

Appendix 2

[Draft] Disclosure Review Document

Explanatory Note

1. The Disclosure Review Document (“DRD”) is intended to:
 - (A) facilitate the exchange of information and provide a framework for discussions around the initial scoping of a disclosure exercise;
 - (B) help the parties to agree a sensible and cost effective approach to disclosure; and
 - (C) provide the court with the information it needs to make appropriate case management decisions.
2. The DRD only needs to be completed if one or both parties are seeking an order for Extended Disclosure.
3. Not every section of the DRD will need to be filled out if the case is likely to require only limited disclosure and/or if the identification and retrieval of documents is likely to be straightforward. Section 1B only needs to be completed if a party is seeking request-based Extended Disclosure.

Section 1

4. The purpose of Section 1 of the DRD is to provide the court with a concise summary of the parties’ positions in relation to Extended Disclosure by identifying the Issues for Disclosure and the Model or Models (as set out in PD[] at section 8) which are proposed in respect of such issues. It is a single document that should be jointly completed by all parties.
5. The Disclosure Models are:
 - (A) No order for Disclosure;
 - (B) Limited Disclosure
 - (C) Request-led Search-based Disclosure
 - (D) Search-based Disclosure excluding Narrative Documents
 - (E) Search-based Disclosure including Narrative Documents

Section 2

6. The purpose of Section 2 of the DRD is to provide the court with information about the data held by each party, including:
 - (A) how the data is held;
 - (B) how the parties propose to process and search the data (if a search-based Disclosure Model (Models C, D and E) is ordered); and
 - (C) whether there are any points that the parties have not been able to agree through discussions and which they therefore need the court to determine at the first CMC.
7. Section 2 of the DRD must be accompanied by a certificate of compliance from each party, signed by an appropriate representative. The parties are reminded of their duties as set out in PD[] at section 3, and, in particular, to liaise and cooperate with the legal representatives of the other parties to the claim (or the other parties where they do not have legal representatives) so as to promote the reliable, efficient and cost-effective conduct of disclosure, including through the use of technology.
8. Each party fills out a Section 2 form providing details of their own data and how it is stored. These documents are exchanged with the other party or parties and will inform the parties' discussions of the appropriate approach to disclosure and the court's assessment of the appropriate orders for disclosure.

Section 3 – Guidance on best practice

9. Section 3 of the DRD contains guidance for the parties on some basic disclosure methodology. It should be considered where a search-based Disclosure Model has been ordered by the court in respect of some, or all, Issues for Disclosure. It is intended to serve as a guide for parties on some of the key principles they should discuss and seek to agree concerning the collection, review, and production of documents. It should also provide a framework for maintaining a record of the disclosure process at each stage, in case any issues later arise.

Section 1A – Issues for Disclosure

Completion of Section 1A of the DRD

1. The Claimant must, within 21 days of the filing and service of the Defence (or later statement of case if that is when a request for Extended Disclosure is first indicated), serve on all other parties a completed draft of Section 1A of the DRD, setting out a draft list of the key issues arising out of the parties' statements of case in respect of which disclosure is likely to be sought (the "Issues for Disclosure").
2. The Claimant must also set out the Disclosure Model it proposes for each Issue for Disclosure in the Claimant's part of the right-hand column. If a party proposes that a different Disclosure Model should apply to each party in the case for a particular Issue for Disclosure, this should be noted (e.g. "Model B for C, Model D for D").
3. The List of Issues for Disclosure should not include every disputed fact. Instead, it should identify each broad area of factual dispute in respect of which contemporaneous documents are likely to be probative. It should serve as a point of reference for further discussions between the parties about the manner and scope of disclosure to be given.
4. The List of Issues for Disclosure is not a statement of case. Nor is it intended to replace the List of Issues, which the parties may be required to prepare and file in advance of the CMC, although it should ultimately be consistent with both documents.
5. If a particular Issue for Disclosure has not been included in the list by the Claimant, or is described in a manner that is unacceptable to the Defendant, the Defendant should provide the Claimant with its proposed alternative wording for inclusion in the draft List of Issues for Disclosure as soon as reasonably practicable after the Claimant has served a completed draft of Section 1A.
6. If a Reply or a Reply and Counterclaim is served, the parties may add any further proposed Issues for Disclosure to the list as soon as practicable following service of the Reply.
7. In advance of the first CMC, the parties must discuss and seek to agree the draft List of Issues for Disclosure, the appropriate Model for each Issue for Disclosure and remaining sections of the DRD, (where appropriate). When doing so the parties should have regard to their duties to co-operate and engage with each other in a constructive way.
8. The draft List of Issues for Disclosure should:
 - (A) state whether each Issue for Disclosure is agreed or opposed and, if so, by whom;
 - (B) seek to avoid any duplication of issues, by using consolidated wording for any overlapping Issues for Disclosure where possible. If the parties are not able to agree on consolidated wording for a particular issue, that Issue for Disclosure should be separately listed.

9. If the parties cannot agree whether certain issues should be included as an Issue for Disclosure, such issues should be included with a tick in the “No” section of the “Issue Agreed?” column, along with an indication of the party not agreeing to it (C for Claimant, D for Defendant, D1 etc. for each Defendant in cases with multiple Defendants).
10. Where the parties disagree as to the need for Extended Disclosure, or seek Extended Disclosure on different Models in relation to an Issue for Disclosure, that should be recorded in the “Proposed model of Extended Disclosure” column.
11. Following such discussions, the Claimant must update and re-circulate Section 1A of the DRD to identify areas of agreement and disagreement.

Updating the Issues for Disclosure

12. Disclosure is an iterative process and its scope will require ongoing review, discussion and co-operation between the parties.
13. The fact that a party has not included a particular Issue for Disclosure in the DRD, does not prevent that party from later proposing that a new Issue for Disclosure should be added to the list. For example, new factual issues, relevant to the parties’ Statements of Case, may be identified because of documents disclosed or evidence exchanged during the proceedings, or because of amendments to the Statements of Case. In the usual way, if the issues in dispute change during the proceedings, then it may well be appropriate to update the Issues for Disclosure.
14. The parties may agree changes to the Issues for Disclosure after the first CMC without having to seek the court’s approval, unless the effect of such changes will be to materially change an order already made, or impact in a material way on the procedural timetable and/or trial date.
15. If Section 1A of the DRD is modified to include any further Issues for Disclosure, the other sections of the DRD should be updated as appropriate to cover any new Issues for Disclosure.
16. If, despite the best efforts of the parties, they are unable to agree on anything throughout this process, they may request the assistance of the court in a brief hearing as set out in PD[] at section 11.

Section 1A: Issues for Disclosure and proposed Disclosure Models

	Brief description of the Issue for Disclosure	Issue agreed?		Proposed Model of Extended Disclosure (A – E)	
		Yes	No (party not agreeing)	To be completed by Claimant	To be completed by Defendant
		1.			
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

Section 1B – Request-led Research-based Disclosure (Model C)

Completion of Section 1B of the DRD – Request-based Disclosure

1. Where a party has indicated in Section 1A of the DRD its intention to seek Model C Request-led Search-based Disclosure, it must complete and then provide Section 1B of the DRD to the other party as soon as reasonably practicable and, in any event, not less than 28 days before the date fixed for the CMC.
2. The parties' requests should be focused and concise in order that the responding party may be clear as to the particular documents or narrow classes of documents relating to a particular Issue for Disclosure for which it is being asked to undertake searches. Broad and wide-ranging formulations such as "any or all documents relating to..." should not be used.
3. Documents falling within the scope of a particular request are required to be disclosed if they support or adversely affect any party's case.
4. Any party served with Section 1B requests must respond by completing the "Response" column of Section 1B, either agreeing to each request or giving concise reasons for any refusal.
5. The completed form must then be served on all parties as soon as reasonably practicable and, in any event, not less than 14 days before the CMC.
6. The parties should seek to agree requests made in Section 1B of the DRD as far as possible in advance of the first CMC. Any outstanding disagreements will be resolved by the court at that hearing.
7. If a party proposes that Model C Request-led Search-based Disclosure would be appropriate for its disclosure on one or more Issues for Disclosure, but the other party disagrees, there will obviously be no list of requests, as the party who would draft this will not be proposing Model C. In these circumstances, if the parties cannot agree the appropriate Model, the court will make an order as to the appropriate Model at the CMC. The court may order Model C Disclosure, even where the party that would formulate the requests opposes this. If the court orders Model C Disclosure, it will then set down a timetable for Section 1B to be completed and a hearing date if needed for any areas of disagreement to be determined by the court.

Section 1B: Model C requests for Disclosure

Claimant / Defendant (delete as appropriate)				
	Issue for Disclosure	Request for Documents or narrow category of documents which are likely to support or undermine its own case or that of another party and which fall within the scope of the request made	Response	Decision (for the court)
1.	Issue []:			
2.				
3.				
4.				
5.				
6.				

Section 2

Completion of Section 2 of the DRD

1. Having completed the List of Issues for Disclosure in Section 1A of the DRD, where any party is seeking disclosure using any of Models C, D or E, the parties should prepare and exchange drafts of Section 2 of the DRD as soon as reasonably practicable and in any event not later than [28 days] before the CMC.
2. The purpose of Section 2 of the DRD is to assist the parties in identifying and then recording where potentially disclosable documents are believed to be filed or stored, whether such sources should be searched and, if so, how.
3. In cases where no documents are held by a party, that party may confirm this in writing rather than complete Section 2 of the DRD.
4. The parties should include in Section 2 any information that will assist the court in determining the appropriate scope of disclosure for each Issue for Disclosure. The information requested should be treated as a guide and not an exclusive list of the information that should be provided.
5. The parties must confer (ideally in person or by phone), and seek to agree the contents of Section 2 of the DRD as it applies to their disclosure, in advance of the CMC. Those issues that cannot be agreed must be recorded, in a summary form, in those sections to be completed after discussions between the parties.
6. For the avoidance of doubt, if only one party considers that disclosure of certain materials is required, the other party must nevertheless state its proposals as to how the disclosure of such materials should be effected, without prejudice to its position that no order for disclosure should be made.
7. The “agree to disagree” approach should be taken not only in relation to categories of documents but also where the parties are considering which of the various Disclosure Models should be used and how searches should then be conducted.

Estimates as to costs

8. Each party must provide an estimate, in the last two rows of Section 2, of the total cost to it of the search, review and production process that it would need to undertake in order to comply with an order for Extended Disclosure in the form sought by each party.
9. Additional rows should be added if there are more than two parties with differing positions on Extended Disclosure.
10. The parties will be expected to consider the cost of Extended Disclosure as part of their discussions of the appropriate scope of any Extended Disclosure since it is one of the factors to be taken into account when considering the proportionality or otherwise of the disclosure proposed.

11. If the approach to Extended Disclosure is not fully agreed, the parties will be expected to be able to provide more detailed information at the CMC as to how their global estimates were arrived at and the impact upon them of particular requests for Extended Disclosure.
12. In cases where the disclosure exercise is likely to be complex and substantial with multiple sources of data, it may not be possible to answer all of the questions in Section 2 of the DRD questionnaire in advance of the Case Management Conference. However, the parties should nevertheless seek to provide as much information as possible about how they intend to approach disclosure so that the court is then in a position to decide what, if any, orders for Extended Disclosure should be made at the CMC.
13. Not less than 7 days before the CMC, the parties must file at court and serve on all other parties updated versions of any sections of the DRD that have been exchanged, completed to the fullest extent possible and signed by their representative (Litigant in Person, client or legal adviser, as appropriate).

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Section 2 Questionnaire

Where a party seeks Extended Disclosure using any of Models C, D or E, the parties must complete the appropriate part of Section 2, even if the request for Extended Disclosure, or the relevant Issue for Disclosure, is contested.

The provision of information about the data that might be relevant to a request for Extended Disclosure shall not be treated as a concession that Extended Disclosure is appropriate.

Claimant / Defendant (delete as appropriate)		
	Question	Details
Phase 01	DATA MAPPING	
1.	<p>Hard copy documents / files</p> <p>Confirm whether hard copy documents (for example, notebooks, lever arch files, note pads, drawings/plans and handwritten notes) that are not originally electronic files should be included in collection.</p> <p>Please propose an approach for the production of hard copy documents: if they will be scanned and made searchable or if they will be disclosed and made available for inspection in hard copy only.</p>	
2.	<p>Electronic files: data sources/locations</p> <p>Please set out details on all data sources to be considered at collection including:</p> <ul style="list-style-type: none"> (A) Document repositories and/or geographical locations (B) Computer systems or electronic storage devices (C) Document management systems 	

	Question	Details
	<p>(D) Email servers</p> <p>(E) Cloud based data storage</p> <p>(F) Back-up systems</p> <p>(G) Third parties who may have relevant documents which are under your control (e.g. agents or advisers).</p> <p>Please also set out details as to sources that are unavailable but may host relevant documents</p> <p>If a data source is likely only to host documents relevant to particular Issues for Disclosure, that should be noted.</p> <p>Please identify any sources which may raise particular difficulties due to their location, format or any other reason.</p>	
3.	<p>Please describe the software installed on these devices on which relevant documents may have been created or stored.</p> <p>Please identify any bespoke or licenced software which may not be available to the other party but without which it is not possible to review the relevant data (e.g. Microsoft Project etc.).</p>	
4.	<p>Please set out a high level summary of the document types (including but not limited to email, Word documents, spreadsheets, presentation and image files) likely to be relevant to Issues for Disclosure.</p>	
5.	<p>Custodians</p> <p>Please set out a list of those custodians whose files you propose to search for documents relevant to Issues for Disclosure for which any party seeks Extended</p>	

	Question	Details
	<p>Disclosure.</p> <p>If a custodian is only relevant to certain Issues for Disclosure, or a certain date range, please indicate this next to their name if this might allow the scope of the search to be narrowed. If the list is extensive, please set out a proposal to prioritise key custodians.</p>	
6.	<p><i>(For completion after discussions between the parties)</i></p> <p>Are the proposals at 5 agreed? If not, set out any areas of disagreement.</p>	
7.	<p>Date ranges</p> <p>Please set out the date range (or ranges) within which you would propose to search for Documents.</p> <p>If a narrower range of dates is appropriate for a particular Issue for Disclosure, or a particular custodian, please indicate this.</p>	
8.	<p><i>(For completion after discussions between the parties)</i></p> <p>Are the proposals at 7 agreed? If not, set out areas of disagreement.</p>	
9.	<p>Keyword search terms</p> <p>Please list any keywords identified at this stage that you may use to search the data to identify documents that may need to be disclosed.</p> <p>If a certain keyword is relevant only to a particular Issue for Disclosure, please indicate this.</p> <p>Nb, It is recognised that keywords will need to be tested and refined during the disclosure process and any keywords suggested at this stage are therefore for</p>	

	Question	Details
	<p>the purposes of discussion only. The use of initial keywords may assist the parties to identify the likely volume of data that may need to be reviewed.</p> <p>If it is not practicable to provide a list of keywords prior to the CMC, the parties should engage and seek to co-operate following the CMC to identify and agree the key words they propose using and thereafter test those key words against the data to determine whether or not they are appropriate.</p>	
10.	<p><i>(For completion after discussions between the parties)</i></p> <p>Are the proposals at 9 agreed? If not, set out areas of disagreement.</p>	
11.	<p>Irretrievable documents</p> <p>Please state if you anticipate any documents being irretrievable due to, for example, their destruction or loss, the destruction or loss of devices upon which they were stored, or other reasons.</p>	
12.	<p>Technology Assisted Review (TAR)</p> <p>Parties are to consider the use of TAR to assist in the review.</p> <p>Where parties have considered the use of TAR but decided against it at this stage (particularly where the review universe is in excess of 50,000 documents) they should set out reasoning as to why TAR will not be used.</p> <p>If the parties are in a position to propose the use of TAR in advance of the CMC, those proposals should be set out in this Section.</p>	
Costs		
13.	<p>Estimate of your costs of search, review and production based on Extended Disclosure (Models and scope of any search required) requested by the</p>	

	Question	Details
	Claimant.	
14.	Estimate of your costs of search, review and production based on Extended Disclosure (Models and scope of any search required) requested by the Defendant.	

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Disclosure Certificate (represented parties)

I hereby confirm that I have discussed, explained and advised my client on the following:

1. The alternative orders that can be made by the court in relation to disclosure, including the question of whether or not an order for Extended Disclosure should be sought at all and, if so, what the Issues for Disclosure should be and which of the Disclosure Models are appropriate to achieve a fair determination of those Issues for Disclosure;
2. The duties that I and my client are under in relation to disclosure pursuant to PD[] at section 3;
3. The overriding objective in all cases to seek to ensure that the burden and costs of disclosure are reasonable and proportionate in the context of the proceedings.
4. The likely costs that will be incurred in respect of the disclosure orders sought.

I further confirm that the information provided in this DRD is, to the best of my knowledge and belief, true and accurate.

.....
Signed

[Legal Adviser]

Disclosure Certificate (unrepresented parties)

I hereby confirm as follows:

1. I understand the duties that I am under in relation to disclosure pursuant to PD[] at section 3
2. I am aware of the overriding objective in all cases to seek to ensure that the burden and costs of disclosure are reasonable and proportionate in the context of the proceedings.
3. The information provided in this DRD is, to the best of my knowledge and belief, true and accurate.

.....

Signed

[Claimant / Defendant]

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Section 3: Guidance on process after any order for Extended Disclosure has been made

1. Where the court orders the parties to give Extended Disclosure, the parties will need to consider the appropriate methodology for the disclosure exercise, which includes the collection, processing, review and production of documents.
2. The parties and their advisers are reminded of their duties to the court to discuss and endeavour to agree the approach to be taken to disclosure, always with a view to reducing the burden and cost of this process.
3. Although the parties are under a duty to discuss and seek to agree the approach to be taken on disclosure, there may be points which cannot be agreed despite the best efforts of the parties, in which case the parties should request the assistance of the court in a brief hearing as set out in PD[] at section 11.
4. This guidance identifies various forms of technology assisted review software (“TAR”) which are currently available and in use. The parties should not, however, feel constrained from proposing new forms of TAR, which may be developed in the future and which may be appropriate for use in any given case.

Appropriate methodology

5. Although the parties may approach the disclosure exercise in different ways and using different technology, an appropriate methodology for a case involving electronic documents should always include the following:
 - (A) Electronic documents should be collected in a format that preserves and does not alter the underlying document metadata¹.
 - (B) A record should be kept of each stage of the process so that the methodology can be explained to the court if necessary after the event (see Methodology record below).
 - (C) To the fullest extent practicable, deduplication of the data set should be undertaken prior to giving disclosure of data to the other side.

Agreeing aspects of methodology

6. To the extent that this has not already been agreed between the parties or determined by the court, the parties should seek to agree the following as early in the process as possible:

¹ The onus is on the parties to ensure they engage appropriate IT forensic expertise to assist with this process if they or their legal advisers do not have such expertise in house.

- (A) How the collection data set is to be identified and collected.
- (B) Data exclusion measures applied (e.g. Domains such as @CompanyA.com).
- (C) Any limitations that will be applied to the document collection process and the reasons for such limitations.
- (D) Data culling measures applied at collection (i.e. date range, custodians, search terms).
- (E) How each party intends to use technology assisted review/ data analytics to conduct a proportionate review of the data set (particularly where the review data set is likely to be in excess of 50,000 documents).
- (F) The approach and format for production. This will have an impact on the approach to the review exercises, so parties should endeavour to agree this point at an early stage.
- (G) Format of documents to be exchanged – parties are encouraged to exchange documents in native format unless there is a reasonable justification not to do so (e.g. redacted documents).
- (H) Management of document groups for production – parties are encouraged not to break document groups (families) and to review a document group as a whole.
- (I) If documents within a group are to be withheld at the production stage they should be replaced with a placeholder indicating the reason for document being withheld (eg Withheld for Privilege). The document group as a whole should be retained.
- (J) Format for electronic exchange – parties are encouraged to agree database load file format and details to be included in load file/document index. All documents to be produced should be assigned a Disclosure Identification/Number. There is no need to produce a typed list of documents in the traditional sense, unless that will be of assistance to the parties.

Methodology record

- 7. The parties should keep records of their methodology during the disclosure exercise, to include the following:
 - (A) Document sources not considered at collection and why.

- (B) The deduplication² method applied.
- (C) Any DeNISTing³ applied.
- (D) Approach to non-text searchable items.
- (E) Approach with encrypted/password protected items (i.e. what measures were applied to decrypt).
- (F) Search terms, including the number of search term responsive documents and search term responsive documents plus family members.
- (G) Any use of clustering, concept searching, e-mail threading, categorisation and any other form of analytics or technology assisted review.

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² The options for deduplication are as follows; (A) Global - where documents across the entire processed data set are deduplicated against each other. This means that where a document exists in any location within the data set only one copy of it is retained; (B) Custodian - where documents held by the same custodian are deduplicated against each other only or (C) Custom – specific to the project

³ “DeNISTing” is a method of reducing the number of documents subject to lawyer or computer review by removing file types that are highly unlikely to have evidentiary value. DeNISTing” is the [National Institute of Standards and Technology](#) and the process of DeNISTing is based on a list of file types maintained by the agency.