

## **The Disclosure Stage in the Litigation Process**

Disclosure is an important part of the litigation process, says Harminder Sandhu, managing partner and head of litigation at Hawkins Hatton.

We find clients often confuse the disclosure exercise with formal exchange of witness and expert evidence, which follow after disclosure. Disclosure is simply the process by which each party is required to disclose to the other party the documents which exist and are relevant to the dispute. The meaning of 'document' is not confined to paper but extends to electronically stored information such as emails (including deleted items), databases, backup tapes, hard drives and the meta data (i.e. history of the document). Each party is required to undertake a reasonable search for relevant documents. As soon as a dispute arises we advise our clients to preserve all relevant documents. The requirement to disclose extends to documents within a party's control. Control means physical possession or where a party has the right to possession or inspection. This may therefore include documents held by subsidiary companies or professional agents.

It can be seen that the disclosure exercise is often an onerous and time consuming stage of the litigation process. The usual order is for the parties to provide what is called standard disclosure. This effectively requires each party to disclose documents relied upon including those which adversely affect your case or support the other party's case.

The disclosure exercise encourages the parties to place all their 'cards on the table'. Any failure to provide proper disclosure can lead to costs sanctions and proceedings for contempt of court. Relevant documents must be disclosed even if confidential (save documents subject to legal advice or litigation privilege).

Once all relevant documents have been collated a list is produced and exchanged with the other party. Each party then has 7-14 days to inspect the other side's documents. The list of documents will include a disclosure statement signed by the party providing disclosure. This confirms the extent of the search undertaken and certifies the maker of the statement understood the duty of disclosure and has complied with that duty. The disclosure obligations continue throughout the life of the litigation. Hence if any relevant document surfaces after service of the list of documents it must be disclosed to the other party.

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