The Effects of Artificial Intelligence on the Judiciary

1) Do judges in your country utilize artificial intelligence technology ("AI"), and how so?

Yes but any use of AI by or on behalf of the judiciary must be consistent with the judiciary's overarching obligation to protect the integrity of the administration of justice.

In England and Wales, following consultation with judicial office holders, Judicial Guidance (AI Judicial Guidance (judiciary.uk) has been released to assist the judiciary, their clerks and other support staff on the use of AI.

The guidance is the first step in a proposed suite of future work to support the judiciary in their interactions with AI. All work will be reviewed as technology continues to develop.

The guidance applies to all judicial office holders under the Lady Chief Justice and Senior President of Tribunal's responsibility, their clerks and other support staff.

As described in the Guidance, potentially useful tasks are these:

"• AI tools are capable of summarising large bodies of text. As with any summary, care needs to be taken to ensure the summary is accurate.

• AI tools can be used in writing presentations, e.g. to provide suggestions for topics to cover.

• Administrative tasks like composing emails and memoranda can be performed by AI."

The Guidance explains that tasks which are not recommended are these:

"• Legal research: AI tools are a poor way of conducting research to find new information you cannot verify independently. They may be useful as a way to be reminded of material you would recognise as correct.

• Legal analysis: the current public AI chatbots do not produce convincing analysis or reasoning."

 a) If not, have judges in your country considered utilizing AI, and, if so, in what ways?

N/A

b) Is the use of AI in legal proceedings regulated?

Not as such but the Guidance makes it clear what approach needs to be adopted.

Furthermore, all legal representatives are responsible for the material they put before the court/tribunal and have a professional obligation to ensure it is accurate and appropriate. Provided AI is used responsibly, there is no reason why a legal representative ought to refer to its use, but this is dependent upon context.

Judges are reminded that it may be necessary at times to remind individual lawyers of their obligations and confirm that they have independently verified the accuracy of any research or case citations that have been generated with the assistance of an AI chatbot.

c) Does the use of AI impact the handling of evidence?

It is not considered that it does given the Guidance explains the limits that apply to its usage.

2) What are the pros and cons of having judges utilize AI?

Again, this is covered in the Guidance:

- Whilst AI tools are capable of summarising large bodies of text, as with any summary, care needs to be taken to ensure the summary is accurate.
- Similarly, AI tools can be used in writing presentations, e.g. to provide suggestions for topics to cover and doing administrative tasks like composing emails and memoranda can be performed by AI.
- However, AI tools are a poor way of conducting legal research to find new information you cannot verify independently and it is recommended that they are not used to conduct legal analysis: the current public AI chatbots do not produce convincing analysis or reasoning.

a) What are the possible effects of AI on the administration of justice?

Once again, the Guidance addresses this:

- Lack of accountability and accuracy: AI tools may make up fictitious cases, citations or quotes, or refer to legislation, articles or legal texts that do not exist, provide incorrect or misleading information regarding the law or how it might apply, and make factual errors.
- Bias: AI tools based on Large Language Models ('LLMs') generate responses based on the dataset they are trained upon. Information generated by AI will inevitably reflect errors and biases in its training data. You should always have regard to this possibility and the need to correct this. You may be particularly assisted by reference to the Equal Treatment Bench Book.

- Reliant on judges individually taking responsibility for its use: Whilst use of AI by or on behalf of the judiciary must be consistent with the judiciary's overarching obligation to protect the integrity of the administration of justice, judges are not generally obliged to describe the research or preparatory work which may have been done in order to produce a judgment.

- Use of AI by courts/tribunals users: AI chatbots are now being used by unrepresented litigants. They may be the only source of advice or assistance some litigants receive. Litigants rarely have the skills independently to verify legal information provided by AI chatbots and may not be aware that they are prone to error. If it appears an AI chatbot may have been used to prepare submissions or other documents, it is appropriate to inquire about this, and ask what checks for accuracy have been undertaken (if any). Examples of indications that text has been produced this way are shown below. AI tools are now being used to produce fake material, including text, images and video. Courts and tribunals have always had to handle forgeries, and allegations of forgery, involving varying levels of sophistication. Judges should be aware of this new possibility and potential challenges posed by deepfake technology.

b) What are the possible effects of AI on judicial independence?

Other than what is stipulated in the Guidance, it is difficult to gauge this.

3) Should there be limits on the use of AI by judges, and, if so, to what extent?

Yes. That is why we have the Guidance.