



18 October 2017

Mr Ed Crosse
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By email: ed.crosse@simmons-simmons.com

Dear Ed

Disclosure Working Party

Thank you for sharing the revised proposals for disclosure prepared by the DWG sub-group. I forwarded them to Eason Rajah QC and his working group, who have considered them. As requested, the information provided to us has not been shared any further than that.

As you know, as an Association we do have views on this topic, and we are grateful for the consideration given by the DWG sub-group to the ChBA paper I sent you in July this year and that some changes have been made as a consequence. We do have some further comments on the revised proposals you have provided to us. Our comments, as with the comments in our earlier paper, are intended to be constructive and they are set out below.

We welcome the extension of the duty to disclose adverse documents known to exist to all the Models of Extended Disclosure except Model A. We are concerned, however, that this does not go far enough. The ChBA feels strongly that the duty to disclose adverse documents known to a party should be on every litigant whatever form of disclosure is made (including Basic Disclosure or no disclosure). We cannot see any just or principled basis for allowing a litigant to be absolved from such a duty.

Moreover, we believe the existence of such a duty makes it more likely that in appropriate cases no disclosure beyond Basic Disclosure will be required. A Court would not rely on Basic Disclosure or order Model A disclosure if it suspected that one party had adverse documents in its possession. The existence of the duty should ensure that the Court is more willing to rely on Basic Disclosure or order no disclosure because any niggling concern, suspicion or doubt as to whether a party might have adverse documents is provided for.

We observe that adverse documents should be defined to include documents which advance an opponent's case or damage the party's own case.

We note there are still no proposals for consultation and hope the DWG sub group will reconsider. We believe, as we said in our paper (paras 13-19, 32 and 34), that there are advantages to consultation, particularly with the SBAs.



We continue to be concerned about the front loading of costs which these proposals entail (para 31) and are disappointed that our points on the overlarge scale of the pilot (para 33) have not resulted in any change. We continue to believe that a much smaller pilot is more prudent and desirable.

Yours sincerely

Electronic Signature: *Amanda Tipples*

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Cc. By Email

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