Roebuck Lecture 2022

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Lecture’s transcript

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Welcome to everyone joining us around the world for the Chartered Institute of arbitrators (CIArb's) annual Roebuck lecture which will shortly be delivered by Sir Geoffrey Vos, master of the roles in England and Wales. My name is Catherine Dixon, and I'm CIArb's Director General. And I take this opportunity to warmly welcome to Geoffrey and CIArb's president Jane Gunn. This is my third Roebuck Lecture and it's wonderful for the first time to be able to host the lecture face to face, whilst also allowing members from around the world to join us virtually. The title of the Roebuck Lecture this year is mandating mediation the digital solution, and it couldn't be timelier as many countries are turning to alternative dispute resolution as an answer to assist with access to justice by alleviating the burdens on overworked courts. I was in Pakistan two weeks ago speaking with the judiciary, including members of Pakistan Supreme Court, on introducing ADR to help with over 2 million outstanding cases in the Pakistan court system. We know that India will shortly introduce a mediation Act, which will mandate mediation for civil cases. Other countries have already embraced mandated mediation including Kenya, Singapore, Israel, Italy, various states in the US, including Texas, and Ontario in Canada, as a global membership and professional body, CIArb's members can help to shape how mandated mediation can and should work through our experience of mediation as alternative dispute resolvers- or should I say effective dispute resolvers, as I know, increasingly mediation, arbitration and adjudication should not be seen as an alternative but as best practice- we know that there is not one size fits all for dispute resolution, or a silver bullet, which will address every situation. However, from our experience of mandated mediation around the world, there are a there are a number of things which need to be in place to make it successful. These include ensuring the system is appropriately funded. Mediation cannot be seen as a free solution. Mediation should be delivered by alternative dispute resolvers if it is to alleviate the burdens on the court, over reliance on the judiciary to conduct mediation does not help alleviate the backlog of cases or enable prompt access to justice. In our view, every aspect of the court process should be directed towards resolution rather than dispute, and effective dispute resolvers are part of the solution. More empirical data should be gathered through the court as part of the litigation process to demonstrate the efficacy of mediation and other

forms of alternative dispute resolution. Mediators should not be over regulated; we do not advocate one regulator to act as a monolithic regulator of mediators in England and Wales. This approach will lead to dual regulation particularly with members of other professions, such as lawyers, who are already regulated. We support ensuring mediators are professionally trained and are members of professional bodies including CIArb as we ensure our members adhere to professional standards and ethical rules in line with best practice. The use of technology can also help. CIArb has been at the forefront of practice for the use of technology and alternative dispute resolution. Having quickly issued guidance and virtual hearings at the start of the pandemic, and recently launched our technology and arbitration guideline. This and other CIArb guidelines are adopted and used as best practice globally. Additionally, more can be done to raise the profile of effective dispute resolution with business and public and CIArb has a role to play in this. Indeed, this is part of our charitable objectives and a key strategic aim. Sir Geoffrey's lectures be mandating mediation a digital solution could not be more pertinent given the changing world we find ourselves in. There are fascinating questions around the details of mandating mediation, and what implementation could look like in practice. And we look forward to hearing more from Geoffrey today. Implemented properly, the rise of commercial mediation, including international dispute could serve as a valuable complement to international arbitration. Indeed, it is this kind of complementarity between the different forms of dispute resolution that CIArb is eager to promote as a better way of meeting the needs of parties. Therefore, CIArb will continue to support the adoption of mediation and other forms of effective dispute resolution around the world in particular in the UK. We will continue to work with the UK all party parliamentary group for ADR. I'm proud to lead CIArb as a mediator and lawyer at a time of exciting change. And as we continue to support our members to effectively resolve conflicts and disputes, thereby supporting the rule of law and access to justice. Our global membership is growing to over 17,500 members in over 150 jurisdictions around the world. We also have 42 branches globally, which are run by members for members. CIArb's aims are to globally promote the constructive resolution of disputes, be a global inclusive thought leader and to develop and support an inclusive global community of diverse dispute resolvers Our vision is a world where disputes are resolved promptly, effectively, and creatively. Our mission sets our commitment to supporting equality, diversity, and inclusion, enabling the best to join us and the ADR profession, irrespective of their background. As a royal chartered body and registered charity in England, we're also dedicated to driving and supported professional and ethical standards, and CIArb awards post nominals, once you have completed our training, become a member I'll post nominals are recognised around the world including by many arbitral institutions, and arbitration and mediation panels. As well as providing professional practice guidelines, we have expert groups on ADR disciplines technology and sustainability. We're also an active participant of UNCITRAL Working Group two and three and use our observer status to represent our members globally. As a member of CIArb will have access to specialist professional development, webinars, lectures, networking events, thought leadership, mentoring, career development, and other member benefits, including being part of a vibrant global network. If you haven't joined CIArb already, I hope you'll do so. This is the 12th year of the Roebuck lecture, which is in honour of Professor Derek Roebuck, a former member of CIArb. Derek who sadly passed away in April 2020 was a senior research fellow of the Institute of Advanced Legal Studies, University of London and was the editor of Arbitration, the International Journal of arbitration mediation and dispute management, which is at the forefront of developments in alternative dispute resolution. This lecture is a fitting way to honour the significant contribution Derek made. Just before I introduce our speaker for the evening, a few housekeeping issues. Firstly, a massive thank you to our sponsor for the evening, JAMS. your ongoing support at our events is greatly appreciated. Jane Gunn, CIArb's president, who is an experienced and published mediator will be asking Sir Geoffrey, questions at the end of the

lecture and giving the closing remarks. If you're online and have a question, please put it in the Q&A box, not the chat. Please use the chat function to chat and maybe tell us where you're from and your role. It's wonderful to see how diverse our audience is at these events. Jane will try to get through as many questions as possible. But please don't be disappointed if we don't have time for your question. For the people in the room in case of a fire alarm, everyone, please leave the room and follow the staff instructions and evacuate the building. The meeting point is the main entrance, Bloomsbury Square Gardens. It now gives me immense pleasure to introduce Geoffrey Vos to many of us Sir Geoffrey needs little introduction. Sir Geoffrey was called to the bar in 1977 and took silk in 1993. He was appointed as a Justice of the High Court assigned to the transfer division in October 2009. Between 2005 and 2009 He was a judge the Court of Appeal in Jersey and Guernsey, a judge a Court of Appeal in the Cayman Islands. He was a chair of the Bar Council in 2007. He became the President of the European Network of councils for the judiciary in January 2015. He was appointed Lord Justice of appeal in 2013 became the Chancellor of the High Court of England and Wales in October 2016. And Sir Geoffrey became master of the rolls and head of civil justice the Court of Appeal in January 2021. In addition, if that was not enough, so Geoffrey is the dean of the chapel and keeper of the black book for the Lincolns Inn is since 2018. He served as the editor in chief of the white book, he served on the social mobility foundation in 2011 was a trustee of the slim foundation since 2009 and is a member of UK law tech and delivery panel. Welcome Sir Geoffrey and thank you for taking the time to speak with us this evening. Sir Geoffrey Vos, Master of the Rolls. Well, thank you, thank you very much for that very kind, and rather breathless introduction. I feel tired already.

Sir Geoffrey Vos 07:17

It's a great pleasure, though, to have been invited. It's an honour also to been invited to deliver this year's Roebuck lecture. And I want to address a subject that has proved controversial across many jurisdictions: mandatory mediation. And I think there are really two questions. First, the question of whether to mandate mediation within the context of civil proceedings, which to my mind always include family and administrative proceedings as being themselves properly called civil proceedings. And the second question is whether if mediation is mandated, how that mandation is to be achieved and again, within the context of civil proceedings. But as a means of answering these mandation questions, I want also to look at the place of mediation in the brave new world that I call the digital justice system we are creating here in England and Wales. Now I'm going to deal with these questions in the following way. First, I'm going to take a look at some European materials that form a useful backdrop to the issues raised by mandatory mediation. And secondly, I'll explain briefly the theory behind our developing digital justice system. And thirdly, I will consider the reasons why mandatory mediation has been so controversial. And finally, I'll explain why I regard digital justice systems as a solution to the difficulties thrown up by mandating mediation and explain how such mandation might occur in the digital contexts. So, first of all, let me look at some European materials that are a useful backdrop. Back in 2018, something Catherine didn't mention, I co-chaired a project group, comprising the European law Institute and the European Network of councils for the judiciary. It produced a report entitled 'The relationship between formal and informal justice, the courts and alternative dispute resolution', very catchy title, together with a statement of European best practice in relation to the approach that courts and judges should adopt in interacting with all types of dispute resolution, or what used to be called alternative dispute resolution processes. Some of you will know that I got myself in trouble by suggesting that alternative dispute resolution should no longer be called alternative dispute resolution, but just Dispute Resolution which led to the government issuing a confusing consultation paper entitled dispute resolution, and nobody knew what they were asking about.

But actually, it is an important point to at least put the A in brackets, because as Catherine has said so convincingly in her introduction, it is a fact that we should all be aiming to resolve disputes and putting the emphasis on resolution rather than dispute. And it should be an integrated part of the entire resolution process. Now, the statement that we issued with ELI and ENCJ, was addressed the circumstances in which judges should require parties to pause their litigation to undertake a mediation rather than immediately continuing their court-based dispute resolution process. And the report said that judges and I quote, should consider the parties concerns about speed, cost, and the fair determination of their legal rights, as well as non-financial considerations such as the provision of apologies, and the preservation of business, familial and other relationships, and the availability of legal advice and power and informational imbalance more important than many people think. The statement said that judges must preserve the party's access to court-based justice and compliance with Article Six of the ECHR. The key to that part of the best practice statement was the judges had to ensure that parties understood whether the mediation process was mandatory or voluntary, and also to ensure that consent to any voluntary mediation process was fully informed and freely given. The commentary to the report considered the relationship between formal and informal justice between courts and mediation processes, and the way in which they could be combined utilised or made to function effectively alongside one another. And it concluded that the possibilities though not limitless, as they were constrained by culture, consumer confidence and technology, but he gave a boost to the online multi door court model where any disputant can arrive at the portal or the courthouse and expect to be directed the appropriate dispute resolution provider, after a triage process that determines the most effective approach to the solution of the complaint. Now, I now realise reading that again four years later, that much of my thinking in relation to the development of digital justice systems was conditioned by the work we did in producing that report four years ago. The multi door court model bears a distinct similarity to the front end of the digital justice system, which I'm going to describe to you in a moment. The second layer of that digital justice system with its range of pre action, pre court portals is presaged in the statement where it said, some states are developing ODR platforms, online dispute resolution platforms, that will aim to solve disputes that arrive on their portal by any available means, including Ombud's person suggested solutions mediation, and court determination. And the other states have adopted purely private web-based solutions that have the same effect. So that was that report. The second one I want to mention briefly is that in September 2020, ELI and UNIDROIT produced some civil procedure rules, which many of you may or may not have seen. It had taken a superhuman effort to bring many jurisdictions within and outside the EU together to create a set of rules that could be applied to the many participating civil and common law jurisdictions. And Rule 9(1) approved by both the European law Institute and UNIDROIT in September 20, provided under the heading the role of the parties and their lawyers that parties must, and I emphasise must, cooperate in seeking to resolve their disputes consensually. both before and after proceedings have begun. And in the preamble, those rules provide that it is a fundamental principle of the rules that lawyers, and courts must encourage parties on a properly informed basis in appropriate cases, to make use of out of court ADR methods. And the rules also provide for in- court court settlements, in respect of which the courts role is not restricted to rendering a decision that gives effect to an agreement reached by the parties, but rather enables the court actively to participate in the process that seeks to assist the parties to reach a consensual resolution of their dispute. And it's interesting, isn't it to note how much these European rules intended, both for civil and common law systems are in tune with the direction of travel towards making ADR an essential part of the court-based dispute resolution process, whether digital or not. So let me come on to explain the theory behind the developing digital justice system in England and Wales. Now, I'm known to bang on about this quite a lot publicly. So many of you may have seen me explain it before. I've honed down my explanation to a

fairly short, few paragraphs. But to understand the rest of what I'm going to say you need to understand what we're trying to do in this regard. Now, first of all, in relation to what I call a digital justice system, I mean, one that is based online, or perhaps on chain, and does not employ historic methods to identify the issue to be resolved. So I'm referring to a smart system, every aspect of which is dedicated to one of two things already mentioned, the identification of the real issues that divide the parties. And secondly, and most importantly, most fundamentally, the resolution of those issues at the earliest possible stage in the dispute. Now, the practical foundation of this smart system is really quite simple. It's a common data architecture, a common and consistent approach to how information, data about an issue or case is collected, as it heads through the system towards the resolution of that case, digital systems designed and built using common data blocks, data standards, common building blocks data standards, will be what allows all participants and contributors to the justice system, whether they are claimants, defendants, lawyers, mediators, or judges to become integrated. And that's the important thing in a way, which is simply impossible in the analogue world. Now, it's wise in this context, to be aware of the reasons why it's so important to develop systems that are devoted towards resolving disputes at the earliest possible stage. And that is put simply, because of the huge economic and psychological disadvantages of continuing dispute. The economic drag, and the loss of economic productivity caused people and businesses involved in lengthy disputes at all levels of society is far greater and far more important than most people can possibly imagine, both in economic and human terms. The digital justice system we're adopting here in England and Wales will have a web based front end that will help any would be claimant, whether represented by lawyers, or not, to establish where they need to go to assert their claim, and perhaps also help them to understand its legal elements, in most cases that will then direct them to a pre action online portal, whose essential purpose is resolution. Now these pre action portals of which we already have many are mostly privately, not state funded. They include Ombud's portals resolving disputes in different economic sectors such as financial services, energy, supply, telecoms, healthcare, etc, etc. They include the road traffic accident portal, and the personal injury portal, known as the whiplash portal, already handling together some 600,000 cases here a year, there are likely to be many of these pre action portals as time goes by, perhaps more than 100, each dealing with a different type of case a different type of dispute, and each specifically tailored to the particular characteristics of that kind of case. The processes that the portal will take claimants through may still in some cases come with an element of human interaction. But the administration of those processes will be smart, and digital. And what will matter most is that these portals will hold the information about the issue in a standardised way consistent with other portals, and with the digital court system, if the case has eventually to proceed from the pre action portal space to the online court process itself. Now this means that if all resolution attempts fail, the relevant data or information can be transmitted by an application programming interface and API directly into the digital court. And the third part of the funnel into which all cases will go whether civil, family, or administrative, or commercial, inevitably, will be the court based digital justice system itself. All court claims of whatever kind will in due course, I think, be started, and progressed online. And by the end of the HMCTS reform programme early next year, almost all public and private family claims civil claims and major tribunal claims, and employment, immigration and Social Security will be started and progressed online. That is many, probably about 2 million claims maybe two and a half million a year, which is a very large number indeed. The online process in both the pre action portal space and in the court based digital justice space will be directed towards identification and early resolution of the core issues, the process will use what I call decision trees, a series of questions guiding the parties to the identification of those issues, so as to obviate the need for lengthy complaints or statement of case and highlighting where agreement already exists. Mediated interventions, aimed at securing compromise, will be integrated at every level. Those interventions will

employ every available method from algorithms, suggesting resolution of interim, or interlocutory issues or even in simple cases, the ultimate issue between the parties to online human mediation to Early Neutral Evaluation by judges, or remote or face to face mediations. So let me move on to the third section of this talk the reason why mandatory mediation has been so controversial, and there are a number of reasons. First, in many European countries, there is a generalised, but common, lack of confidence in the neutrals who offer mediation services. That has not however, as as Catherine alluded to earlier stopped some of those countries both in Europe and outside, introducing mandatory mediation before allowing access to court systems in some types of case, for example, in Italy and the other countries mentioned earlier. And secondly, in countries like the UK, the courts have suggested that delaying court proceedings to allow mediation to take place is, or might be regarded as, a breach of Article Six of the European Convention. And in the famous case of Halsey and Milton Keynes, decided by my predecessor but one Lord Dyson. He said, 'It seems to ask that to truly oblige unwilling parties to refer their disputes to mediation would be to impose an unacceptable obstruction on their right of access to the court'. And he relied on Deweer v. Belgium (1980), where the European Court of Human Rights had said that the rate of access to a court could be waived, but that such waiver should be subjected to 'particularly careful review' to ensure that the claimant is not subject to any 'constraint'. Now, in January 2021, which was coincidentally the month in which I assumed office as Master the Rolls- I was quick off the mark. I asked the Civil Justice Council, so you can see how important I regarded the issue to be actually, I asked the Civil Justice Council to report on the legality and desirability of compulsory ADR. Its report was published on the 12th of July 2021. A bit of a record for the Civil Justice Council, by the way, you could see, I was a Master of the Rols in a hurry. It concluded that mandatory alternative dispute resolution was compatible with Article Six, and was therefore lawful. And it said in its report, that any form of ADR which is not disproportionately onerous and does not foreclose the party's effective access to the court will be compatible with the parties Article Six rights. If there is no obligation on the parties to settle, and they remain free to choose between settlement and continuing the litigation, then there is not an unacceptable constraint in the language of the European Court of Human Rights on the right of access to the court. The logic, they thought, applied both to alternative dispute resolution, as well as Early Neutral Evaluation. In the Rosalba Alassini [2010] 3 CMLR 17, the Court of Justice of the European Union had attached importance to the fact not only that the parties retained a free choice as to whether to settle or not, but also that the ADR process was free and caused no delay to the ultimate resolution. The Civil Justice Council thought that what mattered was that any cost and delay was proportionate. It concluded that more work was necessary to determine the types of claim and the situations in which compulsory ADR would be appropriate and the most effective in analogue and online justice. And they commented that their conclusions, placed another powerful tool in the box, and the opportunity to initiate a change of culture in relation to dispute resolution, which will benefit all concerned. Now I have repeatedly and publicly endorsed the Civil Justice councils report. And I understand that the Ministry of Justice is currently actively considering whether and in what types of case to introduce mandatory mediation. They're starting with the consideration of doing so as I understand it for small claims, and in some private family cases. Now, the third reason why mandatory mediation has been controversial, is that certainly in the commercial context, and perhaps in some other areas, too. It is a thought that forcing parties into mediation actually doesn't work. It can, it's thought, harden their resolve to fight their case, through the courts, and generally entrenched the party's positions. And I spoke last week at a conference organised by the Stockholm Centre for commercial law, and the Oxford Institute of European and comparative law on adequate dispute resolution mechanisms and their interactions (another lengthy and inaccessible title) at which the expert arbitrators attending were very clear that mediation mandated at the wrong time in a disputes progress is most unlikely to succeed, and can have

the effect of entrenching the party's hostile position. Now, the fourth reason why mandatory mediation has been controversial, is a jurisdictional one that arises under procedural codes in various states. The question raised is whether once the court is seized of legal proceedings, it's permissible for it to make orders aimed at requiring the parties to engage in another process, which is aimed at reaching a consensual rather than judicial resolution- rather than progressing the judicial case that the court process is designed to achieve. This problem is based on a premise that courts and mediation are distinct and separate processes. Now in England and Wales, this perceived problem is being resolved in part by the introduction of an online procedure rules committee, which is designed to regulate not only the online court space, but also to provide governance for the pre action portals, which, as I've said, are aimed at resolving a range of different kinds of dispute, without the need for formal legal proceedings to be initiated. The online procedure rules committee will be making provisions designed to achieve resolution of legal problems in the digital space. So it can't be suggested that it would be exceeding its jurisdiction by doing precisely what it's been established to do. And the legislation for the online procedure rules committee, I'm pleased to say was passed in May, in sections 22 to 24 of the judicial review and courts act 2022. to its members will hopefully be appointed shortly. And it will, we hope starts work by the end of the year. So I come to the fourth section of this talk, why digital justice systems are the solution to the difficulties thrown up by mandating mediation. Now let me try and explain that, in fact, digital justice systems do provide those solutions. And I've already explained how the digital justice system will work here. The process is peculiarly well suited at all stages to the integration of a variety of types of mediated intervention, as I've already really indicated. Now, most commercial litigators see mediation as a separate, staged process involving a trained neutral mediator agreed upon by the parties and a face to face nowadays), sometimes remote process of caucuses and plenary sessions. Now it's the essence of that process, that the mediators promote the conditions for offers and counter offers to be made bringing the parties closer and hopefully closer together. But do not themselves, the mediators do not themselves suggest the solution to the case. Now, that is, of course, based on the theory that once the mediator has done so and has had their suggested offer rejected, there's nowhere else to go. If the mediator changes the offer, they have themselves suggested one party or the other is bound to regard their impartiality as compromised. But in a digital environment, different processes are engaged. The issues for a resolution are identified by asking and answering questions, not by presenting ever increasingly ambitious statements of case drafted in an adversarial manner. The pre action portals are dedicated to resolution of particular types of claims. I've mentioned red traffic claims and Ombud’s processes already. But it's important to understand that different types of claim are amenable to different types of online resolution approach. So broadly, there are really four types of claim. What is known in any way European Parliaments parlance is B to C, C to B, B to B, and C to C. So, business to consumer and consumer to business, business to business and consumer to consumer. Large corporations or state authorities versus the individual, the individual against large corporations or state authorities corporate versus corporate and individual versus individual. And family claims are, for example, in the first category for public law claims. And in the fourth category for private law claims, housing possession claims are in the first category. Debt collection claims are in the first category, small consumer claims are in the second category, and so on, and so on. But it's really important to undertake that exercise when you consider how to resolve a dispute, it all comes back to power and balance of power. Now, the importance of these categorizations is also to understand how such claims can be resolved in the online space. With claims against individuals, the resolution process often needs to be directed at providing debt relief or insolvency mechanisms alongside enforcement processes, since fewer of those claims will be substantively defended. We have nearly a million claims in our current online system called M coal brought by utilities and large corporations against individuals, none of them is

defended. The question is only How can the defendant individual pay. Claims brought by individuals against other individuals on the other hand or against small corporates, or even the state are on the other hand, nearly always, if certainly often substantively disputed, and can only be resolved once the real question in contention has been identified. And that's where the decision trees come into their own. Because they ask a series of questions and get answers from both sides to identify where the issue really lies, and individuals and consumers are frequently not represented by lawyers. So the process needs to be accessible, undertaken in simple language and properly directed. Commercial games, on the other hand between businesses will probably be the last to be digitised. But they too, will ultimately benefit from the changes being pioneered at the bulk end of the market. Now, the benefits of this digital justice system include far easier and better access to justice and that is a benefit that is not to be underestimated. By providing a common data standard throughout the case, a digital justice system abrogates the need for repetition of partisan statements of case that become ever more aggressive and sometimes embellished as the case progresses. So you'll no longer get a statement of case describing the facts in one way, followed by an expert report, followed by witness statements, followed by a skeleton argument, followed by oil argument, all of which change the basis often of the way the case is put, and serve only by the way to persuade the party to put forward these ever more elaborate statements of case that they're right, and do very little to persuade the other party that they're wrong, if they're read at all. And critically, a digital justice system allows for the proper integration of mediated interventions, and a truly coherent dispute resolution mechanism. And it's to that integration that I want now to turn. Pre action portals can use different digital structures that are appropriate to the type of dispute they aim to resolve. That's what I've been saying over the last few minutes. Online Ombud's processes, for example, are already designed differently. As between, for example, a financial service's claim and an energy supply claim to take two mainstream widely used examples. But what most Ombud's have in common is the tiered approach to resolution suggesting to the parties repeated online solutions for the issue identified until both parties accept the solution proposed. Now, interestingly, this is of course, the exact antithesis of the approach that commercial mediators employ. And I mentioned as an aside that we should not be afraid of offering different kinds of solutions suitable for different kinds of situations, there is no one size fits all, or as I put it in Stockholm last week, there is more than one way to skin a cat. And when I said that, conscious of the fact that we have an international audience here today, I was reprimanded by a French colleague, who said that it was an inappropriate expression. But I was reminded anyway, how colourful if sometimes unintelligible is the English language.

Coming back to the subject of this debate, other pre action portals, like the road traffic portal, don't do take either of the two approaches I've already mentioned. But they put the claimant in touch with the insurers acting for the large defendant insurer, and provide them, the insurers with the details, they need medical reports, details of loss of earnings, and replacement car, hire costs and so on, to allow those insurers to make an appropriate offer to settle the claim. And that is what happens in hundreds and 1000s of cases. So again, a completely different approach. To that which may also may be necessary, when we have an SME portal, which is proposed an intellectual property portal which is proposed. And all those different portals will apply different pages to resolve the specific kind of dispute between the specific kinds of people that are going to have the dispute time and time again. But the point here is not the differences between the processes within each of these separate portals. It is that all of them, and the interventions aimed at resolution within them lead to a very large percentage of the claims being settled consensually. Without the need even to enter the third layer of the digital funnel, which is the issue of digital court proceedings. There is therefore ultimately often going to be no need to mandate mediation as a separate

action within a digital justice system. The entire process is directed towards achieving resolution of the issue identified. And that's not of course, to say that mediation will not be one of the tools available within the Digital justice system. It certainly will. The online civil money claims platform in England and Wales, for example, has already dealt with some 300,000 claims in the last three years. And it will likely be dealing with well over a million claims next year, as I've already mentioned, when bulk claims brought by utilities and major corporates fall within its Ambit. Within online civil money claims there will eventually be bots or algorithms that suggest solutions to the parties as the claim progresses. For example, and it example I'm afraid I always give if the claim is against a builder for 1000 pounds for failing to erect 100 metre fence, and the defence is that he erected 50 metres of it, the bot might easily suggest that 500 pounds was paid to settle the claim.

But if such an intervention didn't work, and it will only work on some occasions, the next stage might be for the platform to suggest telephone mediation, whereby the parties would speak to a lawyer to try to resolve the issue already identified online. If a telephone mediation failed, one can imagine face-to-face mediation being proposed. And by the way, that is precisely how small claims operate- now, both inside ACMC and outside it. Another report commissioned by the Civil Justice Council has proposed compulsory mediation for small claims. And that will hopefully be introduced shortly, but we may find that the element of compulsion is less likely to be required for cases going through the smart digital justice system, as that system become better developed and integrated. Most individuals and businesses embark upon claims and litigation to achieve speedy resolution of their problem. And that's the answer to the question that everybody always asks, 'Well aren't litigants all completely entrenched before they start, aren't they absolutely dedicated to getting a judicial hearing in every case?' The answer is some are, but some are not. Many just want peace or resolution of their problem and to move on with their lives, very sensibility I may say, because dispute has such economic and psychological drawbacks. So, some people want dispute, most don't- and once it is realised, I think how efficient the digital justice system is to bring about compromise, whether at the pre- action portal stage or at the online court proceeding stage, parties are likely to become even less resistant to the mediation processes offered.

So, it's worth emphasising two things, before I get questions in a hostile vein in a moment, about the digital justice system that I am talking about. First, great care must be taken to ensure that the systems are accessible to the vulnerable and the digitally disadvantaged. That is an imperative, but it should not mean that we neglect providing digital systems to deliver justice economically and quickly to the vast bulk of the younger population of today that expect everything to be delivered instantly on their machines without any delay. Secondly, nothing I have suggested will prevent parties who are unable to settle their dispute within the portal or the digital space from seeking and obtaining a judicial resolution, undertaken face-to-face or remotely by a real judge. I'm not trying to do myself out of business, and actually as I'm sure somebody will ask me, I'm not trying to do any of you out of business either. So the judicial resolution will and must remain an available option in every case. I would still hope, however, that the vast bulk of claims will be resolved consensually without the need for as many judicial hearings as we have today.

Let me try now to draw a few of the threads together. First, the European Law Institute/ European Network of Councils for the Judiciary Statement and the European Civil Procedure Rules, which I began with, allude to an obligation on the parties and their lawyers to seek consensual resolution of their disputes. That is a major departure from the approach with which I was brought up when I trained as a lawyer in the 1970s. It is, however, very much the approach that lawyers and litigants alike understand to

be necessary in the modern environment. And that's a good thing. And secondly, while mandation is desirable, and I think lawful in the analogue world to force parties to consider consensual solutions, even if they're determined to continue their dispute, it's likely to be less important in the digital world, because the processes will be so very different. So finally, returning to the title of the talk, mandatory mediation, the digital solution. Forgive me, I think it's obvious that the creation of a digital funnel, designed at every stage to identify issues and resolve them with integrated mediated interventions, also at every stage will ultimately render the issue of mandation fairly academic. But it will still remain a useful tool in the box in some specific kinds of case as we build the digital justice system. But it's likely in the future to be unnecessary to impose a mandatory formal mediation at a particular stage, in every case. The frequency and diversity of suggested mediated interventions will mean that the parties will inevitably be exposed to the possibility of compromise at times when they are amenable to it. And as you all know, the amenability to settlement of any particular dispute happens when you least expect it, which is why continuous mediated interventions are so very important to achieving resolution Thank you.

Jane Gunn

Sir Geoffrey, thank you, that has been fascinating, and actually a topic that's very close to my heart, because I trained as a mediator 25 years ago. And I was always very interested in that window of opportunity that existed between the time when conflict or dispute started and couldn't we do something with that window, and you've offered some solutions there. Also, back then, we had no such things as digital solutions. We didn't even have mobile phones. I brought my mobile phone up, by the way, because in a digital world, we've got a wonderful online audience with us. And they're going to be asking some questions and they're on my phone. So I like the idea of the digital file you're talking about, and actually the emphasis on the economic and human cost, because I think that's vital in the times we live in that we pay attention to how much disputes cost us. And I was also delighted that you mentioned how important human interaction remains. We're not all going to be solving disputes by algorithm. So if you'd be willing to answer some questions, I know I've got some here on the phone from our online audience. And then we'll ask the audience here at Bloomsbury square. So let's dive in and see what we've got- let me start off. James Anderson has asked 'I've read about AI hearing disputes as it would be able to analyse more data, i.e. previous cases and would be impartial. Do you think this is morally acceptable?'

Sir Geoffrey Vos

Absolutely. I think any form of resolution is morally acceptable provided it's accepted by both parties. Yes, I think I think a lot of, if I may respectfully say so, a lot of nonsense is spoken about artificial intelligence. We use it in every aspect of our lives every time we open one of these devices, which most of us do, every few minutes all day. So the idea that there's some moral problem about it is a bit surprising. But I think the real point is the use of AI- there's two things. One, you can only use AI in dispute resolution if the parties have confidence in it. And we have confidence in uses of AI across the spectrum of human endeavour now, but there would be, I think, no confidence in AI deciding a major commercial dispute in the business and property courts today. I don't know what will be the case in 30 years' time. Human ideas may be very different at that stage, and they may realise, as is the case that machines can make some better decisions than humans. For example, as my friend Richard Susskind is very commonly fond of saying, an AI will be better at diagnosing skin cancer in humans because an AI will have seen hundreds and thousands of skin cancers, whereas a doctor will only have seen a few in comparison to that number. So we don't- it's all

about confidence. But there are two other things, I think, that are requirements for the use of AI within a digital justice system. And one is this. One is that the parties must know what the AI is doing. So you must know if the amount of time that you've got to respond to the claimant is decided by a machine, or human. And if it's decided by a machine, then you should have an absolute right to appeal it to a human. However, don't assume, as I was taxed with the other day, that all machines are biased, and therefore you can't use AI at all. They may be biased, but if you adhere to my two rules, then it doesn't matter, because an appeal can be brought. But the really important thing too is that in very small cases, people won't care. Because if you're deciding between seven and 14 days, and the answer is 10. Well, it may be biased, but it's an answer most people will probably put up with to save money. So AI is not a single subject, it requires a great deal of thought. But confidence is the whole thing.

Jane Gunn 56:23

One more question here. Well, I've got some loads of questions for you. You've got plenty of hours to go. Nina Winter asks, 'does a digital system justice system whether for court systems or mediation or other forms of dispute resolution risk making dispute resolution, a commodity with generic rather than specific resolutions for litigants?'

Sir Geoffrey Vos 56:46
Well, I mean, there are several millions of kinds of disputes, and some are pretty generic. I was trying to explain that in my talk. If you look at possession claims, where people have not paid their rent, they are pretty generic. I went three weeks ago to Baltimore rent court, where they deal with a thousand rent arrears cases a day, the judge sits there, the docket is handed to the judge, the judge makes the possession order and moves on. Now, that's pretty generic. It's not made any better by the fact that the judge has seen nothing before- simply casts an eye over the docket asks the person standing in front of them whether they have anything to say, and there is, in America, nothing to say because there's no defence like, can you give me time to pay? It's simply an order. So it's a generic litigation. Other types of case, of course, are entirely specific, and depend on their facts and require witnesses to be heard, and so on. But the numbers of cases in the latter category are tiny, in comparison to the number in the former category. And if you devise the justice system, as we've done in the past, purely on the basis that everything is major commercial litigation, where absolute justice is required for the parties, when you're dealing with disputes about very, very small sums, or you're dealing with generic disputes, which have a single answer, then you're making a mistake, you have to design your dispute resolution system for the kind of dispute you're dealing with. And it has to be fair, in every case, it has to be just in every case, the parties have to be heard in every case. But it might be possible to do justice 1000 times a day in the Baltimore event court. Certainly, the judges I met there thought it was.

Jane Gunn 58:54
May I ask if we've got any questions here in the room? Yep. Jonathan has one.

Unknown Speaker 59:03
'Where do you think this may the arbitration in this whole new digital world? Are we go into the arbitration community? Or is the arbitration community going to have to catch up with the digitised world?'

Sir Geoffrey Vos 59:20

Yes, but I think it actually is doing so. I think COVID has made a big difference. I think most arbitrations are conducted digitally now, most of them remotely, there's not so much travelling around the world. And single data set for your arbitration is just as sensible as it is for any litigation. I mean, obviously, arbitration is mostly equivalent, particularly international arbitration to promote major commercial litigation. So it will be the last to be affected by online decision trees and and completely the digital process. But having said that, I really think one needs to pay attention to the benefits of digital justice. And one of the major benefits from for arbitration and commercial litigation is a data infrastructure that doesn't allow the parties to change and embellish and repeat their case and entrench their case, because the case is there. And it doesn't change. And everything you've said, is always there. And I mean, we all have experience of major commercial cases where the case gets more and more adversarial, as time goes by. And that is a bad thing. And it doesn't bring about a narrowing of the distance between the parties. So yes, I think you've got to get with the programme. But I don't think it's the end of arbitration, I think people will agree to private resolution of their disputes forever.

Jane Gunn 1:01:04

Thank you. We do have a microphone as well, that can be passed around.

Unknown Speaker 1:01:10

Thank you very much. Sir Geoffrey, thank you very much for a very thought-provoking presentation and talk. When one stands back, you're moving from the accusatorial perhaps very much towards the digitally inquisitorial. And in terms of mediation, perhaps introducing a more evaluative element that is traditionally conceptualised within the Anglo-American model of mediation, are we really overhauling and perhaps updating the whole common law approach? Well, possibly.

Sir Geoffrey Vos 1:01:53

I think that lawyers have been very didactic, particularly common lawyers, about the difference between common law and civil processes between adversarial and inquisitorial. And between evaluative and the other name, I can facilitative that's, that's what I was looking for mediation, I think it's that it's not as black and white as all wet. When I started at the bar, the commercial court introduced the commercial court guide. And the commercial court guide introduced active case management and active case management was as was as similar to a civil law, inquisitorial process as anything they'd ever seen. In fact, it was far more effective than many civil law, inquisitorial processes. And so it is not black and white. It is not a complete overhaul, it is simply a stage a progression on a spectrum, where we are being more realistic about the way we resolve particular kinds of dispute. And let me just say one last thing, and I'm bang on in the Fade. But for years and years, and I have alluded to before, we have devised our entire justice system, on the basis that every case is massive. So we have taken our very few large commercial cases and said that every case in the county court must be decided in exactly the same way. Every case, however small must be decided in the same way. And that is simply inappropriate, it was in my favourite expression, allowing the tail to wag the dog, what I'm trying to do is to achieve dispute resolution methods that are suitable for the dog. And if they eventually spread to the tail, the better part of them, so be it. But if not,

also, it's their beard, because in big commercial cases, the parties can look after themselves. They can spend that money if they wish to on a traditional dispute resolution approach. But that's, you know, in the commercial court, they have 1000 cases a year. Right. And I'm talking about millions of cases here that need to be resolved, for the benefit of real people who are really in trouble and need to have their dispute resolved so they can move on with their lives, so that they can work effectively be productive economic entities, and be happy in their families.

Jane Gunn 1:04:49

One more question. Thank you.

Unknown Speaker 1:04:55

Good evening. I'm probably a stranger in this room. I've come From Delhi, India- a long flight. My name is Amir. I'm heading a project which is being done by the IPA to reduce Indian Pendency, which is running at about 47 million cases in the in the courts today. And it's gone up by about 20%. The digital justice concept is of great interest to us. Because it's probably the only way that we can actually reduce Pendency. It has improved faster and more efficient. I've seen it myself as counsel and arbitrators don't fly in anymore. We don't move out of our offices, we sit in front of reasonably decent screens, and suffer neck paralysis. But apart from that, it has been quite, quite useful. But my question, as far as the digital steps are concerned, if you have to reduce the number of cases pending, and you have large numbers of them that are of the same type, particularly in India, we have certain classes that are just burdening the system and affecting commercial cases affecting criminal justice. What would be your suggestions for perhaps a digital justice system that could tackle common problems that are faced in a wide range of cases? It doesn't have to be specific to my country, but from your experience.

Sir Geoffrey Vos 1:06:40

Well, I mean, you ought to know that I've spent many happy days in courts in India. I visited the court, the Royal Court, why not the Royal Courts of Justice, but the Justice Courts in in Mumbai and Goa in Delhi, in Calcutta everywhere. So, I'm quite familiar with your large number of cases pending and with the way justice is done, and obviously, we you have inherited from the UK system, which has now got gummed up in the way you describe. I have no doubt that a digital justice system would work brilliantly in India, particularly for the bulk of cases, many of which are very small in value. And very hard fought, as I've witnessed, in many cases, and I had a very happy time in the Supreme Court in Delhi. And in the evening, having visited it, and observed some practices which I found, shall we say unfamiliar, where the judge on one occasion through the papers back at the advocate who had failed in his application for permission to appeal. I spoke that night on a platform with the Chief Justice, the then Chief Justice, and he asked me how I thought the Indian justice system could be improved. And they said it was most unwise for visiting then I was chairman of the bar. I said, I thought it was messed up wise for any visiting lawyer to try and tell another jurisdiction how to improve their justice system. I just bear that in mind when answering your question now. But I think the serious answer to your question is, it would be invaluable. If you go to India, you see vast numbers of your population, even the poor members of your population on mobile phones, digitally enabled with access to the internet, we know that there are now four and a half billion members of the world's population with access to the internet. I don't know what the actual percentage in India is.

But I bet it's 50%. At least the population 4.5 billion is more than 50% of the population of the world. And if you've got access to the internet, and you've got access to a mobile device, then you can get access to digital justice. Now, the key thing is that it is simple and accessible to individuals and expressed in simple language. And if it deals with disputes that are of a common kind that is very easy. It's something by the way, we learned from the dispute resolution digital dispute resolution system pioneered in British Columbia, which you may or may not have come across, but Shannon Salter, who's the lady who initiated and ran it for some time she stopped running it now told me that you must use language that is no more complex than can be understood by people in the sixth grade. And that's I think, 12-year-olds or something. So it's really important to do that. But if you do that, it is incredibly effective. And we'll get Your Pendency down, vary considerably. I mean, there are other reasons for the large Pendency in India because it is quite slow, isn't it without being with or without being controversial? 20 years I think I've heard for a trial in some cases.

Jane Gunn 1:10:19

I know people sort of leave them as a legacy and they will do their legal case. I've got several world questions here, one from Lady Justice Joyce, Alec, 'how can we ensure that the digital justice system is made available to those who have no access to digital equipment such as smartphones, computers, etc? I have a feeling she says that this group will definitely be left behind. And that kind of ties in with our talks there about what percentage of the population have access to?'

Sir Geoffrey Vos 1:10:52

Well, in this jurisdiction, I think about 90/90 something percent have access to both the internet and digital devices. The answer is absolutely not hmcts, who were putting together the digital justice system have an organisation, I can't remember if it's called, we are digital or digital something which provides access to digital systems for those who cannot make that access themselves. And that is imperative, as I said in my speech, but if you do not design a system of dispute resolution aimed at disputing resolving 5 million disputes a year on the basis that everybody is the same as the say, 50,000 people who can't access it, let's get rid of the outcome to the numbers 495,500 Whatever disputes and make sure that we devote our resources on making them accessible to the people who really can't access them otherwise.

Jane Gunn 1:12:06

Thank you. An interesting question from Julius Kelby- 'Is there a maximum financial limit on the claims brought through a digital system? Or would you say it's for low value claims only?'

Sir Geoffrey Vos 1:12:18

Well, at the moment, it's the lower value claims only actually OCMC has a limit of 100,000 pounds. Shortly, I think it will have no limit. And there isn't any particular reason why there should be a limit. But obviously, the bigger the claims, the more often the complexity. And the present digital justice system will effectively expel cases when they become too complicated. And that's fine. That's entirely right and proper. But once again, don't put limits that that prevent a very simple case worth 250,000 pounds from the system, just because it's worth 250,000 instead of 100. Many cases worth millions will not be suitable at the moment

for the system. But as it becomes more sophisticated, then more cases will come within it and take intellectual property. I always used to use in talking about this, I used to say, well, of course, patent cases will probably never be digital, because patents are complicated. And they've got a whole section of the white book that none of us needs often to read. But the truth is that the intellectual property lawyers are really keen to put their claims online, because of course, they're all digitally enabled, and they can see the advantages. So never say never.

Jane Gunn 1:13:55

Got one, I've got lots more here. But Helen, so when at SU 101 z, I hope I've pronounced that properly. 'Digital justice can also support inclusion enabling traditionally excluded people to have access, for example, disabled people will have the opportunity to be treated equally'. And she's hoping that the Portals will be accessible to all so she's looking there at inclusion and diversity.

Sir Geoffrey Vos 1:14:20

Well, I completely agree. I think it's actually a very, I think it's very diversity friendly, because one of the things about the court structure is, we lawyers and judges rather like it. We enjoy going to court, we enjoy the theatre. We enjoy the argument, we enjoy the debate, and we've been trained in it and we went some of us to privileged educational institutions and there we were brought up to do all that. But people from diverse and other backgrounds often don't and people from less privileged backgrounds not only dislike debate and, and adversarial contact, but it terrified of going to court perhaps because of illusions of what happened to others in their family or contact circle when they went to court. And if they don't have to, we found in COVID, something really interesting. And that is that lots of very vulnerable people from different backgrounds came into the court system, because they didn't actually have to come. They could appear in court, on their phone. And they felt much more comfortable about that, than actually having to get on the bus, come to the court, pay the bus fare, take a day off work, and come into court into a very hostile environment. It may be a lovely environment to us, as I say, not a lovely environment, to people from different backgrounds. I think a digital justice system is an inclusive one, which will be better for people from all walks of life and all backgrounds. So I think it is a tool of diversity. Thank you for that question.

Jane Gunn 1:16:08

No, thank you for your answer. Any more questions from the room? There's one over here. Thank you. Could you wait for the microphone, please? Yeah, no, sorry. It's just because it makes it easier for the online audience to hear you. Thank you.

Unknown Speaker 1:16:22

Thank you very much. Where would the issue of enforcement sit in this whole conversation?

Sir Geoffrey Vos 1:16:31

Well, enforcement is part of the hmcts reform programme. There is going to be digital enforcement. And there will be I mean, at the moment enforcement is sometimes difficult. It depends on what you're talking

about, I'd say 99% of cases don't require any enforcement. In fact, you know, a lot of discussion was had in the Brexit debate, if you remember about whether or not it would be possible to enforce English judgments in Europe, and whether people would litigate in England after we left the EU. The truth is very few commercial cases ever require enforcement that they are paid or not paid. But in either case, the any kind of enforcement is bankruptcy or insolvency. In most of those cases. In small cases where utilities and major corporations sue individuals who haven't gotten their money, of course, there is a need for some enforcement. And that is it is intended that that will be done as much as possible online. Obviously, you can't have a bailiff go and seize the goods online. But I think the number of judgments that are successfully enforced these days by seizing goods is relatively small. Possession claims have to be enforced by bailiffs because you have to eject defendants from properties. But once again, that's not as big a number as people think, once the court orders possession, in most cases, the defendant tenant goes to the local authority and presents the possession order says there's a wound for possession, I have to be out by Wednesday. And they are dealt with so they get alternative accommodation, and they are out by Wednesday. So the real truth about enforcement is it's very, it's very important as the ultimate sanction. And it's important because the state undertakes it. And it's why the funnel leads to the state rather than to the privately funded or voluntary sector. Eventually, there has to be a compulsion that backs the legal process. That's why you have a court, the court feeds off the estate that's off the state and that is the rule of law. The rule of law requires that everybody has access to an independent judicial resolution of their dispute, and therefore independent but state backed means of enforcement, that that's the theory, but the practice is it's not often necessary, because most people are strangely law abiding.

Jane Gunn 1:19:30

There's a question right at the back there.

Unknown Speaker 1:19:43

Thank you for your lecture, Sir Vos. I'm at the process of narrowing my PhD proposal. So tonight I've been listening everything you said very carefully. My question is more on the- a bit similar to the previous question but like how it is with compulsory mediation when it comes to obliging parties to participate in each of these stages, to what extent do we expect them to follow the process in order to consider that they're followed- sorry- they complied with the process. So for example, for a phone mediation as long as they answer the phone and speak five minutes, would that suffice for the next day? So how is that going to work? And also, usually there would be, let's say, an in-person judge, who would say to them, okay, go on, mediate, and then come back to court, how is it going to work if it's digital, and one of the parties is not participating or not acting with good faith?

Sir Geoffrey Vos 1:20:50

Well, outside the court process, then if they don't participate, and they don't act in good faith, then it will eventually get to the court process, which has powers of compulsion. But it will be in the interests of defendants to reach a resolution to engage with the process to save themselves money, because ultimately, if they're, they're going to engage with the process, the case will go into the court, forgive me into the court process, and will result in a judgement which will be enforced. So and if they don't engage at all, it'll be a default judgement, because we have default judgments as much in the digital process as we do

in the ordinary analogue world. So really, there's no difference in that regard at all. I mean, engagement is voluntary, in the voluntary pre action space. But once people understand how the process works, they'll realise it's much in their interests to reach a speedy and fair resolution voluntarily.

Jane Gunn 1:22:06

So another question. This one here, thank you.

Unknown Speaker 1:22:17

Sir Geoffrey, why do you think now is the right time to consider implementing mandatory mediation? And if it may be cheeky enough to ask is that anything to do with making your life easier by shortening the list?

Sir Geoffrey Vos 1:22:30

Actually, it's not about shortening the list. It is I mean, I, my motive is exactly as I said it was, to resolve disputes as quickly and cheaply as possible for the benefit of individuals and businesses alike. That's may sound like a mantra, but it is true. This is not about shortening the lists, the lists are manageable, the system works reasonably efficiently. I mean, there have been a few problems because of COVID, which has caused delays. But they're not massive delays, and they're being dealt with, they're coming down, we're getting our lists down to manageable delays, and we'll continue to do so. It's not about that all. It is genuinely what I said, which is that dispute is very damaging. And that's the reason why the government supports digital justice. Because every individual involved in a dispute, whether it's a small business, or a personal individual involved in a family dispute, is much, much less productive- they go to work and they're forever thinking about the neighbour whose fence has not been repaired, about whatever it is that's upsetting them. And people are very strange, they get upset about the smallest things. You know that in your own life, I know that in my life, if, if the cat is ill, you're upset, and you're not very productive at work, because you're worrying about the cat being ill, if you're in dispute with your wife, or your husband or your partner or your child or whatever it might be, or your neighbour, or your employer or anybody; you are much less productive at work, you don't do the job properly. And getting that dispute resolved is fantastic for the benefit of the economy and yourself.

Jane Gunn 1:24:36

Yes, that's often a question, isn't it? You know, just imagine what you would feel like tomorrow if you didn't have to worry about this dispute anymore. And it's-

Sir Geoffrey Vos 1:24:44

I mean, we spend all our time going online, I go on, and I see, you know, a message from somebody on my phone, and I'm thinking about that and not thinking about what I'm saying to you. We all have that experience and It's multiplied with people who are less able to order their lives. So the more vulnerable the person is the worse affected they are by dispute.

Jane Gunn 1:25:13

Such a good point. I've got a question here, which is about cybersecurity, actually, from John F. Dasani. ‘What is your thoughts on cybersecurity aspects of the digital justice system and the probable susceptibility to manipulation or data leaks?’

Sir Geoffrey Vos 1:25:31

It's possible. But it's possible today, in every other aspect of our lives, it is extremely important that we improve cyber security as part of our digital progression. And nothing I've said again, says that, but again, the fact that there may be problems is not a reason for doing nothing.

Jane Gunn 1:25:54

And someone who's anonymous, ‘will there be a requirement for the content of mediated settlements to be reported to the court?’

Sir Geoffrey Vos 1:26:10

Well… Tomlin orders is the question, probably not. But there might in some circumstances be.

Jane Gunn 1:26:20

Richmond has asked ‘how do you manage the issue of taking evidence and discovery in the digital justice system?’

Sir Geoffrey Vos 1:26:28

Ah, well now that's a lovely question. The answer is much more efficiently. It is, when you think about it, disclosure, and evidence, are incredibly cumbersome ways of extracting the single smoking gun from your WhatsApp messages. The way it will be done in most cases is going to be by answering questions. So in most cases, cases are very simple, mostly. And if you're a landlord and you want possession, there are only 10 reasons why you're entitled to have possession ‘12345678910’. You sign on which reason it says what do you have for possession? Answer, the tenant didn't pay the rent, the tenant makes a loud noise at night, the tenant didn't repair the property, whatever it might be, it will then ask you to produce a particular kind of evidence of that particular kind of problem. And that will very likely be the end of the case, because once you've shown that the tenant didn't pay the rent, the tenant will have to admit that they didn't pay the rent. And the issue is resolved. Obviously, in very complicated disputes, where you have hundreds of thousands of documents and WhatsApp messages, and you need to, shall we say persuade defendants to give discovery- that's the kind of dispute that is likely to be least amenable to this process. But even there, you will have a database about which I spoke, which will be a single database, which will be accessible to everybody within the case and won't have to be created multiple times when bundles of documents duplicated to the destruction of hundreds of thousands of forests. For first for an interlocutory hearing, and then for the final hearing, and then later when you argue about interest and costs.

Jane Gunn 1:28:37

Here's another interesting question from Judith Kelby. ‘If private funding pays for the portals, is there a risk of privatising justice in relation to these small claims? What judicial oversight will there be?’

Sir Geoffrey Vos 1:28:51

Well, that's the purpose of the online procedure rules committee in Section 24 of the judicial review and courts act of 2022, which allows the online procedure rules committee to accredit and, and give oversight to the online portals, which wasn't previously available. So the privately funded portals, mostly funded by one like insurers or major utilities or the state, but most of those big entities that fund the portals will have to comply with data parameters and will have to satisfy the online procedure rules committee that the process they operate is fair and just

Jane Gunn 1:29:42

and Zohaib Ahmed, as asked ‘how can we deal with the insecurities of lawyers and judges who think mediators can be a threat to their career. The young mediator’s forum team from Pakistan recently reported that they are facing serious hurdles created by lawyers for their functioning’. A question from Pakistan.

Sir Geoffrey Vos 1:30:02

I don't think I should get into that one. They shouldn’t. Lawyers should never fear mediators and vice versa.

Jane Gunn 1:30:12

Yes, very good. Let's take another couple of questions from the room. That's one here. Wait for the mic, please. Sorry. That's great.

Unknown Speaker 1:30:22

Thank you. Just putting a sort of cynical hat on for the moment. Do you think there's a chance that simplifying the process, making it easier for people through mediation, and as you said yourself, just accessing through your mobile phone from home, that actually encourage more claims? I think you gave an example of whiplash claims 600,000. That was a staggering amount. And I think it's an area that's notorious for scam claims. So you have these people thinking, oh this is worth it. Let's give this a go is only mediation, there's an obligation or a pressure on the defendant to, to settle, why not just try it for the initial process. And I can, I can just sit in my living room and do this.

Sir Geoffrey Vos 1:31:09

until you are found out and sent to prison. And there are already scam claims made. And the portals are very good. And many of the actual cases that go to court are cases of fraudulent claims brought, and insurers defend those very, very assiduously. But there are- those things exist now. And digital justice will not make any difference to them at all. And also, the other thing that exists now is the justice gap. And the justice gap, the access to justice gap, where people from all walks of life, and all parts of our society don't have access to justice, because it's too expensive and too slow. And they should be allowed to make their claims. So yes, there probably will be more claims. And they'll be dealt with more efficiently and at lower cost. And they will vindicate legal rights that people actually have, which is a good thing, not a bad thing.

Jane Gunn 1:32:15

So I'm afraid although we've got many, many questions online, and also more in the room, I going to have to take the last question now. So if I could find one last question, I can see your hand in the middle there.

Unknown Speaker 1:32:28
Hi, good evening. You see me? I just have one question. The new virtual platform like Metaverse, and how you will deal with avatar not real person?

Sir Geoffrey Vos 1:32:43

Well, yes. I think we're probably going into the futuristic realm. Now I have thought about how the metaverse will affect what we're doing. And I think not very much at the moment. I think the metaverse is a sort of tool of social media really, an extension of the way people interact socially, rather than a business tool. I'm not ruling out that it will not become a business and economic product in the future. No doubt it will. But at the moment, I don't think it would be a useful part of a digital justice system.

Jane Gunn 1:33:24

Thank you for that question. So Sir Geoffrey Vos, I'd like to thank you very, very much for coming this evening for your lecture, which has provoked so much interest, so many questions- we could be here for another couple of hours, I'm afraid. But it shows that it's a very relevant topic for today, I think, and I have felt for a long time that mediation in particular is a skill for the 21st century, if you take it into the digital world, it becomes something which is very relevant to where we are now. And I think it's a topic that all of us, as you can see, are really interested in learning more about and being able to practice as well. So thank you very much indeed for coming, for your time. Thank you to our online audience, I know the livestream will finish now, but thank you very much for joining us this evening. And thank you to our audience here at 12 Bloomsbury square. Thank you all very much and thank you again Sir Geoffrey.