

SOLICITORS DISCIPLINARY TRIBUNAL – JUDGMENT PUBLICATION POLICY May 2020

The Solicitors Act 1974 requires that SDT Judgments are made available for public inspection on request. As a service to the public and the profession, the Tribunal publishes Judgments on its website as soon as they have been sent to the parties **unless the Division of the Tribunal which determined a specific case directs otherwise.**

The Tribunal's Judgments remain documents of public record indefinitely. Judgments will remain available to download from the Tribunal's website in accordance with this Policy.

In developing the Policy the Tribunal has had regard to the following principles:

- o Proportionality
- o Accountability
- o Consistency
- o Transparency
- o Fairness

Publishing Judgments is important in ensuring that the Tribunal's processes are transparent. The content of Judgments assists in informing and educating users of legal services and the profession. Publication enables the Tribunal's stakeholders to be reassured that the Tribunal's decision-making powers are being exercised proportionately and consistently, and that the Tribunal is accountable for its decisions.

Judgments will be available to download from the Tribunal's website as follows:

- In the case of an Order striking a solicitor or registered European or Foreign lawyer off the Roll of Solicitors or Registers of European or Foreign Lawyers – **the Judgment remains on the website for sixty years, subject to a successful application for restoration to the Roll/Register;**
- In the case of the revocation of the recognition of a recognised body (for financial penalties, please see "all other Orders" below), which will usually be coupled with a sanction imposed on an individual – **the Judgment remains on the website for sixty years, subject to a successful application for removal/redaction of the Judgment by the individual subject to sanction;**
- In the case of an Order suspending indefinitely a solicitor or registered European or Foreign lawyer from the Roll of Solicitors or Registers of European or Foreign Lawyers – **the Judgment remains on the website for sixty years or until such time as the period of suspension is determined;**
- In the case of an Order suspending a solicitor or registered European or Foreign lawyer from the Roll of Solicitors or Registers of European or Foreign Lawyers for a fixed period – **the**

Judgment remains on the website for the life of the suspension or three years (whichever is the greater);

- In the case of a Restriction Order imposing restrictions on a solicitor or registered European or Foreign lawyer – **the Judgment remains on the website for the life of the restrictions or three years (whichever is the greater);**
- In the case of an Order against a Clerk made by the Tribunal under Section 43 of the Solicitors Act 1974 (as amended) - **the Judgment remains on the website for sixty years or until such time as the Section 43 Order is revoked;**
- In the case of an Order approving the terms of an Agreed Outcome reached between a solicitor or registered European or Foreign lawyer and the Solicitors Regulation Authority – **the Judgment remains on the website for the life of the agreed sanction or three years (whichever is the greater);**
- In the case where **no** allegations are found proved - **the Tribunal will consider an application made by the respondent at the hearing for an Order that the Judgment published on the Tribunal's website be anonymized. Following the guidance of the High Court in Solicitors Regulation Authority v Spector [2016] EWHC 37 (Admin), and in recognition of the common law principle of open justice, such an application by or on behalf of a respondent is unlikely to be granted where the hearing has taken place in public under the Solicitors (Disciplinary Proceedings) Rules 2019 (“SDPR”), Rule 35(1)¹. The fact that a Tribunal has directed that a hearing or part of it be held in private under SDPR Rules 31(2), (4) and (5)² does not determine that the Tribunal must decide (on application by a respondent) that the Judgment should be anonymized; each case must be decided on its own facts and merits;**
- In the case of an Order revoking a Section 43 Order; or an Order restoring a solicitor or registered European or Foreign lawyer to the Roll of Solicitors or Register of European or Foreign Lawyers; or determining a period of suspension; or the revocation of a Restriction Order imposing restrictions on a solicitor or registered European or Foreign lawyer – **the Judgment remains on the website for three years** (and the original Judgment is removed from the website). In these cases the Tribunal will consider any application made at the hearing for an Order that the Judgment published on the Tribunal's website be anonymized in accordance with the approach set out in relation to cases where no allegations have been found proved.
- In the case where either or both parties to the proceedings (including for the avoidance of doubt the applicant in the proceedings, usually the Solicitors Regulation Authority (“SRA”)) applies at the hearing for an Order that the Judgment published on the Tribunal’s website be

¹ Or as the case may be the Solicitors (Disciplinary Proceedings) Rules 2007 (“the 2007 Rules”), Rule 12(3) or the Solicitors Disciplinary Tribunal (Appeals and Amendment) Rules 2011 (“the 2011 Rules”), Rule 23(1).

² Or under the 2007 Rules 12(4) – (6) inclusive or the 2011 Rules 23(2) – (4) inclusive.

anonymized - **such an application is also unlikely to be granted where the hearing has taken place in public under the SDPR, Rule 35(1)³. The fact that a Tribunal has directed that a hearing or part of it be held in private under SDPR Rules 35(2), (4) and (5)⁴ does not determine that the Tribunal must decide (on application by a party or parties) that the Judgment should be anonymized; each case must be decided on its own facts and merits;**

- In the case of all other Orders - **the Judgment remains on the website for three years;**
- The Tribunal's Judgment will be published on the Tribunal's website notwithstanding the fact that an appeal against the decision has been filed at the Administrative Court. Judgment will **not** be removed from the website pending the determination of an appeal by either party. A published Judgment will be endorsed to the effect that it is subject to appeal **upon receipt by the Tribunal of notification from either party accompanied by a copy of the Notice of Appeal sealed by the Court**. Once the appeal has been decided, the published Judgment will be annotated briefly to note the outcome and the Appeal Judgment reference;
- Judgments removed from the Tribunal's website pending appeal under the May 2013 Judgment Publication Policy will remain unpublished until the appeal has been determined.
- Where a Respondent lodges an application for rehearing with the Tribunal, the Judgment will be removed only in the event that the application for rehearing is decided in favour of the Respondent. The Judgment will remain on the website pending the hearing of the application for the protection of the public in the intervening period.
- In the event that a request is received, supported by relevant documentation, to remove a Judgment from the SDT's website on the basis that the Respondent is deceased, the Tribunal will grant the request unless it considers there to be continuing public interest in the Judgment remaining on the website.

This Policy will be regularly reviewed and may of necessity be revised from time to time to reflect changes in the law and the Tribunal's practice.

Criteria for publication

Factors which support a decision to publish include:

- The common law principle of open justice;
- The importance of transparency in the SDT's decision-making processes;
- The importance of providing information about disciplinary action against solicitors to enable, for example:
 - Clients or prospective clients to make informed choices about whom to instruct;
 - Clients and others to decide whether behaviour of concern should be reported to the SRA;
- The need to maintain public confidence in the regulatory and disciplinary system by

³ Or the 2007 Rules, Rule 12(3) or the 2011 Rules, Rule 23(1).

⁴ Or the 2007 Rules, Rules 12(4) – (6) inclusive or the 2011 Rules 23(2) – (4) inclusive.

demonstrating what disciplinary action has been taken and why.

Decisions will normally be published promptly but the SDT retains discretion to publish them or parts of them at a later time. This may be necessary, for example, if a prosecution is sensitive, such as where there is a risk of prejudice to other proceedings. The three and sixty year periods referred to above for which various Judgments will remain on the SDT website runs from the date of publication of the Judgment.

Signed

A handwritten signature in black ink, appearing to read "Edward Nally". The signature is fluid and cursive, with a prominent loop at the end.

Edward Nally
President of the Solicitors Disciplinary Tribunal
On behalf of the SDT Policy Committee
Dated 06 May 2020