

Collection of documents: The details

1. This session will highlight how different matters and indeed different parties in the same matter may legitimately use different approaches to the collection of data.
2. The forensic collection of data (or the collection of a parties' data by a third party service provider) will inevitably add to the overall cost of the disclosure exercise. Whether or not to use a 3rd party for collection depends on many things, including:
 - i. If there are allegations of fraud then use a 3rd party, it'll help dispel any allegations of impropriety.
 - ii. If there is no internal IT department at your client you may have to use a 3rd party to ensure that you collect the data correctly.
 - iii. If the internal IT department at your client is small it may be overstretched and asking them to collect data may cause delay.
 - iv. If the internal IT department lacks the necessary skills and or equipment / software to complete the collection competently.
 - v. If there are collection requirements that require specialist attention (i.e social media) you may need to use a 3rd party to get the data in an appropriate format.
 - vi. Parties may wish to be seen by the court and the opposition to be "at remove" from the process and so employ a third party to collect the data.
 - vii. Parties may wish to pressure their opponents by using a 3rd party (and expecting the same).
 - viii. Parties that have data in a foreign jurisdiction which may well cause data protection issues before the data can be moved (possibly requiring in country processing, review and redaction prior to exchange) and so parties will almost certainly wish to be "hands off" to demonstrate to domestic authorities that they took all possible actions to prevent data illegally leaving the jurisdiction.
 - ix. If parties have a large amount of data stored locally on laptops and desktops which use specialised software taking a forensic image of the data is the best way to ensure that all potentially relevant data is captured (there will however be issues surrounding how much of that data to process (particularly if it is graphical).
 - x. Really data collection should only be completed internally if the client has an experienced IT department that has completed similar exercises before or if the ONLY data to be collected is email data.