

## **SOLICITORS DISCIPLINARY TRIBUNAL**

### **Guidance: Person Assisting a Party**

This Guidance applies to proceedings before the Tribunal. It is issued as guidance (**not** as a Practice Direction) by the Policy Committee of the Tribunal.

1. At a public hearing an unrepresented party does not need permission from the Tribunal to be:
  - Provided with moral support;
  - Assisted by somebody taking notes;
  - Helped with case papers.
  
2. At a private hearing the unrepresented party can ask the Tribunal for somebody to be present to assist them with the points above. This will be a decision for the Tribunal on a case by case basis having heard from all the parties.
  
3. A person assisting a party is someone who has no:
  - other role in the proceedings and in particular is not a party or witness;
  - right to act as an advocate; or
  - right to carry out the conduct of the proceedings.
  
4. A person assisting a party may not:
  - act as the party's agent in relation to the proceedings;
  - manage the party's cases outside of hearings, for example by signing documents filed in the proceedings; or
  - address the Tribunal, make oral submissions or examine witnesses unless the Tribunal has given permission.
  
5. While a party ordinarily has a right to receive reasonable assistance from another person, the Tribunal retains the power to refuse to permit such assistance. For example the Tribunal will not permit a witness. If a party is being assisted by a person whose conduct impedes the efficient administration of justice the Tribunal may exclude that person from a hearing.

6. A party who wishes to exercise the right to receive reasonable assistance should inform the Tribunal as soon as possible indicating who the person providing assistance will be. This should be done in advance of the hearing if possible, but no later than the start of the hearing.
7. The proposed person should confirm in writing that he or she has no interest in the case and understands their role and the duty of confidentiality.
8. In a public hearing, if the Tribunal considers that there might be grounds for limiting the right to receive such assistance, or a party objects to the presence of, or assistance given by a person, it is not for the party seeking to have the assistance of that person to justify the exercise of the right. It is for the Tribunal or the objecting party to provide sufficient reasons why the party should not receive such assistance.
9. When considering whether to limit the right to assistance or refuse a person permission to attend the right to a fair trial is engaged. The parties should be given a reasonable opportunity to argue the point. The proposed person should not normally be excluded from that hearing and should normally be allowed to help the party.
10. Where proceedings are in private the party seeking assistance is required to justify the person's presence in court. The presumption in favour of permitting a person providing assistance to attend such hearings, and thereby enable the party to exercise the right to assistance, is a strong one.
11. The Tribunal may refuse to allow a party to exercise the right to receive assistance at the start of a hearing. The Tribunal can also limit the right during the course of a hearing. It may be refused at the start of a hearing or later limited where the Tribunal forms the view that a person providing assistance may give, has given, or is giving, assistance which impedes the efficient administration of justice. However, the Tribunal should also consider whether a firm and unequivocal warning to the party and/or person might suffice in the first instance.
12. A decision by the Tribunal not to curtail assistance from a person providing assistance should be regarded as final, save on the ground of subsequent misconduct by that person or on the ground that their continuing presence will impede the efficient administration of justice.
13. If the decision is given at a case management hearing the Tribunal will set out its reasons why it has curtailed the right to assistance in a Memorandum. If the decision is given at a substantive hearing the reasons will be set out in the Tribunal's Judgment.

14. The following factors should not generally be taken to justify the Tribunal refusing to permit a party receiving such assistance:
  - (i) The case or application is simple or straightforward, or is, for instance, a directions or case management hearing;
  - (ii) The party appears capable of conducting the case without assistance;
  - (iii) The party is unrepresented through choice;
  - (iv) Another party is not represented;
  - (v) The proposed person providing assistance belongs to an organisation that promotes a particular cause.
  
15. A party may be denied the assistance of a person because its provision might undermine or has undermined the efficient administration of justice. Examples of circumstances where this might arise are:
  - i) the assistance is being provided for an improper purpose;
  - ii) the assistance is unreasonable in nature or degree;
  - iii) the person providing assistance is subject to a civil restraint order or has been declared a vexatious litigant;
  - iv) the Tribunal is not satisfied that the person providing assistance fully understands the duty of confidentiality.
  
16. Parties are permitted to communicate any information, including filed evidence, relating to the proceedings to the person providing assistance for the purpose of obtaining advice or assistance in relation to the proceedings. Parties should ensure that the person providing assistance understands and complies with the duty of confidentiality and the need to safeguard personal data when their assistance is sought and that the person understands and complies with this duty.
  
17. Legal representatives should ensure that documents are served on parties in good time to enable them to seek assistance regarding their content from the person providing assistance in advance of any hearing.

## Representation at a Hearing

18. In respect of first instance proceedings, Rule 48(5) of the Solicitors (Disciplinary Proceedings) Rules 2019 (“SDPR”) provides that:

*“At a hearing a party may be accompanied by another person whose name and address has not been notified under paragraph (2) but who, with the permission of the Tribunal, may assist the party in presenting the party’s case at the hearing.”*

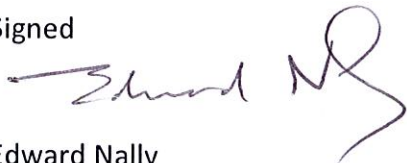
19. A person providing assistance does not have a right to assist the party in presenting the party’s case at a hearing but can do so with the permission of the Tribunal. The Tribunal grants such permission on a case-by-case basis.
20. The Tribunal should be slow to grant any application from a party for a right of audience or a right to conduct litigation to any lay person, including a person providing assistance. This is because a person exercising such rights must ordinarily be properly trained, be under professional discipline (including an obligation to insure against liability for negligence) and be subject to an overriding duty to the Tribunal. These requirements are necessary for the protection of all parties to the proceedings and are essential to the proper administration of justice.
21. Any application for permission to assist the party in presenting the party’s case at the hearing should be considered very carefully. The Tribunal should only be prepared to grant such rights where there is good reason to do so taking into account all the circumstances of the case, which are likely to vary greatly. Such grants should not be extended to lay persons automatically or without due consideration. They should not be granted for mere convenience.
22. Examples of the type of special circumstances which might justify the grant of permission to a person providing assistance including:
- that person is a close relative of the party;
  - health problems preclude the party from addressing the Tribunal, or conducting the proceedings, and the party cannot afford to pay for a qualified legal representative;
  - the party is relatively inexperienced in appearing in a court setting and prompting by a person providing assistance may avoid unnecessarily prolonging the proceedings.

23. It is for the party to persuade the Tribunal that the circumstances of the case are such that it is in the interests of justice for the Tribunal to grant permission for a person to assist the party in presenting their case at the hearing.
24. The grant of such permission to a person who hold themselves out as professional advocates or who seek such permission on a regular basis, whether for reward or not, will however only be granted in exceptional circumstances.
25. If a party wants a person to assist them in presenting their case an application must be made in advance of the hearing if possible, but no later than the start of the hearing in accordance with Rule 48(5) of the SDPR.
26. Having granted permission for a person to assist a party in presenting their case the Tribunal has the power to remove the right. The grant of such permission in one set of proceedings cannot be relied on as a precedent supporting their grant in future proceedings.

#### **Other Circumstances**

27. The Tribunal recognises that there may be circumstances in which a party asks the Tribunal to correspond with another person rather than the party. For example, this may arise due to the health issues of the party or due to their being imprisoned.
28. Provided the party provides written signed consent permitting the Tribunal to correspond with the other person (including sending them documentation) the Tribunal will do so in such circumstances.
29. If such a person wishes to address the Tribunal at a case management or substantive hearing to explain the party's position but not to present their case then the Tribunal will consider this request and the view(s) of the other party/parties before deciding whether or not to agree the request.

Signed



Edward Nally

President of the Solicitors Disciplinary Tribunal  
On behalf of the SDT Policy Committee

Dated 6th November 2019