

Appendix 2¹

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 disclosure;
 - (B) help the parties to agree a sensible and cost-effective approach to disclosure and identify areas of disagreement; and
 - (C) provide the court with parties’ proposals on disclosure, agreed or otherwise, so the court can make appropriate case management decisions at the case management conference.
2. The explanatory notes to each section of the DRD are guidance. Nevertheless, parties are encouraged to follow this guidance, where applicable, unless there are good reasons not to do so.
3. Unless otherwise stated, references to paragraph numbers in the DRD are to Practice Direction []. If there is a conflict between the DRD and the Practice Direction, the Practice Direction will prevail.
4. The DRD only needs to be completed where the parties are seeking an order for Extended Disclosure where a search-based Disclosure Model (i.e. Models C, D and/or E) is proposed. In complex cases, the DRD may be modified as required to ensure that information is provided to the court in a convenient and helpful format. This may include revising some of the questions asked in Sections 2 and 3 of the DRD or adding others relevant to the particular disclosure exercise to be undertaken.
5. The DRD should be completed and submitted electronically as a single document to the court by the parties. The claimant will be responsible for doing this. In some proceedings, not every section of the DRD will need to be filled out, particularly if the proceedings are likely to require very little disclosure and/or if the identification and retrieval of documents is likely to be straightforward.
6. Unless otherwise agreed between the parties or ordered by the court, the timetable for completion of the DRD is set out in paragraphs 7 and 10 of the Practice Direction. For convenience the timetable is summarised below as follows:

¹ The DRD is a draft, approved by the Civil Procedure Rule Committee on 13 July 2018, but is awaiting Ministerial consent and may therefore be subject to change.

	Stage to be completed	PD Ref.	Deadline
Step 1	Each party should state, in writing, whether or not it is likely to request Extended Disclosure to include one or more of Models B, C, D or E on one or more issues in the case. At this point it should not particularise the Model(s) or the issue(s) in the case.	Para 7.1	Within 28 days of the final statement of case.
Step 2	Where one or more of the parties has indicated it is likely to request Extended Disclosure, the claimant must prepare and serve on the other parties a draft List of Issues for Disclosure unless the equivalent of such a list has already been agreed between the parties (for example, as part of a fuller list of issues).	Para 7.2	Within 42 days of the final statement of case.
Step 3	In the event that a particular Issue for Disclosure has not been included in the List of Issues for Disclosure, or is described in a manner that is unacceptable to the defendant, using section 1A of the Disclosure Review Document the defendant should provide the claimant with its proposed wording or alternative wording for inclusion in the draft List of Issues for Disclosure.	Para 7.5	As soon as practicable but in any event no later than 14 days after service of the draft List of Issues for Disclosure.
Step 4	The parties must discuss and seek to agree the draft List of Issues for Disclosure. They should consider whether any draft Issue for Disclosure can be removed. For each Issue for Disclosure that is maintained, the parties should indicate at this point, using Section 1A of the Disclosure Review Document which Model of Extended Disclosure is sought for each party. Where Model C Disclosure is contemplated the parties should discuss the requests that might apply for the purpose of that disclosure.	Para 7.6	In advance of the first case management conference.
Step 5	Any party proposing Model C Disclosure must complete and then provide Section 1B of the Disclosure Review Document to the other parties.	Para 10.5	No later than 28 days after the defendant has responded in accordance with paragraph 7.5 of the Practice Direction to the claimant's draft List of Issues for Disclosure.

Step 6	Any party provided with a completed Section 1B in this way must respond by completing the “response” column either agreeing to the request or giving concise reasons for not agreeing to the request.	10.5	Within 14 days of receiving requests in Section 1B of the Disclosure Review Document.
Step 7	Having agreed the List of Issues for Disclosure and exchanged proposals on Model(s) for Extended Disclosure, the parties should prepare and exchange drafts of Section 2 of the Disclosure Review Document (including costs estimates of different proposals, and where possible estimates of likely amount of documents involved).	Para 10.6	As soon as reasonably practicable and in any event not later than 14 days before the case management conference.
Step 8	The parties must seek to resolve any disputes over the scope of any Extended Disclosure sought.	Para 10.7	In advance of the first case management conference.
Step 9	A finalised single joint Disclosure Review Document should be filed by the claimant. Related correspondence and earlier drafts should not ordinarily be filed.	Para 10.8	Not later than 5 days before the case management conference.
Step 10	The parties must each file a signed Certificate of Compliance substantially in the form set out in Appendix 3 to the Practice Direction.	Para 10.9	As soon as reasonably practicable after the claimant has filed the finalised single joint Disclosure Review Document, but in any event in advance of the case management conference.

Completing Section 1A of the DRD

1. The purpose of Section 1A of the DRD is to provide a concise summary of the parties' proposals in relation to Extended Disclosure by identifying the Issues for Disclosure and the proposed Models for Disclosure in respect of such issues. The list of Issues for Disclosure must be completed in accordance with paragraphs 7 and 10 of the Practice Direction².
2. Issues for Disclosure are defined at paragraph 7.3 of the Practice Direction as only those key issues in dispute, which the parties consider will need to be determined by the court with some reference to contemporaneous documents in order for there to be a fair resolution of the proceedings. It does not extend to every issue which is disputed in the statements of case by denial or non-admission.
3. The Issues for Disclosure are a point of reference for further discussions between the parties about the manner and scope of disclosure to be given. They are not a statement of case. Nor are they intended to replace the List of Issues, which the parties may be required to prepare and file in advance of the case management conference, although the two documents should ultimately be consistent with each other.
4. The 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.
5. In accordance with paragraph 7.5 of the Practice Direction, if a particular Issue for Disclosure has not been included in Section 1A by the claimant, or is described in a manner that is unacceptable to the defendant, using Section 1A of the DRD the defendant should provide the claimant with its proposed wording or alternative wording for inclusion in the draft list of Issues for Disclosure as soon as reasonably practicable but in any event no later than 14 days after service of the draft List of Issues for Disclosure.
6. 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).
7. 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.

² It is to be completed as a Word Document, with any amendments proposed in redline by the parties during period when it is being discussed and finalised. A clean version should ultimately be provided to the court.

Specifying Disclosure Models in Section 1A of the DRD

8. The Disclosure Models under paragraph 8 are:

Model A: No order for Disclosure;

Model B: Limited Disclosure

Model C: Request-led Search-based Disclosure

Model D: Narrow search-based Disclosure, with or without Narrative Documents

Model E: Wide Search-based Disclosure

9. In addition to completing a list of Issues for Disclosure in Section 1A of the DRD, the parties should also specify which of the above Disclosure Models is proposed in respect of particular Issues for Disclosure.

10. If a party proposes that a different Disclosure Model should apply to each party in the case of a particular Issue for Disclosure, this should be noted (e.g. "Model B for C" (Claimant), "Model D for D" (Defendant)).

11. The claimant must update and re-circulate Section 1A of the DRD to identify areas of agreement and disagreement following the discussions required by paragraph 7.

Updating the Issues for Disclosure

12. The scope of disclosure may 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 a statement 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 and, as a consequence, Section 2 of the DRD.

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, costs and/or trial date.

**Section 1A:
Issues for Disclosure and proposed Disclosure Models**

Brief description of the Issue for Disclosure ³		Reference to statement of case	Issue agreed?		Proposed Model of Extended Disclosure (A – E)		Decision (for the court)
			Yes	No (party not agreeing)	To be completed by claimant	To be completed by defendant	
1.							
	<i>[Alternative proposed wording, if not agreed]</i>						
2.							
3.							
4.							
5.							

³ If the wording of any Issue for Disclosure cannot be agreed, the alternative wording proposed should be included immediately under the claimant's formulation.

Brief description of the Issue for Disclosure ³		Reference to statement of case	Issue agreed?		Proposed Model of Extended Disclosure (A – E)		Decision (for the court)
			Yes	No (party not agreeing)	To be completed by claimant	To be completed by defendant	
6.							
7.							
8.							
9.							
10.							

Section 1B

Request-led Research-based Disclosure (Model C)

Completion of Section 1B of the DRD

1. In accordance with paragraph 10.5, any party proposing Model C Extended Disclosure must complete Section 1B of the DRD and provide it to the other parties no later than 28 days after the defendant has responded in accordance with paragraph 7.5 of the Practice Direction to the claimant's draft List of Issues for Disclosure.
2. Any party provided with a completed Section 1B in this way must respond within 14 days by completing the "response" column either agreeing to the request or giving concise reasons for not agreeing to the request.
3. The parties' requests should be focused and concise in order that the responding party may be clear as to the particular document(s) 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.

Section 1B: Model C requests for Disclosure

Claimant / Defendant (delete as appropriate)				
	Issue for Disclosure	Request for Document 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.				
7.				
8.				
9.				
10.				

Section 2

Completion of Section 2 of the DRD

1. The purpose of Section 2 of the DRD is to provide the court with information about the data held by each party, including:
 - (A) where and how the data is held;
 - (B) how the parties propose to process and search the data where a search-based Disclosure Model (Models C, D and E) is sought in relation to particular Issues for Disclosure); 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 case management conference.
2. 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.
3. 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 listed in Section 2 should be treated as a guide and not an exclusive list of the information that should be provided.
4. 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 information 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.
5. The parties must confer (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 case management conference. 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. 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.

Who has responsibility for incorporating the parties' comments on the DRD?

1. Unless otherwise agreed or ordered, the claimant is to be responsible for updating the DRD throughout the proceedings to ensure that it reflects the parties' combined comments and discussions. Where the claimant is unrepresented, it may be appropriate for the defendant's advisers to assist the claimant and/or take responsibility for completion of the DRD by agreement.
2. When a party other than the claimant is completing Section 2 of the DRD, it may do so by completing and sending across just Section 2 of the DRD completed (i.e. there is no need for the party to carry across any text already discussed and agreed in relation to Sections 1A and 1B). The claimant should then ensure that the information provided to it in Section 2 by the other party is incorporated into the latest draft of the DRD, over which it has ultimate carriage.

Estimates as to costs

3. In accordance with paragraph 22 of the Practice Direction, the parties are required to provide an estimate of what they consider to be the likely costs of giving the disclosure proposed by them in the DRD, and the likely volume of documents involved, in order that a court may consider whether such proposals on disclosure are reasonable and proportionate. These estimated costs may be used by the court in the cost budgeting process. This information is to be provide in answer to questions 15 to 17 of Section 2.
4. If the approach to Extended Disclosure is not fully agreed, the parties should be ready 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.
5. In cases where the cost budgeting scheme applies, if it is not practical to complete the disclosure section of Form H in relation to disclosure prior to the court making an order in relation to disclosure at the case management conference, the parties may notify the court that they have agreed to postpone completion of that section of Form H until after the case management conference (see paragraph 22.2 of the Practice Direction).

Section 2 Questionnaire

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) Mobile phones, tablets and other handheld devices (D) Document management systems (E) Email servers (F) Cloud based data storage 	

	Question	Details
	<p>(G) Webmail accounts e.g. Gmail, Hotmail etc</p> <p>(H) Back-up systems</p> <p>(I) Social media accounts</p> <p>(J) 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 format or file types in which relevant documents may have been created or stored on devices.</p> <p>Please identify any bespoke or licenced proprietary software in which relevant documents have been created or stored 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, Lotus Notes, Bloomberg Chat 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>	

	Question	Details
5.	<p>Initial Disclosure – description of searches already undertaken</p> <p>In accordance with paragraph 10.4 of the Practice Direction, each party should (save as already described for Initial Disclosure) describe any searches for documents that it has undertaken or caused to be undertaken for the purposes of the proceedings (including in advance of the commencement of the proceedings).</p>	<p>Claimant: []</p> <p>Defendant: []</p>
6.	<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 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>	
7.	<p><i>(For completion after discussions between the parties)</i></p> <p>Are the proposals at 6 agreed? If not, set out any areas of disagreement.</p>	
8.	<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>	

	Question	Details
9.	<p><i>(For completion after discussions between the parties)</i></p> <p>Are the proposals at 8 agreed? If not, set out areas of disagreement.</p>	
10.	<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 if it might allow the scope of the search to be narrowed.</p> <p>Nb: The use of initial keywords may assist the parties to identify the likely volume of data that may need to be reviewed. However, keywords will need to be tested and refined during the disclosure process. Accordingly, any keywords proposed at this stage are for the purposes of discussion only.</p> <p>The fact that a party may propose a keyword at this stage should not be taken as an acceptance that the keyword should ultimately be used, particularly if, on testing the keyword against the available data, it provides false positive results.</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>	
11.	<p><i>(For completion after discussions between the parties)</i></p> <p>Are the proposals at 10 agreed? If not, set out areas of</p>	

	Question	Details
	disagreement.	
12.	Irretrievable documents 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.	
13.	Use of analytics Parties are to consider using the full range of tools in the analytics suite available to them (either in-house or via e-disclosure specialist firms), to assist in the review. This might include some of the more complex tools available such as technology (or computer) assisted review (TAR or CAR), and other similar software review tools (see question 14 below). Parties should identify which analytics tools / methods they will be using, and any configuration applied to those tools. Analytics can include but is not limited to the following: email threading, near duplicate identification, concept searching, concept clustering and foreign language analysis.	
14.	Technology / computer assisted review (TAR) Parties are to consider the use of technology / computer assisted review tools. These are software tools used for prioritising or coding a collection of documents which take account of a senior lawyer's review and judgments on a set of documents and then extrapolate those judgments to the remaining document collection. Where parties have considered the use of such tools 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 such tools will not be used. If the parties are in a position to propose the use of technology or	

	Question	Details
	computer assisted review tools in advance of the CMC, those proposals should be set out in this section.	
15.	Estimates of Costs Where the parties have agreed searches to be undertaken, state the estimated cost of collection, processing, search, review and production of your Extended Disclosure.	
16.	Where any aspect of the approach to Disclosure is not agreed, estimate your costs of collection, processing, search, review and production of <u>your</u> documents based on Extended Disclosure (Models and scope of any search required) requested by the <u>claimant</u> .	
17.	Where any aspect of the approach to Disclosure is not agreed, estimate your costs of collection, processing, search, review and production of <u>your</u> documents based on Extended Disclosure (Models and scope of any search required) requested by the <u>defendant</u> .	

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 Disclosure 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 liaise and cooperate with the legal representatives of the other parties to the proceedings (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, 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 Disclosure Guidance Hearing as set out paragraph 11 of the Practice Direction.
4. This guidance identifies various forms of analytics, and technology or computer assisted review software which are currently available and in use. The parties should not, however, feel constrained from proposing new forms of processing and review software, 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 metadata (where possible)⁴ thereby allowing the party receiving the documents the same ability to access, search, review and display the documents as the party giving disclosure. This approach should generally be taken unless a document has been redacted.
 - (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 (using the hash values of the documents should be undertaken during processing and prior to giving disclosure of data to the other side.

⁴ 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.

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:
- (A) How the collection data set is to be identified and collected.
 - (B) Data culling measures applied at collection (i.e. date range, custodians, search terms).
 - (C) Any limitations that will be applied to the document collection process and the reasons for such limitations.
 - (D) Data exclusion measures applied during or post-collection (e.g. Domains such as @CompanyA.com).
 - (E) How each party intends to use analytics to conduct a proportionate review of the data set
 - (F) How each party intends to use technology assisted review 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).
 - (G) 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.
 - (H) 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). Electronic documents should generally be made available in the form which allows the party receiving documents the same ability to access, search, review and display the documents as the party giving disclosure
 - (I) Management of document groups for production – parties should describe and agree the approach they will adopt for document groups (families). Often, it will be appropriate to agree not to break document groups (families) and to review a document group as a whole.
 - (J) If documents within a group are to be withheld at the production stage the parties should consider and agree whether to use placeholders indicating the reasons for document being withheld (eg Withheld for Privilege).
 - (K) 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 deduplication⁵ method applied.
 - (C) Any DeNISTing⁶ 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.

⁵ 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

⁶ “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.