

AI and the Courts: cautions from offshore

JUNE 2026

The use of AI in litigation is undoubtedly this year's hot topic. As with other jurisdictions, the courts in the Channel Islands are having to grapple with the difficulties which its use can pose in proceedings.

In two recent judgments from Guernsey and Jersey, the courts have cautioned the use of AI by those who appear before it.

Guidance on the use of AI

The guidance from both courts is that all parties, including litigants in person, owe a duty to the court to ensure that cases or laws cited in legal argument are genuine and provide authority for the proposition being advanced.

In each case, the court cited with approval the comments of Baker LJ in the case of *D (A Child) (Recusal)* [1], in which the Court of Appeal in England and Wales set out the following guidance:

'83. Used properly and responsibly, artificial intelligence can be of assistance to litigants and lawyers when preparing cases. But it is not an authoritative or infallible body of legal knowledge. There are a growing number of reports of 'hallucinations' infecting legal arguments through the citation of cases for propositions for which they are not authority and, in some instances, the citation of cases that do not exist at all. At worst, this may lead to the other parties and the court being misled. In any event, it means that extra time is taken and costs are incurred in cross-checking and correcting the errors. All parties – represented and unrepresented – owe a duty to the court to ensure that cases cited in legal argument are genuine and provide authority for the proposition advanced.'

Judgments

In the *States of Guernsey v Ogier* [2], the Royal Court of Guernsey highlighted that this guidance was *'of indisputable importance for matters'* before it.

In *Golden Sphinx Limited v Itkin* [3], the Master of the Royal Court of Jersey reminded all those appearing before it that *'they are personally responsible for the material placed before the Court'* and that *'[m]isleading the Court is serious and will result in sanction.'*

Golden Sphinx Limited v Itkin

The Master's view is that the recent guidance issued by the Law Society of Jersey on the use of AI, namely, that the validity and veracity of any material presented to the court needs to be assessed by members, ought to apply equally to litigants in person.

The Master commended the approach taken in the Federal Court of Australia, as set out in its recent 'Litigants in Person Practice Note' emphasising from the extracts cited that parties must check:

- 'everything you get from AI programs'
- 'that all the facts are correct and complete'
- 'that the law is correct'

The Australian Practice Note warned that parties '*can be in serious trouble if you give the Court false information about the facts or the law.*'

The Master held that these comments apply with equal, if not greater, vigour in Jersey given the extremely limited amount of freely available material about Jersey law.

Risks of using AI

As was noted in the Jersey Law Society's guidance note, the risk of using Generative AI during litigation preparation is not simply limited to hallucinations, but also to:

- submissions containing AI-generated fake or inaccurate case references, or inaccurate summaries of law;
- cases based on fallacious or irrelevant argument;
- inadequate fact-checking by parties or witnesses;
- rambling and incorrect drafting; and
- the 'flooding' of courts or court services using AI-generated documents

The consequences of failing to guard against such risks was made clear by the Master:

'the Court will take such steps as it thinks fit to mitigate these risks, including greater scrutiny of summonses before allowing them to be issued..., limiting the ability of parties to upload material...and/or the amount of such material, and/or the imposition of sanctions where necessary or appropriate....all litigants...should be very wary of using AI at all in relation to Jersey litigation.'

In a recent scathing judgment of the [High Court in Cork & Anor v Smith \[4\]](#), ICC Judge Mullen responded to a number of misleading statements made by a law firm in a routine insolvency application.

It transpired that a junior solicitor had erroneously relied on AI in drafting letters to the Court, without checking the underlying accuracy of the legal sources referred to. The Court ultimately held that *'[t]here is, at the very least, a prima facie case of a breach of the duty not to mislead the court (noting that [the partner and associate] remain accountable for the work of the lawyers that they supervise) and the duty not to waste court time.'*

The junior solicitor in question was lucky to have escaped contempt of court proceedings and the judgment served to admonish the law firm and the supervising lawyers. This case is a must read for all who appear before the courts.

AI was also the topic of a recent keynote address given by Lord Briggs of Westbourne, a Justice of the Supreme Court, who observed that AI is going to *'revolutionise access to justice for litigants in person'*.

With many Open AI platforms available to the public for free or a modest subscription, they can be used to obtain legal advice and draft court documents at minimal cost, which could result in a *'tsunami'* of civil claims. Lord Briggs urged us *'to begin to think seriously about developing procedural rules and regulation to accommodate AI in advance.'*

Key takeaways

AI has vast potential and is being used more frequently by both law firms, to enhance efficiency, and by the public, who may see it as an affordable way to access justice. AI is here to stay and the issues with its use will, like AI itself, ever evolve.

It is clear that courts have a very dim view of unchecked AI use and have stressed that it is the personal responsibility of all those who appear before the courts to ensure that the material presented is accurate and not misleading in any way. A failure to do so runs the risk of sanctions and potential contempt of court proceedings. It seems that it may only be a matter of time before we see what such sanctions may look like.

How Collas Crill can help

The legal landscape is changing, in part due to AI. When your business is involved in any kind of legal dispute, it's crucial to work with lawyers who know what tools to deploy and how best to use them to respond quickly and intuitively to your unique situation and needs.

Our dispute resolution team is well versed in the use of AI in litigation and how to respond to parties who misuse it. If you have any queries on these developments, please contact a member of the team.

[1] *D (A Child) (Recusal)* [2025] EWCA Civ 1570

[2] *States of Guernsey v Ogier* [2026] GRC 030

[3] *Golden Sphinx Limited v Itkin* [2026] JRC 138

[4] *Cork & Anor v Smith* [2026] EWHC 1199 (Ch)

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