DAVIES & DAVIES

Davies & Davies Associates Ltd
Solicitors & Chartered Surveyors

31 Pearce Drive Faringdon Oxfordshire SN7 7ND
0800 840 4025 enquiries@dda.law **www.dda.law**

June 28, 2026

Lloyds Developments Ltd v Accor Hotel Services UK Ltd [2026] EWHC 1238 (TCC) and [2026] EWHC 1522 (TCC): Proportionality, Document Families and Personal Devices in Disclosure

Lloyds Developments Ltd v Accor Hotel Services UK Ltd [2026] EWHC 1238 (TCC) (12 May 2026)

Lloyds Developments Ltd v Accor Hotel Services UK Ltd & Ors [2026] EWHC 1522 (TCC) (19 June 2026)

Technology and Construction Court (KBD)

The Hon. Mrs Justice Jefford, 12 May 2026

The Hon. Mr Justice Constable, 19 June 2026

References: "M" denotes Lloyds Developments Ltd v Accor Hotel Services UK Ltd [2026] EWHC 1238 (TCC) (12 May 2026). "J" denotes Lloyds Developments Ltd v Accor Hotel Services UK Ltd & Ors [2026] EWHC 1522 (TCC) (19 June 2026).

Key Words

Disclosure — Proportionality — Security for Costs — Document Families — Mobile Device Discovery — Deleted Messages — Privacy Rights — Article 8 ECHR — Independent Reviewer — Common Law Agency — Contractual Obligations — Third-Party Disclosure — CPR 31.17 — Mandatory Injunction — Litigation Costs.

1. **Headnote**
    1. The proceedings concerned disclosure disputes arising in high-value TCC litigation in which the claimant alleged deceit in relation to a hotel development project exceeding £180 million. [J-5]
    2. The first application concerned whether the claimant was required to disclose all documents within "family" groupings where attachments or related documents had been withheld on the basis of relevance. [M-1], [M-2]
    3. The second application concerned whether former directors should be required to provide personal mobile devices to an Independent Reviewer for the recovery and review of relevant communications, including potentially recoverable deleted messages. [J-1],

[J-16], [J-23]

4. The court refused the application for wholesale disclosure of “family documents”, holding that the request was not supported by sufficient evidence of relevance and was disproportionate. [M-3], [M-4]
5. The court granted mandatory injunctive relief requiring the directors to provide effective access to their devices, holding that the claimant had established common law and contractual rights to inspect relevant communications subject to appropriate safeguards. [J-41], [J-42], [J-51], [J-52]
6. The decisions illustrate that disclosure must remain both proportionate and evidence-based, whilst relevant electronic material on personal devices may be subject to controlled inspection where justified by legal rights and adequate safeguards. [M-4], [J-37], [J-40].

2. **Material Facts**
    1. The claimant alleged that the defendant induced changes to an approved hotel design, resulting in delay, increased costs, loss of funding and project failure. [J-5]
    2. The defendant denied liability and contended that the project failed for other reasons, including underfunding and conduct attributed to the claimant’s directors. [J-6]
    3. The litigation involved extensive procedural history, with repeated judicial intervention and numerous disclosure-related orders. [J-2], [J-10]
    4. In 2022, the claimant’s Disclosure Review Document recorded that messages held on the directors’ mobile devices were likely to be relevant and that the devices were available for disclosure purposes. [J-9]
    5. Orders were subsequently made requiring provision of those devices to an Independent Reviewer but effective access was not provided. [J-11], [J-12], [J-16], [J-18]
    6. In the May 2026 judgment, the claimant had disclosed certain documents whilst withholding attachments or associated family documents with placeholders marked “not relevant”. [M-1]
    7. The defendant challenged that approach and sought disclosure of all documents within the relevant “families”, estimated to comprise tens of thousands of additional documents. [M-2], [M-4]

3. **Issues**
    1. Whether the claimant should be required to disclose all documents within “family” groupings irrespective of its solicitors’ assessment of relevance. [M-3], [M-4]
    2. Whether the claimant had a common law right to inspect and copy documents relating to its affairs held by former directors, including electronic communications stored on personal devices. [J-26], [J-27]
    3. Whether contractual obligations to provide reasonable assistance extended to provision of the devices to enable compliance with disclosure obligations. [J-43], [J-46], [J-48]
    4. Whether Article 8 privacy rights precluded or restricted the proposed inspection. [J-29], [J-37]
    5. Whether the uncertainty of recovering deleted messages rendered the proposed exercise disproportionate. [J-23], [J-32], [J-36]
    6. Whether, if necessary, an order could have been made under CPR 31.17. [J-53], [J-61]

4. **Decision**
    1. The court refused the application for disclosure of all “family documents”. [M-4]
    2. The court granted mandatory injunctive relief requiring the directors to provide access to their devices to an Independent Reviewer. [J-42], [J-52]

3. The court held that an application under CPR 31.17 would also have succeeded, although this was not necessary to determine. [J-53], [J-61]
4. Costs were awarded subject to percentage reductions reflecting conduct, duplication and lack of cooperation. [M-14], [M-16], [J-70], [J-71]

5. **Reasoning**
    1. The court held that disclosure obligations must be applied in accordance with the overriding objective, including proportionality and relevance. [M-4]
    2. The application for disclosure of all family documents lacked evidential support demonstrating that the relevance assessment undertaken was materially defective. [M-3], [M-4]
    3. The court distinguished between targeted applications for specific documents and a generalised request for all documents within family groupings. [M-4]
    4. The scale of the material sought, estimated in the tens of thousands of documents, rendered the application disproportionate in the absence of clear evidence of relevance. [M-4]
    5. The court held that the directors were agents who had used their devices for communications relating to the claimant's affairs. [J-26]
    6. It held that a principal has a continuing common law right to inspect documents relating to its affairs held by former agents, including electronically stored communications. [J-27], [J-28]
    7. The existence of private or irrelevant material on the same devices did not negate that right but required a proportionate mechanism for inspection. [J-28], [J-29], [J-37]
    8. The court found that previous limited access to the devices did not amount to proper compliance where there had been no comprehensive or independently supervised review. [J-33], [J-35]
    9. Deleted messages, if recoverable, remained within the directors' control and could be relevant to the issues in the proceedings. [J-34]
    10. The court accepted that recovery of deleted messages was unpredictable but held that unpredictability did not render the exercise disproportionate. [J-23], [J-24], [J-36]
    11. In a case involving allegations of dishonesty, the possibility that relevant material might be recovered justified the exercise. [J-8], [J-32], [J-36]
    12. Article 8 rights were engaged but were not absolute, and required balancing against the requirements of the administration of justice. [J-29], [J-37]
    13. The use of an Independent Reviewer and controlled search parameters was found to provide effective safeguards against disclosure of irrelevant private material. [J-37], [J-40]
    14. The court held that, in light of those safeguards, the interference with privacy was proportionate. [J-40]
    15. The contractual obligation to provide reasonable assistance required the directors to comply with reasonable requests made by the claimant's solicitors in connection with disclosure. [J-43], [J-46]
    16. The provision of access to devices, where necessary to comply with disclosure obligations, fell within the scope of that obligation. [J-46], [J-48]
    17. The refusal to provide access constituted a breach of the contractual obligations. [J-49], [J-50]
    18. The court held that mandatory injunctive relief was appropriate to enforce both the common law and contractual rights. [J-42], [J-52]
    19. The court observed that aspects of the parties' conduct, including duplication and a lack

of cooperation, had contributed to increased costs. [M-16], [M-17], [J-70], [J-71]

6. **Ratio Decidendi**
    1. The court will not order disclosure of documents solely because they form part of a document "family" where there is no clear evidence that withheld documents are relevant. [M-3], [M-4]
    2. A principal has a continuing common law right to inspect and copy documents relating to its affairs held by former agents, including electronic communications stored on personal devices. [J-26], [J-27], [J-28]
    3. Personal devices are not exempt from controlled inspection where they contain relevant business communications and proportionate safeguards can be applied. [J-29], [J-37], [J-40]
    4. Article 8 privacy rights require a balancing exercise and do not preclude disclosure where the administration of justice requires inspection and safeguards protect irrelevant material. [J-37], [J-40]
    5. The uncertainty of recovering deleted communications does not render a disclosure exercise disproportionate where such material may be relevant. [J-32], [J-34], [J-36]
    6. Contractual obligations to provide reasonable assistance may require provision of access to personal devices where necessary to enable compliance with disclosure obligations. [J-46], [J-48], [J-49]
    7. CPR 31.17 is capable, in an appropriate case, of supporting an order for disclosure of documents held by a non-party, including conditions requiring provision of access to relevant devices. [J-59], [J-60], [J-61]
7. **Disposition**
    1. The application for disclosure of all family documents was refused. [M-4]
    2. Mandatory injunctive relief was granted requiring provision of access to personal devices to an Independent Reviewer. [J-42], [J-52]
    3. The court held that the claimant had established both common law and contractual rights to access the devices for disclosure purposes. [J-41], [J-51]
    4. The court indicated that the CPR 31.17 application would also have succeeded if required. [J-53], [J-61]
    5. Costs were awarded subject to reductions reflecting conduct and proportionality considerations. [M-14], [J-71], [J-72], [J-73]
8. **Held**
    1. Held, that disclosure must be confined to relevant material and that speculative applications for wholesale production of document families will be refused where disproportionate. [M-4]
    2. Held, that the claimant was entitled to enforce its common law and contractual rights to obtain controlled access to communications relating to its affairs held by former directors on personal devices. [J-27], [J-41], [J-49], [J-51]
    3. Held, that Article 8 rights were engaged but did not preclude disclosure where proportionate safeguards, including independent review, were in place. [J-37], [J-40]
    4. Held, that the unpredictability of recovering deleted messages did not render the proposed disclosure exercise disproportionate in the circumstances. [J-36]

Comment

These two decisions are properly read together. They address complementary aspects of

proportionality in modern disclosure practice and, taken together, illustrate its operational limits. [M-4], [J-37]

On one side, Jefford J declined to order disclosure of large volumes of documents falling within "family" groupings where there was no sufficient evidential basis to conclude that the relevance assessment undertaken was defective. [M-3], [M-4]

The application was treated as a broad and unsupported request for disclosure, rather than a targeted challenge to specific documents whose relevance could be established from surrounding material. [M-4]

The decision confirms that concerns about completeness, or a lack of confidence in an opponent's review process, do not without more justify a substantial expansion of disclosure beyond what is proportionate and relevant. [M-3], [M-4]

On the other side, Constable J emphasised that proportionality is not a general refuge from disclosure where relevant business communications may exist, particularly where those communications are held on personal devices used in the course of agency. [J-26], [J-27], [J-37]

In that context, the court reaffirmed that a principal's right to inspect documents relating to its affairs may extend to electronically stored material held by former agents, including communications on personal devices. [J-27], [J-28]

The presence of private, confidential or irrelevant material on such devices did not preclude inspection. It required an appropriate and proportionate mechanism to protect that material. [J-28], [J-29], [J-37]

The use of an Independent Reviewer, together with controlled search parameters, was treated as providing sufficient safeguards to reduce the intrusion into private information and to ensure that irrelevant material was not simply handed over to the opposing party. [J-37], [J-40]

The court's approach to deleted messages was also of practical significance. The evidence established that recovery outcomes were uncertain but the court concluded that uncertainty did not render the exercise disproportionate, particularly in litigation involving allegations of dishonesty. [J-23], [J-24], [J-32], [J-36]

The contractual dimension reinforced the position. The obligation to provide reasonable assistance was construed in a practical and purposive manner, extending to steps required to enable compliance with disclosure obligations, including access to devices where necessary. [J-46], [J-48], [J-49]

Taken together, the decisions show that proportionality operates in both directions. It limits speculative or unsupported expansion of disclosure but it does not prevent targeted and safeguarded access to potentially relevant material, including material held on personal devices. [M-4], [J-37], [J-40]

They further confirm that disclosure disputes turn on relevance, legal right or obligation, control, proportionality and the availability of appropriate safeguards, rather than on the form or location in which documents are stored. [J-27], [J-34], [J-40]

The costs decisions in both judgments also serve as a reminder that failures of cooperation, duplication and excessive correspondence will be reflected in recoverability. [M-16], [J-71]

In short, document families are not automatically disclosure families; personal devices are not immune from controlled inspection merely because they contain private material; and Article 8 is a

serious balancing exercise, not an escape hatch. The court drew a clear distinction between speculative bulk disclosure and targeted, safeguarded access to potentially relevant material. [M-4], [J-37], [J-40]

#CommercialLitigation #EDisclosure #Disclosure #DocumentFamilies #Proportionality #TCC #ConstructionLaw #Article8 #DataPrivacy #CPR31.17 #ThirdPartyDisclosure #AgencyLaw #ContractLaw #LitigationStrategy #IndependentReviewer #LitigationCosts #UKLaw #CaseLaw #LegalUpdate #DisputeResolution #DDAlegal

Authorities

Case Law:

Common Law Right of Principal to Inspect Documents Held by Former Agents — Primary Theme

1. ***Fairstar Heavy Transport NV v Adkins* [2013] EWCA Civ 886** *— The court relied on* ***Fairstar*** *for the proposition that a principal is entitled, as a legal incident of the principal and agent relationship, to require production by the agent of documents relating to the principal's affairs. [J-16], [J-27] The authority was also relied on for the further proposition that "documents" may include electronically stored information and that the form in which information is recorded or stored does not detract from the principal's substantive right of access. [J-27] The judgment treated* ***Fairstar*** *as central to the conclusion that the directors' personal devices could be required to be provided for inspection where they had been used for communications about the company's affairs. [J-26], [J-27], [J-41]*
2. ***Yasuda Fire & Marine Insurance Co Ltd v Orion Marine Insurance Underwriting Agency Ltd* [1995] QB 174** *— The court relied on* ***Yasuda*** *for the proposition that the common law right of a principal to inspect documents held by its agents survives termination of the agency relationship. [J-16], [J-28] The authority was also relied on for the principle that contractual rights and common law rights of inspection may co-exist unless the contract expressly limits or excludes the common law right. [J-28] The court further relied on* ***Yasuda*** *for the proposition that a respondent cannot rely on the inseparability of irrelevant material as a basis for refusing inspection, extraction or copying of relevant material. [J-28]*

Article 8, Privacy and Safeguarded Inspection of Mixed Personal and Business Material — Secondary Theme

1. ***Phones 4U (In Administration) v EE Ltd and Others* [2021] EWCA Civ 116, [2022] 1 All England 239** *— The court relied on* ***Phones 4U*** *for the principle that disclosure of business material mixed with personal material engages competing interests, requiring a balance between the due and efficient administration of justice and Article 8 privacy rights. [J-28], [J-29], [J-37] The authority was relied on for the further proposition that the court should seek a workable solution within the CPR and the overriding objective, and that the solution should not be excessively costly, time-consuming or complex. [J-29] The judgment also treated* ***Phones 4U*** *as supporting the proposition, adopted from the earlier Nissen ruling, that where directors chose to use personal mobile phones for company business, they could be expected to bear the disclosure consequences of having done so. [J-38]*
2. ***Nix v Emerdata Ltd* [2024] EWHC 125 (Comm)** *— The court relied on* ***Nix*** *as an example of safeguards protecting private information where images or material from electronic devices were held by an independent computer specialist and then subjected to search parameters. [J-37] The authority was used to support the conclusion that independent review mechanisms can prevent immaterial private information from coming into the hands of the opposing party or its solicitors. [J-37], [J-40] The judgment treated* ***Nix*** *as supporting the proportionality of the*

order sought, because the Independent Reviewer process reduced the intrusion into private material and confined disclosure to responsive material. [J-37], [J-40]

Prior Procedural Determinations in the Same Proceedings — Contextual and Supporting Theme

1. ***Unreported ruling of Alexander Nissen KC dated 20 January 2026*** *— The court referred to the earlier ruling of Alexander Nissen KC for the procedural history, including the reactivation of the order for disclosure to the Independent Reviewer and the identification of the legal bases on which Lloyds was to pursue effective access to the devices. [J-4], [J-16] The ruling was relied on as part of the court's reasoning on the balance between privacy and disclosure, particularly the observations that the directors had chosen to use personal mobile phones for company business, that no relevant difficulties had been foreshadowed in the Disclosure Review Document, and that the Independent Reviewer process provided protections. [J-38] The earlier ruling was therefore important contextually but it operated as a prior case-management and disclosure decision within the same litigation rather than as an external authority on principle. [J-16], [J-38]*
2. ***Coulson LJ's refusal of permission to appeal from the Nissen Order*** *— The court referred to Coulson LJ's refusal of permission to appeal as confirming that the case had been affected by delay and failure by Lloyds to comply with disclosure obligations, assisted by the directors. [J-2] Coulson LJ's decision was also relied on in relation to the privacy objection, because Coulson LJ had considered the point and had noted the protections introduced in addition to provision of material to the Independent Reviewer. [J-39] The decision was therefore supporting and contextual, rather than the primary source of the legal test applied by Constable J. [J-2], [J-39]*

Prioritisation Summary — Case Law

1. ***Common law agency rights to inspect documents*** *were the primary theme because the court's principal conclusion was that Lloyds had established a common law right to obtain access to relevant communications held by the directors as former agents. [J-26], [J-27], [J-41]*
2. ***Article 8 ECHR (s.8 of the Human Rights Act 1998), privacy and safeguarded inspection*** *were the secondary theme because the court had to decide whether the directors' privacy rights displaced or limited the common law and contractual rights relied on by Lloyds. [J-29], [J-37], [J-40]*
3. ***Prior procedural determinations in the same proceedings*** *were supporting authorities because they explained the procedural route to the application and reinforced the court's assessment of privacy, proportionality and the need for effective access. [J-16], [J-38], [J-39]*
4. *The May judgment did not materially depend on separate case-law authority in the passages provided, because Jefford J's reasoning on family documents was based on relevance, proportionality, the overriding objective and the evidential insufficiency of the application. [M-3], [M-4]*

Legislation:

Disclosure Powers, Third-Party Access and Inspection — Primary Theme

1. ***Civil Procedure Rules, r.31.17*** *— The court relied on CPR 31.17 as the statutory mechanism governing third-party disclosure, requiring that the documents sought are likely to support the applicant's case or adversely affect another party's case and that disclosure is necessary to dispose fairly of the claim or save costs. [J-54], [J-55] The rule was applied to confirm that, despite the procedural unusualness of Lloyds acting in substance for Accor, the requirement in r.31.17(3)(a) was satisfied because relevant material on the devices could support or adversely*

affect a party's case. [J-56] The court further held that the objections based on the alleged non-existence of recoverable documents were unfounded, because the evidential position did not support the contention that recovery would be futile. [J-58]

2. ***Senior Courts Act 1981, s.34(2)–(3)*** *— The court relied on section 34 as conferring a broad power to order a non-party to disclose whether documents are in their possession, custody or power and to produce such documents. [J-59] The provision was treated as sufficiently wide to permit orders requiring not only production of documents but also provision of the devices on which they were stored, together with necessary access mechanisms and safeguards. [J-60] The section therefore underpinned the court's conclusion that delivery up of devices could lawfully form part of a disclosure order where required to access relevant documents. [J-60], [J-61]*

Interim Relief and Enforcement Mechanisms — Secondary Theme

1. ***Senior Courts Act 1981, s.37*** *— The court relied on section 37 as the statutory basis for granting mandatory injunctive relief, including orders compelling the provision of effective access to devices. [J-19] The provision was invoked to support the grant of final injunctive relief where common law and contractual rights had been established and required enforcement. [J-42], [J-52]*

Insolvency and Ancillary Jurisdiction (Raised but Not Determinative) — Supporting Theme

1. ***Insolvency Act 1986, ss.234–237 and s.426*** *— These provisions were identified as potential bases for compelling delivery up of documents and information where a company is in administration. [J-16] The court noted these statutory routes but did not rely on them, because the application succeeded on common law and contractual grounds. [J-63]*

Human Rights Framework — Contextual Theme

1. ***Human Rights Act 1998, s.8*** ***(Article 8 ECHR)*** *— The court relied on Article 8 principles, incorporated via the Human Rights Act 1998, as forming the legal basis for the directors' privacy arguments. [J-37] The provision required a balancing exercise between the right to respect for private life and the demands of the administration of justice. [J-37] The court held that the interference with Article 8 rights was justified and proportionate in circumstances where safeguards, including the Independent Reviewer, limited the disclosure of irrelevant private material. [J-37], [J-40]*

Prioritisation Summary — Legislation

1. ***CPR r.31.17*** ***and*** ***Senior Courts Act 1981 s.34*** *formed the primary legislative framework because they established the court's jurisdiction to compel disclosure from non-parties and to require production of documents, including from personal devices. [J-54]–[J-61]*
2. ***Senior Courts Act 1981 s.37*** *was secondary because it provided the enforcement mechanism through which the court translated those rights into mandatory injunctive relief. [J-42], [J-52]*
3. ***Human Rights Act 1998*** ***(Article 8)*** *was contextual but significant because it governed the proportionality and safeguarding analysis required before making the disclosure order. [J-37], [J-40]*
4. ***Insolvency Act 1986 provisions*** *were supporting only because they were identified but not relied upon as a basis of decision. [J-16], [J-63]*
5. ***CPR r.25.2*** *was an ancillary procedural power, relevant to inspection but not central to the court's reasoning or outcome. [J-16]*

Legal Texts & Commentary:

Absence of Cited Legal Texts or Commentary — Primary Theme

No legal texts or commentary were cited *— Upon review of both Lloyds Developments Ltd v Accor Hotel Services UK Ltd [2026] EWHC 1238 (TCC) and Lloyds Developments Ltd v Accor Hotel Services UK Ltd & Ors [2026] EWHC 1522 (TCC), no legal textbooks, practitioner texts, or academic commentaries were expressly cited or relied upon within the reasoning of either judgment. [M-1]–[M-17], [J-1]–[J-74]*

The courts' reasoning was instead grounded primarily in case law authorities, statutory provisions, procedural rules, and factual analysis rather than reliance on secondary sources. [M-3]–[M-4], [J-26]–[J-41]

In particular, the June judgment addressed the issues through established case law on agency and disclosure, statutory frameworks such as the CPR and Senior Courts Act, and the application of Article 8 principles, without recourse to textbook authority. [J-27]–[J-29], [J-54]–[J-61]

Nigel Davies BSc(Hons) (Q.Surv), PGCert.Psych, GDipLaw, PGDipLP, DipArb, MSc (Built Environment), LLM (Construction Law & Practice), MSc (Mechanical & Electrical), MSc (Psychology), FRICS, FCIOB, FCInstCES, FCIArb, CArb, GMBPsS, Panel Registered Adjudicator, Mediator, Mediation Advocate, Chartered Builder & Chartered Construction Manager, Chartered Surveyor & Civil Engineering Surveyor, Chartered Arbitrator, Author, and Solicitor-Advocate

Adjudicator Assessor and Re-Assessor for the ICE
ICE DRC Member
ICE DRC CPD Committee Chairman
Adjudicator Exam Question Setter for the ICE
CIArb Adjudication Panel Member since 2006
CIArb Arbitration Panel Member since 2006
CIC Adjudication Panel Member since 2010
FIDIC Adjudication Panel Member since 2021
ICE Adjudication Panel Member since 2021
Law Society Panel Arbitrator
RIBA Adjudication Panel Member since 2018
RICS Adjudication Panel Member since 2006
RICS Dispute Board Registered since 2013
TECSA Adjudication Panel Member since 2012

The information & opinions expressed in this article are not necessarily comprehensive, nor do they represent the trenchant view of the author; in any event, this article does not purport to offer professional advice. This article has been prepared as a summary and is intended for general guidance only. In the case of a specific problem, it is recommended that professional advice be sought.

© 2026 Davies & Davies Associates Ltd

Back to Legal Updates