



THE VIEW FROM THE COURT

by

Mr Justice Edwards-Stuart

How will the court approach the protocol?

- The judges of the TCC have been consulted about the protocol during its development and support its adoption in appropriate cases.
- With effect from 1 January 2014, the Court is likely to order parties to adopt the protocol in default of any appropriate agreement by the parties to the contrary or to follow a different protocol.
- There will be nothing to prevent parties agreeing suitable or case specific modifications to the protocol if they so wish, subject always to the approval of the Court.
- As always, the Court retains the power, which it may exercise in appropriate cases, to make an order which may vary the terms of the protocol.

Some points to note

- E-disclosure will not ordinarily produce a result that accords with the menu of options set out in CPR 31.5 (7).
- The option chosen will do no more than inform the approach that is to be adopted when choosing the criteria for the electronic searches.
- Substantial time and costs can be saved by the use of filters which eliminate obviously irrelevant documents (such as corporate logos and so on).
- Applications for specific disclosure which may involve extensive manual searches should focus on key custodians and carefully selected periods of time.

Future steps

- The present arrangements for fixing the first CMC following receipt of the AoS/Defence are being changed so as to allow a longer lead time for the parties to discuss e-disclosure and cost budgets (the two are, of course, interrelated).
- The TCC Guide is to be revised and updated in order to reflect the recent reforms and matters such as the e-disclosure protocol.
- The possibility of establishing an e-disclosure working party will be discussed at the next meeting of the TCC Users Group. The purpose of this would be to keep the court abreast of developments and to provide feedback about how the directions being given by the court are operating in practice.