

Initial Disclosure What Should Be Provided And What Should Be Preserved

Initial Disclosure in UK litigation requires lawyers to understand two distinct obligations: what to provide in the bundle and what to preserve from the whole universe of data. This guide clarifies the legal framework, common pitfalls, and best practices for defensible Initial Disclosure.

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IN IT IAL DISCLOSURE · A GUIDE FOR UK LAWYERS Initial Disclosure: What Should Be Provided and What Should Be Preserved? The Small Bundle and the Vast Universe COMPUTER FORENSICS LAB

§ ABOUT THE AUTHOR PREPARED BY COMPUTER FORENSICS LAB E-DISCOVERY TEAM FULL CHAIN-OF-CUSTODY DOCUMENTATION

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Speak to a forensic examiner, not a salesperson. INSTRUCT THE LAB
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Questions and answers

Is Initial Disclosure "our disclosure done"?

No. It is the first, smallest instalment: the key documents relied on and needed to understand the case, served with the pleading. The preservation duty (everything potentially relevant, until the case ends), the known- adverse-documents duty and Extended Disclosure all continue on their own tracks, untouched by service. The most expensive m is understanding in this area is a client who relaxes preservation because a bundle went out.

Do we have to include documents that harm our case?

Not in Initial Disclosure: its two limbs are documents relied on and documents necessary to understand the case, and it is not the vehicle for adverse material. But the separate duty to disclose known adverse documents is real, personal and continuing; it is discharged with Extended Disclosure (or within the PD's fallback timetable where none is ordered on the issue). Educate the client on both clocks so neither false comfort nor panic sets in.

What if our key documents exceed 1,000 pages or 200 documents?

First interrogate the count: bundles over the cap usually contain Extended Disclosure material mislabelled as key. If the genuinely key set still exceeds the cap, the PD's own structure responds: the obligation does not apply in that form, the parties can agree a sensible approach, and the position is explained to the court; what is not acceptable is silently serving a partial set that purports to be complete.

Can we agree to dispense with Initial Disclosure?

Yes, in writing, and it is some time s sensible (key material fully exchanged pre-action, or an imminent limitation deadline making assembly impractical). Record the agreement, and remember dispensation touches only the providing obligation: preservation and the adverse-documents duty are wholly unaffected.

What format should we serve in, and must we give natives?

Electronic and text-searchable by default, with a clean reconciling list and stable number in g. Serve renderings for convenience where they are faithful, keep natives preserved regardless, and provide natives on request wherever formatting, formulas or metadata carry meaning; offering them unprompted for the load-bearing documents is cheap credibility.

Does the preservation duty ever relax as the case narrows?

Scope evolves openly, not by decay: preserve-only tiers, staged sources and reasoned exclusions are recorded in the DRD as the issues crystallise, and material genuinely outside any issue can eventually be released from hold with a documented decision. What never happens defensibly is quiet relaxation: a timer resumed or a device reissued without a recorded, reasoned decision is tomorrow's spoliation correspondence. cflab. u k · e-discove
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