

PRACTICE DIRECTION

DISCLOSURE AND INSPECTION**This Practice Direction supplements CPR Part 31****GENERAL**

- 1.1** The normal order for disclosure will be an order that the parties give standard disclosure.
- 1.2** In order to give standard disclosure the disclosing party must make a reasonable search for documents falling within the paragraphs of rule 31.6.
- 1.3** Having made the search the disclosing party must (unless rule 31.10(8) applies) make a list of the documents of whose existence the party is aware that fall within those paragraphs and which are or have been in the party's control (see rule 31.8).
- 1.4** The obligations imposed by an order for standard disclosure may be dispensed with or limited either by the court or by written agreement between the parties. Any such written agreement should be lodged with the court.

THE SEARCH

- 2** The extent of the search which must be made will depend upon the circumstances of the case including, in particular, the factors referred to in rule 31.7(2). The parties should bear in mind the overriding principle of proportionality (see rule 1.1(2)(c)). It may, for example, be reasonable to decide not to search for documents coming into existence before some particular date, or to limit the search to documents in some particular place or places, or to documents falling into particular categories.

ELECTRONIC DISCLOSURE

- 2A.1** Rule 31.4 contains a broad definition of a document. This extends to electronic documents, including e-mail and other electronic communications, word processed documents and databases. In addition to documents that are readily accessible from computer systems and other electronic devices and media, the definition covers those documents that are stored on servers and back-up systems and electronic documents that have been 'deleted'. It also extends to additional information stored and associated with electronic documents known as metadata.
- 2A.2** The parties should, prior to the first Case Management Conference, discuss any issues that may arise regarding searches for and the preservation of electronic documents. This may involve the parties providing information about the categories of electronic documents within their control, the computer systems, electronic devices and media on which any relevant documents may be held, the storage systems maintained by the parties and their document retention policies. In the case of difficulty or disagreement, the matter should be referred to a judge for directions at the earliest practical date, if possible at the first Case Management Conference.
- 2A.3** The parties should co-operate at an early stage as to the format in which electronic copy documents are to be provided on inspection. In the case of difficulty or disagreement, the

matter should be referred to a Judge for directions at the earliest practical date, if possible at the first Case Management Conference.

- 2A.4** The existence of electronic documents impacts upon the extent of the reasonable search required by Rule 31.7 for the purposes of standard disclosure. The factors that may be relevant in deciding the reasonableness of a search for electronic documents include (but are not limited to) the following:—
- (a) The number of documents involved.
 - (b) The nature and complexity of the proceedings.
 - (c) The ease and expense of retrieval of any particular document. This includes:
 - (i) The accessibility of electronic documents or data including e-mail communications on computer systems, servers, back-up systems and other electronic devices or media that may contain such documents taking into account alterations or developments in hardware or software systems used by the disclosing party and/or available to enable access to such documents.
 - (ii) The location of relevant electronic documents, data, computer systems, servers, back-up systems and other electronic devices or media that may contain such documents.
 - (iii) The likelihood of locating relevant data.
 - (iv) The cost of recovering any electronic documents.
 - (v) The cost of disclosing and providing inspection of any relevant electronic documents.
 - (vi) The likelihood that electronic documents will be materially altered in the course of recovery, disclosure or inspection.
 - (d) The significance of any document which is likely to be located during the search.
- 2A.5** It may be reasonable to search some or all of the parties' electronic storage systems. In some circumstances, it may be reasonable to search for electronic documents by means of keyword searches (agreed as far as possible between the parties) even where a full review of each and every document would be unreasonable. There may be other forms of electronic search that may be appropriate in particular circumstances.

THE LIST

- 3.1** The list should be in Form N265.
- 3.2** In order to comply with rule 31.10(3) it will normally be necessary to list the documents in date order, to number them consecutively and to give each a concise description (e.g. letter, claimant to defendant). Where there is a large number of documents all falling into a particular category the disclosing party may list those documents as a category rather than individually e.g. 50 bank statements relating to account number _ at _ Bank, _20_ to _20_; or, 35 letters passing between _ and _ between _20_ and _20_.
- 3.3** The obligations imposed by an order for disclosure will continue until the proceedings come to an end. If, after a list of documents has been prepared and served, the existence of further documents to which the order applies comes to the attention of the disclosing party, the party must prepare and serve a supplemental list.

DISCLOSURE STATEMENT

- 4.1** A list of documents must (unless rule 31.10(8)(b) applies) contain a disclosure statement complying with rule 31.10. The form of disclosure statement is set out in the Annex to this practice direction.

- 4.2** The disclosure statement should:
- (1)** expressly state that the disclosing party believes the extent of the search to have been reasonable in all the circumstances, and
 - (2)** in setting out the extent of the search (see rule 31.10(6)) draw attention to any particular limitations on the extent of the search which were adopted for proportionality reasons and give the reasons why the limitations were adopted, e.g. the difficulty or expense that a search not subject to those limitations would have entailed or the marginal relevance of categories of documents omitted from the search.
- 4.3** Where rule 31.10(7) applies, the details given in the disclosure statement about the person making the statement must include his name and address and the office or position he holds in the disclosing party or the basis upon which he makes the statement on behalf of the party.
- 4.4** If the disclosing party has a legal representative acting for him, the legal representative must endeavour to ensure that the person making the disclosure statement (whether the disclosing party or, in a case to which rule 31.10(7) applies, some other person) understands the duty of disclosure under Part 31.
- 4.5** If the disclosing party wishes to claim that he has a right or duty to withhold a document, or part of a document, in his list of documents from inspection (see rule 31.19(3)), he must state in writing:
- (1)** that he has such a right or duty, and
 - (2)** the grounds on which he claims that right or duty.
- 4.6** The statement referred to in paragraph 4.5 above should normally be included in the disclosure statement and must indicate the document, or part of a document, to which the claim relates.
- 4.7** An insurer or the Motor Insurers' Bureau may sign a disclosure statement on behalf of a party where the insurer or the Motor Insurers' Bureau has a financial interest in the result of proceedings brought wholly or partially by or against that party. Rule 31.10(7) and paragraph 4.3 above shall apply to the insurer or the Motor Insurers' Bureau making such a statement.

SPECIFIC DISCLOSURE

- 5.1** If a party believes that the disclosure of documents given by a disclosing party is inadequate he may make an application for an order for specific disclosure (see rule 31.12).
- 5.2** The application notice must specify the order that the applicant intends to ask the court to make and must be supported by evidence (see rule 31.12(2) which describes the orders the court may make).
- 5.3** The grounds on which the order is sought may be set out in the application notice itself but if not there set out must be set out in the evidence filed in support of the application.
- 5.4** In deciding whether or not to make an order for specific disclosure the court will take into account all the circumstances of the case and, in particular, the overriding objective described in Part 1. But if the court concludes that the party from whom specific disclosure is sought has failed adequately to comply with the obligations imposed by an order for disclosure (whether by failing to make a sufficient search for documents or otherwise) the court will usually make such order as is necessary to ensure that those obligations are properly complied with.
- 5.5** An order for specific disclosure may in an appropriate case direct a party to –

- (1) carry out a search for any documents which it is reasonable to suppose may contain information which may –
 - (a) enable the party applying for disclosure either to advance his own case or to damage that of the party giving disclosure; or
 - (b) lead to a train of enquiry which has either of those consequences; and
- (2) disclose any documents found as a result of that search.

CLAIMS TO WITHHOLD DISCLOSURE OR INSPECTION OF A DOCUMENT

- 6.1** A claim to withhold inspection of a document, or part of a document, disclosed in a list of documents does not require an application to the court. Where such a claim has been made, a party who wishes to challenge it must apply to the court (see rule 31.19(5)).
- 6.2** Rule 31.19(1) and (6) provide a procedure enabling a party to apply for an order permitting disclosure of the existence of a document to be withheld.

INSPECTION OF DOCUMENTS MENTIONED IN EXPERT'S REPORT (RULE 31.14(2))

- 7.1** If a party wishes to inspect documents referred to in the expert report of another party, before issuing an application he should request inspection of the documents informally, and inspection should be provided by agreement unless the request is unreasonable.
- 7.2** Where an expert report refers to a large number or volume of documents and it would be burdensome to copy or collate them, the court will only order inspection of such documents if it is satisfied that it is necessary for the just disposal of the proceedings and the party cannot reasonably obtain the documents from another source.

FALSE DISCLOSURE STATEMENT

- 8** Attention is drawn to rule 31.23 which sets out the consequences of making a false disclosure statement without an honest belief in its truth, and to the procedures set out in paragraphs 28.1 – 28.3 of the practice direction supplementing Part 32.

Annex

DISCLOSURE STATEMENT

I, the above named claimant [or defendant] [if party making disclosure is a company, firm or other organisation identify here who the person making the disclosure statement is and why he is the appropriate person to make it] state that I have carried out a reasonable and proportionate search to locate all the documents which I am required to disclose under the order made by the court on day of . I did not search:

- (1) for documents predating ,
- (2) for documents located elsewhere than ,
- (3) for documents in categories other than .
- (4) for electronic documents

I carried out a search for electronic documents contained on or created by the following:
[list what was searched and extent of search]

I did not search for the following:

- (1) documents created before,
- (2) documents contained on or created by the Claimant's/Defendant's PCs/portable data storage media/databases/servers/back-up tapes/off-site storage/mobile phones/laptops/notebooks/handheld devices/PDA devices (delete as appropriate),
- (3) documents contained on or created by the Claimant's/Defendant's mail files/document files/calendar files/spreadsheet files/graphic and presentation files/web-based applications (delete as appropriate),
- (4) documents other than by reference to the following keyword(s)/concepts (delete if your search was not confined to specific keywords or concepts).

I certify that I understand the duty of disclosure and to the best of my knowledge I have carried out that duty. I certify that the list above is a complete list of all documents which are or have been in my control and which I am obliged under the said order to disclose.

