



# eDISCLOSURE PROTOCOL PACK

Version 0.2  
9 January 2015

Introduction

eDisclosure Protocol

Guidelines to the Protocol

Guide to eDisclosure

## **INTRODUCTION TO THE TeCSA / SCL / TECBAR eDISCLOSURE PROTOCOL**

**Version 0.2  
9 January 2015**

- In March 2013, in response to the introduction of the new Civil Procedure Rules and the Jackson cost management reforms, TeCSA, TECBAR and the SCL jointly resolved to produce much-needed support for their members in handling eDisclosure and the many attendant issues that it raises.
- Anecdotal evidence from practitioners, clients and the judiciary confirmed the need for guidance and the necessary practical tools for practitioners to underpin the operation of the newly introduced Practice Direction 31B and the new Disclosure Report and Electronic Questionnaire.
- TeCSA established a sub-committee comprising members of its full Committee, Marie Claire O'Hara of Nabarro, Andrew Haslam of Allvision and Andrew Kennell of FTI Consulting to produce a draft eDisclosure Protocol specifically designed for use in cases conducted in the Technology and Construction Court but also capable of being used in any piece of civil litigation. The Mission Statement for this working group can be found in the Appendix to this Introduction.
- Given that one of the principal goals of this initiative from the outset was to give practitioners access to practical information about the eDisclosure process and to create a more level playing-field in terms of understanding, it was felt that a guidance document was called for to serve the following two functions:-
  - a. to serve as a "user's manual" to assist users of the Protocol most effectively to ensure full and economical compliance with the new regulatory framework of the CPR, Practice Direction 31B and related documentation; and
  - b. to introduce practitioners who do not have extensive experience of eDisclosure to this challenging and fast-moving area of practice.

- The next stage of the process was to set up a working group (“the Working Group”) involving members of all three of the organisations involved with the initiative, and Messrs Kennell and Haslam in an advisory capacity, to develop the draft Protocol and supporting guidance document to the point where each of the constituent organisations could give both elements its unqualified blessing.
- The final stage of the process was to seek the support of the TCC Judges since the inclusion of the eDisclosure Protocol in the TCC Guide has been seen as an important landmark in terms of establishing its status or “street-cred” and therefore ultimately its usefulness to practitioners and the Court.
- In October 2013 the incoming senior judge in the TCC, Mr Justice Edwards-Stuart, confirmed that the Protocol would have the support of the TCC judges. The latest version of the TCC Guide, published in May 2014, provides (at section 11.2.3) that whilst use of the eDisclosure Protocol is not mandatory, if parties do not use it and do not have an alternative suitable way of dealing with electronic disclosure, the Court is likely to order the parties to use the Protocol.
- On 1 November 2013 the eDisclosure Protocol and accompanying Guidelines (together with a useful “Guide to eDisclosure”) was launched and adopted for use in the TCC from 1 January 2014.
- In the latter half of 2014, having collated feedback on use of the Protocol from various industry members, the Working Group set out to update both the Protocol and the accompanying Guidelines. Accordingly, version 0.2 of the documents which are gathered in an “eDisclosure Protocol Pack” comprises the following documents:
  - this Introduction;
  - the eDisclosure Protocol (Version 0.2 – 9 January 2015);
  - the Guidelines to the eDisclosure Protocol (Version 0.2 – 9 January 2015), including:
    - six appendices providing examples of proposed wording that parties may wish to agree in the Protocol;
    - a graphic timeline, called the Legal/EDRM Timeline, which sets the scene by consolidating in graphic form the regulatory requirements related to eDisclosure and identifying the input required from practitioners to achieve compliance (Annex A to the Guidelines);
    - a flowchart outlining the suggested pathway to the first CMC (Annex B to the Guidelines);

- a checklist to assist in kick-starting the electronic disclosure process (Annex C to the Guidelines); and
  - the Guide to eDisclosure which provides an overview for practitioners of the disclosure industry, including the types of hardware, software, providers available in the marketplace and a glossary of technical terms.
- TeCSA, TECBAR and the SCL would particularly like to thank Andrew Haslam and Andrew Kennell for their major contribution towards the success of this initiative. Without their technical and commercial understanding of the eDisclosure process and the “jungle” of providers and advisers and different software and hardware systems and solutions that make up the marketplace with which practitioners must deal, it is hard to see how the objectives of this initiative could possibly have been achieved as, we hope and believe, they have been.
- Finally, we hope that the latest version of the eDisclosure Pack continues to be used and applied by practitioners in recognition of the fact that the eDisclosure Protocol represents a “best practice” approach to the thorny and difficult issue of electronic disclosure in the Jackson era of civil procedure. It is in your hands to accomplish the aims of the eDisclosure Protocol for the benefit of your clients and the professional environment in which litigation is conducted in this country.

9 January 2015

## APPENDIX

### TeCSA eDISCLOSURE WORKING GROUP MISSION STATEMENT

1. The Working Group's objective is to provide TeCSA members with guidance, know-how and training on E-Disclosure to raise members' understanding of what is required in practice to meet their E-Disclosure obligations under the CPR and how best to manage the practical and technical complexities of the process consistent with best practice and the new cost management and other rules implementing the Jackson reforms. A key goal in this mission is to reduce the disparity in terms of knowledge and experience that currently exists amongst practitioners which continues to affect the efficiency and cost-effectiveness of the litigation process and which is a continuing cause for concern for the TCC judges.
2. To achieve this objective the Working Group has resolved to:
  - Produce an E-Disclosure Protocol in conjunction with TECBAR and SCL, specially designed to meet the particular needs of TCC business, for consultation with the TCC Judges this summer with a view to its incorporation into the new TCC Guide in Autumn 2013 as representing a best practice code or set of guidelines with which they will require or at least expect familiarity and compliance;
  - To assist the TCC Judges in managing the E-Disclosure Process;
  - Produce a pro forma Disclosure Report (to be served 14 days before the first CMC) for consultation with the TCC Judges;
  - Establish and maintain a body of E-Disclosure know-how material on the TeCSA website which will be available to TCC users ;and
  - Establish a training programme to educate TeCSA members in legal, technical and practical E-Disclosure issues.
3. The role of the E-Disclosure Protocol will be twofold:

To provide valuable and informed guidance to TCC users on current best practice for giving E-Disclosure in the TCC Court. Such guidance is designed to enable users to fully understand and meet their E-Disclosure obligations under the CPR in practice and to promote and facilitate a co-operative approach between parties to the process helpful not only to them but also to the court in ensuring that the broader case and cost management objectives are met. It is also hoped that in the short term parties will adopt

the guidance by agreement to regulate the manner in which E-Disclosure issues will be addressed in proceedings taking place in the TCC. In the longer term, following its inclusion in the forthcoming edition of the TCC Guide, to provide a best practice code and set of guidelines specially designed for users of the TCC court with which the court will expect users to be familiar and to comply unless there are special reasons why it would not be appropriate to do so.

12 April 2013