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STATUTORY INSTRUMENTS

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**2017 No. 1035**

The Court of Protection Rules 2017

PART 16

DISCLOSURE

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**Meaning of disclosure**

**16.1.** A party discloses a document by stating that the document exists or has existed.

**General or specific disclosure**

**16.2.—**(1) The court may either on its own initiative or on the application of a party make an order to give general or specific disclosure.

(2) General disclosure requires a party to disclose—

- (a) the documents on which that party relies; and
- (b) the documents which—
  - (i) adversely affect that party's own case;
  - (ii) adversely affect another party's case; or
  - (iii) support another party's case.

(3) An order for specific disclosure is an order that a party must do one or more of the following things—

- (a) disclose documents or classes of documents specified in the order;
- (b) carry out a search to the extent stated in the order; or

(c) disclose any document located as a result of that search.

(4) A party's duty to disclose documents is limited to documents which are or have been in that party's control.

(5) For the purposes of paragraph (4) a party has or has had a document in that party's control if—

- (a) it is or was in that party's physical possession;
- (b) that party has or has had possession of it; or
- (c) that party has or has had a right to inspect or take copies of it.

### **Procedure for general or specific disclosure**

**16.3.**—(1) This rule applies where the court makes an order under rule 16.2 to give general or specific disclosure.

(2) Each party must make, and serve on every other party, a list of documents to be disclosed.

(3) A copy of each list must be filed within 7 days of the date on which it is served.

(4) The list must identify the documents in a convenient order and manner and as concisely as possible.

(5) The list must indicate—

- (a) the documents in respect of which the party claims a right or duty to withhold inspection (see rule 16.7); and
- (b) the documents that are no longer in the party's control, stating what has happened to them.

### **Ongoing duty of disclosure**

**16.4.**—(1) Where the court makes an order to give general or specific disclosure under rule 16.2, any party to whom the order applies is under a continuing duty to provide such disclosure as is required by the order until the proceedings are concluded.

(2) If a document to which the duty of disclosure imposed by paragraph (1) extends comes to a party's notice at any time during the proceedings, that party must immediately notify every other party.

### **Right to inspect documents**

**16.5.**—(1) A party to whom a document has been disclosed has a right to inspect any document disclosed to that party except where—

- (a) the document is no longer in the control of the party who disclosed it; or
- (b) the party disclosing the document has a right or duty to withhold inspection of it.

(2) The right to inspect disclosed documents extends to any document mentioned in—

- (a) a document filed or served in the course of the proceedings by any other party; or
- (b) correspondence sent by any other party.

### **Inspection and copying of documents**

**16.6.**—(1) Where a party has a right to inspect a document, that party—

- (a) must give the party who disclosed the document written notice of the wish to inspect it; and
- (b) may request a copy of the document.

(2) Not more than 14 days after the date on which the party who disclosed the document received the notice under paragraph (1)(a), that party must permit inspection of the document at a convenient place and time.

(3) Where a party has requested a copy of the document, the party who disclosed the document must supply the requesting party with a copy not more than 14 days after the date on which the request was received.

(4) For the purposes of paragraph (2), the party who disclosed the document must give reasonable notice of the time and place for inspection.

(5) For the purposes of paragraph (3), the party requesting a copy of the document is responsible for the payment of reasonable copying costs, subject to any final costs order that may be made.

### **Claim to withhold inspection or disclosure of documents**

**16.7.**—(1) A party who wishes to claim a right or duty to withhold inspection of a document, or part of a document, must state in writing—

- (a) that that party has such a right or duty; and
- (b) the grounds on which that party claims that right or duty.

(2) The statement must be made in the list in which the document is disclosed (see rule 16.3(2)).

(3) A party may, by filing an application notice in accordance with Part 10, apply to the court to decide whether the claim made under paragraph (1) should be upheld.

### **Consequence of failure to disclose documents or permit inspection**

**16.8.** A party may not rely upon any document which that party fails to disclose or in respect of which that party fails to permit inspection, unless the court permits.