?

Sir Geoffrey Vos: I am cautiously optimistic. Last year we did a nationwide competition for 100 district judges and got only 50, I think. This was a competition for 80 district judges but was limited to London and the south-east. One of the problems has been that when you advertise for district judges, people do not really want to move when they become a judge, as they have children, families, commitments and so on. A particular circuit is advertised. To put that in context, the south-eastern circuit comprises places as far apart as Ipswich and Brighton, so if you live in Brighton, you would apply to become a district judge on the south-eastern

circuit, and they would offer you Ipswich. Ipswich is not really in the south-east or near Brighton, and you certainly cannot commute. So that was causing problems. The JAC is now trying to be clear about where the vacancies are so that if you live in Brighton you can apply knowing that there will be vacancies in Brighton, Hove, Worthing or somewhere relatively close.

Lord Justice Colin Birss: One thing you ought to be aware of is that the 80 number 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 resourcing a recruitment exercise for 200 when you know you are never going to get, for the sake of argument, more than 80 people. So one needs to be a little careful with what these numbers are, as we actually need more judges than that but we know we are not going to be able to recruit more. That is a factor that goes into these vacancy request numbers, and you just need to be aware of that.

Q52 **Pam Cox:** How difficult would it be to separate the southern from the eastern circuit, where I am an MP?

Sir Geoffrey Vos: It is not really a question of separating the circuit; it is a question of saying, "I have a vacancy in Brighton." That does not sound too complex to me. For some reason it has proved a little more complex than you might think, but we are doing better now.

Lord Justice Colin Birss: It is fair to say we have wanted to do something like this for quite a long time. I suspect it seems blindingly obvious to you, if I may say so, that we should be trying to do something like this. There are lots of problematic bits, but we are doing it now, and it is really worthwhile.

Sir Geoffrey Vos: I am optimistic.

Lord Justice Colin Birss: I am too.

Q53 **Warinder Juss:** The recruitment crisis is with salaried district judges in London and the south-east. I live in Wolverhampton. It could be possible for someone like me to apply for a district judge's job in London because traveling is not that bad. Would you agree with that? Is there anything proactive being done to encourage more solicitors and barristers to become salaried district judges in London and the south-east?

Sir Geoffrey Vos: I do not agree that it is necessarily easy to travel from Wolverhampton to London because the train fare is so expensive, as you may have noticed. District judges do not really want to live in Wolverhampton and work in London. History has shown that to be the case. They want to travel maybe 20 miles but not 120 miles.

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. Colin and I, or one of our civil leadership group—often me—go to every continuation course and speak to 60 or 80 mostly deputy district judges. The whole purpose of that is to make them love us and want to become full-time district judges. It is getting more successful, but it makes a lot of excursions for me.

Q54 **Mrs Russell:** In terms of recruitment, do you think 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? You would not now find a solicitor who is a jack-of-all-trades in that way, and then they cannot get through the judicial assessments because they do not have the skills. Do you think you are unduly limiting your potential pool of applicants by making the requirements so incredibly broad?

Lord Justice Colin Birss: I doubt that is causing people who have the right skills not to be appointed. I say that because we are seeing exactly what you are talking about. The new cadre of deputy district judges, which both 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 they were 20 years ago. It is not just solicitors; it is the Bar just as much. The world is much more specialised than it used to be; it is a good news story. We support the Judicial College, which does a fantastic job. The judges who run those courses also do an incredible job. We realise this, and so we are now working on ideas for dealing with the fact that the new judges who are coming in do not have that kind of experience. They need more training and help to do that diversity of work. It is really important, but that is what we are doing.

Sir Geoffrey Vos: One of the functions of having a court where you can go and have your case tried locally is that the judge can deal with a fairly wide range of stuff. If they could not, then you would be pushing people off to Manchester, Birmingham or London to find a specialist judge. It is desirable to have that, and this stuff 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 or possession of property, but it is not impossible.

Q55 **Tessa Munt:** To pick up on what you said, I would gently challenge that. I live in Somerset. If I want to access specialist health facilities, generally I have to travel to Bristol, or sometimes to Birmingham, depending on what sort of specialism I am looking for, because that is where the specialists are. Having worked within legal firms, I certainly recognise that some of the work I did for them would have been found only in the big cities—perhaps five or six of them. So anybody would have to go to Bristol, Leeds, London, Manchester or Birmingham, wherever they lived, even if they were out in the sticks where I live. I do not know that it is so peculiar to recognise the need to travel some distance to find your specialism.

The other thing I would say is that in my area, we have almost no public transport. If we wish to go to Taunton, which is where my local court is, those of us who do not have cars have to leave the day before and stay

overnight in order to travel by public transport and be there for 10 o'clock in the morning. My local court is 25 miles away. I do not think anything of traveling 25 miles or, indeed, 50 miles or 100 miles to find a specialism.

Sir Geoffrey Vos: 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: I am afraid we do not even have horses.

Sir Geoffrey Vos: The reason I would push back in return is that the people who are involved in county court cases are often the most vulnerable in society who have the least money.

Tessa Munt: Indeed.

Sir Geoffrey Vos: 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." To do that, they have to engage and they have to be there. If they have no money, sending them to a big town is not desirable. It is really important that we have local judges. These cases are not hugely complicated. You can do a possession case, after having done a few and observed a day in court, provided you are the right standard of lawyer. I personally think we should keep local courts to serve the public.

Q56 **Tessa Munt:** Our local courts are not terribly local for most of the impoverished population.

Lord Justice Colin Birss: It ties in with the point before about salaried and fee-paid judges, because it is the salaried judges who get the experience. They can deal with all the standard or middle complexity cases. They can do possession lists and personal injury. That is what they do, and that is why there is such value in having salaried judges on the district bench because they can handle that stuff. That is what they do, and they are good at it.

Q57 **Tessa Munt:** Thanks for your tolerance. You talked about the relationship between judges and their staff. I wondered about the impact of having staff who are agency or who are just inexperienced, because there may be a relatively high turnover. What impact does that have on the operations? This came up in the judicial attitude survey in relation to concerns about staffing reductions. Can you comment on that?

Lord Justice Colin Birss: We have fewer agency staff now.

Q58 **Tessa Munt:** Fewer?

Lord Justice Colin Birss: Yes, so I believe. It is really a question for HMCTS, but that is my understanding. Experienced staff are, of course, more valuable. 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 where there are experienced staff, you can tell the difference. So, of course, we want to have experienced staff, and we need to retain them. Retention is a problem in our system. Often, we have a difficulty—I am thinking of

Cardiff—where other areas of the public sector recruit from inside HMCTS at a certain band, and the staff go because they get paid more money for the same band in another part. It is a constant frustration for us to see our good staff going to other parts of the public sector.

Q59 **Tessa Munt:** What are your views on block listing in certain courts as a way of addressing the backlogs?

Lord Justice Colin Birss: Block listing is a fundamental part of the way our civil system works. We do it carefully, and we try to do it right. As the Master of the Rolls has mentioned already, many cases will ultimately not come to a final hearing, and that might happen the day before or on the morning of the final hearing. Sometimes it is because they settle; sometimes it is because, sadly, somebody does not attend the court. There are all kinds of reasons.

In order to be efficient, all our courts will block list. In other words, if you have two district judges available on Thursday, you will list four or five small claims. Actually, if you have two district judges in a middle-sized court, it is probably four or six small claims, or maybe even eight. That will normally be fine; that is how it is done. If we did not do that, we would have even longer delays. So block listing, per se, is not a bad thing.

Recently, the civil executive team, which I chair, ran a civil listing project, led by a designated civil judge in Birmingham, Her Honour Judge Emma Kelly, who has really been brilliant. That listing project tried to identify best practice for block listing for different kinds of cases. It has details of things like how many small claims or possession cases you can block list in a big court, and how much time you give to them. That is how we have an efficient system.

Judges who run block lists know how many cases they have to deal with. They manage their list and, by and large, it works very well. Of course, occasionally you have to cope with the possibility that more people attend than you were hoping for. That is where the flexibility comes in because if you can get it right, you can juggle things and have one judge in the building and another one somewhere else. Most of the time block listing works with good and experienced listing officers.

I am not going to pretend that there will not be times when—I know this sounds odd—unfortunately too many people turn up because there will be. I do not mean that really, but you understand what I am trying to say. Then you have to find a way of dealing with it. Occasionally that is a problem, but not do it would be far worse than to do it.

Q60 **Tessa Munt:** We have highlighted the matter of late adjournments. What is the ideal time for someone to be informed of an adjournment?

Lord Justice Colin Birss: The ideal time would be as early as possible. In reality, the court door is a place when many people settle in civil justice. Actually, a physical courtroom is a great tool for settling. That is the reality of the work we do, and we know that. We have compulsory mediation—

perhaps we will talk about that later—and ways of trying to do that. But that is the answer to your question.

Q61 **Chair:** Could I briefly return to digitisation? 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?

Sir Geoffrey Vos: Actually, they are two different things. The digital justice system deals with the pre-court environment, so my 15 million cases. Almost half the adults in the country are involved in some kind of dispute and will often have familiarity with dispute, whether it is family, a tribunal, or simply a gas bill or something on eBay or the internet. They will have had some kind of dispute.

My vision was that the online environment allows people to find the dispute resolution process that suits querying a gas bill, having an argument about a tenancy, a housing dispute, or making a personal injury claim, without needing to go to court. Five years ago, I expressed the idea of a funnel where lots of people had a problem, went online, were directed to the right place to resolve the dispute, and the funnel got smaller until at the bottom the cases and the data concerning the dispute were transmitted by API, application programming interface, into the court system for final resolution. There would be 15 million at the top and 1 million at the bottom. All those would be resolved very quickly and satisfactorily by a system of signposting.

That has become a sort of reality. I am not going to claim it is quite in place yet, but there are at least 100 portals that aim to resolve disputes or give people advice about getting a resolution. 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 I chair, and is empowered by section 24 of the Judicial Review and Courts Act 2022. Only yesterday, both Houses of Parliament passed a positive resolution endowing the Online Procedure Rule Committee with the power to make rules for property cases, which is fantastic. That means we can make rules that concern the court space but also have some bearing on the pre-court space.

In terms of the data standards, there are two things that limit the way people navigate the internet. First, they may go on a site and get dispute resolution, but then the data is untransferable to another site or to the court. The Online Procedure Rule Committee is likely to make a rule that you have to adhere to these simple data standards, so if you do not resolve the dispute in the Housing Ombudsman portal, you can send the data to court, say.

The second limiting factor is the absence of interconnections. Many ordinary, often vulnerable, people can go online—they are not digitally disadvantaged in that sense—but they do not know what their problem is or where to go. The idea of the digital ecosystem is to make it a rule that for anybody who runs a site like Advicenow, the citizens advice bureau, the

personal injury portal, or the Financial Ombudsman Service—for housing, retail, or anything—and somebody comes to them and says, "Can you sort out my problem?", instead of saying "No, we don't have the statutory power to do that," they say, "We don't but we suggest you go somewhere which will." If they do not know of the place to go, they will direct them to advice. 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 a place where they can resolve their problem.

Diagnosis is a very large part of the cure. I always give this example. Many people do not understand the law or are completely ignorant of it, and some regard that as a badge of office. They may go online and say, "I have a bad foot," but when you actually interrogate them, they have a bad foot because the bailiff came and slammed the foot in the door and they got injured. So their problem is defending the possession claim and not being thrown out of their home—not their foot, which will heal over time. This is a time of trouble, and people in times of trouble need help. The digital environment is uniquely placed to give them that help.

I am an optimist; I have already said that, and it is true. It is a long project, but we have the Online Procedure Rule Committee. The objective must be to resolve millions of disputes quickly, economically and efficiently so that people can get back to work. There is a really poor understanding of the value of getting people's disputes resolved. When you go to work, you see people in the office texting away madly on their mobile phones instead of working. Often that is because they are solving a personal problem, which will be some kind of dispute that is obsessing them. It makes them lack productivity, so they are not contributing to the workplace, and they also suffer psychological damage as a result of disputes. The more we can use our technical tools of the modern era to get people into the right place and get the thing resolved without the need to go to court, the better. Court should be the last resort. It is a vision that has legs—I hope—and that is what I call the digital justice system.

Q62 **Chair:** Would you see the Online Procedure Rule Committee as the midwife to that?

Sir Geoffrey Vos: Yes, absolutely.

Q63 **Chair:** Is it sufficiently resourced to do that?

Sir Geoffrey Vos: At the moment, we have support from the Ministry of Justice and an incredibly committed team working with us. We have just appointed 20 members who do not get paid, I think—

Lord Justice Colin Birss: That is right.

Sir Geoffrey Vos: To the sub-committee of the OPRC, the Online Procedure Rule Committee, and they are all incredibly committed to this vision and working hand over fist to see it work. I do not think it will be tomorrow, Chair. I am sorry; it will have to develop over time. But it is an

objective that is genuinely bringing justice to the people in the modern era. Lawyers tend to be conservative—not politically so, but 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.

We also need to make sure that we do not assume the problems for the digital age are going to be the same 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; people's problems change. Actually, many problems are online—for example, with eBay. People spend lots of money but also lose a lot online. They have legal rights that need to be rectified and vindicated. So it is a big project, but it is the only way forward for justice in the future. We should raise our eyes from everything that is just possession or personal injury claims, which is what it was in the past.

Q64 **Pam Cox:** 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?

Sir Geoffrey Vos: The strategy is to gradually transfer as many types of cases as possible into the purview of the Online Procedure Rule Committee as they are digitised. At the moment, in civil we have the OCMC, the Online Civil Money Claims, but the rules are made by the Civil Procedure Rule Committee. That is illogical because it is a digital, smart system, and so the rules should really be made by the Online Procedure Rule Committee.

Let me explain the difference between the rules. The Civil Procedure Rules are contained in 6,000 pages in two huge books called the White Book, which I had the good fortune to edit for some years. It is absurdly long, completely impenetrable for ordinary people and does not 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 will not 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." That is a basic premise of natural justice, and so that will be the rule. It will be a high-level rule, and it will ensure that the whole system operates within article 6, the right to a fair trial, and ensure that justice is done in the system.

Colin will be able to give you a lengthy discourse on how difficult that is. He is our rules supremo, if I may respectfully say so. It is imperative that a justice system that operates in the name of the state does not do anything illegal. It has to have a legal foundation for the way it resolves disputes. One difficulty is that the programme is created by people who are not lawyers and probably do not have the rules embedded in their

head, so we as judges have to make sure that this platform operates 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 Rule 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.

Lord Justice Colin Birss: Can I add one more thing to what the Master of the Rolls said, which I hope is helpful? We want to have high-level rules in this online procedural rule concept but still have an IT system that 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 or a sandbox; there are lots of different names for it—that allows people to find out how the system works without suing somebody. A difficulty with the existing digital system is, 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 is by litigating, suing someone, working your way through the system and eventually you will come to a screen and see what it says. That does not work as a way of governing an IT system. We need to make sure there is, if you like, a dummy version of the real thing that allows everyone to see how it works and try it out to find out what happens at this or that stage of the system so that you can be sure that it is doing the right thing. This is what we are discussing. To build something like that is not a trivial task, but that is a crucial piece in this whole endeavour.

Sir Geoffrey Vos: That is transparency.

Lord Justice Colin Birss: That is transparency.

Sir Geoffrey Vos: And it allows for the simplicity of rules, so it has a double whammy of efficacy.

Lord Justice Colin Birss: If I may add one more thing, just going back a little, an important reason why the Master of the Rolls talks about data standards is that they are not difficult to make. They are not expensive. They are rules. We make rules in 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. That is a really important aspect of why this vision makes sense.

Q65 **Mrs Russell:** I have a couple of different thoughts or concerns, although possibly this just makes me the small c member of the legal profession that you referred to. Doing justice is one thing; people feeling that they have had justice is a completely and utterly different thing. I have concerns that both the systems that you are talking about have more scope to deliver justice than a feeling of having received it.

In terms of the online rules, in the employment tribunals, we just do not have anything like the volume of rules that you do in the White Book, which I have always found 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 laws. We just do not do it; it is just not a done thing; it is just not something that happens. I appreciate you have a wide variety of different case types, but for some of these, can you not just have the overriding objective to achieve justice and then crack on? Could we get to something like that?

In terms of the online stuff, do you have an equal number of men and women looking at this? What are you doing about engaging with people who are court users? You have a lot of litigants in person out there, and rules that solicitors can use are not helpful.

Sir Geoffrey Vos: You start, and I will come back to whether we do justice.

Lord Justice Colin Birss: I do not know the numbers, but we have a member of the OPRC whose focus is specifically on inclusion. Inclusion is one of the major workstreams of the sub-committee that we talked about, which is exactly on the point, so that is front and centre of the work that is being done. I hope that is a positive answer to your question.

Sir Geoffrey Vos: Can I come back to whether justice is being done?

Mrs Russell: May I just address that point?

Sir Geoffrey Vos: Yes.

Q66 **Mrs Russell:** May I gently suggest that if you are not sure whether your committee is demographically representative in a variety of different ways in terms of disability, ethnicity and gender, then it probably is not, and it might be worth checking on?

Sir Geoffrey Vos: I think it is, actually. I think he is doing himself down. The sub-committee is pretty demographically balanced.

Lord Justice Colin Birss: It is.

Sir Geoffrey Vos: I cannot tell you the numbers either, but it was certainly intended to be. I 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 spend a lot of time trying to identify why people come to court and need disputes resolved. A very large number have a dispute that they simply want to be finished. They want the money, but they want it to be finished. They do not spend all their time thinking that the judge has or has 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 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. I am trying to pick off a series of low-hanging fruit so that the justice system—which is jolly expensive—resolves disputes that have no other way of resolution. Mediation, arbitration, ombudspeople and a whole series of portals are incredibly successful.

We have not discussed automatic referral to mediation. In the county court, of the cases at the bottom of the funnel, even though we force them to go, 32% still settle when they probably did not want to go to mediation in the first place. When they went voluntarily, it was nearly 50%. Mediation is a fantastic tool, and people come away from it normally pretty happy because they have agreed to the outcome. You are quite right: people do have to be satisfied that justice has been done and is seen to be done, but this system achieves that for the most part. Where it does not, we will make sure we do something about it.

Can I come back to this business of why we 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 simpler language. I agree with you. You do not need all those rules, but getting rid of them is a work in progress. As more and more cases move across to the OPRC, which has the kind of rule type that you are talking about, the problem will start to resolve.

Chair: We have three more issues, two of which you have mentioned, namely mediation and the CPR, and then we will end up on AI. If you could bear with us for another 10, 15 minutes, that would be very helpful.

Q67 **Warinder Juss:** Sir Geoffrey, you mentioned the White Book and described it as too long and cumbersome. I agree with you. I never enjoyed reading the White Book, even though I had to do it to do my job. You have suggested a foundational reform. What would that involve? What is that foundational reform going to be? Do you think that reform of the CPR should precede any further digitisation?

Sir Geoffrey Vos: The CPR is going to remain for the non-digital environment, but more and more cases will be brought and resolved there, subject to the OPRC rules, which will be simpler and easier to follow. I have not suggested abolishing the CPR for non-digital cases. That is a big job. The problem with the White Book is that it has too many things that are not rules. It is very useful for somebody who looks at it every day and knows where to find everything—except that it is written in 10 point, which I personally cannot read. Apart from that, it is very useful, but it should be arranged in a quite different way. Most people want to see rules. The rules are only a small book; they are not huge, but they are probably too big. I do not think we should engage in a foundational reform; we are cleaning them up. What is it called?

Lord Justice Colin Birss: Simplification.

Sir Geoffrey Vos: Simplification. 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 they are wanted by the people who buy the book, but actually the rules are simplified all the time.

Lord Justice Colin Birss: We started a project four years ago working through the rules to identify bits that we can get rid of from the main body. First, the White Book is not the rules, as the Master of the Rolls said. It was a constant frustration, frankly, for me working on the CPR to be criticised about the White Book because it 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.

The CPR is really in two parts. It is not written this way, but it is. There are the central rules that govern civil justice—there are not that many of them; about 40—then there is extra stuff about enforcement, which is very important but rather different. Then there is a whole lot of other stuff about special cases. Everybody wants a special case. Often Government come along and say, "We have 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 is another special case and another special case. That is why the rules are in the state they are in. If you are dealing with anything other than a very ordinary case, you flick back from part so-and-so to part such-and-such.

I cannot remember the numbers now, but we have certainly got rid of about six 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 where somebody in our committee sat down, looked at the rule, looked at the practice direction and realised that most of what was written there was the same as what was written in the rule, so if you changed the rule a little you could get rid of it altogether. That has to be worthwhile, and we are doing that.

Q68 **Warinder Juss:** Can I ask you about fixed recoverable costs? In more than 30 years of practising as a PI and clinical negligence lawyer, I absolutely agree with you: every single one of my clients wanted an early resolution and a quick settlement to their claim. You mentioned that legal aid is much less than it was before with the 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, certainly in the kind of cases that I dealt with, was always necessary.

Fixed recoverable costs lead to access to justice as well because there have been birth trauma and mental health cases resulting in suicide, and fatalities in older and younger people where the claim is worth less than £25,000. Those cases have been subject to fixed costs.

I have been contacted by the Society of Clinical Injury Lawyers who say that they have put forward proposals as to what could be an alternative, such as having a road map and then an agreement with the other side as to how the case is to be dealt with. I am particularly concerned about claimants who are vulnerable when they seek legal help, when defendants will always have qualified lawyers representing them. Sir Geoffrey, what is

the rationale behind the reforms to the fixed recoverable costs? I know it is to save costs but are we actually doing so, and is it at the expense of access to justice? Do you believe that fixed recoverable costs have been successful in encouraging access to justice?

Sir Geoffrey Vos: First, it was not the judiciary that introduced fixed recoverable costs; it was the last Government. It is too early to say how successful it has been or indeed what access to justice issues have been thrown up by it. One problem, particularly with personal injury litigation, is that it has been very expensive relative to the amount of damages recovered at the end of the day. Obviously, that is not a good thing because one of the central parts of justice has to be proportionality. You simply cannot justify spending an endless amount of money, however seriously the parties regard the case, if the case itself is worth only a very small amount of money. So, you have to have a proportionate system, and the idea of fixed recoverable costs attempts to achieve proportionality. We must wait and see whether it does that or whether the concerns you raise are valid on the evidence. 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?

Lord Justice Colin Birss: We could discuss the detail of fixed recoverable costs if you like, but I am not sure it is necessarily all that productive. The important thing, to pick up what the Master of the Rolls just said, is that when the committee passed the rules to bring in the new fixed recoverable costs scheme, we specifically said we wanted to have a stocktake once it had been going, which is not something the committee itself has ever done before, as far as I know. The stocktake was originally scheduled for the beginning of this year, but the number of cases going through the intermediate track, which is part of 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, or probably in the autumn around October, to make sure there is some information about what is happening. To the point that the Master of the Rolls and you have just made, we need to look at it. We absolutely know that.

Q69 **Warinder Juss:** I totally take on board the point about proportionality. That is important, but my concern is about access to justice. Looking at all the clients 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 do not necessarily want huge amounts of compensation. Many claims that are considered to be low value are quite complex, where you need legal expertise to represent the claimant well and to achieve a resolution of the claim quickly using legal expertise. That is perhaps overlooked. But I appreciate it was the previous Government who brought these rules in.

I have a final question. We have spoken about delays in the county court. Do you think that delays in the county court have reduced or undermined the effectiveness of fixed recoverable costs?

Sir Geoffrey Vos: Probably not yet, and I do not think enough cases have gone through to see that. It is absolutely imperative that we exclude delays, and we do that only by digitising and putting things online. The sooner we do that, the better. Unfortunately, many of the smaller cases and those brought by vulnerable people are not digital because litigants in person in particular bring things on paper.

Lord Justice Colin Birss: Clinical negligence would normally be brought by a solicitor, and damages claims should be in the Damages Online system. If I am right, for clinical negligence specifically, fixed recoverable costs only apply if causation is admitted, which is an exception for other things.

Q70 **Linsey Farnsworth:** I want to move away from rules and back to humans, and talk to you about mediation and the alternative dispute resolution. Since you last appeared before the Committee in June 2023, there have been major developments in the use of mediation for civil justice in relation to the mandatory requirement for mediation for civil claims under £10,000. We were in Northampton at the business centre where they taught us about that yesterday, and I found that really interesting. Do you think mediation is being used in the county court enough at the moment? Should mandatory mediation be expanded for any particular parts of the system?

Sir Geoffrey Vos: I do, actually: mediation should be tried, and what I used to call repeated attempts to settle. Interventions to try to persuade people to settle, and to get them to reach agreement without the need to spend more and more money and time, and cause more and more upset, is a jolly good thing.

I will give you an example of a case in the High Court, where mediation has been prevalent but not used much 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, that the case was not settleable and required judicial resolution, and that it was completely outrageous that he even had 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." He ordered them to go to mediation, and the case settled. Both parties were saying exactly the same thing, and a long trial was averted by this settlement.

People should be required to consider mediation. 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 a trained HMCTS mediator. I do not think it is deleterious to the interests of justice to require warring parties to spend half an hour or an hour on the telephone having it suggested to them that they might have been unreasonable in demanding £1,000 when their claim was only £500. I think we should have more of it.

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

Q71 **Linsey Farnsworth:** Do you have any concerns about the access to justice side of things if one party has had the benefit of legal advice before going into mediation and the other has not? If you do have concerns, are there any safeguards?

Sir Geoffrey Vos: The mediator has to be properly trained so they understand that. It is very problematic in family cases where sometimes a vulnerable spouse, often a woman, will not have legal advice and will effectively 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 two litigants in person, both of whom have very fixed ideas about their case, and somebody standing in between and saying, "Come on, don't be stupid. £500 was the amount you were due, not £1,000. Why don't you settle?" Of course, there should be no bullying or pressure. Of course, there should be no inequality of arms. Mediators must be very clear about that.

Q72 **Linsey Farnsworth:** If it was to be expanded, would you want to see some safeguards for the sorts of cases that would be—

Sir Geoffrey Vos: There already are. Just because they are forced to go does not mean they are forced to settle.

Q73 **Linsey Farnsworth:** A moment ago you touched on the use of early neutral evaluation within the county court. I am really interested in that. Do you think that should be used more? If so, how should it be used? Would that in itself be a useful tool in terms of access to justice where somebody is not represented?

Sir Geoffrey Vos: I close my mind to no kind of dispute resolution. Early neutral evaluation is excellent in some cases. Four years ago, the Civil Justice Council made a report about small claims. There were a lot of pilots in some county courts suggesting that all small claims should be listed for half an hour in front of another district judge who would 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. The problem was that it also had the effect of entrenching some people who did not settle, making the dispute even more difficult to resolve. It is good for some cases but probably not for all cases.

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

Lord Justice Colin Birss: Just to elaborate on that, what made it complicated was that it was not clear whether the cases that settled at that stage would have settled anyway. It then becomes a question of resource allocation. Was it worth the resource? To be clear, I do not think it is acceptable to depersonalise allocation, but it was questioned whether it was worth that kind of resource. Maybe the answer is yes, because ultimately settling earlier is better, but that is the sort of difficulty that these things throw up.

Q74 **Linsey Farnsworth:** How would we decide which cases were suitable and which cases were not suitable for certain types of resolution?

Sir Geoffrey Vos: That is the problem. Particularly with small claims, it is very difficult because you have to have a system in a court that says every case is going to be listed or not. Overall, with the outcomes we saw in the pilot, it was not absolutely clear that was a good use of judge time. 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 appropriate to reach resolution if you can.

Q75 **Linsey Farnsworth:** Should it be judge-led on a case-by-case basis?

Sir Geoffrey Vos: Yes, when it gets to a judge. My digital justice system has hundreds and thousands of cases that are resolved long before you get anywhere close to a judge. The problematic ones are the ones that get into court.

Q76 **Chair:** Do you think the professions are signed up to your vision of the widest possible dispute resolution? I am conscious that tomorrow night we are celebrating the 200th anniversary of the Law Society. Lawyers are sometimes wedded to their histories.

Sir Geoffrey Vos: I hope so, is my answer.

Q77 **Chair:** I will not press that any further. This is the very last question. You mentioned artificial intelligence in the context of dispute resolution. How do you think artificial intelligence can affect the work of the county court and improve it in the near future?

Sir Geoffrey Vos: I am going to let Colin start.

Lord Justice Colin Birss: There are two different things. There is artificial intelligence as an assistance. I am not talking about artificial intelligence deciding cases, but just as a tool. It seems pretty clear that it is well worth

looking hard—we are doing so, starting with very small baby steps—to see if we can use artificial intelligence to help judges. I would really love to do this. If you are a senior judge, almost every case you get comes with a piece of paper on the front page on which someone has written a summary of what the case is about. Those summaries are very good, but they are not perfect. However, they do not have to be perfect because I am not going to decide the case reading the summary.

The point of a 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. We know that these AI machines are good at summarising. 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. It will not always be perfect, but it will orient them in what the case is about. They can see it.

I will tell you another war story if you like. It is 5 o'clock in the afternoon, and you want to go home in half an hour. It is a paper world and there are five piles of paper on your desk—this is a real example—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. If you had a summary on the top, you would. It is as simple as that. That is the kind of thing that we could use AI for. We are trying to see if we can use it to summarise cases. That is just one example. Transcription is another one. If we could use AI to transcribe material from oral hearings, that would be really helpful. We are looking at that.

Sir Geoffrey Vos: Let me tell you one thing that I was very taken by. I gave a speech on AI at a law tech conference a month ago. A young woman barrister practising 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. 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." 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 every week of my life I save five hours of my time by doing those things that give me a head start in my cases." That is not risky because she has checked everything. It is not dangerous because she has checked everything. It is just time-saving.

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 make sure we get better, cheaper outcomes for the people we serve. We are not here to do justice for ourselves as judges; we do justice for the people, for the citizens and for the business of this country. It is incredibly important to understand that with AI and everything we have talked about.

Q78 **Warinder Juss:** I will make this really quick. We had a presentation at

one of the previous Committee meetings on how lawyers can use AI to make their jobs really easy because AI would tell you the next step you need to undertake in your case. Do you foresee judges using such a facility in the future?

Sir Geoffrey Vos: Judges will use AI for all sorts of things. Different judges will use it for different things. The critical thing is that they follow the guidance that we have issued as to what you must not do. You must not write a judgment with AI and then give it out as your judgment. You must write your judgment yourself. But it can save time. If it can save you time in the particular work you do in an appropriate way, by all means use it.

It will come more and more, and there will be greater acceptance and understanding of how to use it. It is terribly important not to be frightened of the future or of our own shadows because worlds and commercial situations have changed. Everything changes. Luckily, we are all still here and we will still be here when we use AI; 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: We will leave that to the Foreign Affairs Committee. Thank you very much for attending today. That is a suitably positive note to end on. You have given us a lot to think about and question the MOJ Ministers about when we next see them. Thank you very much indeed for your time and your expertise this afternoon.