

## Initial Disclosure

Under this pilot, when a party serves its particulars of claim, defence or reply, it must also serve an Initial Disclosure List of Documents, providing copies of the documents listed.

The documents should be the key documents on which the party has relied in supporting its statement of case and which would enable the other side to understand the claim or defence they have to put forward.

**At this stage, a party is not obliged to undertake a search for documents beyond any search it has already taken, but it must describe those searches in the List of Documents.**

Parties can agree not to provide this Initial Disclosure and the court may order that it is not necessary.

A party must confirm in writing, when serving its particulars of claim or defence that steps have been taken to preserve relevant documents.

This process is intended to be time efficient and therefore there is a cap of 200 documents or 1000 pages of material.

- Within 28 days of final statement of case, the parties should state, in writing, whether they would like to request Extended Disclosure.



- The claimant has 42 days to prepare and serve on the other parties a draft List of Issues for Disclosure, if one indicates that it is likely to request Extended Disclosure.

## Extended Disclosure

To reiterate, a party wishing to seek documents in addition to the Initial Disclosure must request Extended Disclosure after completing a DRD as there is no presumption that a party is entitled to it. The claimant will be required to take the lead in producing the List of Issues for Disclosure.

It will only be ordered if the court is persuaded that it is “appropriate” to request Extended Disclosure in order to resolve the issue. The appropriate model is usually determined at the first CMC.

Extended Disclosure will take place later in proceedings, and there are five Disclosure Models.

### **Model A: No further disclosure**

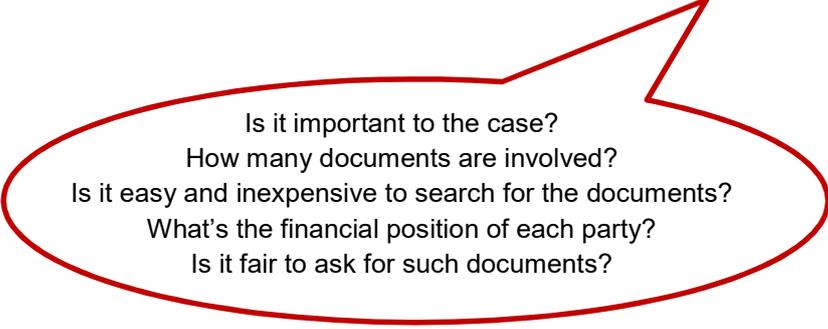
Model A essentially supplements Initial Disclosure where documents may have been missed out the Court may order that the only disclosure required in relation to some or all of the Issues for Disclosure is of known adverse documents in accordance with the continuing duties.

“Known adverse documents” means a document which a party is actually aware of without undertaking a further search and which contradicts or materially damages the disclosing party’s contention or version of event or supports the contention or version of an opposing party.

### **Model B: Limited Disclosure**

This disclosure model involves disclosing namely the key documents on which the parties have relied in support of their claims or defences and the key documents necessary to enable the other parties to understand the claim or defence they have to meet.

- If either party applies for a search-based model of Extended Disclosure (Models C to E) on any issue, both parties will be required to complete Section 2 of the DRD.
- Section 2 provides the court with information about the data held by each party including:
  - Where and how the data is held
  - How the parties propose to process and search the data
  - Whether there are points that the parties have not been able to agree, and which they need the court to determine at the CMC.
- Section 2 also requires the parties to provide an estimate of the likely cost of giving the disclosure that they propose and the volume of documents. This is so that the courts can consider whether the proposals are reasonable and proportionate.



Is it important to the case?  
How many documents are involved?  
Is it easy and inexpensive to search for the documents?  
What's the financial position of each party?  
Is it fair to ask for such documents?

### **Model C: Request-led search-based disclosure**

This require parties to give disclosure of particular documents or narrow classes of documents relating to a particular Issue for Disclosure, by reference to requests set out in the DRD.

If the parties cannot agree that disclosure should be given, or the disclosure to be given, pursuant to a request, then the requesting party must raise the request at the case management conference. The court will determine whether the request is reasonable and proportionate and may either order the disclosing party to search for the documents requested, refuse the request, or order the disclosing party to search for a narrower class of documents than that requested.

### **Model D: Narrow search-based disclosure**

This will require parties to disclose documents which are likely to support or adversely affect their claim or defence or that of another party following a reasonable and proportionate search in relation to the Issues for Disclosure for which this Model has been ordered.

This is the nearest equivalent to the past standard disclosure.

### **Model E: Wide search-based disclosure**

Model E is only ordered "in an exceptional case".

It encompasses disclosing documents which could "lead to a train of enquiry which may then result in the identification of other documents for disclosure".

Narrative documents must be disclosed unless the court orders otherwise. This is a document which is relevant to the background or context of material facts or events and not directly to the Issues of Disclosure.