

Part 31: Disclosure and Inspection of Documents

Under Part 31 of the Civil Procedure Rules 1998 we are under a duty to disclose all documents for inspection that are relevant to your claim.

Outline of Part 31.

- ◆ This rule applies to all claims except a claim which has been issued on the small claims track.
- ◆ Definition of a document is as follows;
 - Anything in which information of any description is recorded and this also includes copies, for example, written documents, audio-tapes, computer disks or photographs.
- ◆ Definition of a copy document is as follows;
 - Anything onto which information contained in the original document has been copied, by whatever means, i.e photocopying or scanning.
- ◆ The rule also includes all relevant documents that you have in your possession or that were previously in your possession and are now in the possession of another party.

Documents to be Disclosed.

- ◆ Documents on which you rely on / refer to in your claim.
- ◆ Documents which;
 - adversely affect your own case
 - adversely affect the party on the other sides case
 - support the other parties case
- ◆ It is important you note that you cannot refuse to disclose a document because you feel it would adversely affect your case or even assist the other side. **All** documents which you possess or once possessed must be disclosed.

Procedure of Disclosure

- ◆ All parties must make a list of all the documents relevant to their claim and identify each document clearly.
- ◆ All lists must include a Disclosure Statement which sets out the extent you have searched to locate the relevant documents and certifying that you understand that you are under a duty to disclose.
- ◆ If you are no longer in control of a document which must be disclosed you are under a duty to explain what has happened to it, i.e. lost, destroyed or been sent to a third party.
- ◆ If you are effecting a disclosure on behalf of a company, firm, association or other organisation, you must identify your position and why you are considered as being the appropriate person to make the disclosure statement.

Legal Professional Privilege

- ◆ Documents falling into one of the following three categories are privileged and therefore you can refuse to disclose / allow inspection of the same. The three categories are;
 - Communications passing between yourself and your solicitors. These include letters, faxes etc which have been written by or to your solicitors in his professional capacity in the purpose of obtaining legal advice concerning your claim. This privilege extends to cover communications between yourself and your solicitors colleagues, instructions / briefs to counsel and counsels opinion.
 - Communications passing between your solicitors and a third party. They must have come into existence after litigation was contemplated and made with a view to commencing litigation. An example of such document is a surveyors report.
 - Communication between yourself personally and a third party providing the dominant purpose for which the document was produced was to obtain legal advice in respect of your claim. Example, obtaining a report in order to obtain legal advice as to whether you have a valid claim / defence.
- ◆ If you are unsure about whether a document should be disclosed then it is vital you ask your solicitors for advice.

Consequence of failure to Disclose

- ◆ Deliberate actions by yourself to conceal a document or not disclose as required is Contempt of Court which is punishable by either a fine or imprisonment.
- ◆ You would not be allowed to rely on any of the documents that you failed to disclose, or allow inspection of the same, without the courts permission.

- ❖ **It is Important to remember that the duty to disclose and allow the inspection of documents continue before and during proceedings and only terminates when the proceedings are concluded.**