

Ministry of Justice
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Dear Sirs

Response to consultation paper CP 6/2011

Solving disputes in the County Courts: creating a simpler, quicker and more proportionate system

My name is Chris Dale. I was admitted a solicitor in 1980 and my practice consisted almost entirely of litigation at all levels. I now run the e-Disclosure Information Project www.edisclosureinformation.co.uk which collects and disseminates information about electronic disclosure to judges, lawyers, clients and providers of e-Disclosure-related software and services. I am a member of Senior Master Whitaker's Working Party which produced the e-Disclosure Practice Direction 31B and the Electronic Documents Questionnaire. I am familiar with developments in nearly all common law jurisdictions which require disclosure/discovery of documents. I helped Lord Justice Jackson's team in relation to e-Disclosure and it was I who set up the software demonstration to which he refers in his final report.

I have seen the submissions by HHJ Simon Brown QC of the Birmingham Mercantile Court and I endorse everything he says. My own submission is made on a much narrower basis, the urgent need for judicial training in relation to electronic disclosure of documents and the associated case management.

Lord Justice Jackson made more than one observation in relation to the need for such training and education. The need for it was a key component in the recent Discovery recommendations made by the Australian Law Reform Commission, and the Australian Attorney General has made it clear that funds for such training will be made available. The recent MoJ paper *Plan for Growth: Promoting the UK's Legal Services Sector* conspicuously failed to mention the subject at all in amongst much sterile and abstract stuff about trade delegations and brochures. The money would be much better spent on judicial training.

The need for such skills is not confined to larger cases. Two quotations from Lord Justice Jackson's Report make the point:

The first point which needs to be made about e-disclosure is that it is inevitable in cases where the parties hold the relevant material electronically. For the parties to print all the material out and then exchange it in hard copy would often be impracticable. With all but the smallest volumes of material, that course would not be cost effective. Thus in cases where edisclosure is a consideration, it is often a practical necessity rather than an optional course.

Final Report Para 2.1, page 365

And this:

I recommend that e-disclosure as a topic should form a substantial part of (a) Continuing Professional Development ("CPD") for solicitors and barristers who will have to deal with e-disclosure in practice and (b) the training of judges who will have to deal with e-disclosure on the bench. *Final Report Para 2.1, page 365*

He also made more than one adverse reference to the general quality of judicial case management.

All commercial litigation, and a great deal of personal litigation, now involves electronic documents, including most actions in the County Courts. Lawyers have felt able to treat management of this as optional, and judges have not been in a position to challenge what is said, or not said, about proportionate disclosure and exchange. Most seem content simply to tick a box for standard disclosure without making any enquiry as to the sources of electronic documents on either side, still less as to the most efficient way of managing them.

It is not suggested that deep technical knowledge is required, merely an understanding in broad terms of what alternative ways exist of giving disclosure, what the relative costs are and what questions should be put to the parties in order to establish the most proportionate course.

Yours faithfully



Chris Dale