

AI CAN SEE CLEARLY NOW

DETECTING, MANAGING AND RESPONDING TO AI-GENERATED DOCUMENTS

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WHO ARE WE?



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WHY THIS MATTERS NOW

AI in Legal Practice (Brief History)

- **2010s:** AI tools for doc review and e-discovery (keyword search, TAR)
- **late 2010s:** Contract analytics, due diligence, and legal research
- **2020–2022:** Automation of drafting support, summaries, and legal analysis
- **Post-2022:** Widespread availability of LLMs for public capable of producing: legal arguments, apparently authoritative pleadings, complete LBAs and submissions

Shift from *back-office assistance* to *front-facing legal communication*

Impact for the Legal System

- The legal system depends on accuracy, traceability, and accountability
- AI-generated material can fabricate authorities, misstate the law with confidence and obscure weak claims behind fluent drafting

Courts rely on lawyers as filters and guarantors of correctness

When that filter fails: (i) judicial time is wasted, (ii) opposing parties incur unnecessary cost and (iii) public confidence in legal process is undermined

This is a systemic issue.

CONSEQUENCES OF AI IN LAW

Why Pre-Action and Pleadings Are a Flashpoint

- Pre-action correspondence is :
 - high-volume
 - formulaic
 - produced under cost and time pressure
- These conditions are ideal for claimants to rely on AI substitution rather than assistance
- Errors introduced at this stage:
 - shape the litigation improperly
 - harden positions
 - distort settlement dynamics

Regulatory Risk

- Professional duties remain personal and non-delegable
- “The tool produced it” is not an acceptable explanation

Procedural Risk

- CPR compliance depends on accuracy and proportionality
- Defective pleadings expose parties to strike-out, sanctions, and costs

Reputational Risk

- Credibility with courts and opponents is fragile
- Once undermined, it is difficult to recover

The Emerging Judicial Position

- AI use is not prohibited
- Courts distinguish between:
 - **Assistive use**: AI as a tool under human supervision
 - **Substitutive drafting**: AI replacing legal judgment
- The latter is increasingly treated as:
 - careless
 - misleading
 - or professionally irresponsible
- **Direction of travel**: accountability is tightening, not relaxing.

DETECTING AI USE – TECHNICAL INDICATORS

Over-formalised or Generic Legal Language

- **Example**
- *"It is respectfully submitted that the Defendant has acted in a manner inconsistent with its legal obligations and in contravention of well-established principles of law."*
- **Why this is a red flag**
- Says nothing specific about *what* obligation, *how* it was breached, or *when*
- Mimics textbook or training-data language
- Lacks the factual anchoring typical of human drafting under CPR

DETECTING AI USE – TECHNICAL INDICATORS II

Fluent but Non-Specific Reasoning

- **Example**
- *"The Defendant's conduct clearly falls below the standard expected and gives rise to liability under multiple causes of action."*
- **Why this is a red flag**
- Confident conclusion without legal tests or factual steps
- No identification of causes of action
- Reads persuasively but avoids committing to analysable propositions

DETECTING AI USE – TECHNICAL INDICATORS III

Boilerplate Phrasing Reused Across Unrelated Fact Patterns

- **Example**
 - *"Your client has failed to act reasonably, transparently, and in good faith, thereby causing our client significant loss and damage."*
 - (Identical wording appears in employment, construction, and consumer disputes.)
- **Why this is a red flag**
 - Same language used regardless of context
 - Indicates templated or generative drafting
 - Risks non-compliance with pre-action protocol requirements for specificity

DETECTING AI USE – TECHNICAL INDICATORS IV

Certainty Unsupported by Evidence

- **Example**
- *"It is incontrovertible that your client knowingly breached its obligations and caused substantial financial loss."*
- **Why this is a red flag**
- Strong factual assertions with no pleaded evidence
- "Incontrovertible" often used where proof is thin or absent
- Courts expect measured pleading, not rhetorical certainty

OTHER RED FLAGS TO CHECK FOR

Hallucinations

- Authorities that “sound right” but cannot be located
- Authorities described confidently but never quoted or applied
- Invented quotations or paragraph references
- Quotations that cannot be found in the cited authority

Old Training Data

- Incorrect or outdated procedural rules (reliance on repealed CPR provisions or pre-amendment wording)
- Incorrect time limits or service rules stated as settled law
- Failure to engage with current practice directions or recent rule changes

Misstated legal tests or blended jurisdictions

- Mixing English, EU, and US legal standards in a single test
- Elements of a cause of action taken from different lines of authority
- Correct terminology used, but in the wrong legal sequence

CIVIL PROCEDURE RULES (1) – PRE-ACTION

- Practice Direction – Pre-action conduct and protocols
 - Para 3 - sufficient information to—
 - (a) understand each other's position;
 - (b) make decisions about how to proceed;
 - (c) try to settle the issues without proceedings;
 - (d) consider ADR;
 - (e) support the efficient management...; and
 - (f) reduce the costs.
 - concise details of the claim, a summary of the facts, what the claimant wants (including how much if necessary).
 - Consequences of non-compliance (info, time, ADR): costs (indemnity); deprivation of interest or reduction of interest rate.

RESPONDING TO AI PAPS (AND CORRESPONDENCE)

- Focus on substance, not technology
 - You don't need to prove AI use, only identify legal defects.
 - Only accuse of AI use, if you are certain.
- Call out fake or unlocatable authorities
 - Identify specific citations that cannot be found in known databases.
- Frontload at the outset
 - If corresponding with lawyers, refer to *Ayinde v Haringey LBC* [2025] EWHC 1383 (Admin) and highlight the professional and costs consequences
 - If dealing with litigants-in-person, explain the risks and consequences of using AI - *Olsen v Finansiell Stabilitet* [2025] EWHC 42 (KB), point to CPR or relevant rules, and highlight free legal resources.

CIVIL PROCEDURE RULES (2) – WHAT ARE WE HERE FOR?

- Overriding Objective (and PD1A)
- r16.4(1):
 - “a concise statement of facts”
 - PD16
 - *Tchenguiz & Ors v Grant Thornton UK LLP* [2015] EWHC 405 (Comm)
- The difficulty of r16.5:
 - *Patel v Patel* [2019] EWHC 2643 (Ch)

RESPONDING TO AI-GENERATED PLEADINGS

- r3.4 read with PD 3A - Strike Out
 - Bases: (2)
 - Importance of costs payment: (4)
 - Totally without merit: (6)
- Defence
 - Proportionality
 - Holding
- r18.1 Further and better particulars
- r25.27 Security for costs?

CIVIL PROCEDURE RULES (3) – THE LIFE OF THE CLAIM

- Witness statements:
 - PD18, 18.1 “The witness statement must, if practicable, be in the intended witness’s own words and must in any event be drafted in their own language...and should also state...the process by which it has been prepared, for example, face-to-face, over the telephone, and/or through an interpreter”
 - PD18, 18.2 - “must indicate:...which of the statements in it are made from the witness’s own knowledge and which are matters of information or belief”
 - PD57C, 3.1 and 4.1 – “I understand that it is not my function to argue the case, either generally or on particular points, or to take the court through the documents in the case”.
- Forged documents.

CONFRONTING AI THROUGH THE LIFE OF PROCEEDINGS

- **Evidence**

- r32.14 – contempt proceedings
- r32.18 – notice to admit facts
- r32.19 – notice to admit or produce documents
- r.34.8 – evidence by deposition?

- **Civil Restraint Orders** - get TWM orders where possible: - *Taiwo v Homelets of Bath Ltd [2025] EWHC 3173 (KB)*
- **Raising professional conduct** (if issue is likely to be with the representative), reasonably.
- **Costs:** - *Ndaryiyumvire v Birmingham City University [2025] 10 WLUK 719*

ADVISING CLIENTS ON OWN AI USE

- Frontload from the outset, again
 - Avoid entering confidential or personal data into public models
 - Risk of waiving privilege
 - Duties under the rules
- Review and verify every output
 - Maintain clear oversight of AI-assisted drafting
 - Document internal safeguards and review processes

DATA PROTECTION AND GDPR DUTIES

- AI use may involve processing personal data
 - Lawfulness, fairness, transparency
- Identify lawful basis for processing
- Special category data
- Data minimisation
- Cross border processing
- Governance
- AI-specific obligations

QUESTIONS OR WAR STORIES?

- Find us:



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