

136th UPDATE – PRACTICE DIRECTION AMENDMENTS

The amendments to Practice Direction 51U, which supplements the Civil Procedure Rules 1998, are made by the Master of the Rolls under the powers delegated to him by the Lord Chief Justice under Schedule 2, Part 1, paragraph 2(2) of the Constitutional Reform Act 2005, and are approved by Lord Wolfson of Tredegar QC, Parliamentary Under-Secretary of State for Justice, by the authority of the Lord Chancellor.

The amendments to Practice Direction 51U come into force on 1st November 2021

The Right Honourable Sir Geoffrey Vos
Master of the Rolls and Head of Civil Justice

Signed by authority of the Lord Chancellor:

Lord Wolfson of Tredegar QC
Parliamentary Under Secretary of State
Ministry of Justice

Date: 14th October 2021

PRACTICE DIRECTION 51U - DISCLOSURE PILOT FOR THE BUSINESS AND PROPERTY COURTS

1) In the table of contents—

a) after the entry for paragraph 6, insert

“Court Control Over Disclosure	PARA.6A”;
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b) in the entry for paragraph 7, after “Disclosure” insert “and Models”.

c) in the entry for paragraph 11, omit the word “Hearings”;

d) in the entry for Appendix 1, for “purpose” substitute “purposes”;
and

e) after the entry for Appendix 4, insert—

“Appendix 5: Disclosure in Less Complex Claims

Appendix 6: Disclosure Review Document for use in
Less Complex Claims

Appendix 7: Explanatory notes to the Disclosure
Review Document for use in Less Complex Claims”.

2) After paragraph 1.10, insert—

“1.11 Provisions relating to Extended Disclosure in Less Complex Claims are contained in Appendix 5. Less Complex Claims are defined in paragraph 1.8A of Appendix 1 to PD51U.

1.12 The pilot applies in multi-party cases. However, the court may order that the timetable and procedure is to be varied so as to provide a bespoke timetable and procedure to meet the needs of the individual multi-party case. Any application to the court in this connection should be made at an early stage.”.

3) In paragraph 5.4, omit sub-paragraph (2).

4) Omit paragraph 6.2.

- 5) In paragraph 6.3, for “after Issues for Disclosure have been” substitute “in respect of Issues for Disclosure which have been”.
- 6) After paragraph 6.6, insert—

“**6.7** It is important that the parties consider what types of documents and sources of documents there are or may be, including what documents another party is likely to have, in order that throughout a realistic approach may be taken to disclosure.

6A. Court Control Over Disclosure

6A.1 The court will determine whether to order Extended Disclosure at the first case management conference or, if directed by the court, at another hearing convened for that purpose or without a hearing.

6A.2 The court may determine any point at issue between the parties about disclosure including the application or effect of any provision in PD51U or an order made by the court and about the scope of searches, the manner in which searches are to be carried out and the use of technology. The parties may, at any time, apply to the court to seek the determination of an issue concerning disclosure by issuing an application notice.

6A.3 The court may also provide disclosure guidance in accordance with paragraph 11.

6A.4 Upon the application of the parties/a party, or on its own motion, the court may vary any period of time for a party/the parties to complete a step in disclosure. If the variation is agreed between the parties and will not affect the date set for the Case Management Conference or trial (as appropriate), court approval is not required.”.

- 7) In the heading before paragraph 7.1, at the end insert “and Models”.
- 8) For paragraphs 7.2 and 7.3, substitute—

“**7.2.1** Where one or more of the parties has indicated it is likely to request search-based Extended Disclosure (i.e. Models C, D and/or E),

the claimant must within 42 days of the final statement of case prepare and serve on the other parties a draft List of Issues for Disclosure unless an agreed list of issues for trial already exists and the parties agree that it is suitable (with or without adaptation) to be used for disclosure. The draft List of Issues for Disclosure should be set out in Section 1A of the Disclosure Review Document.

7.2.2 At the same time as serving a draft List of Issues for Disclosure, the claimant shall identify for each Issue for Disclosure which Model of Extended Disclosure it proposes for each party. If the claimant proposes Model C Disclosure for any Issue for Disclosure it should indicate, using Section 1B of the Disclosure Review Document, how the particular documents or narrow class of documents it proposes should be defined for that purpose (see paragraph 8 below).

7.2.3 If the claimant fails to prepare and serve a List of Issues for Disclosure within 42 days of the final statement of case any defendant may prepare and serve its own draft List of Issues for Disclosure on the other parties together with its proposed Models including any Model C requests.

7.2.4 A List of Issues for Disclosure is not required if the parties are agreed that Extended Disclosure is to be confined to Models A and B.

7.3 The List of Issues for Disclosure should be as short and concise as possible. "Issues for Disclosure" means for the purposes of disclosure 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. For the purposes of producing a List of Issues for Disclosure the parties should consider what matters are common ground but should only include the key issues in dispute in the list."

9) For paragraphs 7.5 and 7.6 substitute—

“7.5 A party served with a draft List of Issues for Disclosure and proposals on Models shall, as soon as practicable but in any event no later than 21 days from service, indicate using Section 1A (and, if applicable, 1B) of the Disclosure Review Document whether it agrees with the proposals (including any proposals as to how Model C Disclosure should be defined). If the party served with the proposals does not agree, or wishes to propose alternative or additional Issues for Disclosure, other Models and/or other Model C proposals, it should set out its alternative or additional proposals in Sections 1A and 1B of the Disclosure Review Document.

7.6 In advance of the first case management conference, the parties must discuss and seek to agree the draft List of Issues for Disclosure, the Models identified for each Issue for Disclosure, and the wording of any Model C proposals. They should consider whether any draft Issue for Disclosure can be removed.

7.6A Whilst reasonable and proportionate efforts are required to agree the List of Issues for Disclosure, if agreement cannot be reached after such efforts the List should be concluded by showing the areas of disagreement. The parties should consider seeking Disclosure Guidance from the court at an early stage as a means to help resolve the differences between them. One situation in which Disclosure Guidance should be considered is where one party believes the other is proposing a list of issues that is far too complex to serve as a List of Issues for Disclosure.”.

10) In paragraph 7.7, before “The List of Issues for Disclosure may be revised” insert “The List of Issues for Disclosure does not bind the parties at trial. The List of Issues need not contain / include a list of all the issues in the case and the issues in the case may develop or be refined as the case proceeds.”.

11) After paragraph 7.9, insert—

“7.10 The parties may agree a revised timetable for completion of the Disclosure Review Document (including the List of Issues for Disclosure,

Models and Model C requests) where appropriate, provided always that any such revision to the timetable does not affect the date set for the Case Management Conference.

7.11 In a multi-party case, where the risk of undue complexity in Lists of Issues for Disclosure is heightened, while the provisions of the pilot remain the default arrangement, an application may be made under paragraph 1.12 above to request that the Court order for a bespoke timetable and procedure to be set in order to meet the needs of the multi-party case.”.

12) In paragraph 8.2, in the first sentence, for “Extended Disclosure” to the end of that sentence substitute “search-based Extended Disclosure (Extended Disclosure Models C, D and/or E)”.

13) In paragraph 8.3—

- a) after “Issues for Disclosure in the case.”, insert “It is important that there is moderation in the number of Models used and the way in which they are applied to the Issues for Disclosure so that the disclosure process that will follow, using the Models and the Issues for Disclosure, will be practical.”;
- b) after “ rarely require different Models for the same set”, insert “or repository”;
- c) after “each party’s Disclosure on a particular Issue for Disclosure.” insert “In some cases, it may be appropriate, practical and proportionate for different Models to be applied to different types of documents (e.g. one Model for physical documents and another Model for electronic documents).”;
- d) in the heading to “Model C”, for “Request led search based disclosure” substitute “Disclosure of particular documents or narrow classes of documents”; and
- e) under the heading to “Model D”, for paragraph (3), substitute—

“(3) The court may order the parties to include or exclude Narrative Documents. In the absence of an order, the parties are encouraged to take reasonable steps to exclude Narrative Documents where it is

reasonable and proportionate to do so with a view to reducing the overall volume and the cost of any subsequent review by the party receiving the disclosure.”.

14) In paragraph 10.2—

- a) after “may be modified” insert “(shortened or lengthened)”;
- b) after “as required in order that” insert “key”; and
- c) after “efficient, convenient and helpful format.”, insert “This may include revising some of the questions asked in Section 2 of the DRD or adding others relevant to the particular disclosure exercise to be undertaken.”.

15) For paragraph 10.4 substitute—

“**10.4** Where Model C is proposed for any Issue(s) for Disclosure, these should be limited in number, focused in scope and concise so that the responding party may be clear as to the particular document(s) or narrow classes of document 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. Model C requests should not be used in a tactical or oppressive way.”.

16) In paragraph 10.5, for “Having agreed” to and including “Extended Disclosure” substitute “Having sought to agree the List of Issues for Disclosure, proposals on Model(s) for Extended Disclosure and the wording of any Model C requests”.

17) For paragraph 10.8 substitute—

“**10.8** The parties must each file and serve a signed Certificate of Compliance substantially in the form set out in Appendix 3 not less than two days before the case management conference.”.

18) In in the heading to paragraph 11, omit “Hearings”;

19) For paragraph 11.1 substitute—

“11.1 A party may seek guidance from the court on any point concerning the operation of the pilot in a particular case, where—

(1) there is a significant difference of approach between the parties;

(2) the parties require guidance from the court in order to address the point of difference between them without a formal determination; and

(3) the point is suitable for guidance to be provided either on the papers or, other than in substantial claims, within the maximum hearing length and maximum time for pre-reading provided at paragraph 11.2.”.

20) For paragraph 11.2 substitute—

“11.2 Disclosure Guidance may be obtained by issuing an application notice. The application notice should contain a statement identifying the point upon which guidance is sought and confirming the matters at (1) to (3) of paragraph 11.1 above. Evidence will not normally be required for Disclosure Guidance. If a hearing is requested, or is fixed by the court, the application will ordinarily have a maximum hearing length of 60 minutes and a maximum time of 30 minutes for pre-reading. However, where suitable the Court may decide to deal with the application on the documents and without an oral hearing. The Court may also direct a longer maximum hearing length or time for pre-reading, if it is required.”.

21) In paragraph 11.3, for “Disclosure Guidance Hearing” substitute “hearing”.

22) For paragraph 11.4 substitute—

“11.4 The guidance given by the court will be recorded in a short note, to be approved by the court. Whilst the primary function of Disclosure Guidance is to provide guidance (see paragraph 11.1(2) above), for the avoidance of doubt the court may, where it considers it is appropriate to do so, make an order.”.

23) In paragraph 11.5, for “a Disclosure Guidance Hearing” substitute “an application for Disclosure Guidance”.

24) After paragraph 11.5 insert—

“**11.6** The provisions in this paragraph do not affect or limit the court’s jurisdiction to determine any point about the scope of disclosure, the application of any provision in PD51U or the effect of any order made by the court. A party may apply to the court seeking the determination of an issue about disclosure at any time (see paragraph 6A above).”.

25) Omit paragraph 12.6.

26) After paragraph 13.4 insert—

“**13.5** In multi-party cases, the parties should discuss and seek to agree whether it is appropriate for all of the disclosing party’s documents to be given to all of the other parties or to some only. In the event of disagreement, the parties may seek Disclosure Guidance from the Court pursuant to paragraph 11 or, if appropriate, apply by application notice to the court for directions.”.

27) In Appendix 1 to the Practice Direction 51U—

a) in paragraph 1.6—

- i) after ““Disclosure Review Document” means” insert “as the case may be”; and
- ii) after “at Appendix 2,” insert “or in the case of Less Complex Claims the Disclosure Review Document at Appendix 6,”.

b) after paragraph 1.8 insert—

“1.8A “Less Complex Claim” means a claim which the parties have agreed or the Court has ordered is one that meets the criteria for the Less Complex Claims regime as set out in Appendix 5 of PD51U.”.

28) For Appendix 2 to the Practice Direction substitute new Appendix 2 as set out in Schedule 1 to this instrument.

29) For Appendix 4 to the Practice Direction substitute new Appendix 4 as set out in Schedule 2 to this instrument.

30) After new Appendix 4, insert new Appendices 5, 6 and 7 as set out respectively in Schedules 3, 4 and 5 to this instrument.

SCHEDULE 1

“Appendix 2 to Practice Direction 51U

Disclosure Review Document

Section 1A: Issues for Disclosure and proposed Disclosure Models

Brief description of the Issue for Disclosure ²	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	
<i>[Alternative proposed wording, if not agreed]¹</i>						

1 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 ²	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	

Section 1B: Model C requests for Disclosure

Claimant / Defendant (delete as appropriate)				
	Issue for Disclosure	Request for document or narrow classes of documents relating to the Issue for Disclosure	Response	Decision (for the court)
1.	Issue []:			
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				

[Note: Parties should refer to the guidance on 'Completion of section 2 of the DRD' in the 'Explanatory notes for the DRD' when completing this section]

Section 2: Questionnaire

Claimant / Defendant (delete as appropriate)		
	Question	Details
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 the collection of documents which you propose to search.</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.

Electronic files: data sources/locations

Please set out details on data sources to be considered at collection which you propose to search. Please include details of any sources that are unavailable but may host relevant documents or which may raise particular difficulties due to their location, format or any other reason.

Examples of sources to be considered may include the following:

	Question	Details
	<ol style="list-style-type: none">(1) Document repositories and/or geographical locations(2) Computer systems or electronic storage devices(3) Mobile phones, tablets and other handheld devices(4) Document management systems(5) Email servers(6) Cloud based data storage(7) Webmail accounts e.g. Gmail, Hotmail etc(8) Back-up systems(9) Social media accounts(10) Third parties who may have relevant documents which are under your control (e.g. agents or advisers). <p>If a data source is likely only to host documents relevant to particular Issues for Disclosure, this should be noted in this section.</p>	

	Question	Details
3.	Please identify and provide details of any bespoke or licensed 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.).	

4.	<p>Custodians and date ranges</p> <p>Please set out a list of custodians whose files you propose to search and the date range(s) within which you would propose to search for documents which are relevant to Issues for Disclosure for which any party seeks Extended Disclosure.</p> <p>If a custodian or range of dates is only relevant to certain Issues for Disclosure, or if a certain date range is only relevant to a particular custodian, 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>	
5.	<p><i>(For completion after discussions between the parties)</i></p> <p>Are the proposals at 4. agreed? If not, set out any areas of disagreement.</p>	

6.

Search proposals

Please list any searches and methods of searching (including any automated searches or techniques other than keyword searches) you have identified at this stage that you may use to search the data to identify documents that may need to be disclosed.

If a certain method of searching, proposed search or 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.

Note: 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.

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.

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.

	Question	Details
7.	<p><i>(For completion after discussions between the parties)</i></p> <p>Are the proposals at 6. agreed? If not, set out areas of disagreement.</p>	
8.	<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>	

<p>9.</p>	<p>Technology / computer assisted review</p> <p>Parties are to consider the use of technology to facilitate the efficient collection of data and its further use for data review. This may include the use of some of the more sophisticated forms of technology / computer assisted review software (TAR / CAR / analytics). If the parties are in a position to propose the use of any technology or computer assisted review tools in advance of the CMC, those proposals should be set out in this section.</p> <p>Where parties have considered the use of such tools but decided against this at this stage (particularly where the review universe is in excess of 50,000 documents), they should explain why such tools will not be used, particularly where this may mean that large volumes of data will have to be the subject of a manual review exercise. Parties should update this form and draw any material updates to the attention of all parties and the Court if they later determine it would be appropriate to use such tools.</p>	
<p>10.</p>	<p>Estimates of costs</p> <p>Where the parties have agreed searches to be undertaken, state the estimated cost of collection, processing, search, review and production of your Extended Disclosure.</p>	

11.	Where any aspect of the approach to Disclosure is not agreed, estimate your costs of collection, processing, search, review and production of your documents based on Extended Disclosure (Models and scope of any search required) requested by the claimant(s).	
12.	Where any aspect of the approach to Disclosure is not agreed, estimate your costs of collection, processing, search, review and production of your documents based on Extended Disclosure (Models and scope of any search required) requested by the defendant(s).	

Appendix 2 to Practice Direction 51U

Explanatory notes for Disclosure Review Document

Introduction

1. The Disclosure Review Document (“DRD”) is intended to:
 - (1) facilitate the exchange of information and provide a framework for discussions about the scope of Extended Disclosure;
 - (2) help the parties to agree a sensible and cost-effective approach to disclosure and identify areas of disagreement; and
 - (3) 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 provide guidance. While not all of this guidance will be suitable for every claim, parties are nevertheless encouraged to follow this guidance unless there are good reasons not to do so.
3. Unless otherwise stated, references to paragraph numbers in the DRD are to Practice Direction 51U. If there is a conflict between the DRD and the Practice Direction, the Practice Direction will prevail.
4. The DRD does not need to be completed in cases where an order for only Models A and/or B Extended Disclosure is sought. Section 1A and Section 2 of the DRD only need to be completed if the parties are seeking an order for Extended Disclosure involving a search-based Disclosure Model (i.e. Models C, D and/or E). Where Model C Extended Disclosure is proposed, Section 1B of the DRD will also need to be completed.
5. The DRD may be modified (shortened or lengthened) as required to ensure that key information is provided to the court in a convenient and helpful format. This may include revising some of the questions asked in Section 2 of the DRD or adding others relevant to the particular disclosure exercise to be undertaken.
6. In some proceedings, not every section of the DRD will need to be completed, particularly if the proceedings are likely to require limited disclosure and/or if the identification and retrieval of documents is expected to be straightforward.

7. 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.
8. The timetable for completion of the DRD is set out in paragraphs 7 and 10 of the Practice Direction. The parties may agree a revised timetable for completion of the Disclosure Review Document (including the List of Issues for Disclosure, Models and Model C requests) where appropriate, provided always that any such revision to the timetable does not affect the date set for the Case Management Conference. For convenience the timetable is summarised below as follows:

	Stage to be completed	PD Ref.	Deadline
Step 1	Each party should state, in writing, whether or not it is likely to request search-based Extended Disclosure to include one or more of Models 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 closure of statements of case
Step 2	Where one or more of the parties has indicated it is likely to request search-based Extended Disclosure (i.e. Models C, D and/or E), 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). At the same time, the claimant shall identify for each Issue for Disclosure which Model of Extended Disclosure it proposes for each party. If the claimant proposes Model C Disclosure for any Issue for Disclosure it should indicate, using Section 1B of the Disclosure Review Document, the particular documents or narrow class of documents it proposes should be defined for that purpose.	Para 7.2	Within 42 days of the closure of statements of case

	If the claimant fails to take these steps, the defendant may, but is not obliged to, prepare and serve its own draft List of Issues for Disclosure on the other parties together with its proposals on Models and any Model C requests.		
Step 3	A party served with a draft List of Issues for Disclosure and proposals on Models shall indicate using Section 1A (and, if applicable, 1B) of the Disclosure Review Document whether it agrees with the proposed Issues for Disclosure and corresponding Model(s) for Extended Disclosure (including any proposals as to how Model C Disclosure should be defined). If the party does not agree, or wishes to propose alternative or additional Issues for Disclosure, other Models and/or other Model C proposals, it should set out its alternative or additional proposals in Sections 1A and 1B of the Disclosure Review Document.	Para 7.5	As soon as practicable but in any event no later than 21 days after service of the draft List of Issues for Disclosure

<p>Step 4</p>	<p>The parties must discuss and seek to agree the draft List of Issues for Disclosure, the Models identified for each Issue for Disclosure, and the wording of any Model C proposals. They should consider whether any draft Issue for Disclosure can be removed.</p>	<p>Paras 7.6 and 10.6</p>	<p>In advance of the first case management conference</p>
<p>Step 5</p>	<p>Having sought to agree the List of Issues for Disclosure, proposals on Model(s) for Extended Disclosure and the wording of any Model C requests, 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 the likely amount of documents involved).</p> <p>Section 2 of the Disclosure Review Document should be completed only if the parties are seeking an order for Extended Disclosure involving a search-</p>	<p>Para 10.5</p>	<p>As soon as reasonably practicable and in any event not later than 14 days before the case management conference.</p>

	based Disclosure Model (i.e. Models C, D and/or E).		
Step 6	A finalised single joint Disclosure Review Document should be filed by the claimant. Related correspondence and earlier drafts should not ordinarily be filed.	Para 10.7	Not later than 5 days before the case management conference
Step 7	The parties must independently file assigned Certificate of Compliance substantially in the form set out in Appendix 3 to the Practice Direction	Para 10.8	As soon as reasonably practicable after the claimant has filed the 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 Direction¹.
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:
 - (1) state whether each Issue for Disclosure is agreed or opposed and, if so, by whom;
 - (2) 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 21 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).

¹ 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.

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.

Specifying Disclosure Models in Section 1A of the DRD

8. The Disclosure Models under paragraph 8 are:

Model A: Disclosure confined to known adverse documents²

Model B: Limited Disclosure

Model C: Disclosure of particular documents or narrow classes of documents

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.

² Under Model A, the only further disclosure that is required is to disclose any known adverse documents in relation to the relevant Issue for Disclosure (without the need for any search), in accordance with the duty under paragraph 3.1(2) of the Practice Direction.

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.

**Completion of Section 1B of the DRD
(Disclosure of particular documents or narrow classes of documents - Model C)**

1. In accordance with paragraph 10.5, any party proposing Model C Extended Disclosure must complete Section 1B of the DRD.
2. Any party provided with a completed Section 1B in this way must respond within 21 days by completing the “response” column either agreeing to the request or giving concise reasons for not agreeing to the request.
3. Model C requests are not intended to be used to replicate the approach sometimes taken in arbitration with Redfern schedules where parties may include a large number of broad requests for disclosure from the other side, addressing all issues in dispute and all potential data sources. As described in paragraph 8.3 of the Practice Direction, the approach envisaged with Model C is very different.
4. The parties’ requests should be limited in number, focused in scope 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.
5. In addition, Model C requests should not be used where extensive search-based disclosure is sought other than “to give disclosure of particular documents or narrow classes of documents relating to a particular Issue(s) for Disclosure”.³ In such cases, it may well be more efficient to use a combination of Models A, B and D. It will rarely be appropriate to have a large number of Model C requests in respect of the same data set, because that is likely to (a) make it more difficult for the parties to agree what the Model C requests should be; and b) increase the complexity, costs and time required to undertake the subsequent review exercise. Further, using multiple Model C requests can, in fact, undermine rather than facilitate the use of technology / computer assisted review tools and should therefore be avoided.
6. Model C should not be used in a tactical or oppressive way.

³ See paragraph 8 of the Practice Direction

Completion of Section 2 of the DRD

1. Section 2 of the DRD only needs to be completed if the parties are seeking an order for Extended Disclosure involving a search-based Disclosure Model (i.e. Models C, D and/or E). This is because Models A and B do not require mandatory searches to be undertaken.
2. In cases where a search-based Disclosure Model (Models C, D or E) is proposed by the parties, the purpose of Section 2 of the DRD is to provide the court with information about the data held by each party, including:
 - (1) where and how the data is held;
 - (2) 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
 - (3) 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.
3. Section 2 of the DRD should also be used to identify data that can be excluded from the review process, for example, particular custodians, data ranges and back up data to ensure that the data pool is it is reasonable and proportionate, having particular regard to the factors in section 6.4 of the Practice Direction.
4. 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.
5. In Section 2 of the DRD, the parties should 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.
6. 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. The DRD may be adapted to meet the needs of the particular case and the parties are not required to answer all of the questions. In particular:
 - (1) In cases where the disclosure exercise is likely to be complex and substantial with multiple sources of data, it may be necessary to raise additional questions and to provide other information. Conversely, it may not in fact be possible to answer all of the questions in Section 2 of the DRD questionnaire in advance of the case management conference because that information may not yet be available.
 - (2) In cases where the disclosure exercise is likely to be less complex or involving a very limited number of documents or sources of data, the parties may complete only those parts of Section 2 which are relevant or helpful for a particular case.
 - (3) The parties are expected to take a reasonable and proportionate approach in completing Section 2 and to seek to agree upon on any such changes to achieve that outcome as far as possible.
7. The parties must confer 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. The parties are expected to do this by phone, video conference or in person. Extensive correspondence in relation to the DRD is unlikely to be efficient or helpful. Where particular points cannot be agreed, they should be recorded, in a summary form in the relevant sections of the DRD after discussions between the parties.

8. 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.
9. 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.
10. In advance of the production of documents, parties should consider and discuss whether in a case involving multiple parties, it will be appropriate for the entirety of a party's disclosure to be provided to all parties or only to those parties to whom the disclosure is relevant.

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

11. 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.
12. 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

13. 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 amount of documents involved, in order that a court may consider whether such proposals on disclosure are reasonable and proportionate. This information is to be provided in answer to questions 10 to 12 of Section 2.
14. 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.
15. In cases where the costs 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).

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.⁴

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:
 - (1) Electronic documents should be collected in a format that preserves and does not alter the underlying document metadata (where possible)³ 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.

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.

- (2) 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).
- (3) To the fullest extent practicable, deduplication of the data set (for example by using the hash values of the documents) should be undertaken during processing and 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) How the collection data set is to be identified and collected.
 - (2) Data culling measures applied at collection (i.e. date range, custodians, search terms).
 - (3) Any limitations that will be applied to the document collection process and the reasons for such limitations.
 - (4) Data exclusion measures applied during or post-collection (e.g. Domains such as [@CompanyA.com](#)).
 - (5) How each party intends to use analytics to conduct a proportionate review of the data set.
 - (6) 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).
 - (7) 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.
 - (8) 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.
 - (9) 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.

- (10) 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 (e.g. Withheld for Privilege).
 - (11) 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.
 - (12) Methodology record
7. The parties should keep records of their methodology during the disclosure exercise, to include the following:
- (1) Document sources not considered at collection and why.
 - (2) The deduplication⁵ method applied.
 - (3) Any DeNISTing⁶ applied.
 - (4) Approach to non-text searchable items.
 - (5) Approach with encrypted/password protected items (i.e. what measures were applied to decrypt).
 - (6) Search terms, including the number of search term responsive documents and search term responsive documents plus family members.
 - (7) 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.

SCHEDULE 2

“Appendix 4 to Practice Direction 51U

Disclosure Certificate

Notes: This Disclosure Certificate is for use in all claims where Practice Direction 51U (Disclosure Pilot for the Business and Property Courts) applies.

In the	
Claim No.	
Claimant (including ref)	
Defendant (including ref)	
Date	
Party returning form	

Initial Disclosure

Either:

On [date] [party], [with its Statement of Case] [or state if the parties agreed to defer the time for provision of Initial Disclosure, in accordance with PD 51U.5.8] , provided [to party/parties] by way of Initial Disclosure [a List, and/or] copies of the following:

- the key documents on which it has relied (expressly or otherwise) in support of the claims or defences advanced in its statement of case (and including the documents referred to in that statement of case); and
- the key documents that are necessary to enable the other parties to understand the claim or defence they have to meet.

(These comprise Initial Disclosure as defined at PD 51U.5.1 and 5.2.)

[The Initial Disclosure List is found at [at Appendix A]] or [The parties agreed to dispense with the requirement to produce an Initial Disclosure List of Documents, as permitted by PD 51U.5.8.]

Or

[No Initial Disclosure was required because [the parties agreed to dispense with it] [the Court ordered that it was not required] [it would involve [name of party] providing (after removing duplicates, and including documents referred to at PD 51U.5.4(3)(a)) more than (about) whichever is the larger of 1000 pages or 200 documents (or such higher but reasonable figure as the parties may agree)].

Where the parties agreed to dispense with Initial Disclosure, please set out here your reasons for this agreement.

Extended Disclosure

Please list the orders made in the proceedings that have imposed Extended Disclosure obligations (together, "the Disclosure Order/s"):

Please state if the Extended Disclosure List of Documents has been dispensed with, by agreement or order.

Unless already particularised in the Disclosure Review Document or in any Extended Disclosure List of Documents, if any of Models C, D or E (search-based Extended Disclosure) were ordered in respect of any Issues for Disclosure, set out here the limits of the search conducted, by reference to custodians, date ranges, locations, document types, keyword searches and any relevant limits specified.

To the extent any of these limits were not contained in the Disclosure Order/s or recorded in an agreement in writing between the parties either in the Disclosure Review Document or elsewhere, please identify them and explain why they were necessary and why they were not agreed with the other part[y/ies]

I, [name] certify for and on behalf of the above-named [Party] that I am aware of and, to the best of my knowledge and belief, have complied with [Party's] duties under Practice Direction 51U, including having:

- A) taken reasonable steps to preserve documents in [the Party's] control that may be relevant to any issue in the proceedings;
- B) disclosed documents I am aware (or, in the case of a company or organisation, of which the company or organisation is aware, within the meaning of PD 51U.2.9) are or have been in [my] or [the company's] control and adverse to [my/the Party's] case on any issue in the proceedings, unless they are privileged;
- C) [*in the case of an order for Extended Disclosure of Model C, D or E only*] undertaken any search for documents in a responsible and conscientious manner to fulfil the stated purpose of the search and in accordance with [my/the Party's] obligations as set out in Practice Direction PD51U and [the Disclosure Order/s];
- D) acted honestly in relation to the process of giving disclosure;
- E) used reasonable efforts to avoid providing documents to another party that have no relevance to the Issues for Disclosure in the proceedings.
- F) produced electronic copies of documents in their native format, in a manner which preserves metadata and produced disclosable hard copy documents by providing scanned versions or photocopied hard copies.

I certify that I am aware of and, to the best of my knowledge and belief, have complied with the Disclosure Order.

I understand that I must inform the court and the other parties if any further document required to be disclosed (whether under PD 51U.3.3 or the Disclosure Order/s) comes into [the Party's] control at any time before the conclusion of the case.

I wish to withhold production of the following [document, part of a document, or class of documents] which would otherwise fall within [my/the Party's] obligations:

Description of document, part of a document or class of documents	Grounds upon which production is being withheld
--	--

e.g. Privilege, already in other party's possession (inter-partes correspondence etc)

Documents no longer within party's control

I am aware that proceedings for contempt of court can be brought against me if I sign a false Disclosure Certificate without an honest belief in its truth.

Signed

(Party) (Party's representative)

Date

If the party making disclosure is a company or other organisation, the person signing this Disclosure Certificate should be someone from within the organisation with appropriate authority and knowledge of the disclosure exercise. This person will have received confirmation from all those people with accountability or responsibility within the company or organisation either for the events or circumstances the subject of the case or for the conduct of the litigation, including those who have since left the company or organisation, that they have provided for disclosure all adverse documents of which they are aware. Identify here who the person making the disclosure statement is and why he or she is the appropriate person to make it:

Name:

Role and explanation of why you are the appropriate person to sign this Certificate:

Appendix A

List/s of Documents

Please either attach copies of any Initial Disclosure and/or Extended Disclosure Lists of Documents, or incorporate the text of the lists here.

SCHEDULE 3

“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 the Practice Direction apply to Less Complex Claims, including the provisions relating to Initial Disclosure in accordance with paragraph 5, 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 PD51U. 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 £500,000 then unless the other factors specified in paragraph 3 above indicate to the contrary, the claim should be treated as a Less Complex Claim.

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 PD51U 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 PD51U and Appendix 7.

10.3 As provided for in paragraphs 7.1 and 10.1 of PD51U, 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 7.3 of PD51U. 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 their primary functions namely (i) to help the court to determine whether Extended Disclosure is required and, if so, whether Models A, B or D disclosure should be ordered; (ii) to assist in identifying documents and categories of documents that are likely to exist and to require disclosure; (iii) in the case of Model D to help define the scope of searches; and (iv) to assist with the process of reviewing documents produced by searches.

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 PD51U 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 PD51U regarding Known Adverse Documents apply to Less Complex Claims.”

SCHEDULE 4

“Appendix 6 to Practice Direction 51U

Disclosure Review Document for Extended Disclosure in Less Complex Claims

1.	Issues for Disclosure and disclosure Model proposals	Issue for Disclosure	Proposed Disclosure Models	Issue agreed? ¹	Model Agreed? ⁷
		1. <i>[Concise description of the issue for disclosure]</i> <i>[Alternative proposed wording of the Claimant(s)/Defendant(s):]</i>	<i>[B / D]</i>	<i>[Y/N]</i>	<i>[Y/N]</i> <i>[Alternative proposed disclosure model of the Claimant(s)/Defendant(s):]</i>
		2.			
		3.			
		4.			
		5.			
2.	Data collection sources to be searched by the parties				

⁷ If the parties cannot agree the wording of any issue and/or any disclosure model proposals, the parties who disagree with the formulation of an issue for disclosure or model proposal should include alternative proposals or wording under the formulation. The parties should also briefly outline the areas of disagreement and state the reasons for the disagreement and for any alternative proposals in section 6 of this form.

	<p>Each party should confirm whether there are any data sources or locations, or categories of hard copy or electronic documents (as applicable) which should be included in the collection of documents which are likely to be relevant to the Issues for Disclosure and which the party proposes to search for the disclosure. Please set out details of the data sources, locations and categories which are proposed to be included.</p>
<p>3.</p>	<p>Unavailable sources or irretrievable/inaccessible documents</p> <p>Please identify and briefly set out details for any documents likely to be relevant to Issues for Disclosure which it is known or anticipated may be irretrievable or otherwise unavailable or difficult to access in order to be searched for the purpose of the disclosure (e.g. due to destruction or loss, or the need for</p>

	bespoke or licenced software to review the data)	
4.	<p>Search proposals</p> <p>Please set out any initial search proposals to identify any documents which may need to be disclosed (including any automated searches or techniques other than keyword searches, as applicable). The proposals should indicate any custodians' files the parties propose to search, any applicable date ranges for the searches, and which particular Issues for Disclosure the custodians or date ranges are relevant to.</p> <p>Parties should also set out proposals to use technology to facilitate the disclosure exercise if the parties consider the use of technology to be appropriate.</p> <p>When considering the use of technology parties</p>	

	<p>should have regard to the following factors: (i) whether it would be efficient and proportionate to use technology, (ii) the number of documents in the potential pool of documents to be searched and potentially reviewed for the proposed disclosure, (iii) the estimated cost of the disclosure (including estimated costs of using technology compared with not using technology), (iv) the value of the claim, (v) the complexity of the claim, (vi) the nature of the claim, and (vii) any other relevant factors.</p>	
5.	<p>Costs estimates</p> <p>Where the parties have agreed / sought to agree for searches to be undertaken, please state the estimated cost of collection, processing, search, review and production of each parties' Extended Disclosure (as applicable).</p>	

6.	<p>Areas of disagreement</p> <p>Please indicate any areas of disagreement between the parties in respect of any of the matters set out in sections 1 – 5 of this form and briefly set out the reasons for any areas of disagreement and for any alternative wording proposed for Issues for Disclosure or alternative Models proposals.</p> <p>Where any aspect of the approach to Extended Disclosure is not agreed, each party should indicate their estimated costs of collection, processing, search, review and production of their documents based on the Extended Disclosure (Models and scope of any search required) requested:</p>	<p><i>[E.g. Description of area of disagreement]</i></p> <p><i>Claimant'(s)' position:</i></p> <p><i>Defendant'(s)' position:]</i></p>

	(i) by the claimant(s) and (ii) by the defendant(s).	
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SCHEDULE 5

“Appendix 7 to Practice Direction 51U

Explanatory notes for the Disclosure Review Document for Extended Disclosure in Less Complex Claims

1. The Less Complex Claims Disclosure Review Document (“**LCCDRD**”) is intended to:
 - a. facilitate the exchange of information and provide a framework for discussions about the scope of Extended Disclosure;
 - b. help the parties to agree a sensible and cost-effective approach to Extended Disclosure for Models A, B and/or D and identify areas of disagreement; and
 - c. provide the court with parties’ proposals on Extended Disclosure for Models A, B and/or D, agreed or otherwise, so that the court can make appropriate case management decisions at the case management conference.
2. These explanatory notes provide guidance. While not all of this guidance will be suitable for every claim, parties are nevertheless encouraged to follow this guidance unless there are good reasons not to do so.
3. Unless stated otherwise below, the explanation and guidance in the Introduction of the Explanatory notes for Disclosure Review Document in Appendix 2 will apply for the completion of this form. If an order for Extended Disclosure is made by the court, the parties may also find it helpful to refer to the “Guidance on process after any order for Extended Disclosure has been made”, which is also in Appendix 2.
4. References to paragraph numbers in the LCCDRD are to the paragraphs in Appendix 5 to the Practice Direction 51U (the “**Practice Direction**”) unless stated otherwise and if there is a conflict between the LCCDRD and the Practice Direction, the Practice Direction will prevail.
5. The LCCDRD only needs to be completed where one or more of the parties are seeking Extended Disclosure in a Less Complex Claim. Parties do not need to complete a LCCDRD in Less Complex Claims where only Model A or B or no Extended Disclosure is sought by the parties. Where only Model B is requested, if the parties consider that it would nevertheless assist to identify and seek to agree upon a List of Issues for Disclosure or to complete any other sections of the LCCDRD, the parties may agree to do so.

6. Unless agreed by the parties or ordered otherwise by the court, the claimant(s) will be responsible for ensuring that the form is completed and a single agreed version is filed with the court. If the claimant(s) is not seeking any search-based Disclosure (i.e. Model D disclosure) but one or more of the defendants is, the parties may agree that the defendant(s) shall be responsible for producing the LCCDRD and ensuring that the form is filed with the court. If there is more than one defendant, the parties should seek to agree which defendant shall bear this responsibility for the form.
7. The parties must seek to agree and complete a List of Issues for Disclosure. Apart from the List of Issues for Disclosure in section 1, which must be completed in all cases where a LCCDRD is required under paragraph 10.1 of Appendix 5 to the Practice Direction, the parties are not required to complete all of the other sections of the form. They only should complete the sections which are applicable and relevant to the disclosure being requested in the particular case. This should as a minimum include the key information which the parties consider would assist the court in deciding what disclosure to order in the case.
8. If the parties agree that any of the sections in the form are not applicable or relevant at all to the case, they should leave the response box next to those sections blank. If the parties cannot agree on whether a section is not applicable or is irrelevant, or if a section is only not applicable to a particular party or to a particular extent, they should include the wording “Not applicable” next to that section and a brief explanation, in order to assist the court in understanding the parties’ positions and in its review of the form.
9. The parties are encouraged to confer (in person or by phone or video conference) and seek to agree the contents of the LCCDRD as it applies to their disclosure, in advance of the case management conference. Extensive correspondence in relation to the LCCDRD is unlikely to be efficient or helpful.
10. If the parties cannot agree on any aspects of the LCCDRD (including the List of Issues for Disclosure) this should be recorded in summary form in section 6. The parties may also apply if appropriate for guidance from the court under paragraph 11 of Practice Direction 51U in order to seek to resolve any differences in advance of the case management conference.
11. The fact that a party may propose initial searches (including keyword searches) at the stage of completing the LCCDRD should not be taken as acceptance by that party that those searches should ultimately be used (particularly if, on testing the keyword searches against the available data, it provides false positive results).
12. If it is not practicable to provide a list of keywords for searches prior to the case management conference, the parties should engage and seek to co-operate following the case management conference 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.

Timetable for completing the LCCDRD

13. The timetable for completion of the LCCDRD is set out in paragraphs 7 and 10 of the Practice Direction. The parties may agree a revised timetable for completion of the LCCDRD (including the List of Issues for Disclosure and Models) where appropriate, provided always that any such revision to the timetable does not affect the date set for the Case Management Conference. For convenience the timetable is summarised below as follows:

	Stage to be completed	Deadline
Step 1	Each party should state, in writing, whether or not it is likely to request Extended Disclosure Models A, B and/or D 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.	Within 28 days of the closure of statements of case
Step 2	<p>Where one or more of the parties has indicated it is likely to request search-based Extended Disclosure (i.e. Models D), unless the parties agree otherwise, 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).</p> <p>At the same time, the claimant shall identify for each Issue for Disclosure which Model of Extended Disclosure it proposes for each party.</p> <p>If the claimant fails to take these steps, the defendant may, but is not obliged to, prepare and serve its own draft List of Issues for Disclosure on the other parties.</p>	Within 42 days of the closure of statements of case
Step 3	<p>A party served with a draft List of Issues for Disclosure and proposals on Models shall indicate within section 1 of the LCCDRD whether it agrees with the proposed Issues for Disclosure and corresponding Model(s) for Extended Disclosure by completing the “Issue Agreed” and “Model Agreed” columns in section 1.</p> <p>If the party does not agree, or wishes to propose alternative or additional Issues for Disclosure or other Models, it should set out its alternative or additional proposals in section 1 of the LCCDRD and briefly explain and set out in section 6 of the LCCDRD the reasons why it disagrees with the Issues for Disclosure or</p>	As soon as practicable but in any event no later than 21 days after service of the draft List of Issues for Disclosure

	Models proposals of the other party the reasons for the alternative proposals it is proposing.	
Step 4	Having sought to agree the List of Issues for Disclosure and proposals on Model(s) for Extended Disclosure, the parties should prepare and exchange drafts of the LCCDRD (with all applicable sections of the document completed) in accordance with the guidance in Appendix 7.	As soon as reasonably practicable and in any event not later than 14 days before the case management conference
Step 5	The parties must seek to resolve any disputes over the scope of any Extended Disclosure sought or any other aspect of the completion of the LCCDRD.	In advance of the first case management conference
Step 6	Unless otherwise agreed by the parties or ordered by the court, the claimant(s) shall be responsible for ensuring that the form is completed and a single agreed version is filed with the court. Related correspondence and earlier drafts should not ordinarily be filed.	Not later than 5 days before the first case management conference
Step 7	The parties must independently file a signed Certificate of Compliance substantially in the form set out in Appendix 3 to the Practice Direction.	As soon as reasonably practicable after the claimant has filed the single joint LCCDRD, but in any event in advance of the case management conference