



President of the
Family Division

**Disclosure of Electronic Documents
Note**

1. Earlier this year I invited the Family Procedure Rule Committee ('FPRC') to consider making provision in the Family Procedure Rules ('FPR') for the disclosure and examination of mobile phone records and other electronic records. The FPRC has agreed to consider making the necessary amendments to the FPR to govern the disclosure of electronic records, but these changes will take time to put into effect.
2. Pending amendments being made to the FPR, the attention of family judges and practitioners is drawn to the provisions of the Civil Procedure Rules ('CPR') which govern this type of disclosure in civil proceedings, namely CPR r. 31.17 & CPR PD31B (see additionally CPR rr. 31.5(9) & 31.22(4)).

3. In the case of *Re P, H-L (Children) (Mobile Phone Extraction)* [2023] EWCA Civ 206 ([P, H-L \(Children\) \(Mobile Phone Extraction\) \(Rev1\) \[2023\] EWCA Civ 206 \(27 February 2023\) \(bailii.org\)](#)) King LJ observed as follows at paragraphs 54-56:

54. It is well established that, where there is a gap in the FPR 2010, recourse is to be had where appropriate, to the CPR 1998 (see for example Tchenguiz-Imerman v Imerman [2014] 1 FLR 232 where Moylan J pointed out that the common law as now encapsulated in the CPR 1998 sets out a more detailed code than the FPR 2010 for the disclosure and inspection of documents).

55. FPR.r.21.2 covers 'Orders for disclosure against a person who is not a party'. A comparable although more detailed rule is found at CPR r.31.17 also carrying the title, 'Orders for disclosure against a person not a party'. The FPR 2010 does not specifically deal with the disclosure of electronic materials referring only to 'documents'. By contrast, the CPR 1998 have a Practice Direction dealing with the issue at CPR PD 31B: 'Disclosure of Electronic Documents'.

56. It follows in my view that the court may look to CPR 31.17 and CPR PD31B for assistance where necessary. FPR r.21.1(3) defines 'document' as 'anything in which information of any description is recorded'. This definition is developed in relation to electronic material in CPR PD 31B paragraph 1 which extends the broad definition of 'documents' to cover electronic documents. Significant also is



President of the
Family Division

that the purpose of the Practice Direction is stated at CPR PD 31B paragraph 2 to be 'to encourage and assist the parties to reach agreement in relation to the disclosure of Electronic Documents in a proportionate and cost-effective manner.'

4. These provisions of the CPR will provide assistance to the court when considering making orders for the disclosure of electronic documents.

Sir Andrew McFarlane
President of the Family Division

18 October 2023