**APPENDIX 5**

**LESS COMPLEX CLAIMS**

**1.** This appendix contains provisions for a simplified disclosure regime for Less Complex Claims. All the provisions of the main body of Practice Direction 57AD on disclosure in the Business and Property Courts apply to Less Complex Claims, including the provisions relating to Initial Disclosure in accordance with paragraph 5 of Practice Direction 57AD, unless they are expressly varied by this appendix or are required to be applied with appropriate changes as a consequence of its provisions.

**2.** Parties to a dispute should always consider whether a dispute or claim is suitable for the Shorter Trials Scheme rather than being treated as a Less Complex Claim.

**Designating claims as Less Complex Claims**

**3.** A Less Complex Claim is a claim which by virtue of its nature, value, complexity and the likely volume of Extended Disclosure may not benefit from the full procedure set out in the main body of Practice Direction 57AD. The value of a claim means a reasonable estimate, made in good faith, of the total financial value at risk in the claim taken with the value, so far as ascertainable, of any non-financial relief sought.

**4.** If the value of a claim is less than £1,000,000 then unless the other factors specified in paragraph 3 above indicate to the contrary, the claim should be treated as a Less Complex Claim. The fact that the value of a claim may exceed £1,000,000 does not, of itself, mean that the claim should not be treated as a Less Complex Claim if the other factors specified in paragraph 3 above indicate that it should be.

**5.** A claim may be treated as a Less Complex Claim for the purposes of Extended Disclosure either by an agreement made between all the parties to the claim or by order of the court.

**6.** An agreement to treat a claim as a Less Complex Claim may be made between parties before or after a claim is issued and these provisions may be used in respect of existing as well as new proceedings. If an agreement is reached before a claim is issued it takes effect upon service of the claim on the parties to the agreement. An agreement between the parties may not vary the provisions for Extended Disclosure contained in this appendix, unless approved by court order.

**7.** If there is no agreement between the parties before the claim is issued, the claimant may by letter or in its particulars of claim notify the defendant that it wishes the claim to be treated as a Less Complex Claim. If no such notification is given by the claimant, a defendant may by letter or in its defence notify the claimant that it wishes to treat the claim as a Less Complex Claim.

**8.** A request to treat a claim as a Less Complex Claim must include brief reasons for believing that the claim meets the criteria specified in paragraph 3 of this appendix.

**9.** If the parties acting reasonably and in good faith do not agree to the claim being treated as a Less Complex Claim, the provisions of this appendix shall not apply unless the court makes an order to the contrary. The court may make such an order of its own volition or upon determining an application made by application notice. The application notice must contain or be accompanied by a fair summary of the parties’ competing contentions in relation to the application of the criteria specified in paragraph 3 of this appendix and copies of any relevant correspondence. Where possible, the court will make a determination in writing without a hearing.

**Simplified procedure for Less Complex Claims**

**10.** Where the parties have agreed that this appendix shall apply to the claim, or the court has so ordered, the provisions in the main body of Practice Direction 57AD shall be varied and shall operate as follows:

**10.1** Extended Disclosure will be given using only Models A, B or D. Models C and E are not available for use in a Less Complex Claim.

**10.2** The parties shall complete a disclosure review document in the form set out in Appendix 6 in accordance with the timetable contained within paragraphs 7 and 10 of Practice Direction 57AD and Appendix 7.

**10.3** As provided for in paragraphs 7.1 and 10.1 of Practice Direction 57AD, if none of the parties are requesting search-based Extended Disclosure (ie Model D), but instead are only proposing Models A and/or B, then the provisions in Appendices 5, 6 and 7 shall not apply (unless the court orders to the contrary) and there shall be no requirement to identify the Issues for Disclosure or to complete a Disclosure Review Document, although the parties may agree to do so if they consider this will assist.

**10.4** “Issues for Disclosure” has the same meaning as in paragraph 7.6 of Practice Direction 57AD. However, the definition is to be applied with the following additional guidance. Issues for Disclosure in a Less Complex Claim must be brief and be drafted at a high level of abstraction. Only rarely should the number of Issues for Disclosure exceed five and they should not be defined by reference to sub-issues if that will materially increase the length and complexity of the List of Issues for Disclosure.

**10.5** When drafting Issues for Disclosure the parties should have regard to the primary functions of those Issues namely (i) to help the parties to consider, and the court to determine, whether Extended Disclosure is required and, if so, which Model or Models should be used; (ii) to assist the parties in identifying documents and categories of documents that are likely to exist and require to be disclosed; (iii) to assist those carrying out the disclosure process to do so in a practical and proportionate way including, in the case of search-based disclosure, to help define and guide the searches; (iv) to assist with the process of reviewing documents produced by searches; and (v) to avoid the production of documents that are not relevant to the issues in the proceedings.

**10.6** The parties may use issues for trial as a starting point for defining Issues for Disclosure but it is not the function of Issues for Disclosure to replace issues for trial.

**10.7** The parties must discuss and seek to agree the draft List of issues for Disclosure in advance of the date fixed for the first case management conference.

**10.8** The parties must at all times have regard to their duties under paragraph 3 (in particular the duty placed upon legal representatives under paragraph 3.2(3)) of Practice Direction 57AD and their duty to assist the court to further the overriding objective, in particular to deal with the claim at proportionate cost. The parties should recognise that there may be genuine differences of view about whether Extended Disclosure should be ordered and, if so, what order should be made. If the parties are unable to agree the terms of an order for Extended Disclosure after reasonable engagement between them, brief submissions on the differences of approach should be made to the court at the case management conference and the court requested to make a determination*.*

**11.** For the avoidance of doubt, all provisions in the main body of Practice Direction 57AD regarding Known Adverse Documents apply to Less Complex Claims.

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