ChatGPT – A new tool in the Family Lawyer tool bag

What is ChatGPT?

It's highly likely most family lawyers will have heard of Chat GPT. There has been a lot of noise about it in the last few months in both the general and the legal media, with it becoming widely available and used by many to test whether it could be widely utilised and how and specifically when would it be right and safe to do so.

Perhaps instinctively, many professionals have apprehensions. It would be easy to brush it off and continue with practice as usual. Probably there will be many in the profession who will do exactly that. That would be wrong and short-sighted. Chat GPT can be compared to something with which we are all now familiar, but if raised topic with a lawyer who practised even 30 years ago, it would then be unimaginable namely remote hearings. Of course, on the ending of the lockdown there is an appropriate shift again to attended hearings including the preference of some judges, but the pandemic forced this huge change in the English family justice system. Alongside the technological innovation of remote court-hearing were electronic court bundle, wet and dry signatures and so on. It happened when least expected it with the pandemic described as the great accelerator.   Much of the family law profession adapted quickly and often relatively comfortably in time. Similar 'forced' changes to our day-to-day practice as a consequence of digital technology will happen again and the widespread availability and use of AI is starting to shape up as one to look out for.

To understand in which areas ChatGPT could potentially cause big stirs, it is important first fully to appreciate what it is.

ChatGPT is a new artificial intelligence ('AI') algorithm that was developed by OpenAI. This was largely founded by Silicone Valley investors in the US, including Elon Musk whom most will associate with new technologies and innovation including Tesla. GPT itself stands for General Pretrain Transformer. This program consumes information and runs it through the software.

Anyone can access this technology and use it through the chatbox (ChatPGT). If one goes to their website, one can start interacting with this AI as one would with a human being in a chat conversation; here is an immediate and obvious part of its appeal. It is accessible and very user-friendly.

Historically, AI had been limited to narrow tasks, such as learning the moves and playing a perfect game of chess. Thus, due to its limitations, it was not used on the scale currently being used. Its advent was however clearly forecast: who has not used Siri on their phones or asked Alexa all sorts of questions?

Within some similarities, GPT is a language-based algorithm. These have been used for quite a while, perhaps sometimes without even being realised. An example of such software used daily is predictive text. It anticipates the next word, based on what one as written before it or in the past. Compared to GPT it is very simple. However, this example shows that the public and the profession have already used AI software, sometimes without even realising it. It also shows how easily these technological tools can spread and it is inevitable that people will start using them across the board.

So it is that in the profession we have been bombarded with articles and messages on social media, with everyone trying to use ChatGPT and sometimes doing so successfully, at least to some degree. Examples that initially drew me in into this subject were summarising research and translations. ChatGPT is said to be able to efficiently summarise the content of a document. The first thing that comes to mind is how easy it would be to get a quick summary of one of these 100 plus pages of long family law case reports that one often feels one simply does not have the time to read in full now and certainly fully digest but would be good to know about, at least to some degree? Most are probably familiar with Google Translate or Deepl when in need for a quick translation for personal purposes. However, family lawyers still rely on certified translators for important court documents as it is mandatory. What if ChatGPT could do it instead, in seconds, without any charge and without losing the sense and sentiment of the sentence when translated into another language?

There is in fact a variety of ways ChatGPT could be used: writing songs, computer games, essays for students, generating art, even giving motivational speeches to start doing something one has been putting off for way too long. The options seem limitless.

At some point though in all this fun, the family lawyer naturally starts to ask: could it also be used to write emails, prepare certain documents or even give advice? Is it being used already? Has the

lawyer received a letter from another lawyer or an opinion from counsel or a statement prepared substantially or wholly from this software? It is here that the bigger questions start to arise. It is here that professional bodies need a lot of catching up to consider the good practice and ethical issues. As often, it will be for those of us as practising lawyers working with this technology who will be vital in considering these issues.

As qualified lawyers, we put countless hours into becoming lawyers; Study, work experiences, exams, networking and then working on actual cases. As Family law practitioners we tend to think of ourselves as a different breed, dealing with distinctive clients, often in the worst moments of their lives and with emotions flying high. We need to be skilled in legal principles and applying these principles to the myriad of complicated facts presented before us, but we also need compassion, empathy, and awareness of the emotional impact of our advice on our clients and their children. It is that emotional element that might often affect our advice and make us consider different avenues rather than taking the first course of action a client may prefer and want. It is that experience of previous cases and knowing how to act that brings the client to us in the first place. It is that experience which helps us settle cases through creative means, lateral approaches and innovative solutions the best outcome in the complex facts. Can that ever be replicated by AI? Can we ever be replaced by AI?!

It is definitely too early to answer these questions reliably. And there will be no one answer fits all questions in all circumstances. Undoubtedly there will remain a crucial role for the specialist family lawyer, but the work undertaken, and the involvement of AI will change so much of the surrounding landscape. There should be no fear of AI replacing our complete skillset in the medium-term at least.

However, the issue that lays here starkly is that AI is still developing and developing fast. Therefore, ChatGPT will get better at drafting and with time will shake up the entire industry and profession if it has not started to do so already. The ChatGPT available to everyone for free is version 3.5, released in November 2022. However, there is already an improved, currently paid-for version called ChatGPT4, which is said to be ten times more advanced. So, its abilities can vastly improve in mere months.

A potential trap of convenience

It seems our lives now revolve more and more around technology. Most recently there has also been a big push to get people more aware of their own wellbeing and selfcare in the face of digital

use. Somewhere along the lines of selfcare, we are all being faced with topics like productivity and effectiveness.

A variety of recent technologies have saved our time or made a task less time-consuming or easier. Apple Pay allows somebody to hold their credit cards virtually on their phone so that they can make a payment with a touch of the screen, either in person or online. Uber is particularly useful when one needs a taxi and with no black cabs in sight. Again, with a proverbial touch of a button, a person can see all the taxis around, the app picks the closest and tracks it so one knows exactly when it will arrive at one's location. These apps were created to serve the same purpose as ChatGPT: help save time and increase efficiency. How could this be viewed as something negative? It could be argued their convenience is both a pro and a con. One wants one's money easily accessible, but not so easy that one does not even think how much one is spending or have a risk of digital theft? It is very handy to have a taxi available at one's literal fingertip, but it is also a valuable experience to use local taxi companies, use drivers which have spent a long time getting to know the area and are experienced in the best and safest routes. There will be plenty more with many other forms of modern technology with their dichotomy of ease of access and convenience yet inherent and perhaps as yet unknown risks.

And this is how family law may be coming to a clash between technology and humans. Some lawyers charge for their time, and correspondingly the charging rate should reflect the quality advice that comes with it. Clients instructed lawyers for expertise, experience, representation and problem-solving. The profession should not therefore object to using software to speed up our work, result in less time being incurred and thus provide a cheaper service for clients. Naturally cheaper should not and cannot mean less accurate or of worse quality.

Some would be tempted to save time now and try to use ChatGPT for a big proportion of work tasks and hope for the best. There should be a big warning on attempting to do so, especially for those of us still near the beginning of our careers and trying to improve and shape our style. A person's growth comes from experiences. With software doing the work, where is the experience to learn and to improve? There is also an argument to be made that the client is paying for the lawyer's knowledge and expertise and if instead they are getting an automated response, albeit driven by incredibly complex software and use of significant data, they might be reluctant to still use professional services. Not least it therefore produces a challenge on hourly rates and time spent. What is the professional obligation of openness of disclosure in respect of a professional letter, to client or a lawyer for the other party of which the content, or a good part, has been generated by AI. Would it be ethical for a professional to use such tool to generate letters?

Presuming so, what and how should be requirements to reference it. Otherwise, we are entering a territory of professional plagiarism. Is not a solicitor entitled to know if counsel's written opinion was produced in whole or substantial part from AI? Should not a solicitor tell a client if a letter of advice has been generated in whole or substantial part by AI? This is not standard precedent letters such as recommending the making of a will at the time of the divorce. This is advice based on the facts of the case and the relevant law generated by AI.

There is also the subject of security and data protection. This digital tool is only as good as the data upon which it relies. Multiple well-known banks and financial institutions here and around the world have now restricted the use of ChatGPT by their employees. This seems to stem from a fear of leaks of confidential information that the user would potentially need to provide for the ChatGPT to create their 'response'. This is clearly a significant issue when dealing with sensitive and highly private details for a client, as it is a large part of the family lawyer's daily job. The programme itself has multiple warnings when first opened, including that no private information should be shared and that the generated responses can be inaccurate. Italy has even very recently blocked ChatGPT in the country entirely over privacy concerns and its compliance with GDPR rules although the ban has now been reversed after OpenAI agreed to meet watchdog's demands. Others seem to follow, with UK competition watchdog, CMA, launching a review of the AI market, including ChatGPT.

It is therefore difficult to see how a family lawyer could use this present incarnation of AI to prepare perhaps even the basic structure of a letter of advice, opinion, or position statement because it would first require provision of substantial confidential information provided by the client. Very soon no doubt terms of business will be amended to allow this provision, but clients must be told what is happening. The risks of data leaks have to be brought into account

Trial and error of use

At a first glance, it all sounds too good to be true. Nevertheless, when put to a test, one can clearly see the problems that we will be facing at this early stage of development: inaccuracy and caveats. I experimented with some basic family law enquiries.

When asked: Explain divorce proceedings in England, the response generated in the second paragraph provides The first step is for one party to file a petition for divorce with the court, which outlines the reasons for the breakdown of the marriage. The most common grounds for divorce are irretrievable breakdown, which can be proven by showing one or more of the following: adultery, unreasonable behaviour, desertion, separation for two years with the consent of both parties, or

separation for five years without the consent of one party. Every family lawyer will see straight away that the generated response is outdated and based on the old law that no longer applies after April 2022. Here is immediately one instance of ChatGPT 3 and 4's major downside as their database only covers data through to September 2021. A slightly more detailed answer was produced when using the upgraded paid ChatGPT-4 version, nevertheless it still referenced old law. Moreover, there are inaccuracies within the response itself.

It later reads During the divorce proceedings, the court will also make orders regarding financial matters, such as the division of property and assets, spousal maintenance, and child support. Although this sentence is not entirely incorrect, it can be misinterpreted by a person who wishes to rely on it. Obviously 'will' and 'can' are not the same things. The court will only make those orders sought by the parties on application.

At the end of the generated response, it says it is recommended that anyone considering divorce seek legal advice and support. Perhaps the profession should be glad that AI still appreciates that it is needed? As below, seems to be a pattern for this type of caveat to be included in the response to every single question being asked that concerns law and legal advice.

The next task was for ChatGPT to Summarise Part III proceedings after an overseas divorce. This is a distinctive and complicated area of law with which I practice but which many family lawyers would understandably feel some nervousness. So, it might be an area where AI would be used as a consequence. The response was very short but accurate. However, it did not go through enough details that the client would expect to know and, of course, it did not apply the facts of the case to the factors being considering by the Court to determine whether a permission should be given to pursue such application. For ChatGPT to even attempt to do that, it would need private information provided by the client. It is worth noting that the last paragraph of the response stated However, the process can be complex and it is recommended that individuals seek legal advice before making an application to the court. Very right!

In the third scenario presented, ChatGPT was asked to Draft email to client advising about pensions on divorce. This is a very important subject in financial proceedings and unfortunately still being overlooked or mishandled by many lawyers despite the brilliant PAG report. Although, again, the response was generic and not case specific, as the client would expect it to be, it was a pleasant surprise to read the draft to say It is important to note that pensions can be complex and may require the assistance of a financial advisor or actuary to properly value and divide.

To summarise, it seems that the bare bones are there, but even AI itself believes that our work is

complex and that we are still needed as there are too many variables to take into account when advising. But for how long? When will AI start to have the confidence to be giving the advice?

Where AI can be helpful?

One of the original selling points for the use of ChatGPT is that it can analyse a large amount of information immensely quicker than any human. This is why it found primary usage in analysing medical data, weather patterns, population trends and other big data. There is a lot of big data in the law and which lawyers have to assimilate, keep fully abreast and then learn how to apply and adapt to the circumstances of clients. So, this benefit of AI can very easily be used towards research, learning and keeping up to date with the current changes in law as long as the information that ChatGPT relies on is up-to-date and verified. As seen from the divorce proceedings example above, this can be tricky with the internet being flooded with information that can be outdated, inaccurate or bluntly wrong. It is a great tool to use in research; however, it is at the moment only a tool, not perfect and needs to double and triple check output.

To put its research capabilities to a test, ChatGPT was asked to Summarise the case of _Radmacher_. In seconds it came up with a very concise response that provided the main facts of the case and its significance for prenuptial agreements. However, the case is over 10 years old. Therefore, to test more, GPT was asked to Summarise the _MN v AN_ [2023] EWHC 613 (Fam) case. a very recent case emphasising the importance of needs on the persuasively binding element of marital agreements. ChatGPT's response was simply that it is not able to find any information about the case and encouraged to consult a legal database or seek advice from a legal professional.

Conclusion

It is fair and right to say, perhaps warn, that the legal profession will be significantly affected by the development of ChatGPT and what is to follow.

There are many areas of practice where the program can be used to streamline and simplify processes, such as completing the onboarding process, divorce applications or Forms E. Some innovative firms have already introduced software to make the completion of these information-based documents more efficient. It can also be utilised for other areas, such as research and creating precedents, which would of course need to be proof-read before being finalised.

We cannot stop AI and instead we should embrace it so that we can assist our clients to the best of

our abilities and hone our skills to work with the benefit of AI to produce a better service for our clients and better resolutions.

As with any change and especially in the current financial climate, there are worries and doubts whether the change will make us less needed or replaceable. That will be the subject of a separate article.

To end this article, I thought it would be quite interesting to hear from ChatGPT itself as to what it thinks about ChatGPT and the implications of its use on family lawyers. The response was somewhat comforting – ChatGPT has the potential to revolutionise the practice of family law by making it more efficient and accessible. However, it is important to ensure that the technology is used in a way that is ethical, unbiased, and complements the expertise of human lawyers. By doing so, family lawyers can use ChatGPT to provide better and more effective legal services to their client. While ChatGPT can be useful in certain situations, it cannot replace the expertise and judgement of a human lawyer who can provide personalised advice and guidance to their clients.

I couldn't have summarised better!

I have been grateful for the assistance of my colleague, Prof David Hodson OBE KC(Hons) MCIArb, in respect of this article.

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