



What's expert evidence and how is it used?

What does disclosure mean?

Disclosure means formally stating that documents or classes of documents exist or have existed. It is limited to documents which are, or have been, in the party's possession or control. It is a very wide definition and the obligation placed on parties to a claim is to search for and disclose documents currently or formally in their control.

What is the purpose of disclosure?

The purpose of disclosure is to make evidence which either supports or undermines the respective parties' cases available. It allows the court to do justice between the parties with an 'all cards on the table' approach.

What does inspection mean?

The phrase, inspection, relates to the process by which a party who has disclosed a document either allows the opponent to view the originals or, more commonly, provides the opponent with copies of documents disclosed.

What about confidential documents?

Confidential, or privileged, documents must be disclosed but may not be inspected. That means you have to confirm their existence but will then decline to provide a copy to the other side.

What if I remember or locate more documents after disclosure and inspection have taken place?

The duty of disclosure continues throughout the claim and includes the duty to preserve relevant documents.

There are consequences for late disclosure, which could affect your case.

There are serious consequences in terms of criminal and regulatory sanction should you deliberately conceal information or disclosable documents and it is strongly recommended you seek independent legal advice as soon as a request for disclosure or inspection is received.

What should a witness statement include?

The purpose of a factual witness statement is to set out your factual account - what you independently recall, what your usual practice is, how did you treat the patient?

Your statement will assist the court in identifying the facts on which the case is determined and gives you an opportunity to explain your clinical judgment.

Are there limits on the nature and number of expert reports used in claims?

Yes. Whilst parties often obtain expert reports at the outset of a claim, the court's permission is required before a party can formally rely on an expert report in a claim.

Can the parties each obtain their own expert report or do they have to share one expert between them?

That depends on several points; when granting permission for the parties to rely on expert evidence the court considers matters such as the purpose of the report, its likely importance to the claim and whether it is proportionate to have each party commission their own expert report.

Separate reports are common to address allegations of breach of duty of care and causation, whilst single reports are more likely to be ordered for less contentious issues such as a patient's prognosis.



FIND OUT MORE

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