

Early disclosure in the Business and Property Courts: a Practitioner's Guide

William Edwards KC, Lisa Lacob and Gretel Scott

23 June 2026

Overview of the talk

1. Overview of PD 57AD
2. Pre-action disclosure
3. Initial disclosure
4. 'Hot pursuit' cases

Taking stock in June 2026

CPR Part 31

PD 51U

PD 57AD

Simplification
2026/2027?

Overview of PD 57AD

Definitions
*Para 2 and
Appendix 1*

Key duties:
document
preservation
and adverse
documents

Paras 3-4

Pre-action
disclosure

CPR r.31.16

Initial
disclosure

Para 5

Disclosure
against non-
parties

*CPR r.31.17
(para 18.5?)*

Para 18.5 (April 2026):

“The court may order a party to request any person to produce for disclosure and inspection any document which may support the case or adversely affect the case of any party to the proceedings.”

Extended disclosure: issues, models, DRD, disclosure guidance, production, withholding, confidentiality, redaction

Paras 6-16

Less
complex
claims

*Appendix
5*

Failure to comply

Paras 17-18

Specific
disclosure

*Para 18
(para 21?)*

Pre-action disclosure

Pre-action protocol /
Commercial Court Guide

- “key documents”
- “essential documents”

“possession, custody
or power”

CPR r.31.6:
documents on which
you rely, which
adversely affect own
case or adversely
affect other’s case, or
required to be
disclosed by PD

s.33(2) Senior Courts Act 1981
CPR r.31.16

Stage 1: jurisdiction

- a) Respondent likely to be party
- b) Applicant likely to be party
- c) Covered by standard disclosure
- d) Pre-action disclosure desirable to:
 - i. dispose fairly of anticipated proceedings;
 - ii. assist resolution of dispute without proceedings; or
 - iii. save costs

Stage 2: discretion

Recent case law

- *PMD Business Finance Holdings Limited v Lee Schofield* [2026] EWHC 10 (KB) (HHJ Karen Walden-Smith)
- *Dennis v Queenwood Golf Club Ltd* [2024] EWHC 3191 (Ch) (Miles J)
- *Zhang v Mishcon de Reya LLP* [2025] 4 WLUK 168 (Hofmeyr KC)

[Seminal CA cases: *Bermuda International Securities Ltd v KPMG* [2001] C.P.Rep.73 (Waller LJ); *Black v Sumitomo Corp* [2002] 1 WLR 1562 (Rix LJ)]

Summary of relevant considerations at stage 2

For disclosure

- Documents necessary for pleading
- Pleading would require substantial amendment if documents only provided later
- Documents would narrow issues and avoid litigation
- Documents are narrow
- Current documents support suspicions

Against disclosure

- C can make case without documents
- Documents are too broad
- Documents are fishing/speculative
- No letter before action / prospective claim not identified

Early disclosure

The 4 Questions

1. Does the court's jurisdiction to order early disclosure of specific documents apply in the context of PD57AD?
2. How far can one take a complaint that there has been a failure of Initial Disclosure?
3. Can you rely on the fact that the document has been mentioned in a pleading?
4. What about the court's residual discretion under CPR 3.1(2)(p)?

Applications for specific disclosure under PD 57AD

Starting point: CPR 31.12 does not apply to cases subject to PD 57AD

Early disclosure case law:

- *Guest Supplies Intl Ltd v South Place Hotel Ltd and another* [2020] EWHC 3307 (QB)
- *Hart and others v Royal Borough of Kensington and Chelsea and others* [2022] EWHC 1090 (QB)
- *Alesayi v Bank Audi SAL* [2024] EWHC 1975 (KB)
- *The Bullring Limited Partnership and others v Laing O'Rourke Midlands Ltd* [2016] EWHC 3092 (TCC)

Specific disclosure after the Extended Disclosure deadline

PD57 AD, para 6.9:

The court may determine any point at issue between the parties about disclosure ...The parties may, at any time, apply to the court to seek the determination of an issue concerning disclosure by issuing an application notice.

*Balfour Beatty Regional Construction Ltd v Broadway Malyan Ltd [2022]
EWHC 2022 (TCC):*

“The only provision for specific disclosure under the PD is, therefore, one that can only come after an order for Extended Disclosure has been made”

Options following an order for Extended Disclosure

PD57AD, paras 17 & 18

17. Failure adequately to comply with an order for Extended Disclosure

17.1 Where there has been or may have been a failure adequately to comply with an order for Extended Disclosure the court may make such further orders as may be appropriate, including an order requiring a party to...

18. Varying an order for Extended Disclosure; making an additional order for, or in relation to, disclosure of specific documents

18.1 The court may at any stage make an order that varies an order for Extended Disclosure. This includes making an additional order for disclosure of specific documents or narrow classes of documents relating to a particular Issue for Disclosure...

Initial Disclosure

PD57AD, paras 5.1

Save as provided below, .. each party must provide to all other parties at the same time as its statement of case an Initial Disclosure List of Documents that lists and is accompanied by copies of—

- (1) the key documents on which it has relied (expressly or otherwise) in support of the claims or defences advanced in its statement of case (and including the documents referred to in that statement of case); and*
- (2) the key documents that are necessary to enable the other parties to understand the claim or defence they have to meet*

The “mention” of a document

PD57AD, para 21.1(1)

*A party may at any time request a copy of a document which has not already been provided by way of disclosure but is mentioned in—
(1) a statement of case;...*

Case law:

- *Hoegh v. Taylor Wessing LLP* [2022] EWHC 856 (Ch)
- *Merrill Lynch v Citta Metropolitano di Milano* [2023] EWHC 1015 (Comm)

“Hot pursuit” cases

- Freezing injunctions compared with proprietary injunctions.
- “The legitimate purpose of a disclosure order in aid of a freezing injunction is to police the injunction and to ensure that it is effective” whereas “Where the Court has granted or proposes to grant a proprietary freezing injunction, the purpose of a disclosure order is different, namely, to enable the applicant to trace the whereabouts of the relevant assets to which it has a proprietary claim” (*Korchevtsev v Severa* [2022] EWHC 2423 (Ch), at [101]-[102]).
- See also *Murphy v Murphy* [1999] 1 WLR 282; *Madoff Securities International Ltd v Raven* [2011] EWHC 3102 (Comm), [2012] 2 All ER (Comm) 634; *Therium Litigation Funding A IC v Bugsby Property LLC* [2023] EWHC 2627 (Comm).

The new standard form proprietary and freezing injunction

PROPRIETARY INJUNCTION

6. Until after the Return Date or further order of the court:

- (1) the Respondent must preserve and must not in any way dispose of, deal with or diminish the value of any of the Proprietary Assets, whether they are in or outside England and Wales, and must not remove from England and Wales any Proprietary Assets which are in England and Wales; and
- (2) the Respondent must preserve and must not dispose of or part with possession of any document which relates to the transfer, receipt or possession of the Proprietary Assets, the use made of the Proprietary Assets or what has become of the Proprietary Assets.

7. In this order, the term “Proprietary Assets” shall mean:

- (1) *[define the Proprietary Assets as appropriate, e.g. the sums received into bank accounts held by the Respondent itemised in Annex A to this Order]*; and
- (2) *[if appropriate]* any asset purchased with, or representing the value of, the [sums] [assets] referred to in subparagraph (1) above.

PROVISION OF INFORMATION

13. Save to the extent that paragraph 15 of this order applies:

- (1) the Respondent must within *[number of days]* days¹⁵ of service of this order and to the best of their ability inform the Applicant’s legal representatives of all Proprietary Assets worldwide exceeding *[amount]* in market value (ignoring charges or other security)¹⁶, giving the value, location and details of all such Proprietary Assets and what has become of them since their receipt by the Respondent or any nominee for the Respondent and details of any charges or other security over all such Proprietary Assets including the amount currently secured thereby. Such details shall include (but not be limited to) the name and contact details of any individual or company to which any Proprietary Assets have been transferred and the account number and sort code of any bank account to which any such transfer was made.
- (2) the Respondent must *[within [number of days] days¹⁷ of service of this order]* and to the best of their ability inform the Applicant’s legal representatives of:
 - (a) all the Respondent’s assets *[in England and Wales]* *[worldwide]* *[exceeding £ [amount] in market value (ignoring charges or other security)¹⁸]* whether in the Respondent’s own name or not and whether solely or jointly owned, giving the value, location and details of all such assets; and
 - (b) details of any charges or other security over such assets including the amount currently secured thereby.

Information from third parties

- Disclosure (often from banks) under the *Bankers Trust* jurisdiction (*Bankers Trust Co v Shapira* [1980] 1 WLR 1274).
- *Mitsui v Nexen Petroleum* [2005] EWHC 625 (Ch), [2005] 3 All ER 511, at [21].
- *Cartier International AG v British Sky Broadcasting Ltd* [2016] EWCA Civ 658, [2017] Bus LR 1, at [201].

Bankers' Books Evidence Act 1879

- Current definition in s 9(2): “Expressions in this Act relating to “bankers’ books” include ledgers, day books, cash books, account books and other records used in the ordinary business of the bank, whether those records are in written form or are kept on microfilm, magnetic tape or any other form of mechanical or electronic data retrieval mechanism.” But note a “bank” means a “deposit taker” as defined by s 9(1A)-(1C).
- Section 7: “On the application of any party to a legal proceeding a court or judge may order that such party be at liberty to inspect and take copies of any entries in a banker’s book for any of the purposes of such proceedings. An order under this section may be made either with or without summoning the bank or any other party, and shall be served on the bank three clear days before the same is to be obeyed, unless the court or judge otherwise directs.”

Equitable power to locate/ safeguard trust assets

- *Arab Monetary Fund v Hashim (No 5)* [1992] 2 All ER 911
- *BDW Trading Ltd v Fitzpatrick* [2015] EWHC 3490 (Ch)
- *The Public Institution for Social Security v Al Rajaan* [2020] EWHC 1498 (Comm)

Contact

William Edwards KC

wedwards@3vb.com



Lisa Lacob

llacob@3vb.com



Gretel Scott

gscott@3vb.com

