

## **Second International Workshop on Supporting Search and Sensemaking for Electronically Stored Information in Discovery Proceedings**

### **CaseMap issue linking in UK civil proceedings**

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#### **Introduction**

There is an increasing focus in UK litigation on early identification of the issues between the parties in the form of a Court-approved List of Issues on which all other stages from pleadings through to trial must rely, and on which the facts, the documents and every other element of the case must be hung.

CaseMap is a well-established software application owned by LexisNexis whose primary function is to facilitate the identification of the key components in a case – the facts, people, documents etc – and to help make sense of how these interact with the issues and other elements of the case.

This paper explores briefly how the functionality of CaseMap matches the issues-based focus of the UK courts at all levels.

#### **Focus on the Issues**

There is, of course, nothing new in the centrality of the issues in litigation. They are the labels given to the matters in dispute. Every stage from the pleaded case through to final judgment is about the issues, and the facts which underlie them and which must be proved or disproved. The rules and procedures all depend upon, and aim towards, identifying, presenting, and debating, the issues.

The most significant recent development in case management is the **Report and Recommendations of the Commercial Court Long Trials Working Party**<sup>1</sup>, released in December 2007 and presently undergoing a trial period in the Commercial Court. Despite its name, its principles are not confined either to long trials or to the Commercial Court. It involves no new law nor variations to the Civil Procedure Rules, and whilst other courts lack the formal structure of a managed trial period, judges are at liberty under their inherent powers of case management to adopt such of the Report's practices as are proportionate to the cases before them.

The Working Party decided<sup>2</sup> that a “new style, judicially settled, List of Issues” should become “the keystone to the proper management of all Commercial Court cases”. This List of Issues “should be the key working document in all Commercial Court cases, whether small or large and whether involving few or many issues”. It should be a Court Document and “should, once settled, be the basis on which decisions are made about the breadth and depth of disclosure, provision of witness statements, what experts will be permitted and, ultimately, the shape of any trial.” The List of Issues should be “structured and sub-divided”.

#### **Using the List of Issues**

Having thus established the importance of the List of Issues, the Recommendations go on to relate almost every other aspect of their management suggestions to that list. It urges a “surgical” approach to disclosure<sup>3</sup> and goes on:

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<sup>1</sup> [http://www.judiciary.gov.uk/docs/rep\\_comm\\_wrkg\\_party\\_long\\_trials.pdf](http://www.judiciary.gov.uk/docs/rep_comm_wrkg_party_long_trials.pdf)

<sup>2</sup> Para 51 of Commercial Court Recommendations

<sup>3</sup> Para 60 *ibid*

“this power to make more specific orders for disclosure, if necessary issue by issue, must be utilised more often by the court. This will be done using the List of Issues, discussed above. Using a more specific approach will also entail the use of a new type of document, a disclosure schedule which will be, effectively, a “shopping list” for disclosure<sup>4</sup>. “

Appendix 3 to the Recommendations is such a “shopping list” in the form of a Disclosure Schedule which shows the Issues, and what each party says about the Disclosure needed in respect of the issues, and with a column to show the order made in respect of each issue.

There are similar provisions as to witness statements which

“...must identify, by reference to the List of Issues, the particular issues on which that witness is giving evidence. This can best be done by having appropriately worded headings in the witness statement”<sup>5</sup>.

There is provision for solid practicalities:

“Where disclosure has been given electronically and it is possible to include a hyperlink to documents referred to within the witness statement, this should be done”<sup>6</sup>.

Expert evidence is to be handled in a similar way:

“The List of Issues should identify, in summary form, the issues on which expert evidence is required, and permission should be limited to expert evidence in relation to those issues. These expert issues may be identified when the List of Issues is first settled or subsequently.”<sup>7</sup>

### **Other initiatives**

In parallel with the above, HHJ Simon Brown QC, a Designated Mercantile Judge in Birmingham, is promoting the application of similar principles in his court.

“What I want to know, is this: what is the case about? Which of the pleaded issues really matter in getting to the heart of the dispute? Can we split the case up and limit disclosure to the subjects which matter, or which matter most?”<sup>8</sup>

Judge Brown has also pioneered a form of draft standard directions order which is premised in large part on the narrowing of the material before the court to the issues identified as central to the case.

### **The Application of CaseMap to judicial and procedural initiatives**

CaseMap is a central case memory for critical case knowledge that can be used to organise information about the key facts, documents, case of characters, issues and case law in every matter. CaseMap makes it easy to evaluate these case details and then to communicate this information to clients, colleagues and the court.

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<sup>4</sup> Para 61 *ibid*

<sup>5</sup> Para 71 *ibid*

<sup>6</sup> Para 75 *b ibid*

<sup>7</sup> Para 83 *b ibid*

<sup>8</sup> Conference speech January 2008

CaseMap helps lawyers make sense of their cases by facilitating identification of the central issues and by providing a mechanism to allow practitioners to focus tightly on any particular aspect.

CaseMap treats all the elements of a case as “objects” which can be linked together - persons, organisations, documents, physical evidence, events, places, pleadings etc are all “objects”. It also provides for Issues to be cross-linked with each of these object-types and Link Summary (LS) fields make it easy to display reports based on relationships between different types of case information.

Linking the various elements of a case together in this way helps CaseMap users make sense of a case by providing a way to organise case information, evaluate the relationships between the various aspects of the case, and then communicate case knowledge to colleagues, clients and the Court.

A key feature of CaseMap is the Fact-by-Issue report which allows litigators to create case summaries focussed on the issues in the case.

One of CaseMap's particular strengths is the “send to CaseMap” feature found in most mainstream litigation and other applications, notably Adobe Acrobat. Whole sets of records can be selected from a document database and mapped to CaseMap document fields. Passages can be extracted from documents and sent to a CaseMap Facts spreadsheet. The new Fact record links back to the passage in the document, so that a single click brings up the documentary source of the fact.

Other linked objects from passages in pleadings, to the people referred to in them, to the documents in which they are mentioned, can similarly be linked to and reported upon. The case analysis features in CaseMap are supported by related tools, including TimeMap which provides a graphical display of timelines from selected data-based information.

These concepts – the ability to send a sub-set of documents or text extracts to CaseMap and the way in which all the facts and issues can be interlinked (and thus followed whichever of them is the starting-point), map well to the case management regime described above. A core data set can be established at the outset and supplemented as new facts, dates, players and documents are brought into play. This can fluctuate with Issues lists which inevitably change as time passes.

It ties well with Judge Brown's insistence that parties focus on “which of the pleaded issues really matter” and on the facts which must be proved or challenged in respect of those issues. At a time when witness statements are under attack for prolixity and lack of focus (as they are) the CaseMap model helps impose a structure, particularly as the objects common to more than one witness can be re-used between multiple witnesses and in respect of each issue to which they pertain.

A senior US litigator put it to me in this way: the mere act of assembling the core objects in CaseMap and creating the links helps to make sense of them, with the bonus that the result is available for others in the team to share and supplement. The shared access may extend beyond the legal team and out to the experts.

There is an under-estimated benefit which follows from standardisation on CaseMap. Although each case will necessarily be different and may use different objects, the overall form is identical for every case, with the same menus and tables. Consistency aids sensemaking. A user can pick up a dormant case and recall its peculiar facts and issues instantly. Similarly, a supervising partner can keep an eye on multiple cases, particularly as the data includes unresolved questions and unfinished tasks.

CaseMap's main use in the UK market has hitherto been largely for criminal cases. The new focus in the civil courts on the Issues List makes these functions increasingly relevant to civil cases.

### **Summary**

This brief note cannot do more than refer to the procedural developments in the courts. It does even less justice to the wide range of functions and features available in CaseMap. This is enough, however, to indicate that the emphasis on a List of Issues, and on the facts, the documents, the evidence of witnesses and the opinions of experts which are linked to those issues, map extremely well to the purpose for which CaseMap is intended and which it performs very well.

There is a further point. The fact that the heavily issues-based procedure can be applied in any court means that firms of all sizes and users of all skill levels will have to grapple with it. CaseMap provides a simple, powerful, cost effective way to help litigators make sense of their cases on an issue by issue basis. . The range of its possible uses, and the scope of its functions, is extremely wide, but the core features are easily learned. CaseMap has the potential to introduce electronic data handling to non-experts at a time when litigation at all levels must necessarily be run electronically and economically.

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