



MEDICAL NEGLIGENCE SEARCHING FOR AND DISCLOSING RELEVANT DOCUMENTS

This leaflet is designed as a brief guide to provide practical information. It is not a complete explanation of the law relating to the issues which are dealt with in the leaflet. You should always seek specific legal advice regarding the particular circumstances of your claim.

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Searching for and Disclosing Relevant Documents

The Civil Procedure Rules (CPR) require all parties to exchange information about a claim not only before court proceedings have been commenced, but also after commencement. This duty continues, even after formal disclosure has taken place, where, for example, additional documents come into your possession.

This includes a duty to search for and to disclose documents that are or have been in your possession or control. Disclosure in this context means revealing the existence of a document and allowing your opponent to inspect it, if it is still in your possession.

This obligation encompasses not only those documents that you intend to rely on to prove your claim, but also documents which:

- (i) adversely affect your case
- (ii) adversely affect another party's case, or
- (iii) support another party's case

In other words, you are required to disclose any document that might be relevant to the claim, even if it is potentially harmful to your case.

"Documents" includes hard copies of documents, documents kept on a computer, tablet, mobile phone or other such device and includes messages, posts, photos and videos on Facebook, WhatsApp, Instagram and similar platforms.

You are also required to carry out a reasonable search to identify documents that should be disclosed.

If you encounter any problems in tracking down any potentially relevant documents, please consult us.

It is important to emphasize that if it becomes necessary to commence court proceedings, you will probably be required to serve a formal list of your documents supported by a written "disclosure statement":

- (i) setting out the extent of your search
- (ii) confirming that you understand your duty to disclose documents, and
- (iii) certifying that you have carried out that duty to the best of your knowledge

If it subsequently transpires that you have failed in either duty, this will not only affect your credibility as a witness but also lay you open to a Court penalty for Contempt of Court. Inadvertent non-disclosure is likely to result in your being prevented from relying on the document at trial.

It is vital that you tell us about and disclose to us any documents that may be relevant to your case, so that we are able to advise you properly. We shall then decide which documents need to be disclosed to your opponent and we will prepare the formal List of Documents for you.