

# Electronic Disclosure - “DeNISTification”

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October 2018



# The Rules... a recap

- Cresswell (2004) → E-disclosure working party (Whittaker) (2009) → Working group on Disclosure (Etherton) (2018).
- PD31B in force since October 2010, and a 'new' rule CPR. 31.5 in force since April 2013.
- New disclosure pilot scheme from January 2019 in the Business and Property Courts (including Bristol), with a new Practice Direction and 'Disclosure Review Document'.

# The Rules... content

- Definition of “document” (CPR r.31.4, and PD31B).
- Phases of e-disclosure: team selection, mapping, preservation, collection, search, review, disclosure and production.
- Document retention policies (para. 7 of PD31B).
- EDQs, ‘reasonable search’, keyword, custodians de-duplication, ‘predictive coding’.



# Some recent cases...

- *Pyrrho Investments Ltd & Anr v MWB Property Ltd & Ors* [2016] EWHC 256 Ch ('predictive coding').
- *Condori Vilca and others v Xstrata Ltd and another* [2016] EHC 389 QB (Peruvian mines).
- *Brown v BCA Trading Ltd and others, in the matter of Tradeouts Limited* [2016] EWHC 1464 (Ch) ('predictive coding').
- *Triumph Controls UK Ltd and another company v Primus International Holding Co and other companies* [2018] EWHC 176 (TCC) (avoid unilateralism).

# The Disclosure Pilot – a closer look

- Duties & principles – adverse documents and data dumping
- Initial Disclosure and the Extended Disclosure Models
- List of Issues for Disclosure
- Disclosure Review Documents – e-disclosure focus
- Disclosure Guidance Hearings
- Redactions

# Practical tips for disclosure in document-heavy cases

- Consider technical options early on and understand how the technology works (at least a little)
- How to choose the right technology and vendor
- Linking the Disclosure Rules Pilot with Early Case Assessment tools
- Parties to work together to agree methodology and record decisions
- Resourcing the disclosure exercise and planning the review

# Specific Disclosure

- CPR 31.12 & Paragraph 5.4 of Practice Direction 31A
- Para 6.4 of new PD in the Pilot
- Staged disclosure
- The future for specific disclosure?