

JOELSON WILSON

LITIGATION TEAM JUNE UPDATE



JOELSON WILSON LLP
Solicitors
30 Portland Place
London W1B 1LZ

T: (+44) (0)20 7580 5721
F: (+44) (0)20 7580 2251
E: info@joelsonwilson.com
W: www.joelsonwilson.com

Update from our Litigation Team: June 2010

HOW IMPROVING YOUR INTERNAL MANAGEMENT CAN SAVE YOU TIME AND MONEY

When any party becomes involved in litigation, it should, from the very beginning, have at the back of its mind the duty and obligation to disclose documents to the other parties involved. This key process in any litigation matter is called disclosure. The duty to disclose is ordered by the court and is often the most expensive and time consuming part of any litigation. It is therefore essential that the parties know and understand their duty from an early stage to allow for preparation and to affect disclosure in the most cost and time effective manner.

Your duty of disclosure

- Disclosure is the process of formally stating what documents exist or have existed and allowing other parties to inspect those documents and to take copies.
- 'Document' does not just include hard copy papers, it covers tapes/disks, computer records, emails, electronic material stored on servers, it could even include electronic documents that have been deleted.
- It is important to remember that the duty to disclose, includes disclosing any documents which may prejudice your case and support the other party's case.
- The extent of the search depends on what is reasonable, the volume of documents and how difficult and expensive it is to retrieve them and the circumstances and value of the case.
- Once litigation is contemplated and certainly once an order for disclosure has been issued, you should not:
 - destroy any documents;
 - create new documents that may prejudice your case;
 - annotate or amend (even in manuscript) existing documents; and
 - ask any third parties, including your professional advisers to send to you any documents. Once in your control these may have to be disclosed.
- Your solicitor will provide a detailed explanation of the duty to disclose early on in any claim to allow you to prepare.

General Housekeeping

It should be apparent from reading the above points, that some good 'housekeeping' principles within your business will be of great assistance should you become involved in a disclosure process and should certainly save you time and money.

For example:

- Organization is the key – ensure that an effective filing system is used for all paper documents as well as electronic documents and make certain that all documents are filed promptly and correctly.
- Keep a record of all types of documents that are deleted and the reason for the documents being destroyed (even if the only reason is that it is a routine process at certain intervals throughout the year). Any policies for the routine destruction of documents would have to be suspended once litigation is in process.

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- Ensure that once litigation is contemplated or actioned, all members of the business who need to be involved are fully aware of the obligations above, including IT personnel, secretaries and any person responsible for the routine destruction or alteration of documents.
- Inform all necessary members of staff, once litigation is contemplated and especially when it is in progress not to discuss the litigation, especially by way of emails. Such emails may form part of any disclosure and could prejudice your case.
- If you are in any doubt as to what documents can be destroyed or amended or the types of documents that can be accepted from third parties, contact your solicitor immediately.

Need to know more? Ask us. For information/advice on litigation issues, please contact:

Joanne Gregory, Niall McCann or Elizabeth Hood
Joelson Wilson LLP
30 Portland Place, London W1B 1LZF
Telephone: +44 (0) 20 7580 5721
Fax: + 44 (0) 7580 2251
E-mail: jeg@joelsonwilson.com, nmm@joelsonwilson.com or eh@joelsonwilson.com

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