

# eDisclosure/ eDiscovery

The purpose of disclosure (or discovery, as it is known outside the UK) is to ensure that parties to proceedings know of all documents that relate to their case, thus avoiding an ambush at trial. It is of paramount importance that parties understand disclosure requirements, particularly where electronic documents are concerned.

**Our quick eDisclosure/eDiscovery checklist provides a high-level best-practice approach to key electronic disclosure (eDisclosure/eDiscovery) requirements in the UK, under and Practice Direction (PD) 51U (which has been extended to run until 31 December 2022).**

## Technical and Legal Procedural Checklist

1/8

Timeline	Phase	Client Disclosure	✓	✗
<p><b>Need for Disclosure Arises</b></p> <p>1 - 2 weeks</p> <p><b>*</b></p>	<p><b>Phase 1</b></p> <p>Initial preparation</p>	Brief client	●	●
		Assemble team (including external experts & eDisclosure/eDiscovery service provider)	●	●
		Designate responsibilities (e.g. initial data collection, first level review (1LR), second level review (2LR), privilege review, key document review, production, etc.)	●	●
		Create roadmap adhering to timescales / deadlines in line with CPR31 <sup>1</sup> and PD51U <sup>2</sup>	●	●
		Confirm loose date ranges for in-scope data in line with the DRD/Court Orders ("relevant time period")	●	●
		Where a foreign language component exists within the proceedings - identify foreign languages in scope. Consider and devise initial search terms in relevant languages	●	●
		Consider initial privileged terms, with a particular emphasis on privileged email addresses, i.e. @lawfirm.com	●	●
		Confirm expected data volumes (rough estimates)	●	●
		Prioritise custodians / data sources	●	●
		Commence Disclosure audit file / decision log <sup>3</sup>	●	●
		Draft Disclosure workflow plan <sup>4</sup>	●	●
		Schedule recurring (weekly) Disclosure call/meeting for all stakeholders	●	●

<sup>1</sup> CPR 31.5(3); CPR 31.5(5) | <sup>2</sup> 1) Claim Commences - Parties agree in writing to dispense with or proceed with Basic Disclosure. The Court will determine whether to order Extended Disclosure. 2) Statement of Case is served - Parties confirm whether or not Extended Disclosure will be used. 3) 21 days from the final date of service of the Reply to the Statement of Case - Claimant must prepare and serve a draft List of Issues for Disclosure (in the manner prescribed by Section 1A of the Disclosure Review Document (DRD)); 4) Within 14 days of the service of the draft DRD - (Models A, B and/or D) - Defendant should agree a particular issue/suggest alternative wording / include additional issues. If Model C is sought by the Claimant, 28 days before the CMC, Claimant must complete and provide Section 1B of the DRD as soon as is reasonably practicable and in any event not less than 28 days before the date fixed for the CMC. Any party provided with Section 1B requests must, as soon as reasonably practicable, and in any event 14 days before the CMC respond by completing the 'Response' column of Section 1B DRD. Parties who do not agree with Model C should not complete this form.; 5) 14 days before the CMC (or as soon as reasonably practicable) - Parties exchange Section 2 of the DRD. 6) 7 days before the CMC, parties file updated versions of the DRD; 7) Before the first CMC - parties must discuss and seek to agree the List of Issues in the DRD. Parties should indicate which Model of Extended Disclosure is sought for each issue. | <sup>3</sup> The decision log acts as an eDisclosure/eDiscovery audit, parties may be required to rely on the decision log at a later date <sup>4</sup> This will be an organic document that changes over the course of the Disclosure review as parameters develop, and/or as Court Orders may dictate.

# eDisclosure/eDiscovery Technical and Legal Procedural Checklist




Timeline	Phase	Client Disclosure	●	●
1 - 2 weeks	<b>Phase 2</b> Scoping	Identify document sources (e.g., hard drives, external media devices, smart phones, cloud repositories, servers, network shares, network home directory, email servers, email archives, voicemails, IM data, corporate chats or equivalent, document management systems, backup tapes, etc.)	●	●
		Confirm type and version of operating system(s) and perceived pitfalls (e.g. older operating systems). Ensure technology provider can process legacy systems and retain metadata	●	●
		Confirm type of email archiving system. Confirm whether different email systems were utilised during the relevant time period	●	●
		Confirm whether there are any file types that should be excluded review in their entirety / should be reviewed in a separate workflow and not on a document review platform (e.g. source code data / audio / video files)	●	●
		Confirm any structured data parameters, i.e. banking transactions ( <i>Owing to the configuration of structured data and its incompatibility with a document review platform in many instance, a separate review system should be considered, i.e. a SQL database</i> )	●	●
		Confirm whether collaborative sites or social media will need to be collected	●	●
		Confer with opposing side regarding Disclosure parameters per PD51U, in accordance with allowed timelines (see footnote 2)	●	●
		Confirm whether there are any encryption issues within the dataset and consider proposals for making these documents accessible <sup>5</sup>	●	●
		Confirm format for data provision (i.e. who is to collect the data? External provider or guided client self-collection?)	●	●
		Consider and address, if required, data protection obligations, i.e. whether Data Transfer Requirements, and Agreements may be required between the Client and the eDisclosure/eDiscovery vendor	●	●
Within a reasonable time-period / 1 - 2 weeks	<b>Phase 3</b> Preservation	Complete preservation of documents process <sup>6</sup> within a "reasonable period" <sup>7</sup>	●	●
		Send litigation hold notices to all current and former employees <sup>8</sup>	●	●
		Obtain written confirmation regarding document preservation duties <sup>9</sup>	●	●
		Complete technical preservation steps (via eDisclosure/eDiscovery service provider/ Client's own IT)	●	●
		Provide all parties with a written notice regarding document preservation <sup>10</sup>	●	●



<sup>5</sup> PD31B, Schedule, Part 1, (11), Potential problems with the extent of search and accessibility of Electronic Documents; PD51U, Appendix 2, Guidance on process after any order for Extended Disclosure has been made, paragraph 7(5). | <sup>6</sup> PD 51U., 3.2 (1) | <sup>7</sup> PD 51U., 4.4  
<sup>8</sup> PD 51U., 4.2(2); 4.3; 4.4(1): This needs to be sent to all current and former employees who may have documents that could be relevant to any issue likely to be in dispute. This notice must be in writing, and identify the documents to be preserved, and notify the recipient (e.g. the relevant employees) that the documents should not be deleted or destroyed. | <sup>9</sup> PD 51U., 4.2(3): An appropriate representative within the organisation must confirm that steps have been taken to comply with document preservation duties.  
<sup>10</sup> PD 51U., 5.1: A written notice confirming steps have been taken to preserve documents must be provided to all parties when statement of case is served and this must be provided at the same time as the Statement of Case.

# eDisclosure/eDiscovery Technical and Legal Procedural Checklist



Timeline	Phase	Client Disclosure	
With Statement of Case	<b>Phase 4</b> Initial Disclosure	Provide <i>Initial Disclosure</i> with the Statement of Case <sup>11</sup> unless this has been dispensed with per PD51U, 5.3 <sup>12</sup>	<input type="radio"/> <input type="radio"/>
Within 28 days from the final statement of case	<b>Phase 5</b> Prior to CMC	Each party should state, in writing, whether or not it will request search-based <i>Extended Disclosure</i> <sup>13</sup> to include one or more of Models C, D or E. At this point the parties should not particularise the Model(s) or the issue(s) in the case	<input type="radio"/> <input type="radio"/>
		Request and/or agree Extended Disclosure. Pick Model for Extended Disclosure for particular issues	<input type="radio"/> <input type="radio"/>
Within 42 days of final statement of case		<b>Note: Claimant</b> to prepare and serve List of <i>Issues for Disclosure</i> <sup>14</sup> using section 1A of the DRD (if any party has provided notice that Extended Disclosure will be requested)	<input type="radio"/> <input type="radio"/>
No later than 14 days after service of List of Issues for Disclosure		[ <b>For Defendants Only</b> : Where a particular Issue for Disclosure has not been included in the <i>List of Issues for Disclosure</i> , or is described in a manner that is unacceptable by the Defendant, using section 1A of the <i>Disclosure Review Document</i> (DRD), the Defendant should provide the Claimant with proposed wording or alternative wording for inclusion in the draft <i>List of Issues for Disclosure</i> ]	<input type="radio"/> <input type="radio"/>
Within 14-28 days, depending on Model requested and party responsible for responding <sup>15</sup>		<ul style="list-style-type: none"> <li>▶ File/serve Notice that Extended Disclosure will be requested.</li> <li>▶ Finalise and file Disclosure Review Document (“DRD”) and Certificate of Compliance</li> </ul>	<input type="radio"/> <input type="radio"/>
ASAP, no later than 14 days before CMC		Both parties to prepare and exchange drafts of Section 2 of the DRD <sup>16</sup> for search-based Extended Disclosure (i.e., Models C, D and/or E) Appendix 2 to PD51U (DRD): <a href="https://www.justice.gov.uk/courts/procedure-rules/civil/pdf/update/appendix-2-pd-51u.pdf">https://www.justice.gov.uk/courts/procedure-rules/civil/pdf/update/appendix-2-pd-51u.pdf</a>	<input type="radio"/> <input type="radio"/>
Filing no later than 5 days before CMC <sup>17</sup>		Claimant to finalise and file single joint DRD <sup>18</sup>	<input type="radio"/> <input type="radio"/>
As soon as reasonably practicable after filing of finalised DRD but not less than 2 days before the CMC <sup>19</sup>		The parties to each file and serve a signed Certificate of Compliance in a form set out in Appendix 3 PD51U Appendix 3 to PD51U (Certificate of Compliance): <a href="https://www.justice.gov.uk/courts/procedure-rules/civil/pdf/update/appendix-3-practice-direction-51u.pdf">https://www.justice.gov.uk/courts/procedure-rules/civil/pdf/update/appendix-3-practice-direction-51u.pdf</a>	<input type="radio"/> <input type="radio"/>
			

<sup>11</sup>PD51U, 5.1 :Save as provided below, and save in the case of a Part 7 claim form without particulars of claim or a Part 8 claim form, each party must provide to all other parties at the same time as its statement of case an Initial Disclosure List of Documents that lists and is accompanied by copies of: (1) 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 (2) the key documents that are necessary to enable the other parties to understand the claim or defence they have to meet. | <sup>12</sup> PD51U 5.3: Initial Disclosure is not required where - (1) the parties have agreed to dispense with it (per para 5.8); (2) the court has ordered that it is not required (per para 5.10); or (3) a party concludes and states in writing, approaching the matter in good faith, that giving Initial Disclosure would involve it or any other party providing (after removing duplicates, and excluding documents referred to at paragraph 5.4(3)) more than (about) whichever is the larger of 1000 pages or 200 documents (or such higher but reasonable figure as the parties may agree), at which point the requirement to give Initial Disclosure ceases for all parties for the purposes of the case. | <sup>13</sup> PD51U 7.1 | <sup>14</sup> PD51U 7.2.1 | <sup>15</sup> Section 1B of DRD: Party requesting Model C must complete within 28 days of response to List of Issues for Disclosure per 7.5 (10.5); Party responding to Model C requesting party must complete Section 1B (response column) of DRD within 14 days of receiving Section 1B (10.5); Both parties must draft Section 2 of DRD Completion and exchange as soon as reasonably practical but no later than 14 days before CMC (10.6) | <sup>16</sup> PD51U, 10.5 | <sup>17</sup> PD51U, 10.7 | <sup>18</sup> Related correspondence and earlier drafts should not ordinarily be filed | <sup>19</sup> PD51U, 10.8 and Appendix 3 of PD51U

# eDisclosure/eDiscovery Technical and Legal Procedural Checklist



Timeline	Phase	Client Disclosure	● ●
Set CMC date	<b>Phase 6</b> CMC	CMC – await Court’s Order for Disclosure. The Court will make an order for disclosure, noting that the Court may order different disclosure models for different issues. [Note: Disclosure Guidance Hearings can be requested at any time prior to, or following the CMC]	● ●
Estimate: 1 – 3 weeks	<b>Phase 7</b> Collection	Further to <b>Phase 1</b> (Initial Preparation) and <b>Phase 2</b> (Scoping), now decide upon and confirm scope and type of collection (e.g., hard-drives/ backups / cloud / servers/ external drives / external media devices / tablets / laptops/ mobile phones / smart watches / banking transaction sources / structured data sources/ hosted databases etc)	● ●
		Confirm collection type (e.g. a forensic image <sup>20</sup> or logical copy <sup>21</sup> )	● ●
		Plan and execute collection logistics (e.g. on-site collection, remote collection, self-collection, guided client collection, external third party collection)	● ●
		Collect and scan hardcopy documents (if and where required)	● ●
Estimate: 1 – 2 weeks	<b>Phase 8</b> Processing	All in-scope data should be provided to the eDisclosure/eDiscovery service provider for processing by (ideally) encrypted hard-drives/ Secure File Transfer Portal (SFTP)	● ●
		Request from eDisclosure/eDiscovery provider daily status reports/processing metrics, automated by the processing tool	● ●
		Instruct eDisclosure/eDiscovery provider to extract easily recoverable deleted items	● ●
		Instruct eDisclosure/eDiscovery provider to deNIST <sup>22</sup> the data set at the time of extraction when all data has been decompressed (e.g., remove system files, files which are machine-made)	● ●
		Request file-type report and suppress files that will not provide any content in relation to the Disclosure, i.e. irrelevant file types / computer-generated file types	● ●
		Remove logos/gif files from processing	● ●
		Address ‘exceptions’ <sup>23</sup> , i.e. documents that cannot be opened, imaged or processed. Request exception report and approaches to addressing exceptions	● ●
			● ●



<sup>20</sup> A forensic image is a complete hard drive copy, including slack space. Forensic imaging requires specific tools and is typically conducted by a digital forensics expert. | <sup>21</sup> A logical copy provides the content of file directories on a drive and does not include previously deleted data or other information that a forensic image would capture. | <sup>22</sup> The removal of system files, program files, and other non-user created data. | <sup>23</sup> Types of exceptions include corrupt files, unprocessable files, unsupported files, some audio and video files, encrypted files etc.



Timeline

Phase

Client Disclosure

**Phase 8**  
Processing  
(continued)

- Confirm processing parameters with the eDiscovery/eDisclosure service provider:
- Time zone to be determined on a per-custodian basis, based on custodian's location. Anticipate that most documents will default to UTC
  - Process emails to MHT format to provide a secure version of the native and to expedite processing
  - Tag documents containing hidden text with a pop-up notification in the chosen document review platform. Where hidden text exists, add it to the start of the extracted text under a text review in the tagging tree/coding layout<sup>24</sup>
  - Consider appropriate deduplication methodologies, i.e. utilising global deduplication<sup>25</sup>
  - Create the following additional fields when globally deduplication:
    - ▶ Duplicate Custodian: The remaining Custodian names that have a duplicate of the record. The primary Custodian is not listed. This list is deduped
    - ▶ Custodian All: The primary Custodian, followed by all other Custodians that have a duplicate of the record. This list is deduped
  - TIFF and OCR documents that do not contain extracted text along with all PDF files (since some PDFs contain partial text)



Estimate: 1 - 2 weeks

**Phase 9**  
Processing /  
Filtering

Finesse initial search terms, preferably on a per-custodian basis, using wildcard searches and variations (to capture documents that do not respond effectively to OCR). These search terms should be run over on the initial post-processing set<sup>26</sup>



**Note:** Some searches can be run across all custodians whilst others can be isolated to certain custodians for accurate results and to reduce any false-positive results



Confirm whether to conduct a family-level review or four corner review.

**Best-practice note:** all productions must include families with any privileged documents placeholdered. It is therefore best practice to load all data to the review platform with search hits plus their families



Confirm date range parameters on a per-custodian basis. As a default, date filters should be Parent Email Sent Date for email families and Last Modified Date for efiles, i.e. MSWord, PDF, etc



Further to **Phase 1** (Initial Preparation), finesse and provide standalone potentially privileged search terms for separate filtering



Load searchable text into ECA Platform (for early case assessment and document interrogation) or document review platform (to commence the review), ensuring that all character errors with non UTF-8 text have been fixed



<sup>24</sup> Request that the hidden text appears at the top of the document in a section marked with <<<START HIDDEN CONTENT>>><<<END HIDDEN CONTENT>>>. Include page numbers within the hidden content area so that anybody reviewing the document can determine the context for the hidden text. | <sup>25</sup> There are two different method for conducting deduplication, custodial deduplication and global deduplication. Custodial Deduplication removes all duplicate files within a single custodian's collection, Global Deduplication removes all duplicates across all custodians in a matter (i.e., if Person A and Person B receive the same email, only one copy of this two-way correspondence will be uploaded to the review platform). | <sup>26</sup> Focused search term syntaxes will be devised once the final dataset is populated to Relativity. Processing tools do not have the sophistication to recognise syntaxes, therefore standalone search terms are run in the processing tool to reduce the dataset.



Timeline

Phase

Client Disclosure

Estimate: 1 - 2 weeks

**Phase 10**

Post-processing  
Filtering/Culling and  
upload to Document  
Review Platform

eDisclosure / eDiscovery provider to configure document reviewer and law firm review platform accounts



eDisclosure / eDiscovery provider to Confirm document ID appearance, i.e. CLIENT\_0000001



eDisclosure / eDiscovery provider to Include language identification field to easily identify documents with a foreign language component and run language identification across the uploaded document corpus



eDisclosure / eDiscovery provider to Include name nomination field and group custodian aliases together



eDisclosure / eDiscovery provider to run privileged search terms and mass tag any documents with hits with an admin tag titled 'potentially privileged'



eDisclosure / eDiscovery provider to de-duplicate to unique families only (check hash deduplication levels with eDisclosure/eDiscovery service provider, i.e. MD5/SHA1/SHA256)



Consider, in tandem with eDisclosure / eDiscovery provider, whether to run varying analytics, including:

- › Thread deduplication
- › Content analytics
- › Near-duplicate analysis<sup>27</sup>



eDisclosure / eDiscovery provider to sort documents by Custodian, then folder (keeping families together). Any document with a language identification should be grouped/batched together for review consistency



Engage native foreign language speakers to provide "stop words", search terms and search term variants



Confirm tagging tree/coding layout and any categories and sub-categories per the Disclosure request/Order/DRD issues, as well as key/hot documents and a document comments box



Consider and discuss with eDisclosure/eDiscovery provider family propagation<sup>28</sup> / near-duplicate propagation (noting that any documents in a family with a privilege tag will be placeholdered at the production phase)



Activate machine translation on all foreign language documents to ensure the general 'gist' of foreign language documents can be assessed by English speaking reviewers for document quality control



<sup>27</sup> It is advisable to ring-fence documents with a > 99% duplicate hit and sample review before mass tagging. Log reasoning for mass tagging of duplicates in the decision log | <sup>28</sup> Family documents must be produced together. If a parent is relevant, all the child documents will follow suit. Any privileged/part-privileged documents in a family will be placeholdered/redacted and produced with a slip-sheet or with the requisite redactions burned on the face of the document.



Timeline

Phase

Client Disclosure

Timeline	Phase	Client Disclosure	
	<p><b>Phase 10</b> Post-processing Filtering/Culling and upload to Document Review Platform (continued)</p>	<p>Further finesse search terms and keyword syntaxes/search strings. Run search term reports (STRs) over the dataset and tag documents with the appropriate search term contained within the document. For best results, this should be conducted on a per-custodian basis</p>	<p>● ●</p>
		<p>Activate keyword highlighting/ persistent highlighting sets for easier document relevance recognition</p>	<p>● ●</p>
		<p>Batch documents by custodian in priority order and publish for review</p>	<p>● ●</p>
		<p>Create a query log for the review team – this log should be circulated to the review team daily. Key/hot documents should be assessed by senior team members for keyword content. Keywords should be updated and re-run, if required</p>	<p>● ●</p>
		<p>Consider predictive coding work flow, i.e. Simple Active Learning (TAR1.0) or Continuous Active Learning (CAL/TAR2.0)</p>	<p>● ●</p>
		<p>Discuss predictive coding models and initial training set (seed set), particularly if the dataset is comprised of at least 20,000 documents</p>	<p>● ●</p>
		<p>Draft review instructions / Review Protocol</p>	<p>● ●</p>
<p>Estimate: TBC Depending on the nature of the matter, the number of document reviewers, the document volumes, and review methodologies used, i.e. TAR</p>	<p><b>Phase 11</b> Review</p>	<p>Confirm review levels, e.g. 1LR, 2LR, Privilege Review, Redaction</p>	<p>● ●</p>
<p>If TAR1.0 or 2.0/Predictive coding has been decided, activate TAR and enlist expert reviewers to exclusively work on the predictive coding set. Establish appropriate relevancy threshold</p> <ul style="list-style-type: none"> <li>▶ For TAR1.0, results of the predictive coding set will need to be validated to ensure a proper standard of quality – create work flow to validate documents coded as ‘non responsive’ that respond to keyword hits</li> <li>▶ On the other hand, TAR2.0/CAL, is an iterative review, which will automatically update the statistical model of documents coded as ‘relevant’, which will allow the algorithm to promote potentially relevant documents to the top of the review queue. A cut off, or tail off of the documents marked relevant will need to be decided, i.e. when to stop reviewing as all the relevant content has been identified, based on the CAL results</li> <li>▶ Documents filtered out as not relevant will need to be validated</li> </ul>		<p>● ●</p>	
<p>For Predictive Coding – Enlist Team to validate not relevant documents to know when to stop the review</p>		<p>● ●</p>	
<p>Enlist QC team for quality control searches at all levels. Create missed tag and clean-up searches for review consistency</p>		<p>● ●</p>	
<p></p>		<p></p>	



Timeline	Phase	Client Disclosure	
Estimate: 1 week	<b>Phase 12</b> Production	Production requirements will vary, depending on what is agreed by the parties involved. This will be revisited prior to production. For example, a textbook production will be as follows: <ul style="list-style-type: none"> <li>› Conduct inconsistency searches - clean up tagging inconsistencies</li> <li>› QC privileged placeholders</li> <li>› Agree Bates stamps and Bates numbering designations</li> <li>› Produce unstructured data as black &amp; white TIFF images at 300 dpi named with the unique Bates number per page</li> <li>› Produce excel/structured data in native having removed associated metadata from the .dat file. These docs should be named with a unique Bates number and corresponding Bates-numbered TIFF image placeholder.</li> <li>› Scanned paper docs should be produced as standalone (i.e. distinct documents should not be merged into a single record and vice versa)</li> <li>› Extracted text for all non-redacted documents containing searchable text should be produced, and all non-searchable or redacted files should be OCR'd. Native files should contain the text of the document and not the OCR version of the TIFF image placeholder</li> <li>› Produced documents, images, and placeholders should include sequential Bates numbering, with prefixes consistent throughout all documents</li> </ul>	
1 day	<b>Phase 13</b> Presentation	Produced documents should ideally be sent via SFTP/encrypted hard-drive. Passwords should be provided separately	