

# **ROYAL COURT OF JERSEY**

**RC17/07**

## **Discovery**

1. The purpose of this practice direction is to provide guidance to parties on how to approach the obligation to produce documents relevant to a dispute in the Royal Court. This process is known as "discovery". The discovery process has two stages, discovery (when relevant documents are identified) and "inspection" (when those documents or copies of them are made available to the other parties). Attention is also drawn to Practice Direction RC 17/08, Discovery of Documents held in Electronic Form, which should be read together with this practice direction.
2. This practice direction applies where discovery is required by the procedural rules of the Royal Court or where the Court orders discovery in respect of any proceedings before it. It does not apply to any application for documents to be processed or disclosed by an injunction order, or where the application is for a legal entity to produce documents.
3. As soon as a party is aware that litigation is contemplated, that party must immediately take all reasonable steps to ensure that potentially discoverable documents are preserved.
4. As soon as a party retains a legal representative, that legal representative must inform its client of the need to preserve all potentially discoverable documents.
5. The party and its legal advisers in either case shall take all reasonable steps to ensure that no potentially discoverable document is destroyed pursuant to any document retention policy or otherwise in the ordinary course of business.

6. Where an order for discovery is made it is the duty of all parties to ensure that a party identifies all relevant documents:-
  - a. which it has or used to have in its physical possession;
  - b. where it has or has had a right to possession of the document;
  - c. where it has or has had a right to inspect or take copies of a document; or
  - d. where it has the right to compel someone else to provide a document to that party.
7. A "document" for these purposes includes any medium by which information is recorded and is retrievable. So, for example, while written letters or hardcopy documents are documents, so also are photographs, emails, spreadsheets and other electronic files.
8. Relevance is usually determined by the issues identified in the written pleadings of the parties. If a document is relevant it must be produced whether or not it assists a party's case.
9. The starting point is that the discovery obligation is absolute and extends to all relevant documents falling within paragraphs 6 to 8 above. However, the obligation to provide documents may be dispensed with or limited by the Court or by the written agreement of the parties. Any written agreement of the parties must be produced to the Court and is subject to Court approval.
10. In giving discovery, a party is required to make a reasonable search for documents. What is meant by reasonable is determined having regard to:-
  - a. The overriding objective;
  - b. The number of documents involved;
  - c. The nature and complexity of the proceedings;
  - d. The ease of retrieval of any particular document;

- e. The significance of any document which may be located during the search;
  - f. The likely expense of carrying out any search.
11. The factors set out in paragraph 10 will also be taken into account in deciding whether or not to limit discovery.
12. In providing discovery a party need not disclose more than one copy of a document where any copy only contains identical relevant information. A copy of a document that contains a modification, obliteration or other marking or feature relevant to any issue in dispute shall be disclosed as a separate document.
13. The form of each party's list of documents shall be in accordance with the specimen list attached as Appendix 1.
14. The list must identify the documents in a convenient order. Normally documents should be
- a. listed individually,
  - b. in date order,
  - c. numbered consecutively and
  - d. described concisely.
15. Documents may be disclosed in bundles in a list provided the following practice is adhered to:-
- a. the bundles must be documents of the same nature (e.g. invoices, bank statements);
  - b. the documents within a bundle must be numbered;
  - c. the nature of the documents within a bundle must be concisely defined;
  - d. the date range of the documents within each bundle must be stated.

16. The list must set out the basis of any claim not to disclose documents identifying
  - a. The category of 'privilege' claimed i.e. any reason relied upon in support of an assertion that documents should not be disclosed,
  - b. all grounds in support of such a claim; and
  - c. all documents or categories of documents to which the claim to privilege applies.
17. Where more than one basis of a claim to privilege is relied upon the list must identify separately each claim and the information required by paragraph 16 of this practice direction.
18. If a party claims that inspection of any document should not be permitted or copies should not be provided, the list of documents must set out the reasons why.
19. The affidavit verifying the list of documents must include a statement setting out the extent of the search that has been carried out to locate documents.
20. Where the person swearing the affidavit is not the advocate with overall responsibility for the case or for the discovery process, the affidavit must contain a written endorsement from the advocate with overall responsibility for either the case or for the discovery process, that the advocate concerned is satisfied that his or her client's discovery obligations have been met.
21. The obligation of discovery continues until the proceedings come to an end. After a party has prepared and served a list of documents, if the existence of further documents comes to the attention of that party, a supplemental list verified by affidavit must be served as soon as possible.

22. The parties may agree in writing or the Court may direct that discovery or inspection or both may take place in stages.
23. Where a party wishes to inspect a document that party must give the party who has given discovery written notice of his wish to inspect. Inspection should be permitted within 7 days after the date upon which the party who made discovery received a notice to inspect unless the Court orders otherwise.
24. A party may also request a copy of any document discovered, provided that party meets the reasonable copying costs. Copies should be normally be provided within 7 days. The parties may agree for copies to be provided electronically provided that the relevant requirements of the practice direction in relation to electronic discovery are adhered to.
25. Any party who obtains discovery from any other party is taken to have undertaken to the Royal Court and to all other parties only use the documents disclosed to him for the purpose of conducting his own case and not for any other purpose. An order of the Court is required to depart from this undertaking in order to use documents for any other purpose. Any party found to have misused documents obtained through the discovery process may face adverse consequences or sanctions imposed by the Court including being restrained by injunction

This Practice Direction shall come into force on 1<sup>st</sup> June 2017 and replaces Practice Direction RC 05/04 which is repealed

## **Appendix 1**

### List of Documents pursuant to an Order of the Court

(Title as in action)

#### LIST OF DOCUMENTS

1. The following is a list of the documents of the [plaintiff/defendant] relevant to the matters in question in this action

a. which the [plaintiff/defendant] has or used to have in its physical possession;

b. where the [plaintiff/defendant] has or has had a right to possession of the document;

c. where the [plaintiff/defendant] has or has had a right to inspect or take copies of a document; or

d. where the [plaintiff/defendant] has the right to compel someone else to provide a document to that party.

and which is served in compliance with the order herein dated the            day of  
20   .

2. The [plaintiff/defendant] has in his physical possession, has a right to possession of, has a right to inspect or take copies of or has the right to compel someone else to provide to the [plaintiff/defendant] all the documents listed in Schedule 1.

3. The [plaintiff/defendant] used to have in his physical possession, used to have a right to possession of, used to have a right to inspect or take copies of or used to have the right to compel someone else to provide to the [plaintiff/defendant] all the documents listed in Schedule 2.

4. The [plaintiff/defendant] has also identified in schedule 2 the date or dates on which the [plaintiff/defendant] either last had each of the documents or last had any right to each of the documents
5. The [plaintiff/ defendant]) objects to produce the documents listed in Schedule 3 on the ground that (stating the grounds of objection).

### **SCHEDULE 1**

*Here list in a convenient order usually in date order, all relevant documents in your physical possession, where you have a right to possession of, or have a right to inspect or take copies of or have the right to compel someone else to provide any the document(s) to you in each case with a short description of each document or bundle sufficient to identify it.*

### **SCHEDULE 2**

*Here list the relevant documents you used to have or used to have a right to, also setting out when you last had the document or a right to it and why you no longer have the document or a right to it.*

### **SCHEDULE 3**

*Here list those relevant documents or categories of documents in your physical possession, where you have a right to possession of, or have a right to inspect or take copies of or have the right to compel someone else to provide any the document(s) to you where you object to producing any document or category of documents.*

*You should also set out the reason why you object to producing any document or category of documents*

Dated the     day of                      , 20     .

#### NOTICE TO INSPECT

Take notice that the documents listed Schedule 1 may be inspected at (the office of the advocate/solicitor of the above-named (plaintiff) (defendant) (insert address) or as may be) on the     day of                      , 20     , between the hours of and (or by mutual arrangement).

To the defendant, (plaintiff) C.D. and his advocate/solicitor.

Served this day     of                      , 20     , by                      of                      , advocate/solicitor for the (plaintiff) (defendant).