

# PD57AD: Dual Legal & Technical Approach

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## Purpose of Disclosure

- The primary goal of disclosure is to prevent surprises at trial by ensuring that all parties are aware of all documents relevant to the issues in the proceedings (to enable the fair resolution of disputes).
- Disclosure must be limited to what is reasonable and proportionate to resolve the issues in the proceedings.
- PD57AD requires parties and their legal representatives to agree on the scope of disclosure, making the process as efficient as possible (Duties in relation to disclosure, *paragraph 3, PD57AD*).

## What is a "document"?

- Under PD57AD, a "*document*" includes any record containing information, whether paper or electronic. This definition extends to emails, text messages, social media, voicemails, and even deleted data and metadata. The broad definition ensures comprehensive disclosure, covering all potential evidence formats.

## Disclosure Models

PD57AD outlines five models (A to E) for extended disclosure, each suited to different needs and levels of search intensity.

- **Model A:** Confined to known adverse documents.
- **Model B:** Limited disclosure of key documents plus known adverse documents.
- **Model C:** Disclosure of particular documents or narrow classes of documents, plus known adverse documents.
- **Model D:** Narrow search-based disclosure including adverse documents, with the option to include/exclude narrative documents.
- **Model E:** Wide search-based disclosure, including adverse documents and documents leading to other discoverable documents, used in exceptional cases.

# Disclosure Duties

## Parties' Duties

Parties involved in proceedings must:

1) Preserve relevant documents.

2) Disclose known adverse documents promptly unless privileged.

(3) Comply with court orders for disclosure.

(4) Conduct document searches responsibly.

(5) Act honestly throughout the disclosure process.

(6) Avoid disclosing irrelevant documents.

## Legal Representatives' Disclosure Duties

Legal representatives must:

(1) Help preserve relevant documents.

(2) Advise clients on compliance with disclosure duties.

(3) Cooperate with opposing parties to facilitate efficient disclosure.

(4) Act honestly in the disclosure process.

(5) Verify claims of privilege on disclosed documents.

# Combined Legal and Technical Steps for Effective Disclosure

To achieve effective eDisclosure, a combination of legal and technical measures is essential (and required by PD57AD – *paragraph 3.3 (2), paragraph 6.9, paragraph 9.6*).

## Legal Steps

- **Early Case Assessment:** Assess the scope of disclosure early to determine the relevant documents and issues.
- **Cooperation and Communication:** Maintain open communication with the opposing party to agree on disclosure scope and processes.
- **Detailed Planning:** Develop a comprehensive disclosure strategy, including identifying key custodians and data sources.
- **Compliance and Monitoring:** Regularly monitor compliance with disclosure duties and court orders.

## Technical Steps

- **Data Preservation:** Implement robust data preservation measures to prevent loss or alteration of relevant documents.
- **Data Collection:** Use advanced tools to collect data efficiently from various sources, ensuring completeness and accuracy.
- **Data Processing:** Process collected data to filter out irrelevant information, reducing the volume of documents to review.
- **Review and Analysis:** Employ technology-assisted review (TAR) and other analytical tools to expedite document review and identify critical information.
- **Production:** Produce documents in a format that is accessible and usable by all parties, ensuring compliance with court requirements.

# A Snapshot of UK Disclosure Terminology – PD57AD

## Initial Disclosure

Limited to key documents on which each party relies and necessary documents for understanding the claim or defence.

**Scope:** Should be proportionate to the dispute and should not include adverse documents unless agreed.

**Timeline:** Provided with statements of case, or within 60 days after the first case management conference (CMC).

## Disclosure Review Document (DRD)

**Purpose:** Helps to identify and agree on the scope of disclosure and issues for disclosure.

**Components:** List of Issues for Disclosure, disclosure models, and search methodologies.

**Submission:** Drafted by the parties and submitted to the court. Claimant drafts the List of Issues for Disclosure, which should be a fair representation of the issues in dispute between the parties.

## Parties' Disclosure Duties

- Preserve relevant documents.
- Disclose known adverse documents unless privileged.
- Conduct reasonable and proportionate searches.
- Act honestly and avoid disclosing irrelevant documents.

## Legal Representatives' Disclosure Duties

- Advise and assist clients in compliance.
- Preserve documents and ensure proper claims of privilege.
- Cooperate with other parties' representatives to ensure efficient and cost-effective disclosure.

# Extended Disclosure

**More comprehensive than Initial Disclosure and categorised into five models (A to E)**

**Components:** List of Issues for Disclosure, disclosure models, and search methodologies.

**Submission:** Drafted and agreed by the parties and submitted to the court. Claimant drafts the *List of Issues for Disclosure*, which should be a fair representation of the issues in dispute between the parties.

**Model A:** Disclosure of known adverse documents only.

**Model B:** Limited Disclosure of key documents and known adverse documents.

**Model C:** Disclosure of particular documents or narrow classes of documents and known adverse documents.

**Model D:** Narrow search-based disclosure including adverse documents, may include or exclude Narrative Documents.

**Model E:** Wide search-based disclosure including adverse documents and documents leading to further inquiry, includes Narrative Documents.

**Court Approval:** Required for Models C, D, and E.

## Case Management Conference (CMC)

**Purpose:** Discuss and agree on the scope and process of disclosure, including the appropriate models to use.

**Outcome:** Court orders specifying the scope of Extended Disclosure and deadlines.

## Disclosure Certificate

**Requirement:** Parties must certify that disclosure duties have been complied with, particularly the disclosure of known adverse documents.

## Continuing Obligation

**Duration:** The disclosure duties continue until the conclusion of the proceedings, including any appeals, i.e. until it becomes apparent that there will be no further proceedings.

# Practitioner Checklist - PD57AD

Our best practice check list is below. Some of the steps are required by PD57AD, whilst others are a form of recommended technical procedure to ensure that disclosure is conducted effectively.

#	Requirement	Action	Complete
1	Initial Steps	Send preservation letters to client	
		Assemble team (including external experts, as required)	
		Engage eDisclosure technology / platform	
		Send Disclosure and Privilege memoranda to the client	
		Brief client on disclosure details and duties under PD57AD	
2	Preservation	Clients to conduct timely preservation	
		Clients to provide written confirmation of preservation	
3	Identification / Scoping (1-2 weeks)	Identify key documents for Initial Disclosure	
		Identify in-scope sources for wider Disclosure	
4	Data Governance / Initial Preparation (1-2 weeks)	Scope the extent of disclosure required	
		Ensure data is properly managed and governed	
		Prepare initial set of documents for <i>Initial Disclosure</i> .	
5	Initial Disclosure (With Statement of Case)	Provide Initial Disclosure and Initial Disclosure List of Documents	
		Include key documents on which either party relies	
		Ensure documents are provided electronically (no translations needed)	
6	Request Extended Disclosure	Submit request within 28 days from the final Statement of Case (Request should be in writing)	
		Specify disclosure models for each Issue for Disclosure	
7	Draft List of Issues for Disclosure (LOIFD) + Models	Draft within 42 days of the final Statement of Case	
		Agree on service proposals in Section 1A of the Disclosure Review Document (DRD)	

# Practitioner Checklist - PD57AD

## Continued

#	Requirement	Action	Complete
8	Agreement on LOIFD + Models	Parties to reach agreement as soon as practicable, no later than 21 days after service of List of Issues for Disclosure (LOIFD) Set out alternative/additional proposals in Sections 1A and 1B of the DRD if no agreement	
9	Final Agreement on LOIFD, Models + DRD	Finalise LOIFD and DRD Models (as soon as reasonably practical) no later than 14 days before the Case Management Conference (CMC) Complete and file the final DRD no later than 5 days pre-CMC	
10	Certificate of Compliance	File and serve signed Certificate of Compliance as soon as reasonably practicable after filing the DRD, but not less than 2 days before the CMC	
11	CMC / Disclosure Order	Final CMC / Order for Disclosure	

### Contact



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