

Identifying The Right Custodians In Electronic Disclosure

Identifying custodians is central to electronic disclosure in UK litigation. This guide clarifies the concept of a custodian, distinguishes custodial from non-custodial sources, and provides a methodical approach to selecting and interviewing custodians, including handling difficult categories and common pitfalls.

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CUSTODIAN IDENTIFICATION · A GUIDE FOR UK LAWYERS Identifying the Right Custodians in Electronic Disclosure People, Shared Sources and Organisational Data
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§ ABOUT THE AUTHOR PREPARED BY COMPUTER FORENSICS LAB E-DISCOVERY TEAM
FULL CHAIN-OF-CUSTODY DOCUMENTATION

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§ 09 · DIFFICULT CATEGORIES Former employees 2 · Inventory what survives. Per leaver: mailbox (live, archived, or exported before deletion), One Drive and 3 · Assess control and cooperation. Company-held data is squarely in the client's control. Data on the

§ 10 · DIFFICULT CATEGORIES Organisational data: CRM, ERP and the systems with no custodian

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§ 12 · THE INSTRUMENT The custodian interview: question set and method ROLE AND INVOLVEMENT 3 · Who held your role before and after you? Who covered your absences? IDENTITIES AND CHANNELS 5 · Every messaging channel used for anything work-related: Whats App, SMS or i Message, Signal, Telegram, STORAGE AND SYSTEMS 10 · Any personal cloud storage, personal devices or home equipment used for work in the period? 11 · Any spreadsheets, trackers or in form a l databases you maintained that others relied on? DEVICES AND EVENTS 13 · Since [the dispute arose], have you deleted, exported, moved or tidied anything potentially relevant, or CLOSING THE RECORD 15 · Read-back and confirm at i on: the custodian reviews the noted answers, corrects, and signs or confirm by

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Questions and answers

What is a custodian?

The person (or identity) whose data holdings are treated as one unit of collection, search and review: their mailboxes, chat accounts, drives, devices and system activity, gathered and searched as a bundle attributable to them. The custodian is eDisclosure's organising unit: DRDs list custodians, costs scale by custodian count, platforms index by custodian, and attribution arguments usually begin from whose collection a document sat in. Sources with no single human owner (shared mailboxes, repositories, business systems, service accounts) are non-custodial and are handled as sources in their own right with a nominated system owner.

How many custodians is normal?

There is no normal, but there are patterns: modest commercial disputes commonly run 4 to 8, substantial B&PC claims 8 to 20, and regulatory or fraud matters more. The defensible number is the one the issues-to-people method produces, tiered so that collection effort matches involvement. A useful discipline: for every custodian beyond the first eight, be able to say in one sentence what unique material they plausibly hold.

Is a shared mailbox a custodian?

No. It is a non-custodial source: collect it as a repository with a system owner, establish its access history for attribution, and never assume it is covered by the individual custodians who used it. The same applies to departmental drives and business systems.

Do former employees count as custodians?

Yes, when ever they were participants: departure changes what survives and how you reach it, not whether they matter. Freeze the leaver pipeline immediately, send preservation notices (PD 57AD contemplates exactly this), inventory what survives, and negotiate cooperation for anything on personal devices or accounts.

Is the CEO automatically a custodian?

No. Seniority is not participation. A CEO who approved one board paper may be a Tier 2 or Tier 3 entry, or a reasoned exclusion, while their assistant is Tier 1. Equally, do not use non-participation as a shield where the interview or correspondent analysis shows the CEO ran the relationship over WhatsApp; the data, not the org chart, decides.

Can we add or remove custodians after the DRD?

Yes, and well-run matters usually do. Additions arising from review findings, amended pleadings or communication analysis are routine when the list was framed as living and the change is proposed promptly with reasons. Removals are rarer (preservation usually continues even where collection is dropped) and should be agreed or ordered, not silent.

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