COMPUTER FORENSICS LAB
London digital forensics & e-discovery · Established 2007

Proportionality in eDisclosure: When Is Enough Enough?

Volume, Cost, Importance, Difficulty and Evidential Value

Digital estates have no natural stopping point: there is always another source, another term, another tranche of review. Proportionality is the principle that decides when to stop, and it is not a feeling but a balance: volume, cost, the importance of the case and the issue, technical difficulty and likely evidential value, weighed openly and on numbers. This guide explains how each factor works, how to run the balancing argument in the DRD and before the court, how proportionality shapes strategy in both directions, and how to make the stopping decision an evidenced event rather than an exhausted one.

⏱ Estimated reading time: 29 min read

§ ABOUT THE AUTHOR

PREPARED BY COMPUTER FORENSICS LAB E-DISCOVERY TEAM

Computer Forensics Lab is a London-based digital forensics and electronic disclosure practice established in 2007. Its eDiscovery arm, **e-discovery.uk**, is built on the proportionality principle in its working form: aggressively cull noise before it reaches review, so clients pay for substance, not volume. The practice manufactures the evidence proportionality arguments run on (measured volumes, per-source costs, sampled richness, feasibility statements) and its laboratory prices the technically difficult sources honestly, in both directions.

ESTABLISHED 2007 · LONDON | ISO 17025-ALIGNED PROCEDURES | ISO 27001-ALIGNED SECURITY | ACPO / NPCC DIGITAL EVIDENCE PRINCIPLES | EARLY CASE & DATA ASSESSMENT | PD 57AD / DRD EXPERIENCE | FULL CHAIN-OF-CUSTODY DOCUMENTATION

§ CONTENTS

In this guide

§ 01 · ORIENTATION

Executive summary

THE HEADLINE ANSWER: WHEN IS ENOUGH ENOUGH?

Enough is enough when the marginal cost and burden of further searching exceeds the likely marginal evidential value of what it would find, judged against the importance of the case and of the specific issue, and demonstrated rather than asserted. Proportionality is the master principle running through the overriding objective, CPR 31.7, PD 31B and PD 57AD's Extended Disclosure factors, and it is operated with five working dials: volume (measured, not adjectival), cost (itemised through the pipeline, per source, at the margin), importance (of the case, monetary and otherwise, and of the issue within it), technical difficulty (which prices sources rather than excusing them) and evidential value (sampled richness, uniqueness and the significance of what a source may yield). A party that puts numbers on all five, at the level of each disputed increment of scope, wins proportionality arguments in either direction; a party arguing with the words "vast" and "disproportionate" funds the difference. And the stopping decision itself (ending review, declining the next tranche) is an evidenced event: richness decline and a null-set sample, recorded, not a budget running dry.

- **Proportionality is multi-directional.** It shields producing parties from landslide demands and requesting parties from token disclosure; it also justifies targeted additions (a precise Model C request is proportionate exactly because it is cheap and probative). Treating it as a producers' shield only is the commonest strategic misreading.
- **The unit of analysis is the increment.** Not "is this exercise proportionate?" but "is this custodian, this archive, this term, this next tranche proportionate?", each judged at the margin with its own cost and its own likely yield. Marginal analysis is what converts the doctrine into decisions.
- **Evidence is the whole game.** Measured volumes, provider quotes, feasibility statements, sampled richness and overlap data: the assessment machinery of this series is the proportionality arsenal, and every worked argument in this guide is an arithmetic exercise before it is a rhetorical one.
- **Proportionality never reaches the known adverse document.** The duty to disclose known adverse documents is search-independent and cost-independent; no balancing excuses it, and conflating the two is a serious error in both advice and argument.
- **Data protection pulls the same direction.** UK GDPR minimisation and the costs rules both condemn reflexive over-collection; proportionality arguments increasingly run with a data-protection harmony line, and it is a good one.

§ 0 2 · FIRST PRINCIPLES

The problem in plain English: estates without endings

Paper disclosure ended when the filing cabinets did. Digital disclosure never ends on its own: there is always another mailbox, an older backup, a wider term, a personal device, a further tranche of the review queue, and each increment can be justified by the sentence "there might be something there." That sentence is always true and never sufficient, because it proves too much: it would justify restoring every tape and reading every document in every case, which no one can pay for and no court will order.

So every disclosure exercise contains a stopping decision, made by someone, on some basis. In badly run matters the decider is one of two impostors: **budget exhaustion** (the search stops when the money does, wherever that happens to fall, with nothing measuring what remained) or **anxiety** (the search continues past all sense because nobody will own the decision to stop, and the costs schedule becomes the case's second dispute). Proportionality is the principled decider: a structured balance the rules supply, the court applies, and a prepared party can run with numbers at every margin. The five factors that follow are its working dials, and the craft of this guide is turning "there might be something there" into "here is what it would cost, here is what sampling says it would yield, and here is why that trade does or does not make sense for this issue in this case."

§ 0 3 · THE LAW

The legal framework: proportionality everywhere

- **The overriding objective (CPR 1.1)** requires cases to be dealt with justly and at proportionate cost, expressly weighing the amount at stake, the case's importance and complexity, the parties' financial positions, and the court's resources. Disclosure is administered under this umbrella, and every disclosure argument is, formally, an overriding-objective argument.
- **CPR 31.7** builds the balance into the reasonable search: the number of documents, the nature and complexity of the proceedings, the ease and expense of retrieval, and the significance of any document likely to be located.
- **PD 31B** adds the electronic factors: accessibility (including of legacy and backup systems), the location of documents, the likelihood of locating relevant data, retrieval and disclosure costs, the likely significance of what may be found, and the availability of the same material from other sources.
- **PD 57AD** makes proportionality the gate to Extended Disclosure: no Model is ordered unless it is appropriate having regard to the factors, which include the nature and complexity of the issues, the importance of the case (including non-monetary importance), the likelihood and probative value of documents, the number of documents involved, the ease and expense of searching and disclosure, and the parties' funding and means; and the duty to cooperate exists precisely so the balance is struck on shared information. The Less Complex Claims track is proportionality institutionalised for the lighter end.
- **Costs management (CPR 3)** operationalises the doctrine in money: the disclosure phase of Precedent H is scrutinised for proportion to the case, and a budget that could never be proportionate flags the exercise behind it.
- **The limits:** proportionality shapes searches and orders; it does not dilute the duty to disclose known adverse documents, excuse spoliation, or justify silent narrowing. It is a doctrine of open balancing, and its arguments only work in daylight.

§ 04 · FACTOR 1

Volume

- **Volume is an input, not an argument.** "Two million documents" persuades nobody by itself: the court's next question is always what the funnel does to it (deduplication, threading, date and term culling) and what remains to be reviewed. Present volume as the funnel: collected, post-cull, review population, per scenario.
- **Measure it or lose it.** Adjectival volume ("vast", "enormous") is discounted; measured volume (per custodian, per source, with expansion allowances and the dedupe rate) is credited. The early-assessment machinery exists to make the measurement cheap.
- **Volume cuts both ways.** High volume supports culling technology and staged approaches; it also supports TAR rather than refusal to search. Conversely, an opponent's small measured volume undermines their burden objection: 4,000 documents is a weekend, not an oppression.
- **Watch the volume of what, exactly:** chat messages, database rows and media hours are not documents; argue them in their own units with their own review economics, or the numbers mislead in whichever direction suits the careless.

§ 05 · FACTOR 2

Cost

- **Itemise through the pipeline.** Credible cost evidence separates collection (per source), processing (per gigabyte, with expansion), hosting (per gigabyte per month, for the matter's life) and review (per document, the dominant term), because the court can then see which increment drives what. A single round number invites the suspicion it was reverse-engineered.
- **Argue at the margin.** The question is never the exercise's total cost but the disputed increment's: "adding these six custodians adds an estimated 61,000 unique documents and £74,000 of review" is the sentence that decides things. Provider quotes per increment are the exhibits.
- **Ratio it to the stakes, carefully.** Cost against the value in issue is a legitimate and powerful comparison ("the restoration exceeds 8 per cent of the entire claim, for one secondary issue"), tempered by non-monetary importance where it genuinely exists (§6).
- **Count both parties' costs.** A producing party's burden argument is strengthened by the requesting party's own review cost of the landslide it demands; over-disclosure is expensive for everyone, which is the document-dumping prohibition's economic logic.
- **Keep the budget consistent.** The proportionality argument and Precedent H must tell one story: nothing undermines a burden submission like a budget that already assumed the work, or contradicts it.

§ 06 · FACTOR 3

Importance

- **Of the case:** the sums in issue anchor the balance, but importance is expressly wider: liberty and livelihood, reputation, public interest, test-case status, the survival of a business, allegations of dishonesty (which both raise the stakes and widen what is probative). A £300,000 claim carrying a fraud allegation against a professional supports more disclosure than its value alone would.
- **Of the issue within the case:** proportionality is struck issue by issue under PD 57AD, and the same source can be disproportionate for a peripheral issue and plainly proportionate for the central one. Argue at issue level; resist opponents who average across the case in whichever direction helps them.
- **Of the moment:** importance shifts as cases narrow: an issue conceded, a quantum agreement, a preliminary-issue direction can collapse the justification for scope that was proportionate last quarter, and variation applications exist for exactly that.
- **Prove the intangibles:** non-monetary importance is asserted cheaply and often; give it content (the regulatory consequence, the published allegation, the precedent effect) or expect it discounted.

§ 07 · FACTOR 4

Technical difficulty

- **Difficulty prices the question; it rarely answers it.** Legacy tapes, decommissioned systems, encrypted containers, damaged devices, obsolete formats and provider-side data are not excluded because they are hard; they are weighed because hardness has a cost, and the cost goes into the balance with everything else.
- **Evidence it with feasibility statements.** "Not reasonably accessible" survives scrutiny only with the engineering behind it: what the source is, what retrieval involves, the quoted cost and timescale, and the failure risks, prepared or reviewed by an examiner who could defend it. Hand-waved difficulty is the fastest way to lose an accessibility argument.
- **Distinguish difficulty's species:** restoration difficulty (tapes, legacy formats: a money question), access difficulty (encryption, passwords, provider control: a legal-route and feasibility question), and interpretation difficulty (proprietary systems needing expertise: a cost-of-understanding question). Each argues differently and prices differently.
- **Preserve while you argue.** Difficulty postpones searching, never preservation: the tapes are catalogued and held, the encrypted container imaged, while the balance is struck, so losing the argument later does not mean losing the evidence.
- **Difficulty erodes.** What was infeasible last year may be routine now (and vice versa where providers purge); date-stamp feasibility statements and refresh them if the fight returns.

§ 0 8 · FACTOR 5

Evidential value

- **Likelihood times significance.** A source's evidential value is the probability it holds relevant material multiplied by how much that material would matter: a low-richness source can still be proportionate if what it might hold is case-deciding (the deleted thread in a fraud claim), and a rich source can be marginal if everything it holds exists elsewhere.
- **Sample the likelihood.** Richness is measurable: sampled relevance rates per source and custodian, term-hit relevance sampling, and overlap analysis showing uniqueness ("under 2 per cent of the archive is unique against live sources"). These are the numbers that make yield arguments real, and the companion assessment guide supplies the method.
- **Argue significance from the issues.** What kind of document would this source uniquely contain, and which pleaded issue turns on it? A source that could only duplicate the story already told has low value however relevant its contents; a source that could uniquely prove or disprove a disputed fact has high value at any richness.
- **Alternative availability discounts value.** PD 31B says so expressly: material obtainable from a cheaper source (the counterparty's production, the live archive, the system report) drains the expensive source's justification.
- **Absence has value too.** Sometimes the point of a search is to demonstrate a negative (no such instruction exists); the value of a confirmatory null result is legitimate, finite, and best delivered by sampling rather than exhaustive review.

§ 0 9 · METHOD

Running the balance: the argument in practice

The anatomy of a proportionality submission that wins, applicable to a source, a custodian, a term or a tranche:

ELEMENT	CONTENT
1 · The increment, precisely	What exactly is in dispute: these custodians, this archive, this term family, the next review tranche; never the exercise at large
2 · The cost side, itemised	Provider-quoted collection, processing, hosting and review figures for the increment, with the timetable effect
3 · The value side, sampled	Measured richness, uniqueness against existing sources, and the issue-level significance of what the increment could yield
4 · The importance frame	The stakes of the case and of the specific issue the increment serves, monetary and otherwise
5 · The proportionate alternative	What you offer instead: preservation, sampling, a staged trigger, a targeted Model C, report-based extraction; courts prefer choosing between plans to endorsing refusals
6 · The record	The cooperation history on this increment: what was exchanged, offered and refused, exhibited briefly

Delivered in a page and a half with the tables annexed, this structure wins because it does the judge's work: both pans of the scale are loaded with numbers, the alternative is ready, and the order writes itself. The identical structure, mirror-imaged, is how to demolish an opponent's unevidenced burden objection: demand their itemised costs and their sampling, supply your own value evidence, and offer to pay for a sampled test of the disputed source, an offer that calls every bluff.

§ 1 0 · BOTH DIRECTIONS

Proportionality as strategy, in both directions

- **Producing:** stage the exercise (core first, extensions behind evidence-defined triggers), park the expensive-and-thin openly with the figures annexed, offer preserve-only for the marginal, and let measured funnels defend the scope you propose. Proportionality run this way is not minimising disclosure; it is sequencing it, which courts consistently endorse.
- **Requesting:** precision is your proportionality. A tight Model C request or a single-custodian addition supported by their own production's gaps is proportionate almost by construction; the broad demand invites the burden defence you cannot rebut. Ask for the probative narrow thing, with the reason it matters, and offer the mechanism (sampling first, costs contribution for genuinely expensive retrieval) that makes refusing look unreasonable.
- **Defending against the landslide:** the demand for everything meets the five factors deployed as a battery: measured volume and cost of compliance, low sampled value, the issue-level frame, and the staged alternative. Add the data-protection harmony point: minimisation is not just cheaper, it is the lawful-processing posture.
- **Settlement leverage:** a measured disclosure-cost projection, exchanged early, is itself a settlement instrument: both sides pricing the road ahead on the same numbers changes offers, and the party that produced the projection controls its framing.
- **Costs consequences:** proportionality arguments won and lost are remembered at costs; the party whose scope positions were evidenced recovers, and the party that demanded or performed the landslide explains itself.

§ 11 · THE END

The stopping decision: when enough is demonstrably enough

- **In scope-setting,** enough is reached when each remaining candidate increment fails the §9 balance on its own numbers: recorded per source in the promote / stage / park / escalate discipline, with the DRD carrying the reasoned exclusions.
- **In review,** enough is reached when the evidence says continuation stops paying: richness in the ranked stream declining toward noise, and a null-set sample of the unreviewed population returning a residual rate assessed as immaterial ("a 1,500-document random sample found 0.4 per cent residual relevance, reviewed and assessed"), with sample sizes, rates and the decision recorded. That sentence, in the methodology memo and available for the certificate, is the difference between a stopping decision and a stopping accident.
- **In retrieval questions,** enough is reached when the feasibility statement and the sampled value together fail the balance, openly: the tapes stay preserved, the decision stays visible, and a defined trigger (an issue surviving, a gap emerging) reopens it without a fight about concealment.
- **Never by exhaustion, never silently.** The two impostors from §2 are the audit findings that lose later arguments: a stop with no measurement behind it, or a narrowing nobody recorded. Every stop in a defensible exercise has a number and a note.
- **And never against the adverse duty.** Stopping a search is a proportionality decision; sitting on a known adverse document is not available at any price point.

§ 12 · IN THE WILD

Worked examples

EXAMPLE 1 · THE ARCHIVE THAT STAYED ON THE SHELF

In a £2.1m supply dispute, the claimant demanded restoration of the defendant's 2019–2021 tape archive. The defendant's response ran the §9 anatomy: restoration and processing quoted at £58,000 plus eleven weeks; a sampled restore of two tapes showing 97 per cent duplication against the live archive and sampled unique relevance under 1 per cent; the issue served (an alternative quantum theory) worth at most £190,000; and the offer: tapes preserved, catalogued, and restorable on a defined trigger at the claimant's initial cost subject to reallocation at trial. Ordered as offered, with the judge adopting the defendant's table almost verbatim.

EXAMPLE 2 · FORTY CUSTODIANS MEET ARITHMETIC

An employer facing a discrimination claim received a 40-custodian demand ("the whole department may hold relevant material"). Its evidence: footprint counts showing 31 candidates under 700 issue-period items, hash overlap above 85 per cent against the nine genuine participants, review cost of the demand at £310,000 against a schedule of loss of £84,000, and an offer of the nine plus preserve-only for the rest. The tribunal ordered the nine, observed that the demand had never engaged with the data, and the observation reappeared at costs.

EXAMPLE 3 · THE REQUESTING PARTY WHO ASKED SMALL AND WON

A claimant sought one addition to the defendant's disclosure: the WhatsApp thread between two named individuals for an eleven-week window, identified from gaps in the produced email chronology where decisions plainly happened off-channel. Cost of compliance: one targeted extraction, low hundreds. Value: potentially decisive on the central authorisation issue. The defendant's generalised burden objection had nothing to weigh against a request that precise; ordered, extracted, and the thread settled the issue. Proportionality is the requesting party's friend when the request is engineered to pass the balance.

EXAMPLE 4 · STOPPING THE REVIEW WITH A NUMBER

A CAL-prioritised review of 210,000 documents saw richness fall from 34 per cent in early batches to under 2 per cent by document 60,000. The team ran a 1,500-document null-set sample: residual relevance 0.5 per cent, the sampled items reviewed and assessed as duplicative of disclosed material. Review stopped at 63,000 documents with the statistics minuted; the opponent's completeness challenge was answered with the sample memo in a single letter, and never renewed.

§ 13 · WHERE IT GOES WRONG

Common mistakes and technical limitations

Common mistakes

- **Adjectives for numbers:** "vast", "oppressive" and "disproportionate" doing the work that funnels, quotes and samples should.
- **Arguing the whole instead of the margin:** defending or attacking the exercise at large when the dispute is three custodians and one archive.
- **Cost without value, value without cost:** half-loaded scales, easily rebalanced by the first opponent who loads both pans.
- **Averaging across issues** when the regime strikes the balance per issue, in whichever direction flatters the argument.
- **Difficulty as refusal:** "not reasonably accessible" asserted without engineering, collapsing on the first expert challenge.
- **Silent proportionality:** narrowing performed without recording, indistinguishable later from concealment.
- **Budget contradiction:** a burden submission alongside a Precedent H that priced the work, or the reverse.
- **Proportionality against the adverse duty:** advice or argument treating cost as a reason a known bad document might not need disclosing.
- **The stop nobody owned:** review ended by budget, no sample, no memo, and the gap discovered by the other side.

Technical limitations

- **Samples bound, not banish, uncertainty.** Richness and null-set figures carry confidence intervals; state sizes with rates, and size the sample to the stakes of the decision it supports.
- **Costs move.** Provider quotes age, difficulty erodes, hosting compounds monthly; date-stamp the figures and refresh before the hearing that relies on them.
- **Value is partly unknowable in advance.** Sampling estimates likelihood; significance is judgment; the balance is honest about both, which is why the proportionate alternative (preserve, stage, trigger) exists: it prices being wrong cheaply.
- **Non-monetary importance resists quantification** but not evidence: regulatory letters, published allegations and precedent effects are exhibits, not adjectives.

§ 14 · INTERROGATORIES & DRAFTING AIDS

Questions to ask · Suggested wording

Ask your client

- Beyond the money, what genuinely rides on this case (regulatory, reputational, precedent), and what evidences it?
- Which issues would you spend real money to win, and which are makeweights? (The per-issue balance starts here.)
- What is your appetite for the staged alternative: core now, extensions on triggers, with the decisions recorded?

Ask your opponent

- For each source you say is disproportionate to search: the itemised cost, its basis, and your sampling of its likely yield.
- For each increment you demand: the issue it serves, why existing sources cannot serve it, and your position on a sampled test first.
- Please reconcile your burden submissions with your filed costs budget.

Ask your eDiscovery / forensic provider

- Quote the disputed increment, itemised: collection, processing, hosting for the matter's expected life, and review at our rates.
- Design and run the sampling that measures the increment's likely yield (richness, uniqueness), sized to the decision.
- For the difficult sources: a feasibility statement (method, cost, timescale, risks) you would defend under CPR Part 35.
- What staged or report-based alternative would you propose for this source, and its price?

SUGGESTED WORDING · PROPORTIONALITY PARAGRAPH FOR THE DRD OR A SUBMISSION (ADAPT PER INCREMENT)

> "The [party] does not propose to [search / restore / collect] [the increment]. Itemised cost: £[x] and [y] weeks (quotation annexed). Likely yield: a sampled [restore / review] of [n] items returned [r] per cent relevance, with [u] per cent unique against sources already searched (methodology annexed). The increment serves Issue [n] only, [state its weight in the case]. In the circumstances the cost is out of proportion to the likely probative value, having regard to the factors in [PD 57AD paragraph 6.4 / CPR 31.7 / PD 31B]. The source has been preserved [state how], and the [party] offers: [the staged trigger / a further sampled test at the requesting party's initial cost, subject to reallocation / a report-based extraction], so that the position can be revisited on evidence if the case develops."

SUGGESTED WORDING · CHALLENGING AN UNEVIDENCED BURDEN OBJECTION

> "Your objection that the requested [source] is disproportionate to search is unparticularised. Please provide within [14] days: (1) the itemised cost of compliance and its basis; (2) any sampling or measurement of the source's likely relevance and uniqueness; and (3) your preservation position in respect of it. Our request is confined to [the precise increment], serves Issue [n] because [reason], and cannot be met from sources already produced because [reason]. We are content for the source to be sampled first on the following basis: [terms]. Absent a substantive response we will refer the question to the court with this correspondence."

§ 15 · QUICK CONTROL

Checklist and red flags · When to involve a digital forensic expert

The proportionality checklist

- ☐ Every scope position argued at the increment, with both pans loaded: itemised cost and sampled value
- ☐ Volumes presented as funnels per scenario, in the right units, measured not adjectival
- ☐ Importance framed per issue as well as per case; intangibles evidenced, not asserted
- ☐ Difficult sources priced by feasibility statements an examiner would defend; preserved while argued
- ☐ Alternative availability checked before expensive sources are fought over
- ☐ The proportionate alternative always on the table: staging, sampling, triggers, targeted requests
- ☐ Budget and proportionality submissions reconciled on the same numbers
- ☐ Requests engineered to pass the balance: narrow, issue-tied, mechanism attached
- ☐ Every stop evidenced and minuted: richness curves, null-set samples, reasoned exclusions
- ☐ The adverse-documents duty ring-fenced from every balancing argument

Red flags

- Any submission, yours or theirs, whose only quantities are adjectives.
- A burden objection with no itemised cost, or a demand with no issue attached.
- "Not reasonably accessible" with no engineering behind it.
- Scope narrowed anywhere without a recorded reason.
- A review that ended at a round number with no sample of what remained.
- A budget and a burden argument that disagree.
- Anyone reasoning from cost toward a known adverse document.

When to involve a digital forensic expert

Proportionality arguments go technical exactly where they are won and lost: feasibility and cost statements for difficult sources (tapes, legacy systems, encrypted and damaged media) that must survive the other side's expert; sampled restores and examinations that measure a disputed source's real yield before anyone pays for the whole; recovery-prospect statements where deleted data is the increment in dispute; and CPR Part 35 evidence where accessibility or methodology becomes a contested issue before the court. An examiner's honest number, in either direction, is the most persuasive document a proportionality argument can annex.

§ 16 · COMMON QUESTIONS

Frequently asked questions

Is proportionality just about money?

No: cost is one pan of the scale. The balance weighs the case's importance (expressly including non-monetary importance), the significance of the issue served, the likelihood and probative value of what a search may yield, and the burdens beyond fees (time, disruption, data-protection exposure). But money is the pan most often left empty by lazy arguments, which is why itemised cost evidence is disproportionately powerful.

Can we refuse to search a source simply because it is expensive?

Not simply: expense enters the balance, it does not conclude it. The defensible position is expense evidenced (itemised, quoted, engineered), weighed against sampled value and issue importance, with the source preserved and a revisiting mechanism offered. A source that is expensive and probably decisive gets searched; one that is expensive and demonstrably thin gets parked, openly. The word doing the work is "demonstrably".

Who bears the burden on a proportionality dispute?

Formally, a party seeking an order persuades the court it is reasonable and proportionate, and a party resisting on burden grounds must make the burden good. Practically, the burden falls on whoever lacks numbers: courts decide these disputes on the evidence in front of them, and the party with the itemised costs, the samples and the offered alternative usually writes the order regardless of who technically moved.

Does proportionality ever excuse not disclosing a known adverse document?

Never. The known-adverse duty is independent of any search and any balance: it attaches to awareness, not to effort. Proportionality governs how far you must look; it says nothing about what you may withhold once you know. Conflating the two is the single most dangerous error in this territory, in advice and in argument alike.

How does proportionality work in smaller claims?

Structurally identically, at smaller magnitudes: the Less Complex Claims track institutionalises it in the Business and Property Courts, and outside them the CPR 31.7 factors scale naturally. In practice small claims reward the light machinery hardest: in-place volume reports, one round of tested terms, and a stopping sample can cost hundreds and still transform the argument, because the opponent almost never has any numbers at all.

The court ordered more than we think proportionate. Now what?

Comply, measure as you go, and use the evidence: if performance generates the numbers the argument lacked (the tranche's actual richness, the real costs), a variation application under the regime's machinery is the proper route, made promptly and candidly. What is not available is quiet under-performance of the order; that converts a proportionality grievance into a compliance breach, and no set of numbers rescues it.

§ 1 7 · R E F E R E N C E

Glossary

Accessibility economics
The pricing of hard-to-reach sources (tapes, legacy, encrypted) as an input to the balance rather than an exclusion.

Feasibility statement
The engineered account of a difficult source: method, cost, timescale and risks, defensible under CPR Part 35.

Funnel
The measured path from collected volume through culling to review population, per scenario.

Increment
The unit of proportionality analysis: the specific custodian, source, term or tranche in dispute.

Marginal analysis
Judging each increment on its own cost and likely yield, rather than the exercise at large.

Null-set sample
A random sample of the unreviewed population; its residual rate is the stopping decision's evidence.

Proportionate alternative
The offer accompanying a refusal: preservation, sampling, staged triggers, targeted extraction.

Reasoned exclusion
A source parked openly in the DRD with its cost and yield evidence annexed.

Richness
The sampled rate of relevant documents in a source or review stream; likelihood's measurement.

Staging
Sequencing disclosure: core scope now, defined evidence-based triggers for extensions.

Stopping decision
The evidenced, recorded end of a search or review, as against exhaustion or silence.

Uniqueness
The proportion of a source not duplicated elsewhere; overlap analysis' output, and value's discount factor.

Sources and authoritative references

The balancing disciplines in this guide draw on materials published by our e-discovery practice and laboratory, referenced here as sources:

- e-discovery.uk, practice principles including proportionality ("we aggressively cull noise before it reaches review; you pay for substance, not volume") and the method statement ("Review is where budgets are spent. Processing is where budgets are made"): e-discovery.uk · e-discovery.uk/edrm/processing
- e-discovery.uk, EDRM Phase 01 · Identification and Phase 05 · Review (the measurement and validation machinery behind funnels, richness and stopping samples): e-discovery.uk/edrm/identification · e-discovery.uk/edrm/review
- e-discovery.uk, Knowledge Centre, including the case note on negotiated terms reducing a review set by 71 per cent: e-discovery.uk/knowledge · e-discovery.uk/expertise
- cflab.uk, digital forensics services (feasibility and cost statements for tapes, legacy, encrypted and damaged sources; sampled restores; recovery-prospect statements; CPR Part 35 evidence on accessibility): cflab.uk/digital-forensics-services · guides for lawyers: cflab.uk/guides
- CPR 1.1 (the overriding objective and proportionate cost): justice.gov.uk, Part 1
- CPR 31.7 and PD 31B (reasonable search factors; accessibility and significance): justice.gov.uk, PD 31B
- Practice Direction 57AD (the Extended Disclosure factors, Models, Less Complex Claims, variation): justice.gov.uk, PD 57AD
- CPR Part 3 (costs management) and Part 44 (costs and conduct): justice.gov.uk, Part 3 · justice.gov.uk, Part 44
- CPR Part 35 (experts): justice.gov.uk, Part 35 · ICO, UK GDPR guidance including data minimisation: ico.org.uk

DISCLAIMER

This publication provides general information about proportionality in electronic disclosure in the United Kingdom as at August 2026. The worked examples are fictional illustrations and all figures are illustrative. This guide is not legal advice, does not create a professional relationship, and should not be relied upon in place of advice on the facts of a specific matter from a qualified lawyer or a suitably qualified forensic practitioner. Rules and guidance change; always check the current text. Links were live at the date of publication.

§ HOW A SPECIALIST LABORATORY CAN ASSIST

Working with Computer Forensics Lab

Proportionality arguments are manufactured from measurements, and measurements are what we sell. Through **e-discovery.uk**: the funnels, footprint counts, overlap tables, sampled richness figures and itemised cost scenarios that load both pans of the scale, prepared exchange-clean for the DRD and the hearing; staged and report-based alternatives designed and priced; and the stopping evidence (richness curves, null-set samples, the memo) that makes enough demonstrably enough. Through the laboratory: feasibility and cost statements for tapes, legacy systems, encrypted containers and damaged media that survive the other side's expert; sampled restores that measure a disputed source's yield before anyone pays for all of it; recovery-prospect statements where deleted data is the battleground; and CPR Part 35 / CrimPR Part 19 evidence when accessibility or methodology reaches the court. We will also tell you, candidly, when the increment is worth paying for: an honest number in either direction is the point. Conflicts checks, confidential scoping discussions and fixed-fee estimates are routine.

INSTRUCT THE LAB

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

Computer Forensics Lab Ltd · Euro House, 133 Ballards Lane, Finchley, London N3 1LJ, United Kingdom
cflab.uk · Customer service +44 (0)20 7164 6915 · ICO ZB395023 · NPCC · ISO 17025 aligned practice · UK Gov Digital Marketplace