

# Pre-Action Disclosure

An application for pre-action disclosure may be made prior to the issuing of a claim and can be used to assist a claimant to formulate their claim.

## WHAT IS PRE-ACTION DISCLOSURE?

Pre-action disclosure permits the applicant to obtain and view documents in the possession of his opponent to help them assess and formulate their claim.

## THE LAW

The power to undertake the above can be found at Civil Procedure Rule (“CPR”) 31.16. CPR 31.16 allows for such application and provides the criteria that must be satisfied. All of the following conditions must be met, however the court still has discretion to refuse such an order:

- The claimant and defendant are likely to be parties to the litigation;
- The documents sought are within the scope of standard disclosure; and
- Pre-action disclosure will help to dispose fairly of the anticipated claim, assist in its resolution without proceedings and save cost.

## RELEVANT CASE LAW

The leading case in relation to CPR 31.16 is *Black v Sumitomo [2001]*. This explores in more detail the criteria that must be met.

## FURTHER CONSIDERATIONS

If the applicant can plead and fully understand its claim adequately without requiring documentation from the defendant, there is no need for pre-action disclosure. As with all litigation, there are pre-action protocols (a set of rules) that should be followed. These detail all information/documentation that should be provided to the opponent. Abidance by these rules and obtaining the relevant information/documentation should avoid the need for a costly application to court. If the relevant documentation/information has already been provided and the party can fully understand its position, it is unlikely pre-action disclosure would be permitted. If pre-action protocols are not followed, the usual remedy is related to cost consequences for the party in breach.

## COSTS

If the court orders pre-action disclosure, the usual order is that the applicant should pay the costs of the opponent’s work in recovering the documents. These costs must be reasonable and proportionate.

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