**Standard disclosure**

This element explains what is involved in standard disclosure.

**Civil procedure rules**

The main CPR which support the content of this element are:

- CPR 31 (in particular CPR 31.4, 31.6, 31.7, 31.8, 31.10, 31.21 – 31.23.

This element is concerned with standard disclosure, one of the types of disclosure order a court can make (the other types of disclosure order were considered in the element 'sources and types of disclosure order').

**Standard disclosure**

'Standard disclosure' is a particular form of disclosure which the court can order, and it is the most common type of disclosure to be ordered.

*CPR 31.6: Standard disclosure requires a party to disclose only–*

*(a) the documents on which he relies; and*

*(b) the documents which –*

*(i) adversely affect his own case;*

*(ii) adversely affect another party’s case; or*

*(iii) support another party’s case; and*

*(c) the documents which he is required to disclose by a relevant practice direction.*

However, this must be read subject to two other provisions.

Firstly, the disclosure duty is about 'documents', and document is defined in the rules (CPR 31.4).

Secondly, a party's duty to disclose documents is limited to documents which are or have been in his control (CPR 31.8).

We will therefore look at these three concepts in turn.

- is it a document (CPR 31.4)?

- Is/was it in the party's control (CPR 31.8)?

- Does it fall within standard disclosure (CPR 31.6)?

**Is it a document (CPR 31.4)?**

Meaning of 'document'

A document is defined very widely and is anything which records information. It can therefore include:

- Digital recordings

- Emails

- Photographs

- Text messages

- Voicemails

- Metadata (data about data eg the time of creation or modification of a file, or its author)

Electronic documents could be stored on personal devices, desktop computers, servers, portable storage and many other locations. In many cases, the majority of documents are electronic documents.

**Is/was it in the party's control (CPR 31.8)? - Meaning of 'in a party's control'**

The duty of disclosure is limited to documents which are or have been within a party's control. Control is defined widely. It means:

- The document is (or was) in the **physical possession** of the party; or

- The party has (or has had) a **right to possession** of the document (eg documents held by party's agent, such as documents a party sent to its own accountant); or

- The party has (or has had) a **right to inspect or take copies** of the document (eg a party has a right to inspect their own medical records).

As you can see, therefore, the obligation to disclose encompasses documents **presently and formerly** within a party's control.

Note that all disclosure obligations are limited to documents which are or were in the disclosing party's control – not just the obligation to give standard disclosure.

**Does it fall within standard disclosure (CPR 31.6)? – meaning of standard disclosure**

Meaning of standard disclosure

As set out above, standard disclosure requires a party to disclose documents which:

- It relies on;

- Adversely affect its own case;

- Adversely affect another party's case;

- Support another party's case; or

- It is required to disclose by a relevant practice direction (eg practice direction to the pre-action protocols).

Note that:

The requirement to disclose is met if a document satisfies even one of these criteria – it need not satisfy more than one of the criteria, although many documents will.

Whether or not a document satisfies one of these criteria must be determined by considering the issues in dispute as revealed by the statements of case.

Documents which might be considered relevant in the sense that they tell the story of what happened, but which do not support or undermine either side's case, do not need to be disclosed under standard disclosure (unless the disclosing party wishes to rely on them).

**The concept of a reasonable search**

If an order for standard disclosure is made, the rules provide that a party must make a reasonable search for documents falling into categories (b) to (e) as set out two pages back (which are the categories described at CPR 31.6(b) and (c))(CPR 31.7).

What is reasonable depends on the following:

- The number of documents involved

- The nature and complexity of the proceedings

- How difficult/expensive it is to retrieve any document

- The significance of any document likely to be found

In deciding what constitutes a reasonable search, the court must also take into account the overriding objective and, in particular, the principle of proportionality. So it might be possible to limit the search to documents relating to a specific transaction, or documents created on or after a specific date. The limitations will vary with the nature of every claim.

**Disclosure list**

Standard disclosure is performed by each party making a list of the required documents and serving it on the other party (CPR 31.10). The normal direction is for lists to be exchanged simultaneously.

Copy of a blank disclosure list is provided on the next page, and you may find it useful to consider this alongside the remainder of this element.

[a blank disclosure list N265 is shown at this point]

The list falls into three parts:

(a) '**I have control** of the documents numbered and listed here. **I do not object to you inspecting** them/producing copies.'

(b) **'I have control** of the documents numbered and listed here, **but I object to you inspecting** them [due to privilege].'

(c) 'I have had the documents numbered and listed below, but they are **no longer in my control**.'

When listing the documents in the second part, it is not necessary to list individually each document for which the party is withholding inspection. For example, rather than listing each and every fax and letter between the defendant and its solicitor by date, it is sufficient to describe generically such documents as correspondence between the defendant and its solicitor for the purpose of giving legal advice. The details of each and every document which must be disclosed, but which are privileged from inspection, are not therefore revealed in the list. If the recipient disagrees with the disclosing party's assertion of privilege, it can apply to court challenging the alleged privilege (CPR 31.19(5)).

**The disclosure statement (part of the disclosure list)**

Every list of documents must include a disclosure statement in the prescribed form (31A PD 4). This:

- sets out the extent of the search made (ie that the search was reasonable and proportionate and also what was not searched for - eg documents predating a certain date);

- certifies the party understands its duty to disclose the documents; and

- certifies that, to the best of the party's knowledge, it has carried out that duty.

The disclosure statement must include details of any documents the inspection of which the party considers disproportionate (CPR 31.3(2)).

The disclosure statement must be made (signed) by the disclosing party.

If the 'person' making the statement is a company, the statement should be made by an appropriate officer, who must identify him/herself and state why they are the appropriate person to make the statement (CPR 31.10(7)).

**Ensuring compliance with the duty of disclosure**

A solicitor is required to 'endeavour to ensure' that the person making the disclosure statement understands the duty of disclosure (31A PD 4.4). A solicitor should therefore advise its client of the disclosure obligations at the outset of the case.

A party may not rely on any document which he fails to disclose or in respect of which he fails to permit inspection unless the court gives permission (CPR 31.21).

Proceedings for contempt of court may be brought against a person if he makes, or causes to be made, a false disclosure statement, without an honest belief in its truth (CPR 31.23).

Supplemental lists - Supplemental lists may need to be prepared and served if additional documents falling within a party's disclosure obligations come to light, or are created, after the disclosure list is served.

**Summary**

Standard disclosure is the most common form of disclosure order.

It requires a party to disclose documents which are in their control, and which they rely on, or which are adverse to their case, adverse to another party's case, support another party's case, or which a practice direction requires them to disclose.

'Documents' has a broad definition: anything which records information.

The obligation is limited to documents which are or were in a party's control.

A disclosing party must carry out a 'reasonable search' for documents falling within standard disclosure.

Procedurally speaking, standard disclosure is given by drawing up a list of documents which are being disclosed. The list has three parts: a) in control, inspection permitted; b) in control, inspection not permitted; c) no longer in control.