



Cooperating on Electronic Disclosure Without Giving Away Your Case

The duty to cooperate under PD 57AD, and how to discharge it: custodians, search terms, date ranges, TAR, metadata and production protocols – what to share freely, what never to share, and how to negotiate a defensible protocol without surrendering strategy.

A practical guide for solicitors, barristers, litigation partners, associates, paralegals, in-house counsel, disclosure lawyers, investigators and litigation-support professionals · England & Wales, with notes for Scotland, Northern Ireland, arbitration, tribunals and criminal proceedings

Contents

This guide explains how to discharge the cooperation duties that PD 57AD imposes on parties and their legal representatives without disclosing privileged strategy: what must be shared, what may be withheld, how to run the negotiation, and when cooperation should give way to a Disclosure Guidance Hearing or a contested application.

1	Executive summary	3
2	The problem in plain English: cooperation feels like giving the game away	4
3	Why it matters legally: the express duties and their teeth	5
4	Important terminology	6
5	The organising idea: methodology transparent, strategy privileged	7
6	The share/hold map: what to share freely and what never to share	8
7	Cooperating on custodians, date ranges and sources	9
8	Cooperating on search terms: hit counts, sampling and the horse-trade	10
9	Cooperating on TAR and analytics: how much transparency?	11
10	Cooperating on metadata, formats and the production protocol	12
11	The negotiation sequence: proposal to protocol, with a decision log	13
12	Cooperation is not capitulation: when to stop agreeing	14
13	Disclosure Guidance Hearings under paragraph 11	15
14	What the courts have said: a cooperation case digest	16
15	Correspondence hygiene: open, without prejudice and the record	17
16	Who attends the meet-and-confer, and how to run it	18
17	Worked example 1: negotiating the TAR protocol in Aldgate v Harlow	19
18	Worked example 2: the search-term horse-trade	20
19	Worked example 3: the production-protocol negotiation	21
20	Practical workflow: an eleven-step cooperation plan	22
21	Decision tree: agree, counter, sample or seek directions?	23
22	Privilege and confidentiality considerations	24
23	UK GDPR and data minimisation in cooperative disclosure	25
24	Proportionality: cooperation as the cheapest case-management tool	26
25	Common mistakes and how to avoid them	27
26	Technical limitations lawyers should understand	28
27	Questions lawyers should ask their client	29
28	Questions lawyers should ask the opponent	30
29	Questions lawyers should ask a forensic or eDisclosure provider	31
30	Suggested wording for instructions and correspondence	32
31	Checklist: cooperation without capitulation	33
32	Red flags	34
33	When to involve a digital forensic expert	35
34	How the rules differ: Scotland, NI, arbitration, tribunals, criminal	36
35	Glossary	37
36	Authoritative UK references	38
37	How a specialist laboratory can assist	39

Disclaimer. This publication provides general information about electronic disclosure and digital forensics practice in England and Wales. It is not legal advice and must not be relied on as such. The law, procedural rules and guidance change; always check the current versions and take advice on the facts of your matter. Case citations are provided for further reading. Computer Forensics Lab Ltd accepts no liability for reliance on this guide. © 2026 Computer Forensics Lab Ltd.

SECTION 1

Executive summary

Practice Direction 57AD is built on an idea that sits uneasily with adversarial instinct: the parties are expected to **cooperate** in working out what disclosure is required, and their lawyers are under an express personal duty to **liaise and cooperate** with the other side's lawyers, "including through the use of technology". Solicitors regularly ask the same question in different words: if we tell the opponent our custodians, our search terms, our date ranges and our review technology, are we not handing them a map of our case?

The answer, developed throughout this guide, is that the duty is about **methodology, not strategy**. What the rules require you to share is how you propose to search: the sources you will look in, the people whose documents you will collect, the terms and tools you will use, the format in which you will produce. What the rules do not require you to share is why: your view of the merits, which documents you hope to find, which issues frighten you, what your review has revealed, and anything else protected by litigation privilege. A party that understands this division can be generous with the first category and disciplined about the second, and will usually do better at the case management conference than a party that treats every request for a hit count as an attack.

Cooperation also has teeth. Paragraph 10.3 arms the court with adverse costs orders against parties whose failure to cooperate over the Disclosure Review Document causes wasted expense. The judgments collected in Section 14, from *UTB v Sheffield United* to *Voltaire Capital v Watson* in 2025, show judges penalising parties who litigate what they should have negotiated. At the same time, cooperation is not capitulation: *Coll v Alphabet*-style specificity, sampling data and the Disclosure Guidance Hearing under paragraph 11 give you principled exits when the other side's demands are disproportionate.

THE GUIDE IN ONE PARAGRAPH

Share your methodology early, in writing, with numbers attached. Test everything the opponent proposes against sampling data, not rhetoric. Keep your strategy, your review learnings and your assessment of the documents privileged. Record every offer, counter-offer and agreement in a decision log. Escalate to the court only what genuinely cannot be agreed, and arrive at the CMC with a joint document that shows the judge you did everything paragraph 2.3 expects.

SECTION 2

The problem in plain English: cooperation feels like giving the game away

Under the old CPR Part 31 culture, disclosure was something each party largely did alone. You searched what you thought reasonable, listed what you found, and argued about it afterwards. PD 57AD reverses the order: the arguing is supposed to happen **first**, cooperatively, so that by the time anyone searches anything the scope has been agreed or decided. The Disclosure Review Document forces the parties into a joint drafting exercise; paragraph 10.6 requires them to try to resolve disputes before the case management conference; and the court expects a single, jointly completed DRD, not duelling versions.

This makes many litigators uncomfortable for understandable reasons:

- **Information asymmetry.** Telling the other side which custodians and repositories you have identified reveals the shape of your organisation's evidence, including sources they might never have thought to ask about.
- **Search terms feel like a confession.** A term list built around your weak points looks like a map of your anxieties. Lawyers worry that proposing "delay", "penalty" or "known issue" tells the opponent exactly where to dig.
- **Tactical exposure.** Every concession in negotiation ("we can live without that custodian") may be read as an admission about where the evidence lives.
- **Cost fear.** Cooperation takes senior time. Meet-and-confer calls, hit-count reports and iterative term testing all cost money before a single document is reviewed.

The discomfort is real but mostly rests on a misunderstanding. The rules do not ask you to reveal your assessment of the case. They ask you to be transparent about **process**: an engineering conversation, not a merits conversation. The distinction is the subject of Section 5, and almost every practical difficulty in this guide resolves into applying it correctly. There is also a hard commercial point: the alternative to cooperation is not privacy, it is **a contested hearing**, where you will be forced to explain your methodology anyway, on a witness statement, at much greater cost, in front of the judge who will case-manage the rest of your dispute.

REALITY CHECK

Nothing in PD 57AD requires you to disclose what your review has found, how strong you think your case is, or what you intend to do at trial. Everything it requires you to disclose – sources, custodians, terms, tools, formats – the opponent could ultimately obtain through the DRD process or a court order in any event. Cooperation mostly means giving earlier, and with better grace, what the process would extract from you anyway.

SECTION 3

Why it matters legally: the express duties and their teeth

The cooperation obligations in PD 57AD are not aspirational. They appear four times, in mandatory language, and are backed by costs sanctions.

3.1 Paragraph 2.3: the parties' duty

"The court expects the parties (and their representatives) to cooperate with each other and to assist the court so that the scope of disclosure, if any, that is required in proceedings can be agreed or determined by the court in the most efficient way possible."

This sits in the principles section of the Practice Direction, which means it colours the construction of everything else. When a judge has to resolve a disputed search term or an argument about Models, the party who can show a cooperative paper trail starts ahead.

3.2 Paragraph 3.2(3): the lawyers' personal 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."

Note three things. First, this is a duty owed by the **legal representatives personally**, not just the parties; solicitors have professional exposure if they obstruct. Second, it expressly extends to **technology**: refusing to discuss deduplication, threading, TAR or production formats is itself a breach. Third, the standard is promotion of "reliable, efficient and cost-effective" disclosure, which gives content to what cooperation must achieve.

3.3 Paragraph 10.6: resolve before the CMC

"The parties must seek to resolve any disputes over the scope of any Extended Disclosure sought in advance of the first case management conference."

Disputes that could have been resolved but were parked for the hearing attract judicial irritation and, increasingly, costs. The judge's function at the CMC is to decide genuine disagreements, not to chair a first negotiation.

3.4 Paragraph 10.3: the sanction

Paragraph 10.3 makes completion of the DRD an ongoing joint obligation and provides that a party's failure to cooperate in that process may be met with **adverse costs orders**. This is the provision under which the wasted costs of a hearing caused by obstruction are visited on the obstructing party; Guide 15 in this series examined it in the DRD context. The discipline provisions travel with it: paragraph 6.5 requires a party requesting Extended Disclosure to show the request is "appropriate, reasonable and proportionate", and paragraph 10.4 warns that Model C requests "should not be used in a tactical or oppressive way".

WHY THE JUDGE CARES

Disclosure disputes consume disproportionate court time, and the Disclosure Review Working Group's July 2026 survey found that costs remain the profession's chief complaint about the regime. Judges therefore treat the cooperation record as a proxy for reasonableness: the party whose correspondence shows offers, sampling data and narrowing proposals is believed; the party whose correspondence shows demands and silence is not. Your cooperation file is advocacy you write months before the hearing.

SECTION 4

Important terminology

Term	What it means in the cooperation context
Meet-and-confer	Borrowed from US practice: a structured discussion (call, meeting or exchange) between the parties' lawyers and often their eDisclosure providers, aimed at agreeing methodology. PD 57AD does not use the phrase but paragraphs 2.3, 3.2(3) and 10.6 assume the activity.
Disclosure Review Document (DRD)	The joint form that Model C/D/E cases must complete: List of Issues for Disclosure, Models, and the Section 2 technology questionnaire. The main formal vehicle for cooperation.
Hit count / hit report	A per-term count of documents (and usually document families) responsive to each proposed search term across the processed data. The basic currency of search-term negotiation.
Richness / prevalence	The estimated proportion of relevant documents in a population, measured by reviewing a random sample. Used to test whether a term earns its review cost.
Sampling	Reviewing a statistically meaningful random selection from a population (e.g. documents hit by a disputed term) to estimate richness before agreeing or refusing the term.
TAR / CAL	Technology-assisted review / continuous active learning: machine-learning prioritisation or classification of the review population. Cooperation questions concern seed sets, validation statistics and stopping criteria.
Production protocol	The agreed specification for exchanging documents: formats (native or image), metadata fields, load files, numbering, redaction method, de-duplication scope and secure transfer. Trailed in Section 19 and covered in depth in Guide 94 of this series.
Disclosure Guidance Hearing	The short, informal hearing under paragraph 11 by which parties can seek the court's guidance on a point of difference without a formal application. Costs are "costs in the case" by default (para 11.5).
Decision log	A running record of every methodology proposal, counter-proposal, agreement and refusal, with dates and reasons. Your defensibility file and your CMC exhibit.
Without prejudice	The rule protecting genuine settlement negotiations from disclosure to the court. Most methodology correspondence should be open, not without prejudice: see Section 15.

SECTION 5

The organising idea: methodology transparent, strategy privileged

Every cooperation question in electronic disclosure can be answered by asking one question: **is this information about how we will search, or about what we think of the case?**

Methodology is the engineering of disclosure: which systems exist, which custodians held relevant roles, what date ranges bound the issues, what terms and analytics will cull the population, what tool will run the review, how validation will work, and in what form documents will be handed over. PD 57AD makes this category presumptively transparent. The DRD literally contains fields for it. Withholding it achieves nothing except delay, because the court will order its disclosure in the end, and the withholding itself becomes evidence of unreasonableness.

Strategy is the product of legal skill applied to the case: the advice you have given, the strengths and weaknesses you perceive, what your early review has told you, which documents you will deploy and how, your settlement appetite, and your work product (issue coding, review notes, memoranda). This category is protected by legal professional privilege, principally litigation privilege, and nothing in PD 57AD touches it. No cooperation duty requires you to explain *why* you want a custodian included or what you fear a term will surface.

The two categories genuinely can touch. A search-term list can edge toward work product if it encodes your theory of the case at a fine grain; a refusal to include an obviously relevant custodian can signal anxiety. Section 6's share/hold map, and the drafting techniques in Section 30, manage the boundary: propose terms framed by the *Issues for Disclosure* (which are already public between the parties) rather than by your private theory; give reasons by reference to proportionality arithmetic rather than merits; and when a proposal would reveal review learnings, say so in terms ("we decline to explain the basis of this term further, as doing so would trench on privileged work product") rather than going silent.

THE JUDICIAL FRAME · McPARLAND AND THE "CULTURE CHANGE"

In *McParland & Partners Ltd v Whitehead* [2020] EWHC 298 (Ch), Sir Geoffrey Vos C used a disclosure dispute to restate the point at [57]: cooperation over disclosure is "obligatory", and lawyers who treat the process as trench warfare can expect the court's displeasure. Earlier, in *UTB LLC v Sheffield United Ltd* [2019] EWHC 914 (Ch), Sir Geoffrey had described the pilot as intended to effect "a culture change" – language the courts have repeated ever since, most recently in the guidance-hearing context in *Voltaire Capital Holdings Ltd v Watson* [2025] EWHC 1948 (Comm) at [2], which describes the regime as "stressing the imperative nature of party cooperation".

One more reframe helps clients accept the discipline: methodology transparency is **mutual**. Everything you must reveal about your systems, the opponent must reveal about theirs. In practice the party with the better-organised evidence estate gains from early methodological exchange, because gaps, convenient retention accidents and vague answers on the other side surface months earlier than they otherwise would – in time to do something about them before the CMC.

SECTION 6

The share/hold map: what to share freely and what never to share

Figure 1 is the centrepiece of this guide: the two-lane map. The left lane is the material PD 57AD expects you to put on the table, usually through the DRD or open correspondence. The right lane is the material that remains yours. The narrow middle band lists the judgement calls, with the test to apply.

Figure 1 · The share/hold map: methodology flows left, strategy stays right



If a piece of information would help a competent stranger run the same search, it belongs in the left lane. If it would help the opponent predict your advocacy, it belongs in the right. When it does both, share the fact and keep the reasoning.

The map is a default, not a straitjacket. Some right-lane items can be traded deliberately: parties sometimes exchange TAR seed sets, or explain the thinking behind a term, as the price of agreement. That is legitimate tactics, but it should be a **decision**, recorded in the decision log with the client's informed consent, never a drift.

SECTION 7

Cooperating on custodians, date ranges and sources

Custodian and source scope is usually the first negotiation, because everything downstream (volumes, cost, terms) depends on it. The DRD Section 2 questions require each party to identify custodians and repositories; the negotiation is about whose list prevails.

7.1 What to put on the table

- **A custodian register extract:** name, role, relevance to which Issue for Disclosure, employment dates, and the sources held (mailbox, OneDrive, phone, shared drives). Guide 5 in this series covers building the register; the cooperation move is sharing the extract, not the interview notes behind it.
- **Date ranges per issue, not per case.** A single global range is almost always wrong: a pricing issue may need 18 months, a quality issue five years. Ranges anchored to pleaded events are hard to argue with.
- **Non-custodial sources:** shared mailboxes, line-of-business systems, audit logs. Volunteering these early builds credibility and forecloses later "why did you not mention" letters.

7.2 How to respond to the opponent's list

Test additions against three questions, in writing: (1) which Issue for Disclosure does this custodian speak to; (2) what unique documents would they hold that agreed custodians do not (deduplication means overlapping custodians often add little); (3) what does adding them cost, in gigabytes and review hours? A refusal expressed in those terms is a proportionality argument the court can act on. A refusal expressed as "not relevant" is an assertion the court will discount.

TACTIC · THE TIERED OFFER

Where the opponent wants ten custodians and you say four suffice, offer tiers: agree the four now, process (but do not review) the next three, and park the rest with liberty to revisit if sampling of the processed tier shows meaningful unique richness. Tiering converts a binary fight into an experiment, and judges like experiments; the CMC order in the Aldgate v Harlow example (Section 17) took exactly this shape for the BYOD phones.

SECTION 8

Cooperating on search terms: hit counts, sampling and the horse-trade

Search terms are where cooperation most often breaks down, because both sides treat term lists as strategic documents. The discipline that keeps the negotiation on the rails is simple: **no term is agreed or refused without numbers**.

8.1 The iterative loop

The defensible sequence, examined in depth in Guides 7 and 8 of this series, is: propose terms anchored to the Issues for Disclosure; run them against the processed data; exchange a hit report (per-term document and family counts, unique hits after deduplication against other terms); sample the contentious terms to estimate richness; then narrow, broaden or drop terms on the evidence. Each loop takes days, not weeks, once the data is processed, and each loop shrinks the disagreement.

8.2 What the exchange looks like

You share	Because	You withhold
The term list itself, with connectors and exclusions	It is methodology; the DRD assumes it; a secret term list is indefensible	Why each term was chosen
Hit and family counts per term	Without them the opponent cannot assess proportionality, and para 6.5 puts the burden on the requesting party	What the hit documents say
Sampled richness for disputed terms ("we reviewed 400 random hits; 1.8% were relevant to any Issue")	It converts argument into arithmetic; it is how <i>Voltaire</i> -type disputes are avoided	The sample documents themselves and your coding of them, unless you choose a joint-sampling protocol

8.3 Receiving the opponent's terms

Run them. It is almost always cheaper to run and report the opponent's proposed terms than to refuse on principle: the numbers usually make your argument for you. If their term hits 34,000 families with sampled richness under 2%, the refusal writes itself and survives judicial scrutiny; that is precisely the exchange that resolved the Harlow terms in the worked example at Section 18. Refusing even to run a term invites the inference that you fear what it would show, and hands the opponent a paragraph 2.3 point for the CMC.

DO NOT AGREE TERMS BLIND

The mirror mistake is agreeing terms before processing, to look cooperative. Terms agreed blind become terms you must live with: *Triumph Controls UK Ltd v Primus International Holding Co* [2018] EWHC 176 (TCC) shows the cost of departing unilaterally from an agreed methodology. Agree the *process* early; agree the *terms* only once the numbers are in.

SECTION 9

Cooperating on TAR and analytics: how much transparency?

Since *Pyrrho Investments Ltd v MWB Property Ltd* [2016] EWHC 256 (Ch) approved predictive coding, the question has not been whether technology-assisted review is permissible but how much of your TAR workflow you must show the other side. Paragraph 3.2(3)'s reference to technology, and the DRD Section 2 questions about analytics, mean you cannot simply announce "we used TAR" and stop there.

9.1 The standard transparency package

- **Tool and workflow:** which platform, whether simple prioritisation or CAL classification, and how documents leave the review (human review of everything the model promotes, or a cut-off).
- **Validation design:** control set or elusion testing, sample sizes, target recall, and who reviews the validation samples.
- **Validation results:** the recall/elusion statistics themselves, when the review concludes.
- **Categories excluded from TAR:** hard-copy scans, spreadsheets, short-text documents, foreign-language material, and how those are being reviewed instead.

9.2 The seed-set question

Opponents sometimes demand the seed or training documents. There is no rule requiring this: the trained model is validated by its outputs (recall on unseen samples), not its inputs, and seed documents coded relevant are ordinarily produced in disclosure anyway. But offering shared validation – the opponent reviews a blind sample of the discard pile under a claw-back agreement – is a powerful cooperation gesture that costs little when your process is sound. In the *Aldgate v Harlow CMC* (Guide 14; Section 17 below), the order recorded agreed transparency terms of exactly this kind: shared seed and validation arrangements in exchange for Model D on the pricing issues.

GENAI NOTE

The Law Society's November 2025 guidance on generative AI in disclosure treats GenAI-assisted relevance and privilege classification as permissible with human verification, documented prompts and validation, and expects the methodology to be disclosed to the other side and the court in the same way as TAR. If you propose GenAI first-pass review, put it in DRD Section 2 and offer the same validation package; if the opponent proposes it, ask the Section 29 provider questions. Guide 90 in this series covers the topic in full.

SECTION 10

Cooperating on metadata, formats and the production protocol

Production-format disputes are the most avoidable in eDisclosure, because there is almost nothing strategic about them: they are pure engineering, and PD 57AD Appendix and the DRD contemplate agreement. Yet unagreed formats generate real damage: productions that arrive as flattened PDFs without metadata, load files that will not import, families broken apart, and redactions that leak.

10.1 What to agree, and when

Agree the protocol **before the first production**, ideally alongside the DRD. The core items: native versus image production per file type (spreadsheets native, always); the metadata fields exchanged (date sent/received/modified, authors, recipients, file paths, hash values, family relationships, custodian); load-file specification; a numbering convention; redaction method and the treatment of redacted natives; deduplication scope (global versus per-custodian, and whether suppressed duplicates' custodians are reported in an overlay); email threading treatment; and secure transfer (encrypted SFTP or a shared platform, never open email). Guide 94 of this series contains a full model protocol; Section 19 below shows the negotiation in action.

10.2 The cooperative frame

Because formats are engineering, delegate the first draft to the providers on both sides: a providers' call with a lawyer from each side listening usually settles 90% of the protocol in an hour. The lawyers' job is the remaining 10%: redaction standards, confidentiality clubs, and the treatment of documents withheld or produced in part. A refusal to discuss formats at all is a paragraph 3.2(3) breach in its purest form – it is precisely "the use of technology" the sub-paragraph names.

METADATA IS EVIDENCE

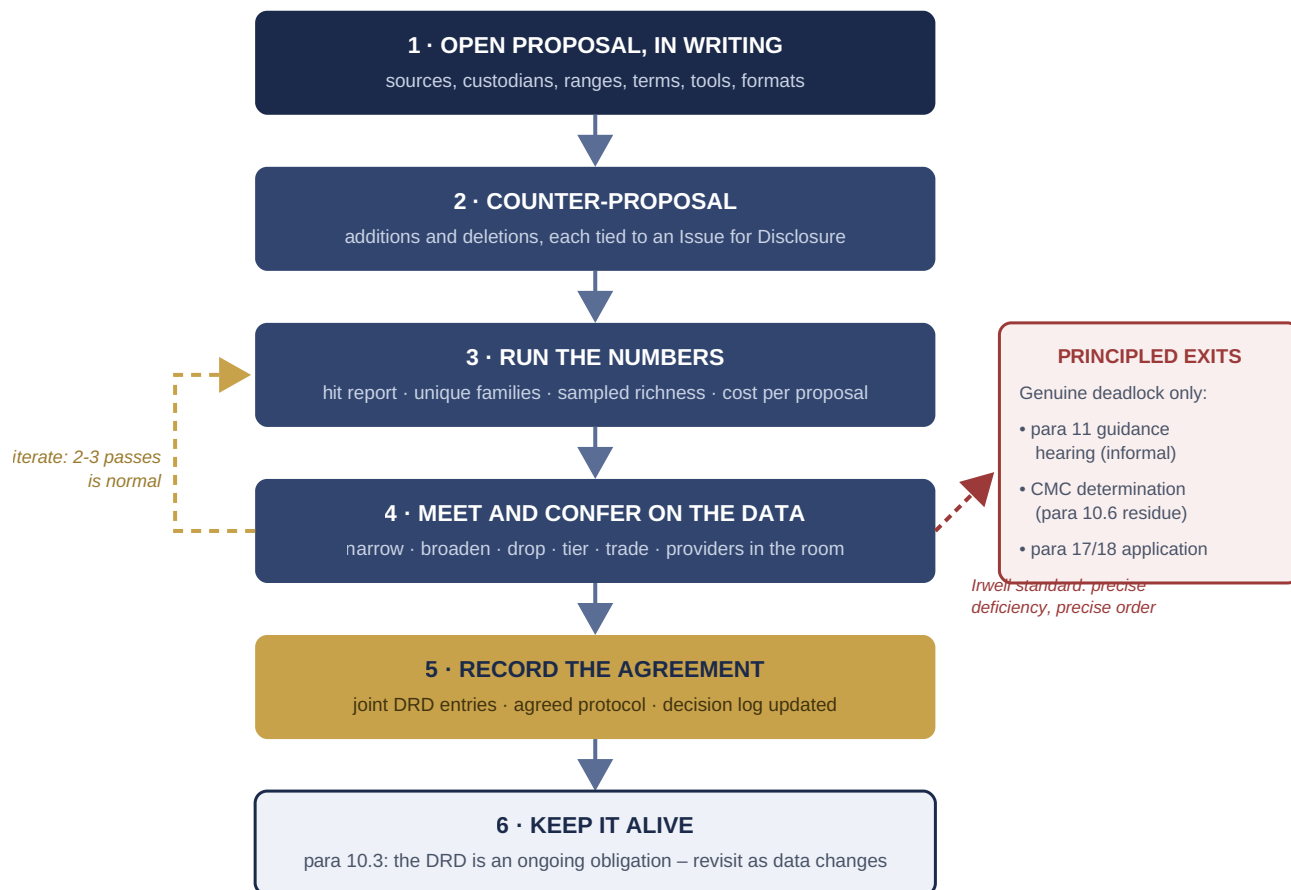
Never agree to strip or "flatten" metadata to save cost. Metadata is often the evidence: in the Aldgate v Harlow scenario, the February 2025 bulk-deletion audit entries and the CAD file access logs matter more than most of the documents. If the opponent proposes PDF-only production, treat it as a red flag (Section 32) and insist on native-plus-metadata for at least the file types where metadata is probative.

SECTION 11

The negotiation sequence: proposal to protocol, with a decision log

Figure 2 maps the negotiation as a repeatable sequence. Its virtues: every stage produces a written artefact; sampling data, not assertion, moves the parties; and the exits are principled (guidance hearing or CMC determination), not rage-quits. The escalation standard comes from *Irwell Riverside* (Section 14): a challenge to the other side's methodology must be precise about what is deficient and what order is sought – vague dissatisfaction has no procedural home.

Figure 2 · The cooperation loop: every pass narrows the dispute, every stage leaves a record



The loop's output is not just agreement: it is a record. If the CMC has to decide anything, the judge decides it on the artefacts this sequence generated, and the party who generated them looks like the reasonable one.

11.1 The decision log

Keep a single table, maintained by one named person, recording: date; topic (custodian, term, format, TAR); proposal and by whom; response; data relied on; outcome; and where the agreement is recorded (DRD field, letter, protocol clause). The log is privileged as prepared, but most entries are rehearsals of open correspondence, so a clean version can be exhibited when the CMC needs a chronology of who was reasonable. Guide 9's strategy memorandum contains a template annex.

SECTION 12

Cooperation is not capitulation: when to stop agreeing

The cooperation duty is a duty to engage, not a duty to concede. Paragraph 2.3 expects scope to be "agreed or determined by the court": the rules explicitly contemplate that some disputes deserve a judge. The skill is telling which.

12.1 Legitimate grounds to hold the line

- **Disproportion, evidenced.** You have run the term or costed the custodian, and the numbers condemn it. Paragraph 6.5 places the burden on the requesting party; your sampling data reverses momentum.
- **Tactical or oppressive Model C requests.** Paragraph 10.4 names this expressly. Broad "all documents relating to" requests dressed as Model C are Model D without the discipline; *Castle Water Ltd v Thames Water Utilities Ltd* [2020] EWHC 1374 (TCC) insists on narrow, defined classes.
- **Fishing outside the Issues for Disclosure.** A request untethered to any agreed Issue fails at the threshold; say so by reference to the List, not the merits.
- **Privilege or work-product intrusion.** Demands to explain review learnings, hand over coding, or justify terms by reference to document contents cross the Figure 1 line. Decline in terms, citing the line.
- **Specificity failures.** Complaints that your disclosure is "plainly inadequate" without identifying what is missing or what order is sought. *Coll v Alphabet Inc* [2024] CAT 25 and *Irwell Riverside Developments Ltd v Arcadis Consulting (UK) Ltd* [2023] EWHC 2864 (TCC) both demand precision from challengers; hold challengers to it.

12.2 How to refuse well

Every refusal should contain four elements: the request as understood; the data (hits, richness, cost, or the privilege ground); the counter-offer, if any (a narrowed term, a sampled tier, a confidentiality club); and the escalation route you propose if not agreed (guidance hearing or CMC). A refusal in that shape is cooperation. A bare "rejected" is ammunition for the other side.

THE CAPITULATION FAILURE MODE

Agreeing to everything is its own breach of duty – to your client. Every custodian, term and model you concede without numbers becomes review cost your client pays and a methodology you must defend later. The lawyers who do best under PD 57AD say yes quickly to cheap requests, no slowly and with data to expensive ones, and never leave a concession unrecorded.

SECTION 13

Disclosure Guidance Hearings under paragraph 11

Paragraph 11 provides a deliberately informal mechanism: where the parties have a "significant difference of approach" and need the court's guidance without a formal determination, they may seek a short hearing. The design assumptions were spelled out in *Voltaire Capital Holdings Ltd v Watson* [2025] EWHC 1948 (Comm): the mechanism exists to help parties "address the point of difference between them without a formal determination" (at [2]-[3]), and the default costs position – paragraph 11.5's "costs in the case" – "reflects the fact that resolution of disagreements over disclosure is part and parcel of case management and anticipates close cooperation between the parties" (at [12]).

13.1 When to use it

- A genuine methodology crossroads (TAR versus linear review; whether backups are in scope) where early steer saves months.
- A single recalcitrant issue poisoning otherwise productive DRD negotiation.
- Timing: soon enough that the guidance shapes the work, not after positions have hardened into applications.

13.2 How not to use it

Voltaire is the cautionary tale. The application was "conducted by the parties... consistent with a heavily contested disclosure application rather than an application for informal guidance" (at [13]), complete with heavy evidence and entrenched positions; the Second Defendant pressed disputed search terms even after hit counts were provided, and the court found his approach unreasonable and departed from the default costs position (at [13], [17]). Two lessons: the guidance hearing is not a stealth application, and arriving with numbers you then ignore is worse than not arriving at all.

PREPARING FOR A GUIDANCE HEARING

Bring: a one-page joint statement of the difference; the data both sides rely on (hit reports, sampling, cost estimates); and a draft of each party's preferred direction. Leave behind: merits argument, witness statements beyond the minimum, and any relief that amounts to a sanction – that belongs in a paragraph 17/18 application. The judge should be able to give useful guidance inside 30 minutes.

SECTION 14

What the courts have said: a cooperation case digest

Case	What happened and what it decided	Cooperation lesson
UTB LLC v Sheffield United Ltd [2019] EWHC 914 (Ch), Sir Geoffrey Vos C	Early pilot decision: the pilot was intended to effect "a culture change", and Issues for Disclosure are only those needing documents to resolve.	The foundational statement: disclosure under the new regime is a cooperative, issue-driven exercise, not trench warfare.
McParland v Whitehead [2020] EWHC 298 (Ch), Vos C	Restated how to draft Issues for Disclosure and choose Models; warned at [57] that cooperation is obligatory and unreasonable conduct would be penalised.	The [57] warning is the standard citation when writing to an uncooperative opponent.
Castle Water v Thames Water [2020] EWHC 1374 (TCC)	Model C requests must be narrow and defined; overbroad requests refused; known-adverse duty requires reasonable steps to check.	Request discipline is part of cooperation: para 10.4's anti-oppression rule has judicial teeth.
Agents' Mutual Ltd v Gascoigne Halman [2017] CAT 15	CAT applied pilot principles to search-term disputes: terms are tested by reference to proportionality and the issues, on evidence.	Term disputes are resolved on numbers; tribunals will not referee assertion.
Triumph Controls v Primus [2018] EWHC 176 (TCC)	Party departed unilaterally from an agreed sampling/review methodology; ordered to go back and do it properly.	Agreed methodology binds. Renegotiate openly if circumstances change; never quietly deviate.
Irwell Riverside v Arcadis [2023] EWHC 2864 (TCC)	Challenge to Model D disclosure adequacy: the court distinguished variation applications from non-compliance applications and required challengers to specify precisely what was deficient and what order was sought.	The precision standard for escalation: identify the defect, the paragraph, and the order. Vague dissatisfaction is not a disclosure application.
Coll v Alphabet Inc [2024] CAT 25	Refused a sweeping further-disclosure application; adopted <i>Castle Water</i> ; required specificity and evidence before disturbing an ordered process.	Even against a giant opponent, challengers must be specific; incumbents can rely on a documented process.
Excelerate Technology v WMAS [2024] EWHC 177 (TCC), Pepperall J	Procurement claim outside PD 57AD; claimant sought disclosure "guidance" informally without an application notice identifying the issues; costs of the wasted hearing ordered against it for late non-engagement.	Even outside PD 57AD, courts import its cooperation model – and charge for chaos. Identify issues, engage early, put requests in proper form.
Voltaire Capital v Watson [2025] EWHC 1948 (Comm)	Guidance hearing run like a contested application; party pressed search terms despite adverse hit counts; costs awarded against it, displacing the para 11.5 default.	The current leading example: ignore the numbers at your peril, and do not weaponise the informal mechanism.

The through-line from 2019 to 2026 is remarkably consistent: courts reward parties who negotiate on evidence and punish parties who litigate what evidence would have settled. The Disclosure Review Working Group's July 2026 survey (215 respondents; 67% reporting costs up; a consultation on simplification expected late 2026 or early 2027) makes reform of the machinery likely, but every reform option retains the cooperation core – it is the one part of the regime respondents did not ask to repeal.

SECTION 15

Correspondence hygiene: open, without prejudice and the record

Cooperation happens in correspondence, and the correspondence is destined for a judge. Three disciplines:

15.1 Default to open

Methodology correspondence should almost always be **open**. You want to be able to show the court your offers, your data and your reasonableness; correspondence marked without prejudice cannot be deployed. Reserve WP (or WP save as to costs) for genuine compromise discussions that mix methodology with commercial settlement, and keep those channels separate.

15.2 Write for the eventual reader

Every letter should read as if the CMC judge is the addressee, because eventually she is. State the proposal, the data, the offer, the deadline. Delete the adjectives: "surprising", "extraordinary" and "hopeless" have never narrowed a search term. The tone that wins is the tone of an engineer reporting measurements.

15.3 Confirm calls in writing, same day

Meet-and-confer calls move fast and memories diverge. The party whose same-day note records "you agreed to drop term 7; we agreed to add custodian Szabo for Issue 3, 1 Nov 2024 to 31 Mar 2025" owns the record. Circulate the note for correction; silence after a correction invitation is powerful at a hearing.

PRIVILEGE FOOTNOTE

Your internal deliberations about what to offer are litigation-privileged; the offer itself, once made openly, is not. Brief the client team that anything said on an inter-partes providers' call is on the record: technical staff sometimes over-share ("our retention was a mess until 2024") in the spirit of engineering candour. Prepare providers as you would a witness: truthful, precise, and no volunteering beyond the question.

SECTION 16

Who attends the meet-and-confer, and how to run it

16.1 The cast

Attendee	Role in the meeting	Risk if absent
Disclosure lead (associate or senior associate)	Owens the agenda, the decision log and the follow-up letter	No one converts discussion into record
eDisclosure provider / litigation support	Answers processing, hit-report, TAR and format questions with authority	"We will have to come back to you" on every technical point; momentum dies
Partner (selectively)	Deadlock-breaking authority for trades with cost consequences	Agreements made subject to approval unravel
Client IT (rarely, for systems questions)	Factual answers about the estate	Usually manageable; brief them first if attending (see 15.3)

16.2 Running order that works

1. Circulate an agenda 48 hours ahead: items agreed, items open, data exchanged since last call.
2. Bank the agreements first, out loud, so the call starts with momentum.
3. Take open items in order of cheapness: formats, then custodians, then terms, then TAR – cheap agreements build the habit of agreeing.
4. For each open item: the data, the offer, the counter, and if no agreement, name the exit (another sampling pass, a tier, or the guidance hearing).
5. Close by allocating actions with dates, and say who writes the note.

Forty-five minutes is a good target; a meet-and-confer that needs two hours needed better preparation. Fortnightly during the DRD window (which in the series timeline ran November 2026 to the joint DRD filing on 14 January 2027) is a typical cadence, tightening to weekly in the run-up to the CMC.

SECTION 17

Worked example 1: negotiating the TAR protocol in Aldgate v Harlow

ALDGATE COMPONENTS LTD v HARLOW PRECISION ENGINEERING LTD · THE SERIES CASE STUDY

Recap: Aldgate sues Harlow in the Business and Property Courts (claim issued 15 June 2026) over termination of a supply agreement, misuse of confidential pricing and CAD theft by ex-commercial director James Marsh, who joined Harlow after leaving Aldgate on 21 March 2025. Five Issues for Disclosure were settled (Guide 13); the CMC was fixed for 21 January 2027; Extended Disclosure was ordered on Models C and D (Guide 14). Aldgate's early data assessment (Guide 8) produced a 61,400-document review population.

The problem. Aldgate proposed TAR (continuous active learning) over the 61,400-document universe for the Model D pricing issues. Harlow's first response, in late November 2026, was a blanket objection: "our client is entitled to human review of the disclosable population and does not consent to documents being withheld by an algorithm."

The cooperative counter. Rather than argue principle, Aldgate's solicitors sent a four-page open letter: the CAL workflow (prioritisation with human review of everything promoted; nothing withheld by the model without elusion testing); the validation design (target recall, sample sizes, blind control set); the arithmetic (linear review of 61,400 documents at 400 documents per reviewer-day versus projected CAL completion at roughly 40% of the population reviewed); and an offer – shared transparency terms: Harlow to receive the validation statistics, and a blind sample from the unreviewed residue to be jointly reviewed under a claw-back agreement, costs of that sampling shared.

The trade. Harlow's provider, brought onto a providers' call in December 2026, accepted the workflow was orthodox. Harlow dropped the objection in exchange for the transparency package plus one addition: an agreed seed-set exchange for the two pricing issues. Aldgate conceded it – a deliberate right-lane trade (Section 6), recorded in the decision log with client sign-off, on the view that the seed documents were all disclosable anyway.

The order. The CMC order of 21 January 2027 recorded the agreed TAR protocol with its transparency terms (Guide 14). Total negotiation cost: two letters, two calls, one providers' call. The alternative – a contested TAR application – was quoted at more than the entire projected review saving.

WHY IT WORKED

Aldgate never asked Harlow to trust the algorithm; it offered Harlow the means to verify it. Verification offers are the cheapest currency in disclosure negotiation: they cost you little when your process is sound, and a refusal to be verified is the opponent's problem at the CMC, not yours.

SECTION 18

Worked example 2: the search-term horse-trade

The DRD exchange (Guide 15) left two of Harlow's proposed additional terms in dispute after Aldgate's provider ran the hit-count report of 12 November 2026 against the processed data. Issue 2 (pricing misuse) already carried 14 agreed terms yielding 9,850 unique family hits.

Disputed term	Hits (families)	Sampled richness	Outcome
Harlow term H-1: <i>price OR pricing OR quote*</i> (bare, across all custodians)	34,000	<2% (400-document random sample, richness interval reported)	Narrowed: proximity-connected to counterparty and product names; re-run fell to 3,900 families; agreed
Harlow term H-2: <i>margin* w/5 (adjust* OR review*)</i> duplicating an agreed term's scope	6,200, of which 210 unique after dedupe against agreed terms	Sample of the 210 unique: no new relevant families	Dropped by Harlow on the numbers

The choreography, step by step. (1) Aldgate ran both terms within a week of receipt rather than objecting on paper – the running cost was trivial against the argument it ended. (2) The hit report went to Harlow with the sampling protocol *offered before the sample was reviewed*: sample size, random selection method, and coding standard (relevant to any Issue, not just Issue 2), so the result could not be attacked as curated. (3) The richness result was reported with its confidence interval, and Aldgate offered the underlying sample for joint re-review under claw-back if Harlow disputed the coding. (4) Harlow, faced with verifiable arithmetic, narrowed one term and dropped the other – the outcome recorded in the joint DRD filed 14 January 2027, leaving genuine deadlock on only two items for the court (Guide 15: the Issue 2 model dispute and the Marsh mailbox class).

THE LESSON IN ONE LINE

Aldgate never once told Harlow what the sampled documents said – only how many were relevant. Richness percentages are methodology; document contents are strategy. That is the Figure 1 line, held under pressure.

SECTION 19

Worked example 3: the production-protocol negotiation

With productions due in spring 2027, the parties' providers exchanged draft protocols in February. Three points of friction, three cooperative resolutions:

- **Spreadsheets and CAD files.** Harlow proposed image-plus-text production for everything. Aldgate insisted on native production for spreadsheets (formulas and hidden sheets are evidence on the pricing issues) and for the CAD files within Issue 3, with hash values in the metadata load file. Resolution: native for spreadsheets, CAD and MS Project files; images for the rest; no party to object to a native document's use at trial on format grounds. This is the standard outcome, and objecting to native spreadsheets is rarely sustainable – see the red flags in Section 32.
- **Metadata fields.** Aldgate wanted file-path and custodian fields on every document; Harlow initially resisted custodian fields as "revealing internal structure". The objection dissolved when Aldgate pointed out the DRD already named every custodian: internal structure was methodology already on the table. Agreed: a 22-field schema based on the provider's standard template, including family identifiers, hashes, and dedupe-custodian overlay.
- **Redactions and the confidentiality club.** The Guide 12 confidentiality club (two tender appendices) carried over into the protocol: club documents produced natively into a segregated workspace with named-individual access, redacted versions in the main production, and a schedule identifying each redaction's basis. Redaction method specified as text-layer-and-image redaction with metadata scrubbing of the redacted fields only – not wholesale metadata stripping.

The protocol was agreed in three provider drafts and one lawyers' call, and annexed to a consent order. Guide 94 of this series will contain the full model protocol with clause-by-clause commentary.

TIMING NOTE

The protocol conversation started in February 2027 – after the CMC but well before the first production. Any later and the first production becomes the test of an unagreed specification, which is how load-file disputes end up before Masters. Put "production protocol agreed" on the case plan as a dated milestone, not an ambient hope.

SECTION 20

Practical workflow: an eleven-step cooperation plan

#	Step	What good looks like	Timing anchor
1	Map your own estate first	Data map and custodian register signed off internally before you write to the other side; you cannot negotiate what you have not counted	Before Issues exchange
2	Open the channel early	First methodology letter with the draft Issues for Disclosure; name your disclosure lead and provider	With draft Issues
3	Propose the process, not just the scope	Suggest the cadence: fortnightly calls, hit-report format, sampling protocol, decision log	First letter
4	Exchange DRD Section 2 drafts	Complete, honest answers; gaps flagged rather than fudged	Para 10.5: draft s.2 with estimates 14 days before CMC at the latest – aim far earlier
5	Providers' call on processing and formats	Dedupe, threading, DeNIST, exceptions, load-file spec largely settled by the technicians	Once data processed
6	Term proposals with numbers	Hit report within days of any proposal; nothing agreed or refused blind	Iterative, 2-3 passes
7	Sample the disputes	Agreed sampling protocol; richness with confidence intervals; joint re-review offer under claw-back	Before escalating anything
8	Trade and tier	Cheap concessions banked; expensive items tiered or traded; every trade logged with client consent	Meet-and-confer rounds
9	Reconcile the DRD	Single joint document (para 10.7: lodged 5 days before CMC); disputes compressed to a short schedule for the court	Reconciliation call ~2 weeks pre-CMC
10	Escalate the residue properly	Guidance hearing or CMC schedule, Irwell-precise; certificates of compliance in time (para 10.8: 2 days)	Only after step 7
11	Keep cooperating after the order	Para 10.3 is ongoing: volumes change, terms get revisited, productions get sequenced; the loop in Figure 2 keeps running	Through productions

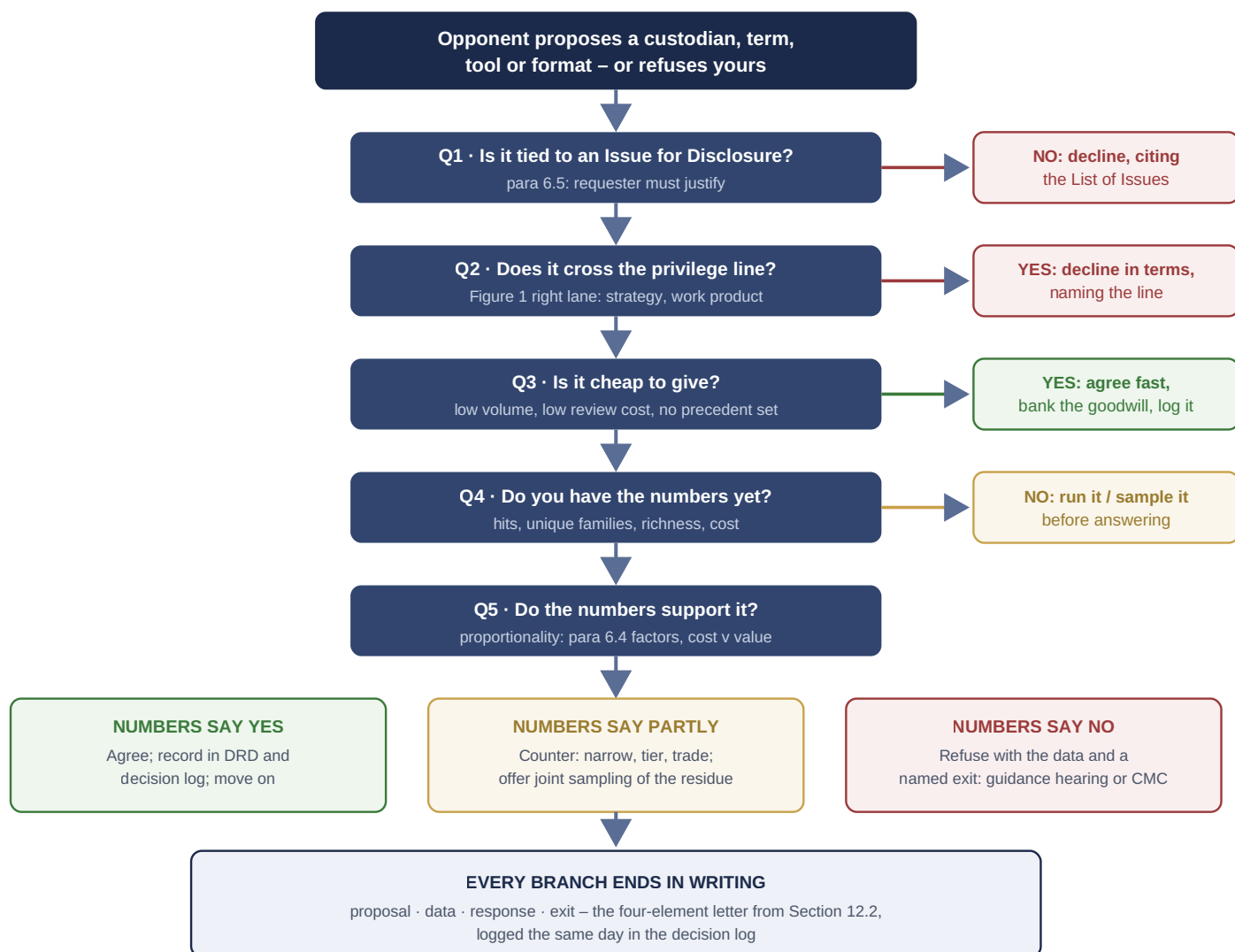
The timeline anchors above are the series case study's: DRD drafts exchanged 11 December 2026, reconciliation call 8 January 2027, joint DRD filed 14 January, certificates 18 January, CMC 21 January 2027. Real cases vary; the sequence does not.

SECTION 21

Decision tree: agree, counter, sample or seek directions?

Figure 3 compresses Sections 7 to 13 into the decision you actually face each time the opponent proposes (or refuses) something.

Figure 3 · Responding to any methodology proposal: the five-question filter



Q3 before Q4 is deliberate: pricing every trivial request wastes the negotiation budget. Say yes to cheap things at once; spend the sampling effort where the money is.

SECTION 22

Privilege and confidentiality considerations

22.1 What cooperation cannot touch

Legal advice privilege (lawyer-client communications for giving or receiving legal advice) and litigation privilege (communications and documents made for the dominant purpose of litigation reasonably in contemplation) survive PD 57AD intact. The cooperation duties operate *around* privilege, never through it. Specifically protected in the cooperation context: your review platform's coding and analytics output; instructions to and reports from your forensic experts (litigation privilege, subject to CPR 35 rules if they become testifying experts); the strategy memorandum (Guide 9); and internal deliberations about negotiation positions.

22.2 Cooperation-specific privilege traps

- **Over-explaining terms.** "We propose 'Devlin AND late' because our review shows Mr Devlin repeatedly acknowledged delays" waives nothing legally in most framings, but discloses work product gratuitously. Justify terms by the Issues, not the review.
- **Provider chatter.** Your provider's processing decisions are methodology; their analytics built to your lawyers' specification can be work product. Define in the provider's instructions which is which, so a providers' call does not casually cross the line.
- **Joint sampling without claw-back.** Any protocol that puts opponent eyes on unreviewed documents needs express claw-back terms (inadvertent disclosure of privileged material does not waive; return-and-delete on notice) and, where needed, a confidentiality club. CPR 31.20's permission requirement for use of inadvertently disclosed privileged documents remains the backstop; Guide 92 covers the aftermath when it goes wrong.
- **The decision log.** Prepared for the litigation, it is privileged; but if you intend to deploy it at the CMC, draft it from day one in two layers: the exhibitable chronology of open events, and the privileged commentary kept separate.

22.3 Confidentiality (as distinct from privilege)

Commercially sensitive but disclosable material – pricing appendices, customer lists, the tender documents in the series example – is handled by confidentiality clubs, redaction schedules and segregated workspaces, all of which are themselves cooperation products: they exist because the parties agreed terms. Propose the club with the production protocol, not after the first dispute; the Guide 12 precedent (two documents to a named-individuals club) carried through the whole case.

SECTION 23

UK GDPR and data minimisation in cooperative disclosure

Disclosure processing engages the UK GDPR and the Data Protection Act 2018 throughout: collection, hosting, review and production are all processing of personal data. The lawful basis is ordinarily legitimate interests (Article 6(1)(f)) or legal obligation/claim-related processing, with the Article 5(1)(c) minimisation principle doing the practical work: process no more personal data than the disclosure exercise requires. The Data (Use and Access) Act 2025's amendments (commenced through 2025 and early 2026) did not disturb these fundamentals.

23.1 Minimisation as a cooperation argument

Data minimisation and proportionality point the same way, and a minimisation argument is often the most palatable way to resist over-broad demands: "your proposed bare term would put 34,000 families, overwhelmingly irrelevant and rich in third-party personal data, into hosted review" is both a paragraph 6.4 point and an Article 5(1)(c) point. Courts respond to it, and ICO-aware in-house teams appreciate it being made.

23.2 Practical GDPR items for the protocol

- **Special category and third-party data:** agree redaction or exclusion conventions for obviously irrelevant personal data (payroll, health, family correspondence on BYOD phones – see Guide 68's treatment when it arrives; the Q2 BYOD tier in the series example was framed this way).
- **International transfers:** hosting location and any transfer mechanism belong in DRD Section 2 answers and the protocol.
- **Security:** encrypted exchange, access controls, breach notification between the parties – two data controllers exchanging large personal-data sets should say who tells whom, and when, if something leaks.
- **Retention and disposal:** the protocol should provide for deletion or return of productions and hosted data at defined points after the proceedings end (CPR 31.22's collateral-use limits do the legal work; the protocol does the operational work).

SECTION 24

Proportionality: cooperation as the cheapest case-management tool

Paragraph 6.4 lists the factors governing whether Extended Disclosure is appropriate: the nature and complexity of the issues; the importance of the case; the likelihood of probative documents existing; the number of documents involved; the ease and expense of retrieval; and the need to ensure the case is dealt with justly. Every one of those factors is *evidenced by cooperation artefacts*: volumes come from the EDA and hit reports, retrieval cost from provider quotations, probative likelihood from sampling. A party that has run the Figure 2 loop arrives at the CMC with the paragraph 6.4 analysis already done; a party that has not is asking the judge to guess.

Cooperation is also itself subject to proportionality. A £150,000 dispute does not need fortnightly meet-and-confers and three sampling rounds; it needs one sensible call and a short protocol. Scale the machinery: the discipline (numbers before answers, everything in writing) survives scaling down; the ceremony does not need to.

THE ARITHMETIC HABIT

Attach money to every position. "Your additional custodians add roughly 40 GB, an estimated 55,000 documents after culling, and £46,000-£77,000 of first-pass review at £0.85-£1.40 per document" is a sentence a judge can act on, and the format the series case used for Issue 2 (Guide 14). If you cannot cost a position, you are not ready to take it.

SECTION 25

Common mistakes and how to avoid them

Mistake	Why it happens / what it costs	The fix
Treating every request as an attack	Reflexive refusal reads as concealment; para 2.3 record deteriorates; costs risk under para 10.3	The five-question filter (Figure 3); agree cheap things fast
Agreeing terms before processing	Looks cooperative; binds you to unknown volumes (<i>Triumph Controls</i>)	Agree process early, terms only with numbers
Refusing to run the opponent's terms	Invites adverse inference; the numbers would usually have won the argument for you	Run first, argue second
Justifying terms by review learnings	Discloses work product; educates the opponent	Justify by Issues and arithmetic only
Methodology letters marked without prejudice	Your best reasonableness evidence becomes undeployable	Open by default; WP only for genuine compromise
No same-day note of calls	Agreements dissolve; "that is not what we agreed" letters multiply	One person owns the note; circulate for correction
Lawyers-only technical negotiation	Format and TAR points stall for weeks on relay-race instructions	Providers' calls with lawyer oversight (Section 16)
Parking disputes for the CMC	Breaches para 10.6; judges increasingly order costs of avoidable schedule items	Escalate only sampled, genuinely deadlocked residue
Guidance hearing as stealth application	<i>Voltaire</i> : costs against you, displacing the para 11.5 default	Keep para 11 informal; applications go to paras 17/18
Unlogged concessions	Six months later no one knows why custodian X is absent; defensibility gap	Decision log, maintained same-day, one owner

SECTION 26

Technical limitations lawyers should understand

- **Hit counts move.** A hit report is a snapshot of the processed population. Late collections, exception handling and de-NISTing all shift counts; agree terms by reference to a defined data snapshot, and re-report if the population changes materially.
- **Counts are not relevance.** A low hit count can mean a bad term as easily as an irrelevant topic; only sampling tells you which. Conversely "unique hits after dedupe" depends on the order terms are applied – ask the provider how uniqueness was computed.
- **Sampling has error bars.** A 400-document sample estimates richness with a confidence interval, not a point value; quote the interval (as the $14\% \pm 3\%$ figure in the series EDA was quoted) and size samples to the decision they support.
- **Search syntax differs by platform.** Proximity operators, stemming and wildcard behaviour vary between tools; a term list agreed in the abstract can behave differently on each side's platform. Exchange platform names and, for contested terms, the exact query syntax.
- **Some content defeats terms.** Images, CAD files, audio, spreadsheets of numbers and heavily formatted documents carry little searchable text. Terms cannot clear a population that OCR and extraction never reached – the exception report matters as much as the hit report (Guide 81 will cover processing in depth).
- **TAR validation is statistical, not magical.** Recall estimates depend on sample design and honest coding of validation samples; a validation protocol nobody could audit is not a protocol. This is what the shared-validation offer solves.
- **Metadata fields are only as good as the pipeline.** Time zones, daylight saving, and container extraction can shift dates; agree the canonical time zone (usually UTC) in the protocol, a lesson Guide 8 tagged for date filters.

SECTION 27

Questions lawyers should ask their client

1. Who inside the organisation can answer systems questions with authority, and can they attend a providers' call if needed? (Brief them on Section 15.3 first.)
2. Are there sources, custodians or gaps the other side will eventually find – departed employees, wiped devices, retention accidents – that we should disclose on our terms rather than have extracted? (The Marsh phone wipe in the series example was disclosed, with dates and recovery steps, in Aldgate's first methodology letter.)
3. What does each additional custodian or month of data range cost us commercially – not just in review fees but in business disruption and data-protection exposure?
4. Which documents or classes are commercially sensitive enough to need a confidentiality club, and who may be named to it?
5. Are you content for us to trade right-lane items (seed sets, reasons) where it buys agreement, and who signs off such trades?
6. What is your appetite for a guidance hearing versus conceding a marginal item – in money and in relationship terms?
7. Is there any parallel proceeding, regulatory process or insurance notification whose disclosure positions must stay consistent with ours?
8. Who will maintain the decision log on your side for business decisions (e.g. agreeing costs of tiered processing)?

SECTION 28

Questions lawyers should ask the opponent

1. Which repositories and systems have you identified as holding potentially disclosable documents, and which have you excluded, on what basis?
2. Who are your proposed custodians, with roles and date ranges per Issue for Disclosure – and which former employees' data do you still control?
3. What preservation steps have you taken, when, and are there any known losses, deletions or retention-policy expiries we should discuss now?
4. What platform will process and host your data, and what deduplication, threading and DeNIST settings will you apply?
5. Will you provide per-term hit and family counts for your proposed terms and ours, against a defined snapshot?
6. For any term you refuse, will you state the hits, the sampled richness, and the estimated review cost on which you rely?
7. Do you propose TAR, CAL or GenAI-assisted review; what validation will you apply; and what transparency package do you offer?
8. What production format, metadata schema and load-file specification do you propose, and will your provider join a call to settle a protocol?
9. Are there categories you intend to withhold or redact (privilege, confidentiality, data protection), and do you propose a confidentiality club?
10. Do you agree to record methodology agreements in a jointly maintained schedule appended to the DRD?

Send this list early and in writing. Each unanswered question becomes, without any aggression on your part, an entry in the CMC chronology of who was cooperating.

SECTION 29

Questions lawyers should ask a forensic or eDisclosure provider

1. Can you produce hit reports with unique-family counts within 48 hours of a term proposal, and what does each run cost?
2. How do you compute "unique" hits, and in what order are terms applied?
3. What sampling methodology do you use for richness estimates – sample sizes, randomisation, confidence intervals – and can you document it for the other side?
4. Which search syntax does your platform use, and which of the opponent's proposed operators behave differently on it?
5. What is your standard metadata schema and load-file specification, and where has it been agreed inter-partes before?
6. Can you attend providers' calls, and do your staff understand what is on and off the record (Section 15.3)?
7. For TAR/CAL: what validation design do you run, what recall do you target, and what does a shared-validation exercise with the opponent's provider look like operationally?
8. How do you handle exceptions – encrypted files, corrupt containers, no-text documents – and can you produce an exception report we can share?
9. If the court orders a different methodology than we proposed, what is the switching cost and delay?
10. Where is data hosted, what certifications apply (ISO 27001 and related), and what happens to hosted data at matter end?

FORENSIC ANGLE

Where cooperation touches forensic questions – deleted data, device images, audit logs, the Marsh-laptop category of evidence – ask whether the provider's forensic arm can produce a methodology statement suitable for exchange: acquisition method, hashes, chain of custody, and what was and was not recoverable. Exchanging forensic methodology statements is the cooperation duty applied to forensics, and it is how the "you must have wiped it" correspondence war is avoided. Guide 100 will cover instructing experts, including Forensic Science Regulator Code compliance declarations for criminal work.

SECTION 30

Suggested wording for instructions and correspondence

A · OPENING THE METHODOLOGY CHANNEL (first letter)

"In accordance with paragraphs 2.3 and 3.2(3) of PD 57AD we write to propose a process for agreeing the scope and methodology of disclosure. We enclose (1) our draft custodian and source schedule, (2) proposed date ranges by Issue for Disclosure, and (3) our provider's standard processing specification. We propose fortnightly calls between the parties' representatives, with providers attending for technical items, hit-count reports to be exchanged within five working days of any term proposal, and all methodology correspondence to be open. Please confirm your disclosure lead and provider."

B · REFUSING A TERM, WITH DATA AND AN EXIT

"We have run your proposed term 4 against the processed population (snapshot of [date]). It returns 34,000 document families, of which 33,100 are unique against the agreed terms. A 400-document random sample, coded for relevance to any Issue for Disclosure under the enclosed sampling protocol, yielded a richness estimate below 2%. First-pass review of the unique families is estimated at £[x]-£[y]. In those circumstances the term as framed is not a reasonable and proportionate search (PD 57AD paras 6.4 and 6.5). We would agree the term narrowed as follows: [narrowed term]. If you do not agree, we propose this item be listed for Disclosure Guidance under paragraph 11 rather than held for the CMC."

C · DECLINING TO CROSS THE PRIVILEGE LINE

"You ask us to explain the basis on which term 9 was formulated and what our review of its results has shown. The formulation of search terms by our lawyers, and the product of our review, are protected by litigation privilege and constitute work product. We are not prepared to waive that protection, and no provision of PD 57AD requires it. We remain willing to justify the term's scope by reference to the Issues for Disclosure and the enclosed hit and sampling data."

D · PROPOSING SHARED TAR VALIDATION

"We propose review using continuous active learning on [platform], with human review of all documents promoted by the model. Validation will comprise [design], targeting recall of not less than [x]%. On a reciprocal basis, we offer: (1) disclosure of the validation statistics on completion; and (2) joint review of a blind sample of [n] documents from the residual population, under the claw-back terms at clause [x] of the draft protocol, costs shared equally. This offer is made to avoid any dispute as to the reliability of the review methodology."

E · SAME-DAY CALL NOTE

"We write to record the outcome of today's call at [time], attended by [names]. Agreed: [items, by reference to the schedule]. Open: [items], next steps [steps] by [dates]. If you consider this note inaccurate in any respect, please say so by [date + 2 working days]; otherwise we will treat it as the agreed record and update the joint methodology schedule accordingly."

SECTION 31

Checklist: cooperation without capitulation

-
- ☐ Own estate mapped and custodian register signed off before first inter-partes methodology letter

 - ☐ Disclosure lead and provider named on both sides; cadence of calls agreed

 - ☐ Methodology correspondence open by default; WP channel separated

 - ☐ Known gaps (departed custodians, wiped devices, retention expiries) disclosed proactively with dates and recovery steps

 - ☐ Share/hold map briefed to the whole team, including provider and client IT

 - ☐ No term agreed or refused without hit counts; no contested term without sampling

 - ☐ Sampling protocol offered before results are generated

 - ☐ TAR transparency package prepared (tool, workflow, validation design, results commitment)

 - ☐ Production protocol drafted by providers and agreed before first production

 - ☐ Claw-back and confidentiality-club terms in place before any joint sampling or sensitive production

 - ☐ Decision log maintained same-day by a named owner, in exhibitable and privileged layers

 - ☐ Every refusal contains: request, data, counter-offer, exit

 - ☐ Same-day notes of every call, circulated for correction

 - ☐ Disputes triaged: cheap items conceded, sampled items negotiated, deadlock listed for guidance hearing or CMC only after sampling

 - ☐ Joint DRD lodged as one document; disputes compressed to a short schedule (para 10.7 timing met)

 - ☐ Post-order cooperation diarised: hit-report refresh, protocol review, production sequencing (para 10.3 is ongoing)

SECTION 32

Red flags

IN THE OPPONENT'S CONDUCT

- Refusal to provide hit counts, or hit counts without family or uniqueness figures.
- Refusal to name their platform, provider or processing settings.
- PDF-only or metadata-stripped production proposals, or resistance to native spreadsheets.
- Terms or custodian lists that change without explanation between drafts of the DRD.
- Vague preservation answers, or new "gaps" emerging late (compare Guide 16's certificate-stage discoveries).
- "Plainly inadequate disclosure" letters that never specify a document class, a paragraph or an order sought (*Irwell, Coll*).
- Demands framed as cooperation that seek your review learnings, coding or seed reasoning.
- A guidance hearing listed by the opponent with heavy witness evidence attached (*Voltaire* pattern).

IN YOUR OWN CAMP

- Your team cannot state, today, which items are agreed and which are open (no decision log).
- Concessions being made on calls by people without authority, or unminuted.
- Your provider learns of methodology commitments after they are made.
- Sampling being skipped "to save time" on items with six-figure review consequences.
- Correspondence drifting hostile: adjectives up, data down.
- The client trading methodology points in commercial side-channels without telling the litigation team.

SECTION 33

When to involve a digital forensic expert

Most cooperation is lawyer-and-provider work. Bring a digital forensic expert in when:

- **Preservation facts are contested.** Allegations of deletion, wiping or device loss (the Marsh laptop and phone in the series example) need forensic method statements, not assertions: acquisition dates, hash values, audit-log exports, recoverability analysis.
- **You must explain a gap.** A credible, technically documented account of why data does not exist (retention expiry, MDM wipe on departure, ransomware) defuses what correspondence inflames – and Guide 28's reconstruction options need expert hands.
- **The opponent's methodology needs auditing.** An expert can review their TAR validation design, sampling maths or forensic collection method and either reassure you cheaply or give your challenge Irwell-grade precision.
- **Chain of custody will matter at trial.** If authenticity is in issue (disputed emails, backdated documents), collection should be forensic from the start – see Guides 31-35 – and the collection methodology exchanged as part of cooperation.
- **A neutral is worth more than an advocate.** Parties sometimes jointly instruct a forensic examiner for a defined task (imaging a departed employee's devices; extracting a defined WhatsApp thread) with an agreed protocol. Joint instruction is cooperation at its most efficient: one fee, one report, no duelling experts – and if the matter later needs CPR Part 35 expert evidence, the groundwork is clean.

SECTION 34

How the rules differ: Scotland, NI, arbitration, tribunals, criminal

Forum	The cooperation position
England & Wales, non-B&PC	CPR 31 and PD 31B apply (not PD 57AD), but PD 31B paras 8-9 impose their own duty to discuss technology and searches before the first CMC, and <i>Excelerate</i> shows courts importing PD 57AD's cooperative expectations as best practice.
Scotland	No general disclosure: recovery is by specification of documents and commission and diligence. Cooperation is therefore petition-shaped: the discipline of precise classes matters more than meet-and-confer machinery. Electronic recovery protocols are increasingly agreed in commercial actions.
Northern Ireland	Discovery under RCJ (NI) Order 24 remains closer to pre-CPR practice, with broader relevance testing. No PD 57AD equivalent, but the same iterative term/hit-count methodology is routinely agreed by consent in commercial cases.
Arbitration	IBA Rules on the Taking of Evidence: document production through Redfern requests (Art 3), with objections (Arts 3.5-3.8) resolved by the tribunal. Cooperation takes the form of the Redfern schedule and agreed e-production protocols; the Prague Rules push further toward tribunal-led restraint. Confidentiality is structural, so protocols matter more, not less.
Competition Appeal Tribunal	CAT Rules 60-65 and the Practice Direction adopt PD 57AD-like disclosure management; <i>Agents' Mutual</i> and <i>Coll v Alphabet</i> show the CAT applying the same numbers-first, specificity-first discipline.
Criminal proceedings	CPIA 1996 disclosure is asymmetric: prosecution duties (initial and continuing disclosure) against defence statements, managed through the Attorney General's Guidelines on Disclosure (2024) and, in complex casework, the Digital Material and DMD provisions contemplating defence engagement on search terms for seized digital material. "Cooperation" here means early, recorded defence engagement with the prosecution's reasonable-lines-of-enquiry approach – and FSR Code compliance for any forensic methodology relied on.

SECTION 35

Glossary

CAL	Continuous active learning: TAR that keeps retraining as reviewers code, promoting likely-relevant documents.
Claw-back	Agreement that inadvertent disclosure of privileged material does not waive privilege and the material is returned or deleted on notice.
Confidentiality club	A defined group (usually named lawyers and experts) permitted access to specified sensitive documents on undertakings.
Decision log	Running record of methodology proposals, data, agreements and refusals with dates and owners.
DeNIST	Removal of known system files by hash comparison against the NIST reference library.
DRD	Disclosure Review Document: the joint PD 57AD form covering Issues, Models and technology.
Elusion test	Validation sampling of the documents a TAR process would discard, to estimate what relevant material would be missed.
Family	A parent document and its attachments treated as a unit for review and production.
Hit report	Per-term counts of documents/families matching proposed search terms in a defined data snapshot.
Load file	Structured file (e.g. DAT/OPT) carrying metadata and images/natives into a review or production platform.
Meet-and-confer	Structured inter-partes discussion aimed at agreeing disclosure methodology.
Recall	The proportion of truly relevant documents a process actually found; the headline TAR validation statistic.
Redfern schedule	Tabular document-request format used in arbitration: request, justification, objection, reply, tribunal ruling.
Richness / prevalence	Estimated proportion of relevant documents in a population, from random sampling.
Seed set	Documents used to begin training a TAR model.
Snapshot	The defined, dated state of the processed population against which counts are reported.
TAR	Technology-assisted review: machine-learning classification or prioritisation of review populations.
Without prejudice	Protection from deployment in court of genuine settlement communications; inapt for methodology correspondence.

SECTION 36

Authoritative UK references

- Practice Direction 57AD, Disclosure in the Business and Property Courts, with Appendices and the Disclosure Review Document: [justice.gov.uk – PD 57AD](https://www.justice.gov.uk/pd-57ad); DRD form: [justice.gov.uk/documents/disclosure-review-document.pdf](https://www.justice.gov.uk/documents/disclosure-review-document.pdf)
- CPR Part 31 and PD 31B (Disclosure of Electronic Documents): [justice.gov.uk – CPR 31](https://www.justice.gov.uk/cpr-31)
- Disclosure Review Working Group announcement on simplification of PD 57AD (survey results, July 2026): [judiciary.uk](https://www.judiciary.uk)
- *UTB LLC v Sheffield United Ltd* [2019] EWHC 914 (Ch); *McParland v Whitehead* [2020] EWHC 298 (Ch): [caselaw.nationalarchives.gov.uk](https://www.caselaw.nationalarchives.gov.uk)
- *Castle Water Ltd v Thames Water Utilities Ltd* [2020] EWHC 1374 (TCC): [caselaw.nationalarchives.gov.uk](https://www.caselaw.nationalarchives.gov.uk)
- *Irwell Riverside Developments Ltd v Arcadis Consulting (UK) Ltd* [2023] EWHC 2864 (TCC): [caselaw.nationalarchives.gov.uk](https://www.caselaw.nationalarchives.gov.uk)
- *Excelerate Technology Ltd v West Midlands Ambulance Service* [2024] EWHC 177 (TCC): [caselaw.nationalarchives.gov.uk](https://www.caselaw.nationalarchives.gov.uk)
- *Voltaire Capital Holdings Ltd v Watson* [2025] EWHC 1948 (Comm): [caselaw.nationalarchives.gov.uk](https://www.caselaw.nationalarchives.gov.uk)
- *Coll v Alphabet Inc* [2024] CAT 25: [catribunal.org.uk](https://www.catribunal.org.uk)
- Law Society guidance: Generative AI in disclosure (November 2025) and the LPP practice notes: [lawsociety.org.uk](https://www.lawsociety.org.uk)
- UK GDPR and Data Protection Act 2018; Data (Use and Access) Act 2025: [legislation.gov.uk](https://www.legislation.gov.uk); ICO guidance: [ico.org.uk](https://www.ico.org.uk)
- Attorney General's Guidelines on Disclosure (2024) and CPS disclosure guidance: [gov.uk](https://www.gov.uk); Forensic Science Regulator statutory Code (version 2, October 2025): [gov.uk/fsr](https://www.gov.uk/fsr)
- IBA Rules on the Taking of Evidence in International Arbitration (2020): [ibanet.org](https://www.ibanet.org); CAT Rules and Practice Direction: [catribunal.org.uk](https://www.catribunal.org.uk)

Links current at publication (September 2026). PD 57AD reform consultation is expected late 2026 / early 2027: check [judiciary.uk](https://www.judiciary.uk) before relying on paragraph numbers in submissions.

SECTION 37

How a specialist laboratory can assist

This series is educational, but the work it describes is practical, and much of it benefits from a specialist electronic disclosure and digital forensics laboratory operating alongside the legal team. In the cooperation context specifically, an independent laboratory can:

- **Produce the numbers that move negotiations:** fast hit reports with defensible uniqueness computation, documented sampling protocols, richness estimates with confidence intervals, and cost models per proposal.
- **Field a technical counterpart** for providers' calls who understands both the engineering and the record: what to answer, what to take away, what not to volunteer.
- **Prepare exchangeable methodology statements** for collections and forensic work – acquisition methods, hashes, chain of custody – so preservation facts never become correspondence wars.
- **Audit the other side's methodology:** TAR validation designs, sampling arithmetic, processing exceptions and production load files, giving your challenges Irwell-grade precision or saving you from making bad ones.
- **Support joint instructions:** neutral imaging and extraction under agreed protocols, including mobile devices, cloud sources and departed-employee equipment.
- **Stand behind the work:** NPCC-aligned digital evidence handling, ISO 17025 aligned practice, and examiners experienced in giving evidence when methodology is challenged.

Instruct the laboratory early – ideally when the first methodology letter is being drafted – so that the estate map, the processing specification and the first hit reports are ready when cooperation begins in earnest.



I N S T R U C T T H E L A B

Speak to a forensic examiner — not a salesperson.

Describe your matter in confidence and an examiner will respond the same working day. Conflicts checks and scoping calls with US counsel are routine.

NEW ENQUIRIES

+44 (0)20 7164 6971

EMAIL

info@cflab.uk

E-DISCOVERY

e-discovery.uk



SCAN TO CONTACT

e-discovery.uk / +44 (0)20
7164 6971