

New Disclosure Rules in Effect from 1 January 2019

On 1 January 2019, a new set of disclosure rules came into effect in the Business and Property Courts of England and Wales, most notably the Commercial Court and the Technology and Construction Court (with some limited exceptions, such as the Admiralty Court). The new rules are part of the Disclosure Pilot scheme, which is set to run for two years, and replace those currently set out in CPR Part 31.

The new Disclosure Practice Direction puts in place a radically different disclosure regime from the one it replaces, and was intended to bring about a change in culture insofar as this stage of litigation is concerned. Although it is important for litigators to understand the details of the Disclosure Pilot, the key aspects of the new rules may be summarised as follows:

- Initial Disclosure' is now given alongside statements of case, so key documents which the parties rely on or which are required in order to understand their case must be disclosed when the Particulars of Claim or Defence (etc.) are served.
- Following close of pleadings, the parties must co-operate in advance of the first CMC to complete a lengthy Disclosure Review Document (set out in Appendix 2 of the new Practice Direction), which is intended to set out a detailed list of issues for disclosure and enable the judge at the CMC to understand the 'disclosure landscape'.
- At the CMC itself, the judge may be asked to make an order for 'Extended Disclosure' in respect of one or more of the issues identified in the parties' Disclosure Review Document. The judge will consider which of five different models of disclosure (from model A to model E) is appropriate for the issue in question. Standard disclosure (i.e. search-based disclosure; effectively model D under the new Practice Direction) will no longer be the default order; if anything, request-led disclosure on an issue-by-issue basis is likely to be more common (model C under the new Practice Direction).
- The new Practice Direction also sets out a list of key disclosure principles for both the parties and their legal advisers (including a duty not to 'data dump'), strengthens the duty to disclose 'adverse' documents and imposes sanctions for failure to comply with the new disclosure rules.

For further information or to arrange an in-house briefing on the new disclosure routine, please contact us at clerks@4pumpcourt.com or call +44(0)207 842 5555.