HENSHAW J TALK TO LEEDS BUSINESS & PROPERTY COURTS FORUM ON 5 MARCH 2026

(A) DISCLOSURE REVIEW

1. The Disclosure Review Working Group has recently conducted an online survey, the results of which have been provisionally compiled. There will be an official report in due course analysing the outcome. In the meantime, I offer the following unofficial summary, condensed from a large amount of data (including narrative responses) with the assistance of AI. I do not express any personal views on the results, or make any predictions as to what may happen in due course. However, I would be interested in your views on these matters, and will invite feedback at the end.

2. There were a large number of written responses from a wide cross-section of legal professionals operating within the Business and Property Courts (B&PC), including judges, King's Counsel, junior barristers, solicitors from firms of all sizes, litigation support specialists, e-disclosure professionals and paralegals. The respondents represent diverse practice areas: Commercial Court, Chancery, TCC, Financial List, Business List, Admiralty, Insolvency and Companies Court, intellectual property and others. It was a long-form survey including both multiple-choice questions and free-text answers, some of which were extensive. Many respondents offered detailed reflections on their experience of PD57AD, ranging from concise comments to multi-paragraph critiques.

3. Some potential limitations of the survey need to be borne in mind. The respondents to surveys of this kind are self-selecting, and may skew toward those with strong views (often negative). The survey was open-ended, so the volume of commentary varies significantly between participants. Some responses are specific to certain courts (e.g., TCC, Commercial Court). Certain practice areas (e.g., regional County Court property work) report very different experiences from, say, complex financial litigation. Nonetheless, the dataset is rich and detailed, and seems sufficiently internally consistent to allow some insights to be gained.

4. A clear majority of respondents believe that PD57AD, while well-intentioned, has increased costs, often significantly. Most reject the idea that PD57AD has increased cooperation. Many argue that the regime is over-engineered and overly legalistic. A minority – largely experienced disclosure professionals and some commercial litigators – praise elements of the regime, particularly the focus on datasets, the structure provided by Section 2 of the Disclosure Review Document (DRD) and the embedding of Technology Aided Review (TAR)/artificial intelligence (AI).

5. The DRD: this is the single most criticised feature of the regime. Almost every respondent who expressed a view identified it – especially Section 1A (Issues for Disclosure) of the DRD – as the most problematic part of PD57AD. Key concerns voiced repeatedly were the large amounts of time and cost spent drafting, revising, debating, and litigating the DRD; frequent counsel involvement (often multiple counsel) driving up costs; junior solicitors and foreign clients finding it hard to understand; the exercise often being divorced from the documents ultimately disclosed; and parties behaving tactically, overstating or understating issues. The way one barrister put it was that "*the DRD assumes cooperation. Real life assumes the opposite*." There is other, strongly worded, criticism of the DRD.

6. Most respondents, across professions, reported a marked increase in litigation cost since the introduction of PD57AD. Examples are provided, such as DRD Section 1A requiring 25–40 hours of senior solicitor time; counsel being instructed repeatedly for DRD negotiations, sometimes in teams; and multi-party DRD reconciliation taking weeks of work. Many respondents noted that clients, faced with very high disclosure preparation costs before a single document has been reviewed, lose confidence in the process and in litigation strategy. Several respondents said that they now sometimes advise clients not to issue proceedings because the cost of early disclosure engagement is too high. Practitioners noted that clients of modest means, or businesses with limited budgets, are deterred from pursuing legitimate claims.

7. Respondents suggest that the structural problem is not that PD57AD is "misused" or that practitioners resist change. Rather, it is said, PD57AD's own

architecture creates complexity, encourages conflict, and fails to deliver proportionality.

8. One of the core assumptions behind PD57AD was that early investment in planning would reduce later waste. The responses indicate, however, that such downstream savings rarely materialise, and that in many cases downstream costs rise. Many respondents (including judges) emphasised that the court is asked to resolve disclosure disputes before the parties understand the documents, leading to hypothetical debates, poorly informed judicial decisions and mismatches between ordered issues/models and actual document sources. Further, PD57AD is said to be wholly disproportionate for property disputes, mortgage possession disputes, probate disputes, insolvency litigation and typical regional BPC work.

9. As to architecture, respondents argue that a modern disclosure regime should start with data scoping, then set parameters based on actual document populations, and only then determine the method of review. It is said that PD57AD reverses these steps.

10. Some specialist practitioners (particularly in major commercial firms) like DRD Section 2: the data scoping element, which involves identifying custodians, data sources (email, cloud drives, messaging apps), repositories, date ranges, search parameters and TAR/AI plans. Unlike Sections 1A and 1B, Section 2 receives significant praise. It is viewed as helpful in complex cases, fostering early engagement with data sources, and assisting in coherent TAR deployment.

11. Issues for Disclosure are widely criticised as replicating issues for trial, minus pure points of law. The separation of the two is said to be an artificial distinction that creates arguments without improving the disclosure result. Further, it is reported that the process is weaponised, with parties inflating or narrowing issues tactically, opponents using issue-definition to block disclosure of potentially adverse documents, and lists of issues for disclosure in the dozens where the trial spans only a few days. A smaller set of respondents said that Issues for Disclosure help to focus disputes in very complex cases, are useful if kept short (under ten), and give TAR a cleaner structure.

12. Disclosure models: a clear majority of respondents say that Model D is used in all or almost all cases; that Model C is rarely used successfully and often requires keywording and expanded parameters, expanding into Model D in practice; and that Models A, B, and E are almost never used. Model E is said to be conceptually unclear and impractical.

13. Interestingly, it is said that reviewers do not in practice apply the Models during document review. Review teams tag documents as relevant or not relevant, do not track which Model applies, cannot feasibly separate "narrative" from "non-narrative", and treat Model C and D differences as theoretical rather than practical. It is also said that the Model architecture does not align with how disclosure is conducted technologically. Respondents say that the existence of multiple models creates extended argument, further DRD disputes and client confusion.

14. A minority believe that the 'menu' of models is useful in principle, that Model C is valuable in narrow categories (e.g., board minutes, contracts) and that the Models support targeted disclosure where appropriate.

15. The most common reform proposals are to reduce the models to two or three (typically B and D, with or without known adverse documents); to make Model D the default; to treat Model C as a request mechanism, not a general model; and to abolish narrative documents as a concept.

16. Initial Disclosure: Respondents' views are more mixed though still with some strong clusters of views. Many say that it should be abolished on the basis that it is duplicative of statement-of-case exhibits, rarely used or cost-creating for no perceived benefit. Others say it is valuable if done properly, because it encourages early engagement and can be useful in cases with limited pre-action disclosure. Implementation seems to be inconsistent. Reform proposals include delaying Initial Disclosure until after close of pleadings and limiting it to documents referred to in the statements of case.

17. Document preservation obligations: Many respondents find these too onerous, especially the requirement to notify wide categories of custodians. Foreign clients often find the concept unfamiliar. Some respondents fear asymmetry:

diligent parties comply whereas opponents may not. Reform proposals include providing clearer and shorter guidance, allowing proportionality-based carve-outs, and providing a checklist for clients.

18. Disclosure guidance hearings: Many respondents have had one to five such hearings (I have only ever done one). Some found them useful. Many found them too short, too difficult to schedule, overburdened by counsel who lack detailed knowledge of the data, and/or costly and prone to becoming mini-CMCs. It is said that they are frequently used because the DRD process itself creates disputes. The time estimates are considered to be unrealistic, with 15-30 minutes rarely sufficient. Reform proposals include making them solicitor-led, allowing paper-based determinations as the default, extending the time estimates, and using disclosure guidance hearings as a second-stage process after initial data scoping.

19. TAR and AI: These are seen as major opportunities, offering increased accuracy, reduced reviewer fatigue, potential cost savings at scale, more consistency than human reviewers, reduced privilege and relevance errors and easier quality control. They are seen as essential for dealing with modern communication volumes. Several respondents emphasised that TAR is now a mature technology, widely accepted in the US and international arbitration, with predictable performance and diminishing resistance. In a recent disclosure guidance hearing, I gave guidance that AI should be used in preference to word-searches for certain particular important categories of documents (noting that the parties had in fact agreed to take that course in relation to key document categories in an earlier phase of the case).

20. At the same time, respondents report that smaller firms struggle to deploy TAR economically, given the cost of buying platform time; that courts lack confidence or clear legal standards (i.e. judicial inconsistency), and that the DRD requires parties to fix parameters prematurely. Proposals made include clearer judicial guidance, mandatory TAR/AI thresholds (making TAR/AI mandatory above certain thresholds) and better integration of TAR and AI into the Practice Direction (including requiring explicit TAR/AI declarations in DRDs).

21. Overall: Looking at PD57AD overall, nearly all respondents, across all roles, complained of significant front-loading of costs, increased counsel involvement, higher e-disclosure provider fees and longer CMCs (with half-day to full-day becoming the norm), and said they had experienced no meaningful disclosure costs reduction after the CMC. Respondents largely felt that the regime is too complicated for the average BPC case; that the DRD/Issues for Disclosure/Models structure forces expenditure, early on, that is disproportionate to the likely value of the disclosure; that it is a poor fit for smaller and mid-sized cases; that parties focus on complying with – or fighting about – process rather than meaningful disclosure; and that courts vary widely in their willingness and ability to manage PD57AD properly. On the more positive side, some respondents feel that PD57AD aligns with modern datasets; and that DRD Section 2 (custodians, repositories, dates) is genuinely helpful in supporting TAR/AI and encouraging earlier consideration of technology.

22. Recommendations: The general view of respondents was that PD57AD needs structural overhaul, and that minor amendments will not address the core problems. The proposals put forward can perhaps be grouped under three main options that many respondents invite the Disclosure Review Working Group to consider, as follows.

23. Option A: a radical simplification. This would involve abolishing Issues for Disclosure, and either replacing the DRD as a whole with a short-form data scoping schedule, or replacing DRA Section 1A with a Redfern Schedule mechanism. This popular suggestion would, respondents say, mirror international arbitration practice and would involve targeted requests with reasoned explanations, relevance statements, objections based on burden and proportionality and pragmatic judicial rulings. Model D would become the default model for disclosure, with applications being made for more tailored disclosure as needed, and narrative documents would be abolished. Redfern schedules or targeted requests could be used more for specific classes of documents.

24. Option B: a staged disclosure process. Stage 1 (data scoping) would be mandatory, and would cover custodians, repositories, date ranges and known

data sources. Stage 2 (disclosure parameters) would be optional or ordered by the court, and cover keywords, TAR settings and special categories of documents. It is suggested that this would resolve the current problem of early 'abstraction' (i.e. disclosure decisions being taken at an early stage before the parties or the court have a good picture of the 'universe' of potentially relevant documents).

25. Option C: a revised PD31 regime. This would mean reverting to the previous CPR Part 31 principles but adding in disclosure of known adverse documents, TAR/AI guidance and data source transparency obligations.

26. Respondents in general would also support reducing the disclosure models to Model B (key documents), Model D (reasonable search) and known adverse documents (as a standalone obligation). Document preservation requirements would be clarified and simplified, introducing standard client-facing guidance and narrow burdens for straightforward cases. The rules about TAR/AI would be strengthened and clarified, and would include mandatory TAR for datasets above agreed thresholds, upfront TAR/AI declarations, and publication of best practice.

27. In addition, respondents would propose adjustments based on case value and complexity, with many suggesting automatic exemption for cases under £1m, optional use of PD57AD for property and insolvency cases unless ordered, and greater use of default standard disclosure in simpler matters.

28. I hope this summary has been of interest. I repeat that it attempts to give an overview of respondents' comments, on which I express no view, and is not an official summary. I would, though, be very interested in your feedback, either now or later.

(B) BUSINESS AND PROPERTY DIVISION

29. I'll now move on a spend a few minutes on the planned Business & Property Division. This is a topic you may have heard about following the summary that the Chancellor of the High Court (CHC) gave at the B&PC Conference on 2 February.

30. Subject to Ministerial approval, the Judicial Executive Board has decided to bring the Business and Property Courts together under the auspices of a new Business and Property Division: though there remains a decision to be taken as to the name: another option is the Business Property and Technology Division, which would reflect the Division including the TCC, the Patent Court and a range of other cases with a technical element (cryptocurrency cases being just one example). For now, I'll refer to it as the 'BPD' for simplicity. The general objectives of the reorganisation include making our arrangements look more modern and logical for the outside world, and simplifying reporting lines internally.

31. The details are still being worked out, and the objective is for the new arrangements to become effective in the autumn.

32. In simple terms, the BPD will replace the Chancery Division but preserve all of the courts and lists that currently operate within the Business and Property Courts (i.e. Admiralty Court; Commercial Court; Circuit Commercial Court; Intellectual Property and Enterprise Court; Patents Court; Technology and Construction Court; Business List; Companies List; Competition List; Financial List; Insolvency List; Property, Trusts and Probate List; and Revenue List). That includes keeping 'Courts' as 'Courts': there is no intention to diminish any of them, including the Commercial Court, the Circuit Commercial Courts and the Technology & Construction Court. It also involves preserving how the existing Courts and lists are presented and branded both internally and externally, for example in reports, speeches, websites, court guides, case headings, case citations and cause lists. [All of this applies equally outside London as well as in London.]

33. The BPD will have its own President as a Head of a Division, standing alongside the President of the King's Bench Division (PKBD) and the President of the Family Division (PFD).

34. The new arrangements is not intended to alter the current structure or work of the present KBD or BPC courts or lists. In particular, as is essential for resourcing both the KBD and Chancery workloads, the intended arrangements

should not reduce the ability of High Court judges to be ticketed to sit in multiple jurisdictions. Thus, under the new structure, it is envisaged that BPD judges will still be ticketed and deployed to sit in crime, administrative law and other KBD cases, and in the CACD; and KBD judges will be ticketed to sit in one or more parts of the BPD. There is intended to be no reduction in the amount of sitting that BPD judges are currently able to do outside of the Rolls Building. The plans are intended to maintain the same overall level of sitting by BPC judges outside the BPCs (e.g. general King's Bench Division (KBD), Admin, and Crime (inc. the CACD)) and also the same overall level of sitting by non-BPC judges inside the BPCs. Recruitment in future into the divisions will also be on that basis.

35. It is also recognised that there will, as at present, need to be additional flexibility e.g. when a Commercial Ct judge is requested to sit on a Divisional Court basis, or to hear a Crown Court or CACD case for a particular reason during a half term when they are otherwise 'in' the Commercial Court.

36. The new arrangement is not designed to increase rigidity or reduce cross-deployment. In fact, there should if anything be greater opportunities for judges to sit in different jurisdictions in the BPD and outside it. Under the new arrangement, for example, a Commercial Court or TCC judge might elect to spend half a term on insolvency work while a Chancery judge elects to sit in the RCJ. Generally, there is a wish to embed cross-deployment more than it is at present.

37. At the same time, there will be no change to the statutory requirement for the LCJ, in consultation with the Lord Chancellor, to be the person empowered to grant authorisation (tickets) to sit in the Commercial Court, the Admiralty Court or the Patent Court, which have similar statutory provisions; nor any change to the internal process by which the Head of Division recommends the grant of tickets only after consultation with the Judge in Charge of the Commercial Court. It is not planned that the change will result in any increase in the numbers of tickets being granted: as now, these will be granted with care and discretion in order to preserve the quality and reputation of the transferred courts i.e. the Commercial Court, Circuit Commercial Courts and TCC.

38. In terms of recruitment, the same flexible ticketing arrangements and cross-deployment arrangements across the KBD and BPD will be equally applicable to incoming judges as to existing judges. All new BPD judges will be encouraged to sit outside the BPD i.e. to sit in crime and admin. Just as new Commercial Court judges with no criminal experience attend the introductory courses on crime, so any new BPD judges willing to do so will attend that course.

39. Thought is going to have to be given to Presiding and Supervising judge arrangements. The CHC at the Conference expressed a personal view that, provisionally, these could continue as at present, except that in future any HCJ could perform those roles: but this remains to be worked out.

40. There are other practicalities that will need to be addressed including some renaming within what is currently the Chancery Division, and welfare, training, performance, and career development.

41. The CHC and PKBD are currently engaged in a process of working out the details, with support and contributions from other judges, and working groups are being and will be set up during the process.

42. There will be an appropriate engagement strategy, including for the legal professions, specialist Bar Associations, the Bar Council and the Law Society, and the City, as well as clerks and staff.

(C) OTHER TOPICS

43. Henshaw J also touched on other matters of current interest, including:

    i) Rolls Building judges' continued support for, and encouragement of regular communication with, the Circuit Commercial Courts outside London, including a variety of recent and forthcoming visits and sittings;

    ii) the reduced costs management approach (costs management 'light') being piloted since 1 April 2025 in Leeds, Manchester and London B&PD courts pursuant to PD 51ZG1 and 2, under which the default position for claims worth £1 million or more is no costs management

unless the court orders it, and for claims worth under £1 million is simplified costs budgeting using Precedent Z;

iii) the Civil Justice Council's interim report and consultation on the use of AI for court documents, which among other things considers use of AI in statements of case, skeleton arguments/submissions, witness statements and experts' reports, with a closing date for responses of 14 April 2026;

iv) recent developments in the London Circuit Commercial Court; and

v) Leech J's forthcoming B&PC Users meeting on 26 March 2026.