# The Algorithm and the Tribunal: Philosophy to the Rescue and the Threat from Within

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**Abstract**

This article asks whether English law should extend party autonomy to recognize the output of a fully autonomous artificial intelligence (AI) system as a binding resolution of a construction dispute. It argues that the real issue is not current technical weakness, but whether algorithmic decision-making can ever satisfy the conditions of legitimate adjudication so as to justify state-backed enforcement. Drawing on philosophy and doctrine, the article contends that adjudication is a human practice of responsible judgment and that the existing routes to enforcement are unlikely to succeed. It further argues that the greatest threat comes from within: hybrid human-AI decision-making, which risks hollowing out the very conception of judgment itself.

**Keywords:** AI; algorithmic decision-making; statutory adjudication; arbitration; expert determination; party autonomy; natural justice; construction disputes; public policy.

## [A] INTRODUCTION

We stand at a threshold in the history of adjudication. For centuries, the tribunal's legitimacy has rested on the human capacity for judgment. That capacity was never defined solely by efficiency or technical accuracy. It includes moral discernment, the ability to act impartially, listen, weigh competing narratives and accept responsibility for the decision. The emergence of artificial intelligence (AI) systems now poses a fundamental question: if an algorithm can apply law to fact with greater speed, lower cost, greater consistency and apparent freedom from bias, what remains to justify the human tribunal? This article focuses on construction disputes falling within the jurisdiction of the English courts, although its implications are wider.

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The question is no longer speculative. Courts, tribunals and arbitral institutions already employ algorithmic tools. In the Online Civil Money Claims, where a defendant admits a debt but seeks time to pay, an algorithm orders the instalments. Dissatisfied parties may ask a judge to reconsider, but the first decision is made by code (Birss 2024: paragraphs 7 and 8). Government policy papers openly project further automation, speaking of AI transforming the public's experience of the justice system (Ministry of Justice 2025).

The development is even more striking in the private dispute resolution sphere. The American Arbitration Association-International Centre for Dispute Resolution (AAA-ICDR) has developed the "AI Arbitrator", currently available for use in two-party, documents-only construction cases (AAA-ICDR November 2025). Under that model, the parties submit their claims and evidence, then confirm that their submissions have been accurately summarized by the AI arbitrator. The AI arbitrator then parses the claims, analyses the evidence, applies the law and drafts a proposed award, which is subsequently reviewed, revised where necessary, finalized and issued by an AAA-trained human arbitrator (AAA-ICDR October 2025).

Existing critiques of AI in adjudicative adversarial dispute resolution tend to focus on current technical limitations: misinterpretation of evidence, misapplication of legal principles or hallucinated authorities (Socol de la Osa & Remolina 2024; Ashraf 2025). Those are serious problems, but they are also likely to be transient. It is only a matter of time before systems emerge that are better constrained, better trained on legal material and empirically more accurate than many human decision-makers. If the case against fully autonomous AI tribunals rests on present-day malfunction, it will be a short-lived objection.

This article argues that public policy is the final meaningful obstacle to the full algorithmic replacement of human tribunals. Properly understood, that public policy rests on a set of philosophical commitments about what adjudication is. Those commitments are not always made explicit outside jurisprudential scholarship. Yet, they sit silently beneath the rules of natural justice, the common law's treatment of private ordering, and the statutory architecture of legislation such as the Arbitration Act 1996 (AA) and the Housing Grants, Construction and Regeneration Act 1996 (HGCRA). Taken together, they express a conception of adjudication as a human practice of responsible judgment.

The article develops this argument against two broad objections. The first is functionalist: if an AI system can produce an output equivalent to

that of a competent human tribunal, why should the law care whether the source is machine or person (Eidenmüller & Varesis 2020)? The second is the realist objection: human adjudication is itself often opaque, *post hoc* and symbolic; so why insist on some supposedly pure moral or philosophical core that human tribunals do not always display (Zerilli & Ors 2018)?

The article proceeds in five stages. First, it explains the philosophical foundations of human adjudication, drawing on Aristotle, Dworkin, Fuller and Habermas. Secondly, it identifies the minimum non-waivable conditions of legitimate adjudication and distinguishes those threshold requirements from the more aspirational virtues of excellent judging. Thirdly, it identifies a threat from within: the institutional embrace of hybrid human-AI decision-making, which undermines the very conception of human judgment invoked to resist full automation. Fourthly, it turns to doctrine, asking whether an AI output might be enforced as an arbitrator's award or adjudicator's decision, as an expert determination, or as a purely contractual mechanism. Finally, it draws the threads together in conclusion.

In this article, the term "ChatGPT" is used as shorthand for any fully autonomous AI system. That is, a system that receives rival submissions, identifies issues, evaluates evidence and law, issues procedural directions and generates a dispositive outcome. The defining feature is the absence of any human decision-maker in the process and of any human acceptance of personal responsibility for the result.

Furthermore, "adjudication" generally refers to the act of judging between disputed rights and obligations, whether in court or in a private decision-making process. Where necessary, however, it is also used in the narrower statutory sense of the HGCRA, under which a construction dispute is referred to an adjudicator for a temporarily binding decision, typically within 28 days. Where that narrower meaning is intended, it is referred to expressly as "statutory adjudication".

## [B] THE NORMATIVE FOUNDATIONS OF HUMAN ADJUDICATION

The question is not simply whether ChatGPT can make decision-making more efficient; it may. The real question is whether ChatGPT can perform the kind of activity the law recognizes as adjudication, so that its output may properly attract state-backed enforcement. This section argues, by reference to philosophy, that adjudication is a distinctively human

practice. It involves a responsible decision-maker exercising *phronesis* about what legal norms require in complex and contested circumstances, interpreting those norms in light of underlying values, hearing and answering the parties' reasons, and giving an account of the result for which the decision-maker can be held to answer.

The aim is not to rehearse large tracts of jurisprudence. It is instead to identify a set of core ideas which, taken together, support the proposition that adjudication is, and ought to remain, a distinctively human practice.

## Judgment as *phronesis*

Construction disputes are commonly resolved under conditions of urgency, incompleteness and complexity. Adjudicators and arbitrators must decide issues on the balance of probabilities, often on partial information, against a background of cogent rival pleadings, conflicting expert reports and sharply contested witness evidence. Their task is not merely to apply rules to facts in a mechanical way. It is to exercise what Aristotle called *phronesis*, or practical wisdom, in determining how legal norms should operate proportionally within the messy particularities of real disputes.[1]

That exercise involves not only logical reasoning but also moral perception: an ability to see which facts matter most, which arguments prevail, and where the parties' conduct or equity might temper apparent contractual rights. It also involves courage, in that the decision-maker must commit to a view in the face of uncertainty and the knowledge that someone will be aggrieved.

ChatGPT does not exercise judgment in that sense. It identifies patterns in data and produces outputs that resemble reasoning. It does not perceive salience, experience uncertainty or commit itself to a conclusion as an exercise of practical wisdom. However sophisticated its performance may become, it does not possess the quality that makes adjudicative judgment distinctively human (Sharp 2025).

## Interpretation and moral authorship

For Ronald Dworkin, hard cases in law are not solved by prediction or pattern-matching. They are resolved by *constructive interpretation*. The decision-maker must present the law in its best moral light by offering a

[1] For a judicial discussion of the term "phronesis" with particular regard to proportionality, see *Main v Scottish Ministers* (2015: paragraph 46) and *Bank Mellat v Her Majesty's Treasury* (2013: paragraph 68). For a modern extensive commentary, see, Reeve (2013).

view that both fits and justifies the community's practice, making it the best it can be (Dworkin 1986: 255-258; Ross 1991; Wacks 2006: 40-51).

The outcome is therefore not a mere extrapolation from data. It is a moral judgment about which principles best explain and justify the resolution of contested rights and obligations in that community. On this view, the authority of an adjudicative decision depends on authorship. The decision-maker must be able, in good faith, to say: this is my best judgment about what justice requires, given the law and the facts. That claim of sincerity and accountability matters because it turns adjudication into an exercise in integrity rather than mere regularity. It is also part of what justifies the state in enforcing the outcome against the losing party (Dworkin 1986: 227; Wacks 2006: 45).

ChatGPT, however well trained, cannot make that claim in any meaningful sense. It does not believe the reasons it gives. It has no conception of justice or fairness to which it seeks to be faithful. Its outputs come from matching patterns in data, not from moral deliberation (Boucher 2020; Bronner-Martin 2025). The point is not simply that ChatGPT may reach the wrong answer. It is that, even where it reaches the right answer, it lacks the kind of authorship that makes an adjudicative decision something to which the parties may be required to submit as a matter of principle.

## Fidelity to law's internal morality

Lon Fuller's account of the internal morality of law consists of requirements such as generality, publicity, clarity, prospectivity and congruence between declared norms and official action (Fuller 1969: chapter 2). These are not merely technical niceties. They express respect for human agency, because people can plan their affairs only if they are able to know the rules, understand how they will be applied and trust officials to act in accordance with them.

Law's internal morality therefore presupposes a human official who understands law as a purposive enterprise, can be criticized for failures of fidelity and can adjust future conduct in light of that criticism. ChatGPT may simulate compliance through reason-like text and a statistical appearance of consistency. But it cannot inhabit Fuller's internal morality because its "reasons" are not commitments of a responsible agent. They are outputs produced by pattern-matching across prior material. It does not understand itself as bound by a legal order, nor can it be answerable for failures of fidelity to that order.

## Deliberative legitimacy and the right to be heard

For Jürgen Habermas, legitimate decision-making arises from discursive processes in which parties present reasons to one another through an institutional structure of reciprocal recognition. In the adjudicative setting, parties place their arguments before a decision-maker, who in turn offers a justification that they could, in principle, regard as reasonable even if they lose (Habermas 1996).

When a court enforces such an outcome, it does not merely honour a bargain. It backs a determination of rights with state force. To claim that such coercion is exercised in the name of law rather than brute power, there must at least be a guarantee that the parties' claims have been considered within a recognizably human practice of giving and answering reasons.

This point is reinforced by empirical work on procedural justice. Parties are more willing to accept adverse outcomes when they believe the decision-maker listened, treated them with respect and took their arguments seriously (Tyler 2006). That legitimacy-enhancing function presupposes a human being who can listen, respond and be criticized. It is not satisfied by a system that merely simulates dialogue.

ChatGPT may generate text that resembles a reasoned answer. However, it cannot participate in the reciprocal practice of justification that deliberative theories treat as a condition of legitimate coercion. By contract alone, parties cannot transform that simulation into a sufficient basis for state-backed enforcement.

## Responsibility and institutional symbolism

Finally, a distinction must be drawn between liability and responsibility. Statutory and contractual immunities mean that decision-makers are rarely liable in damages for the way they perform their functions. That immunity exists not for their own benefit, but "for the sake of the public, and for the advancement of justice, that being free from actions, they may be free in thought and independent in judgment" (*Garnett v Ferrand* 1827, quoted in *Gaultier v Four Judges* 2025: paragraph 8.2).

Authorities therefore recognize that independence of judgment requires protection from collateral attack. Yet decision-makers are still treated as responsible for their decisions. The act of signing an award, of having one's name and credentials on the front page, symbolizes that someone has

undertaken to answer, professionally and normatively, for the reasoning and result.

This symbolism matters. It marks the decision as the product of human judgment rather than anonymous output. It is part of what allows parties to treat even adverse decisions as instances of justice rather than mere calculation. ChatGPT cannot "answer" for its outputs in that way. Any attribution of responsibility to a developer or institution is a legal fiction, not the moral agency of the decision-maker itself.

Taken together, these ideas support a simple proposition. Adjudication, properly understood, is a human practice of responsible, reason-giving judgment between persons. That does not mean law must reject all technology. It does, however, mean that when a mechanism is asked to perform the core tasks of hearing, reasoning and deciding, the law is entitled to insist that the mechanism be human.

## [C] THRESHOLD CONDITIONS AND ASPIRATIONAL VIRTUES

The preceding section set out the normative foundations of human adjudication. Not every feature of that practice, however, is a non-waivable condition of legal legitimacy. It is well established, for example, that parties may agree that an arbitrator's award or an adjudicator's decision need not include reasons. In such cases, the courts will generally enforce the outcome in accordance with party autonomy, subject only to established exceptions such as fraud, lack of jurisdiction or material breach of natural justice.[2]

Some qualities of private dispute resolution are therefore aspirational virtues. They may render the outcome clearer, wiser, more thorough, more economical, more humane or more admirable. Others are threshold requirements of legitimacy: absent them, the process should not be treated as a lawful basis for state-backed enforcement.

The threshold conditions defended in this article are two. First, there must be a responsible human author of the outcome, that is, someone who can own the result as their judgment and answer for it institutionally and normatively. Secondly, the process must remain sufficiently within the realm of judicial supervision that the court can treat the result as a legal determination rather than as an output it is merely being asked to ratify.

[2] Section 52(4) of the AA; paragraph 22 of part I of the Scheme for Construction Contracts (England and Wales) Regulations 1998) (the Scheme).

These threshold conditions are distinct from the aspirational virtues of excellent judging. One may reasonably hope for wisdom, empathy, moral imagination, rhetorical elegance and commercial realism. All of these qualities improve adjudication, but none needs to be proved for the office to remain legitimate. The present argument does not depend on saying that human decision-makers are always wise, always sincere or always transparent. It depends on the more modest claim that there remains a categorical difference between human judgment and autonomous machine output.

That distinction matters because much of the literature comparing human and AI decision-making misses the real point. The case against the fully autonomous AI tribunal does not depend on proving that ChatGPT is less clever, less accurate or less consistent than a human tribunal. It depends on showing that, even if ChatGPT became all of those things, it would still fail to satisfy the threshold conditions of legitimate adjudication.

A realist or functionalist may object that this account is too idealized. Human adjudication is itself often opaque, decision-makers may rationalize after the event and responsibility may be said to be merely symbolic. Why, then, insist on a categorical distinction between human judgment and algorithmic output, especially where the latter appears plausibly equivalent, or even superior, in practical terms?

The answer is not that humans are neutral whereas ChatGPT is not. Our legal system has never proceeded on the fiction that decision-makers are free from personal beliefs, perspectives, ideology or background (*Locabail v Bayfield* 1999: paragraph 25). Rather, the point is that human bias is personal and variegated. It is spread across many individual decision-makers, each of whom must disclose conflicts, can be challenged and may be criticized or corrected.

By contrast, ChatGPT's "bias" is embedded in its training data, model architecture and alignment policies in ways that cannot be meaningfully inspected or contested (Bathaee 2018). Its behaviour reflects the values and preferences of its developer, yet no individual stands behind the decision as its author. This risks legitimizing a single, inscrutable arbiter replicated at scale, without the ordinary mechanisms of disclosure, challenge and responsibility that govern human decision-makers.

This is why the argument does not depend on proving that humans are better. Machine output, however impressive, cannot merit state-backed enforcement unless it is adopted and owned by a person.

Human minds, despite their flaws, are still the minds of agents who can occupy office, understand themselves as bound by norms, receive criticism as criticism, revise future conduct and stand publicly as the bearers of decisions. Human judgment remains the judgment of a person who can be treated as responsible. That is enough for law's purposes.

The opacity of ChatGPT is different in kind. It is not the opacity of a person whose reasoning may be questioned, institutionally assessed, criticized and owned. It is the opacity of an artefact with no first-person standpoint and no normative relation to the office it is said to fill. A human adjudicator may fail to live up to the ideals of judgment. ChatGPT cannot meaningfully stand in relation to those ideals at all.

## [D] HYBRID AI AND THE SELF-SUBVERSION OF ADJUDICATION

The case against the autonomous AI decision-maker should now be clear. ChatGPT cannot be the responsible author of a binding decision in the sense required by law and philosophy. More troubling, however, is the growing use of AI as an assistant within ostensibly human adjudication.

There is a spectrum of potential uses. At one end lie clerical tasks such as checking for typographical or arithmetical errors. Subject to confidentiality and data protection concerns, there is little reason to object. At the other end are tasks that go to the heart of judgment: identifying the principal issues, summarizing the parties' cases, weighing evidence and drafting the structure and substance of the reasons.

Consider a familiar scenario. An adjudicator receives hundreds of pages of submissions and exhibits under acute time pressure. ChatGPT offers to read them, extract the issues and suggest a draft decision. The appeal is obvious.

It goes without saying that a decision-maker cannot call an old friend for a "freebie" view on a live issue without telling the parties and giving them an opportunity to comment (*Highlands & Islands v Shetland Islands* (2012): paragraphs 8, 9, 20, 31 and 34). The same must be true of ChatGPT. A decision-maker cannot quietly enlist ChatGPT to perform cognitive tasks without the parties' knowledge and opportunity to respond.

The AAA-ICDR model implicitly recognizes the problem because it asks parties to confirm that the AI-generated summary accurately reflects their submissions (AAA-ICDR October 2025). In practice, however, parties to contested proceedings seldom agree on anything, least of all on whether

their carefully constructed case has been fairly captured in a short synopsis. Institutional pressure in favour of speed and economy is likely, over time, to erode even this limited safeguard.

Once ChatGPT is used to generate the initial summary and structure, the adjudicator's understanding of the dispute is already being framed by the system's selection of what is important. ChatGPT has made interpretive choices: which delays matter, which notices are central, how each party's position is paraphrased, which themes are foregrounded and which are pushed to the margins. Human psychology being what it is, such frames anchor subsequent reasoning and are difficult to dislodge.

Over time, repeated reliance on ChatGPT creates a risk of epistemic dependence. If the system consistently produces plausible summaries and draft reasons, the decision-maker has less incentive and, given ordinary pressures of time and cost, less practical ability to reconstruct the dispute independently. The adjudicator's role begins to shift from author to editor, or, worse still, to mere publisher. The substantive work of understanding and shaping the dispute is performed elsewhere.

The tribunal that invites ChatGPT into the core of its reasoning dismantles the very philosophical architecture that could otherwise be deployed in its defence. The accounts developed earlier proceed on a common premise: that there is a human subject who perceives meaning in legal materials, weighs reasons, interprets norms and bears responsibility for the outcome. Once that subject delegates central elements of this cognitive labour to ChatGPT, the predicates of interpretation, fidelity and responsibility no longer apply in the same way. The activity begins to resemble assisted computation rather than judgment.

In those circumstances, philosophy can no longer rescue the tribunal, because the conceptual distinction between judging and computing has been blurred by decision-makers themselves. If, in practice, judgment has been redefined as a hybrid human-AI process in which ChatGPT frames the issues, filters the arguments and drafts the reasons, while the human reviews the result only at the margin, the basis for insisting that adjudication must remain human is materially weakened. The adjudicative office has, in substance, been eroded from within.

The paradox is that proponents of AI assistance often believe they are preserving adjudication, and the profession more broadly, by modernizing it. Yet in presenting ChatGPT as a neutral tool that enhances speed, consistency and objectivity, they also recast judgment as something that can safely be co-produced by an algorithm. Once that premise is accepted,

the principled objection to full automation becomes increasingly difficult to articulate. When AI systems eventually outperform most human tribunals on metrics such as accuracy, consistency or efficiency, those who championed AI assistance will struggle to explain why a human final sign-off remains necessary. If quality has already come to be measured by alignment with machine analysis, the insistence on a human decision-maker will appear sentimental at best, opportunistic at worst.

Emerging regulatory responses do not resolve this concern. For example, Recital 61 of the European Union (EU) Artificial Intelligence Act (Regulation (EU) 2024/1689) states that AI systems used by judicial authorities, or in a similar way in alternative dispute resolution, to assist in researching and interpreting facts and law and in applying law to facts should be classified as high-risk. It also states that AI can support decision-making, but should not replace it: final decision-making must remain a human-driven activity. High-risk systems are accordingly subject to requirements of human oversight and, in certain cases, affected persons have a right to clear and meaningful explanations of the AI's role (Article 86).

However, although the Act currently stands squarely against the full algorithmic replacement, it does not confront the deeper danger identified in this article. The Act's premise is that the risks of adjudicative AI can be managed by keeping a human in the loop. The risk, however, as explained, is that hybrid human-AI decision-making erodes the cognitive substance of judging itself. The danger is gradual hollowing-out, by which the human decision-maker remains in place formally while ceasing to function as the true author. In time, that hollowing-out may itself generate pressure to revise the legal framework, as the principled objection to full algorithmic replacement becomes harder to articulate.

The conclusion is not that decision-makers and their institutions must reject all technology. It is that they must draw a principled line. AI may be used for genuinely trivial, clerical or presentational aspects of the process. At most, it may assist in the articulation of conclusions already independently reached by the decision-maker. It should not, however, be used to summarize submissions, identify issues, weigh evidence, choose between competing arguments or generate the substance of the reasons. Those tasks are constitutive of judgment itself. If they are ceded to machines, there will soon be little left of adjudication that philosophy can plausibly defend as human.

# [E] ENFORCEMENT

The preceding sections have argued that adjudication is a human practice of responsible judgment, and that both fully autonomous and hybrid AI decision-making threaten the normative foundations on which its legitimacy depends. The question now becomes doctrinal. However strong the philosophical objection may be, would English law nevertheless enforce ChatGPT's output if commercial parties agreed to use it as the mechanism for resolving their dispute? It is at the enforcement stage that the conflict between contractual innovation and the law's conception of adjudication comes into sharpest focus.

Consider a construction contract providing that any dispute may be referred to ChatGPT, which is empowered to issue procedural directions, receive the parties' submissions and documentary evidence, and produce a written, reasoned decision. The contract may provide either that ChatGPT's decision is final and binding, or that it is temporarily binding until the dispute is finally determined by litigation or arbitration, thereby mimicking statutory adjudication.

A dispute duly arises. The parties upload their submissions, and ChatGPT generates a decision directing the responding party to pay a substantial sum. The responding party refuses to pay. The referring party then applies to the Technology and Construction Court seeking to enforce ChatGPT's output.

Real disputes may involve additional complications. The clause may be poorly drafted or ambiguously incorporated into the contract. The responding party may have objected from the outset to the legitimacy of the process and reserved its rights. ChatGPT may have misread a figure, misunderstood a document or been fed false material. These issues are important, but they are not the focus here. The present question is more fundamental: as a matter of principle, should the English courts treat ChatGPT's output as binding and enforceable?

No reported case appears yet to answer that question directly. The analysis must therefore proceed from first principles. The party seeking enforcement would need to persuade the court to characterize ChatGPT's output as:

1. an award or decision of an arbitrator or adjudicator; or
2. an expert determination; or
3. a purely contractual risk-allocation device, analogous to an indexation clause.

The next three sections examine each route in turn.

## [F] WHETHER AN AI OUTPUT COULD BE TREATED AS AN ARBITRAL AWARD OR ADJUDICATOR'S DECISION

The first and most attractive route for a party seeking enforcement is to argue that ChatGPT's output should be treated as the decision of an arbitrator or adjudicator. That is because, subject to limited grounds of challenge or refusal, the courts readily enforce arbitral awards and adjudicators' decisions. If ChatGPT could be brought within either statutory framework, enforcement would become markedly easier.[3]

At first sight, the argument may appear plausible. ChatGPT could be programmed to apply the same procedural rules to both parties, enforce timetables, receive submissions and documents, and afford each side an apparently equal opportunity to present its case and answer that of its opponent. On that basis, it might be said, at least superficially, to satisfy the general duty of fairness, impartiality and procedural suitability under section 33 of the AA and section 108 of the HGCRA.

That, however, is to read the law in an unduly thin and mechanistic way. ChatGPT merely executes pre-set instructions over given inputs. It cannot exercise judgment about what fairness demands in context, adapt procedure to the developing circumstances of the case, or recognize when a party has, in substance, already had a fair opportunity to be heard (Bender & Ors 2021; Grizzard & Ors 2025). Nor can it respond to procedural difficulty by drawing on the kind of practical judgment that natural justice often demands. Talk of its impartiality is therefore metaphorical: it has no consciousness, no intentions and no capacity to be criticized as a moral or professional subject (Waltermann 2021; Ayres & Balkin 2024). It therefore cannot act as the responsible decision-maker that the statutory schemes assume.

For the same reason, ChatGPT cannot satisfy the deeper demands of natural justice, which are not exhausted by the mere absence of bias (*RSL v Stansell* 2003: paragraph 31). They also require a tribunal capable of genuinely considering the parties' cases, making context-sensitive procedural judgments and deciding in a way that can be recognized as the product of a responsible adjudicative mind. A non-human system standing in place of the tribunal is therefore difficult to reconcile with

[3] For arbitration, under the AA and, where relevant, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), see eg *Lesotho v Impregilo* (2005: paragraphs 17-18); *Dallah v Pakistan* (2010: paragraphs 101-102). For statutory adjudication, under the HGCRA, see *Macob v Morrison* (1999: paragraphs 19 and 37); *Carillion v Devonport* (2005: paragraph 52).

Lord Hewart's classic statement that "justice should not only be done, but should manifestly and undoubtedly be seen to be done" (*R v Sussex Justices* 1924: 259).

There is also a direct doctrinal obstacle. Section 26(1) of the AA expressly treats the arbitrator's authority as personal. While the HGCRA contains no equivalent provision, the authorities make clear that an adjudicator performs "personal professional services … [which] must be undertaken by a person … [and] cannot be performed by someone else" (*Christopher Linnett Ltd v Harding* (2017): paragraph 53, Nissen J). ChatGPT cannot satisfy that requirement. It is not a person and cannot personally discharge adjudicative functions.

Faced with ChatGPT's output, the better view is that a court should refuse to treat it as an arbitral award or adjudicator's decision. The clause does not, in the author's view, provide for a tribunal recognized by law. In the arbitral context, the parties will have to submit their dispute to the courts (subject to any new agreement), or, if the court accepts that the arbitration clause is severable, it may conclude that it amounts to a valid arbitration agreement which must be given effect by appointing a human tribunal pursuant to section 18 of the AA. In the statutory adjudication context, the contractual machinery would fall away and the Scheme would apply in its place (*Yuanda v WW Gear Construction* 2010: paragraph 61).[4]

Therefore, under the existing statutory schemes, ChatGPT's output is unlikely to be treated as an arbitral award or adjudicator's decision. Recognition under the present statutory framework would be difficult to sustain absent express legislative intervention.

## [G] WHETHER AN AI OUTPUT COULD BE ENFORCED AS AN EXPERT DETERMINATION

The second route is to argue that ChatGPT's output should be enforced, not as an award or adjudicator's decision, but as an expert determination. This route is more formidable. Expert determination is governed by contract and common law rather than by statute. It is a private mechanism by which parties agree to entrust the resolution of a dispute to an expert whose determination is binding, subject only to narrow grounds of challenge such as actual partiality, fraud or departure

[4] The effect is that the referring party shall request an adjudicator nominating body to select a person to act as adjudicator pursuant to paragraph 2(1)(c) of part I of the Scheme.

from the contractual mandate (*Bernhard v Nile* 2004: paragraph 98; *Homepace v Sita* 2008: paragraphs 18 and 19).

That route may appear attractive to the party seeking enforcement because, unlike arbitration and statutory adjudication, an expert's determination is not generally vulnerable to challenge on the basis of alleged breach of natural justice, due process or manifest error, unless the contract itself so provides (*Bernhard v Nile* 2004: paragraph 95; *Barclays v Nylon* 2011: paragraphs 36-38). Furthermore, there is no requirement that the expert's authority be personal: the clause may, for example, appoint a firm of chartered accountants as the expert rather than a named individual (*Jones v Sherwood* 1992: 174).

The response begins with the ordinary definition of the term "expert": "a person with a high level of knowledge or skill relating to a particular subject" (Cambridge Dictionary nd). The fact that the named expert may be an organization does not show that expert determination is compatible with non-human processing. ChatGPT is not an expert but a tool. To treat it as the determining mind would require a deliberate departure from both the ordinary meaning of the term and the assumptions that underpin the jurisprudence on expert determination.

In every reported case, the expert, whether acting in their own name or through a firm, remains a natural person or group of persons exercising professional judgment. The judicial deference to expert determiners rests on confidence in the skill, judgment and accountability of human experts, which ChatGPT lacks. It has no expertise of its own, no professional standing and no capacity to answer for the determination it produces.

To extend the same deference to a fully autonomous AI system would therefore mark a qualitative shift. It would move expert determination away from human professional judgment and toward a computational mechanism that cannot bear responsibility. It would displace human judgment altogether, not merely house it in a corporate shell.

On an argument derived from the existing doctrine of expert determination, the better view is that a court should decline to enforce ChatGPT's output on the basis that the agreement lacks an expert in both the ordinary and the doctrinally relevant sense. This route, though stronger than the first, is likewise unlikely to succeed.

## [H] WHETHER AN AI OUTPUT COULD BE ENFORCED AS A MATTER OF CONTRACT

The final and strongest argument is to retreat from all adjudicative labels and say:

- ◊ This was not arbitration, statutory adjudication or expert determination.
- ◊ We simply agreed that whatever output ChatGPT produced would bind us.
- ◊ ChatGPT is neither tribunal nor expert; it is the agreed machinery of performance.
- ◊ The court should enforce our bargain.

This argument seeks to assimilate ChatGPT to self-executing contractual formulas tied to non-human indices. For example, parties commonly agree to, or are otherwise subjected by statute to, interest on late payment accruing at a fixed percentage above the Bank of England (BoE) base rate current at the relevant time.[5] No tribunal fixes the interest rate; the contract simply bites on whatever the base rate happens to be.

Likewise, standard construction contracts enable parties to agree that prices will be adjusted by reference to inflation or commodity indices.[6] Such index-linked mechanisms are routinely relied on in practice and, where litigated, the courts have treated them as enforceable in principle, subject to clear drafting errors (*Monsolar v Woden Park* 2021: paragraphs 3-7).

The party seeking enforcement would therefore say that ChatGPT's output is no more than another external reference point. Just as the parties in an interest clause agree to be bound by whatever the BoE announces as the base rate, so here they have agreed to be bound by whatever ChatGPT announces as the outcome. On this characterization, the court is not being asked to recognize a tribunal or expert. It is simply being asked to enforce an agreement to treat ChatGPT's output as dispositive.

In doctrinal terms, this is the strongest available argument for enforcement. It does not depend on persuading the court that ChatGPT is an arbitrator, adjudicator or expert. It depends only on the proposition that party autonomy extends this far. The response has three stages.

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5 Late Payment of Commercial Debts (Interest) Act 1998, which implies statutory interest at 8% above the BoE base rate unless the contract provides a "substantial remedy".

6 See eg NEC (2017), Option X1 (Price adjustment for inflation); Joint Contracts Tribunal (2024), Fluctuations Option C.

## Index versus adjudication

An index or interest clause answers a factual question: "What is the BoE base rate on date X?" or "What is the value of Index Y on date Z?" Once that factual state of the world is identified, the contract prescribes the consequences. The BoE or index provider does not hear rival submissions, weigh competing narratives or choose between conflicting claims. It simply reports a publicly ascertainable fact.

By contrast, ChatGPT is asked to receive rival submissions, weigh legal and factual arguments, and pronounce on disputed rights and liabilities. It does not supply an external factual input to an agreed contractual mechanism; it substitutes the tribunal in resolving the underlying dispute. To describe that as mere machinery of performance is to overlook the crucial difference between fixing a contingent fact and outsourcing the act of judgment.

## Limits of contractual autonomy

The second step is to recognize that party autonomy, though extensive, is not unbounded. The courts have long refused to give effect to certain private arrangements, not because they are unclear, but because they are incompatible with the court's role and public policy (*Lee v Showmen's Guild* 1952: 342, cited in *Charles Stanley v Adams* 2013: paragraph 13). Statute and common law have since refined that public policy boundary, carving out regulated spaces for arbitration, statutory adjudication and expert determination.

What has remained constant is judicial resistance to clauses that, in substance, seek to oust the court's supervisory role. Even Parliament may displace the courts only in the clearest terms, and not so far as to undermine the rule of law itself (*Privacy International v IPT* 2019: paragraph 119). Even more so, private parties cannot by contract require the court to act as a rubber stamp for an unreviewable output that lacks responsible authorship, thereby stripping away any meaningful supervisory function. Labelling the mechanism "pure contract" cannot immunize it from public policy scrutiny if, in substance, it amounts to a private redesign of adjudication.

A distinction must therefore be drawn between two kinds of clause. On the one hand are clauses that fix inputs (interest rates, indices and commodity prices), which are then fed into an agreed contractual framework. On the other are clauses that purport to fix outcomes (decisions about who is right and who is wrong), without any human tribunal in

between. The former are part of the machinery of performance. The latter are attempts to computerize the act of adjudication.

## Settlement versus pre-commitment

There is, however, an important nuance. If the parties submit their dispute to ChatGPT, consider its output, and then enter into a settlement agreement, the court should enforce that compromise like any other. ChatGPT's role is incidental; the binding act is the subsequent human agreement.

What is objectionable in the present scenario is the pre-commitment to accept whatever ChatGPT decides, with no further human ratification once its output is known. It is this pre-commitment, rather than the mere use of AI, that should trigger public policy concern. A court sensitive to the distinction can coherently say:

- ◊ We will enforce genuine settlements, even where AI has informed the parties' assessment of their positions.
- ◊ We will enforce neutral machinery clauses tied to factual indices.
- ◊ We will not, however, enforce a pre-commitment to accept the output of a non-responsible system as a binding resolution of a dispute over rights and liabilities.

The pure contract route is therefore, on the better view, also unlikely to succeed if courts are willing to look past labels and classify mechanisms by their function rather than their drafting. The question then comes full circle: why should the law insist that adjudication remains human, and why should it resist contractual attempts to normalize algorithmic decision-making in construction disputes? The answer lies in the normative foundations of adjudication and in the non-waivable conditions of legal legitimacy already explained.

# [I] CONCLUSION AND IMPLICATIONS

This article has argued that the advance of AI into construction dispute resolution raises a deeper question than whether current models hallucinate cases: should the law recognize fully autonomous AI outputs as legitimate resolutions of disputes about rights and liabilities, and therefore capable of attracting state-backed enforcement?

The doctrinal analysis suggests that English law is unlikely at present to enforce that output. Under the existing statutory schemes, ChatGPT cannot plausibly be treated as an arbitrator or adjudicator. It cannot

satisfy the statutory assumptions of personal appointment, responsible judgment and compliance with the demands of natural justice. Nor is it consistent with the doctrine of expert determination, which presupposes a human professional whose personal skill and professional accountability justify judicial deference.

The pure-contract route, treating ChatGPT's output as no more than an agreed external machinery of performance, is the strongest route to enforcement. However, it becomes difficult to sustain once one distinguishes between clauses that fix factual inputs and clauses that attempt to fix adjudicative outcomes. The former are part of ordinary contractual machinery; the latter amount, in substance, to an attempted private redesign of adjudication and are, on the better view, vulnerable to refusal on public policy grounds.

Beneath those doctrinal conclusions lies the article's central claim. Adjudication is a human practice of responsible judgment. The philosophical traditions considered in this article, though different in emphasis, converge on that point. Whether expressed through Aristotle's *phronesis*, Dworkin's moral authorship, Fuller's fidelity to law's internal morality or Habermas's account of legitimacy through reason-giving and reciprocal justification, the underlying idea is the same: when the state lends its coercive force to the resolution of a dispute, the decision must be one for which a person can answer. That is why the law is entitled to insist that when rival claims are heard, evaluated and resolved, the tribunal must be human.

Finally, the article argued that the greatest threat to the human tribunal, and to the law's existing conception of adjudication, comes from the uncritical embrace of hybrid human-AI decision-making. Once ChatGPT is permitted to frame issues, summarize submissions and draft reasons, the human decision-maker risks becoming the outcome's publisher rather than its author. Delegating those cognitive tasks hollows out the very conception of judgment that distinguishes it from computation. If that occurs, decision-makers and their institutions would have undermined the normative foundations on which human adjudication depends.

The practical implications are twofold. First, courts, when the inaugural AI enforcement case reaches them, have an opportunity to set a principled marker that adjudication remains a human responsibility. Secondly, professional institutions for decision-makers should articulate clear guidance on permissible uses of AI, drawing a line between clerical assistance and cognitive delegation. This article has argued against the hybrid human-AI decision-making trend.

Philosophy can still explain why disputes must be resolved by humans; why human flaws may be compatible with legitimacy, while machine opacity is not; and why being judged by someone, rather than processed by something, is a virtue. But philosophy cannot rescue a practice that has already surrendered its core. When the algorithm becomes the tribunal, justice may not cease to exist. What may disappear is the human judgment that has long been treated as a precondition of state-backed coercive force.

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