

## Disclosure Pilot Scheme: What are narrative documents?

Within the context of the Disclosure Pilot Scheme operating in the Business & Property Courts, narrative documents are those documents that are:

1. relevant only to the background or context of material facts or events; and
2. not directly relevant to the Issues for Disclosure (see below for the definition of Issues for Disclosure).

You will find reference to narrative documents throughout Practice Direction 51U (which governs the Disclosure Pilot Scheme). However, for the definition of narrative documents you must look at Appendix 1 to PD51U.

An Issue for Disclosure are the key issues in dispute, which the parties consider will need to be determined by the court with some reference to contemporaneous documents in order for there to be a fair resolution of the proceedings (para. 7.3 PD51U).

In short, narrative documents provide additional detail, which strictly may not be relevant to the Issues for Disclosure but do help tell the story of the dispute within its factual matrix.

Adverse documents (ie ones that contain information that contradicts or materially damages the disclosing party's position or supports that of the opposing party (para. 2.7 PD51U)) should not be treated as narrative documents (Appendix 1 of PD51U).

## Narrative Documents and The Disclosure Models

Narrative documents should not be disclosed if either Disclosure Model A, B or C has been ordered by the court.

Under Disclosure Model D, an order should specify whether a party giving Model D disclosure is to search for and disclose narrative documents. If the order does not specify whether narrative documents should be disclosed, it is presumed that they should not.

Unless otherwise ordered by the court, narrative documents should be searched for and disclosed if Disclosure Model E is to be used (para. 8 PD51U).

If narrative documents are to be excluded, the parties must discuss and seek to agree how that is to be achieved in a reasonable and proportionate way, with a view to reducing the burden and costs of the disclosure exercise.

The parties should discuss the use of:

1. software or analytical tools, including technology assisted review software;
2. coding strategies, including to reduce duplication; and
3. prioritisation and workflows

(para. 9.6 and 9.6(2) PD51U).

*Johnny Shearman, Special Advisor to London Legal*

*This information is provided for general purposes only and does not constitute legal advice.*