

Proportionality In EDisclosure When Is Enough Enough

Proportionality in eDisclosure is crucial for UK legal professionals. This guide examines the five key factors - volume, cost, importance, technical difficulty, and evidential value - that inform the 'stopping decision'. It provides practical advice, worked examples, and strategic considerations for managing electronic disclosure effectively and defensibly.

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PROPORTIONALITY · A GUIDE FOR UK LAWYERS Proportionality in e Disclosure: When Is Enough Enough? Volume, Cost, Importance, Difficulty and Evidential Value COMPUTER FORENSICS LAB DISCOVERY. UK

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

§ CONTENTS In this guide 01 Executive summary 02 The problem in plain English: estates without endings 03 The legal framework: proportionality every where 04 Factor 1 · Volume 05 Factor 2 · Cost 06 Factor 3 · Importance 07 Factor 4 · Technical difficulty 08 Factor 5 · Evidential value 09 Running the balance: the argument in practice 10 Proportionality as strategy, in both directions 11 The stopping decision: when enough is demonstrably enough 12 Worked examples 13 Common mistakes and technical limitations 14 Questions to ask · Suggested wording 15 Checklist and red flags · When to involve a digital forensic expert 16 Frequently asked questions 17 Glossary · References · Disclaimer · How a specialist laboratory can assist

§ 01 · ORIENTATION Executive summary THE HEADLINE ANSWER: WHENISENOUGHENOUGH?

§ 02 · FIRST PRINCIPLES The problem in plain English: estates without endings

§ 03 · THELAW The legal framework: proportionality every where

§ 04 · FACTOR1 Volume

§ 05 · FACTOR2 Cost

§ 06 · FACTOR3 Importance

§ 07 · FACTOR4 Technical difficulty

§ 08 · FACTOR5 Evidential value

§ 09 · METHOD Running the balance: the argument in practice ELEMENT CONTENT 2 · The cost side, itemised Provider-quoted collection, processing, hosting and review figures for the increment, with 3 · The value side, sampled Measured richness, uniqueness against existing sources, and the issue-level significance 5 · The proportionate What you offer instead: preservation, sampling, a staged trigger, a targeted Model C, 6 · The record The cooperation

history on this increment: what was exchanged, offered and refused,

§ 10 · BOTH DIRECTIONS Proportionality as strategy, in both directions

§ 11 · THE END The stopping decision: when enough is demonstrably enough

§ 12 · IN THE WILD Worked examples EXAMPLE1 ·

THE ARCHIVE THAT STAYED ON THE SHELF EXAMPLE2 ·

FORTY CUSTODIANS MEET ARITHMETIC EXAMPLE3 ·

THERE REQUESTING PARTY WHO ASKED SMALL AND WON EXAMPLE4 ·

STOPPING THE REVIEW WITH A NUMBER 0.5 per cent, the sampled items reviewed and assessed as duplicative of disclosed material. Review

§ 13 · WHERE IT GOES WRONG Common mistakes and technical limitations Common mistakes
Technical limitations

§ 14 · INTERROGATORIES & DRAFTING AIDS Questions to ask · Suggested wording Ask

your client Ask your opponent Ask your e Discovery / forensic provider SUGGESTED

WORDING · PROPORTIONALITY PARAGRAPH FOR THE DORA SUBMISSION (A DATA
POINT PER INCREMENT) SUGGESTED WORDING ·

CHALLENGING AN UNEVIDENCED BURDEN OBJECTION

§ 15 · QUICK CONTROL Checklist and red flags · When to involve a digital forensic expert The
proportionality checklist Red flags When to involve a digital forensic expert

§ 16 · COMMON QUESTIONS Frequently asked questions Is proportionality just about money?

Can we refuse to search a source simply because it is expensive? Who bears the burden on a
proportionality dispute? Does proportionality ever excuse not disclosing a known adverse
document? How does proportionality work in smaller claims? The court ordered more than we
think proportionate. Now what?

§ 17 · REFERENCE Glossary Sources and authoritative references DISCLAIMER

§ HOW A SPECIALIST LABORATORY CAN ASSIST Working with Computer Forensics Lab

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

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Questions and answers

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. cflab. u k · e-discove r y. u k ©2026
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Page 19 of 22