

The Solicitors Disciplinary Tribunal

Constituted under the Solicitors Act 1974

POLICY ON THE SUPPLY OF DOCUMENTS **FROM TRIBUNAL RECORDS TO A NON-PARTY** **(June 2020)**

Introduction

This policy concerns the approach that the Tribunal will adopt in the event of a request by a non-party for the supply of documents which are held by the Tribunal pursuant to its statutory function under the Solicitors Act 1974 to hear and determine applications made to it under that Act. For the purpose of this policy those documents are referred to as “Tribunal documents”. A “non-party” is someone who is not the person(s) about whom the application to the Tribunal has been made, the person(s) making the application pursuant to that Act, or the person(s) who has been granted permission by the Tribunal to intervene.

This policy does not concern the Tribunal’s approach to the publication of its Judgments on the Tribunal’s website, which is the subject of a separate policy (the Solicitors Disciplinary Tribunal – Judgment Publication Policy (May 2020)) and does not apply to subject access applications under the General Data Protection Regulation or any other form of application.

In adopting this policy the Tribunal has had regard to the following general principles:

- the common law principle of open justice and the principles set out by the Supreme Court in Cape Intermediate Holdings Ltd v Dring [2019] UKSC 38
- the importance of transparency in the Tribunal’s decision-making processes
- the interests of the parties and any third parties referred to or otherwise involved in the disciplinary process

Preliminary points

In the Supreme Court’s decision in Cape Intermediate Holdings Ltd v Dring Lady Hale said: “*the default position is that the public should be allowed access, not only to the parties’ written submissions and arguments, but also to the documents which have been placed before the court and referred to during the hearing*”. The Tribunal accepts and endorses this default position as its starting point in determining any application. However, applicants do not have an automatic right: a non-party seeking access must explain why they seek it and how granting access will advance the open justice principle and the Tribunal will carry out a fact-specific balancing exercise to take account of factors such as privacy interests, confidentiality or proportionality. Lady Hale also said: “*also relevant must be the practicalities and the proportionality of granting the request. It is highly desirable that the application is made during the*

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trial when the material is still readily available, the parties are before the court and the trial judge in is day to day control of the court process.”

The Tribunal also has the power to award legal costs for or against the parties involved in non-party disclosure applications, but as set out below will not ordinarily do so save where this is necessary to prevent injustice.

A party to proceedings before the Tribunal may make an application at any stage for an order that no disclosure of specified documents be made in the event of a non-party disclosure request. In each case, a Panel will consider the reason for the request, the position of the other parties to the proceedings and whether it is appropriate to make such an order having regard to the interests of justice (including the principle of open justice) and before making such an order must be satisfied that the disclosure would be likely to cause any person serious harm.

For the avoidance of doubt, the Tribunal retains the power to determine an application by a non-party for disclosure where the relevant substantive proceedings are completed.

Procedure

1. An application for disclosure of Tribunal documents by a non-party must be made in writing addressed to the Clerk to the Tribunal, on the form attached at Annex 1 to this policy. An editable electronic version of the form is available on the Tribunal’s website.
2. A non-party disclosure application must contain the following information:
 - a. The full name of the non-party (any application made on an anonymous or pseudonymous basis will be rejected).
 - b. The full residential or business address of the non-party (which if requested by the non-party will be redacted by the Tribunal’s administrative team when the application is sent to the parties).
 - c. The identity of the applicant and/or the respondent in the proceedings to which the request relates.
 - d. A description of the document(s) requested. If the formal name of the document is not known a general description should be included.
 - e. The reason for the request and how granting the application would advance the open justice principle.
3. Upon receipt of a non-party disclosure application, unless they have already been provided, the Tribunal’s administrative office will invite submissions

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from the parties to the relevant proceedings (including the SRA) and/or any person (to the extent that this may reasonably be ascertained) who would be affected by a decision of the Panel of the Tribunal as to whether or not the disclosure (or any part of it) should be granted.

4. Where the application is incomplete/not in the correct format, it will be rejected by the Tribunal's administrative team and written reasons for rejection given.
5. A non-party disclosure application will be determined by a Panel of the Tribunal. If proceedings have concluded where reasonably practicable this will be the same Panel that heard the substantive hearing. The Panel considering the application will be provided with the application, any submissions made in response, the judgment from the substantive hearing (if applicable) and any decision taken by a Panel in the relevant proceedings for an order that no disclosure of specified documents be made.
6. The application will be considered on the papers unless there are exceptional circumstances which justify an oral hearing. If the non-party, any of the parties or a third party considers that an oral hearing is required they should notify the Clerk to the Tribunal at the earliest opportunity, and a Panel will determine how to proceed.
7. In the interests of proportionality, in furtherance of the principle of open justice, and to reflect the fact that the non-party disclosure application will be determined on the papers in all but the most exceptional cases, no order as to the recovery of any legal costs will be made (save where it is necessary to do so to prevent injustice).
8. The default position is that any disclosure will be provided electronically by encrypted email.

The Tribunal's Decision

As stated above, the Tribunal's default starting position will be that the public should be allowed access to documents referred to during a public hearing. In determining whether an order for non-party disclosure will be made the Panel of the Tribunal will take into account the following non-exhaustive list of factors insofar as they are relevant to the particular case:

- The reasons for the request;
- The nature of the document(s) requested;
- The stage of the proceedings at which the request is made;
- Whether an application for the proceedings to be heard in private has been or is likely to be made;

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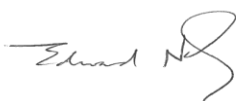
- The potential value of the material in advancing the purpose of open justice;
- Any risk of harm which access to the documents may cause to the legitimate interests of others;
- Whether the information is confidential
- Whether the information includes medical, financial or other sensitive personal information;
- Whether the information relates to a person with a particular vulnerability;
- Whether disclosure might impede any judicial process or the information includes legally privileged material;
- Whether the information concerns allegations against other persons which have not been explored and could be potentially damaging to them;
- Whether the information is of such peripheral, if any, relevance to the judicial process that it would be disproportionate to require its disclosure;
- The likely costs of complying with the application; and
- Whether the information is so voluminous and/or requires such editing or redaction before it could lawfully be disclosed that the compliance with the request is not practicable or proportionate given the size and administrative resources of the Tribunal.

For the avoidance of doubt, the Tribunal has no power to order the parties to carry out sifting/redacting/editing/anonymisation of documents to facilitate disclosure. Where the Panel directs that the Tribunal itself should redact, edit or anonymise documents the parties will be given an opportunity to review and comment in writing upon the proposed redactions before the documents are disclosed.

In the event that the Panel of the Tribunal determines that the requested disclosure, or any part of it should not be granted, the non-party applicant's right of challenge lies to the High Court by way of judicial review.

The Panel will produce a Memorandum of the reasons for its decision to be signed by the Chairman and delivered to the party making the application and to the parties to the proceedings. The Panel will endeavour to produce the Memorandum within fourteen days of the determination of the application. The Memorandum will be published on the Tribunal's website and will be publicly available on request unless the Panel directs otherwise.

Signed



Edward Nally
President of the Solicitors Disciplinary Tribunal
On behalf of the Policy Committee
Dated this 13th day of May 2020

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APPLICATION FORM FOR NON-PARTY DISCLOSURE OF TRIBUNAL DOCUMENTS

This form should be used to make an application for the disclosure by the Tribunal of documents held by it pursuant to its statutory function under the Solicitors Act 1974 to hear and determine applications made to it under that Act. **It should not be used for subject access applications under the Data Protection Act or any other form of application. An editable electronic version of this form is available on the Tribunal's website.**

If you have any disability or communication need affecting the making of your application or how you would prefer to receive correspondence or documents please indicate this below (or inform the Tribunal's administrative office on 020 329 4808 or at enquiries@solicitorsdt.com).

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Name of person making the application

Address of person making the application

Email address of person making the application

Name of the applicant in the Tribunal proceedings to which the request relates

Name of the respondent in the Tribunal proceedings to which the request relates

Description of the documents requested (please continue on a separate sheet if required)
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Reason for the request and
how granting the application
would advance the open
justice principle (please
continue on a separate sheet if
required)

I confirm that the information contained in this form is correct.

Signed

Dated