

AUTOMATIC DISCLOSURE PROCESS (“ADP”) POLICY AND GUIDANCE

1. THE PRINCIPLE

- 1.1 The Tribunal views the open justice principle as an essential element of the rule of law to enable public scrutiny of the cases before the Tribunal and to ensure the public understand how the Tribunal works and why decisions are taken.
- 1.2 Open justice is a fundamental principle of the common law (*Scott v Scott* [1913] AC 417), comprising (unless abrogated/varied by statute or otherwise in the interests of the administration of justice) the public's freedom to attend court hearings, the freedom to report proceedings (*A-G v Leveller Magazine Ltd* [1979] AC 440) and the freedom to identify persons involved (*Re Guardian News and Media* [2010] 2 AC 697).

2. ADP

- 2.1 ADP relates solely to a specified class of documents (see table at 2.6) which fall to be disclosed to the public (which includes the press) automatically during the course of a substantive hearing without the need for a request or an application. It applies to all new cases certified as showing a case to answer from 15 January 2025.
- 2.2 ADP represents a proportionate and reasonable step in improving and demonstrating the Tribunal's commitment to open justice and allowing the public to gain a better understanding of a case in real time, as it unfolds.
- 2.3 Nothing within the Solicitors Act 1974; the SDPR 2019 or the Tribunal's Policy on the Supply of Documents to a Non-Party (NPD) prevents the implementation of ADP which accords with (i) the relevant authorities (some of which are referred to above) and (ii) Rule 4 SDPR 2019 and gives real effect to the 'overriding objective' set out in that rule. [See also Rule 6 SDPR 2019 and section 46(5A) of the Solicitors Act 1974]
- 2.4 [NDP](#) remains as the process for disclosure of material not covered by ADP and the process by which Non-Parties may apply for disclosure of documents outside the currency of the substantive hearing.
- 2.5 ADP is separate to the Tribunal's NDP but adopts the definitions of "Tribunal documents" and "Non-Party" set out therein where applicable. NDP must still be used for any request for documents falling outside the scope of ADP.
- 2.6 Documents subject to ADP will be disclosed automatically at a time specified within this policy and as set out in the table below.

| Specified Document | Timing of Disclosure | Method of Disclosure |
|--|---|--|
| Rule 12 Statement (<i>minus anonymisation schedule and exhibits</i>) | At the commencement of the substantive hearing | On the Tribunal's website and be removed 7 days after the end of the hearing |
| The Answer* (<i>minus exhibits</i>) and any Reply *In the case of unrepresented Respondents, the SRA will be requested to remove sensitive and confidential material from the Answer in consultation with the Respondent. | As above | As above |
| Skeleton Arguments (<i>if served</i>) | As above or when served if this is during the hearing | As above |

- 2.4 The list of specified documents will be revised and added to from time to time.
Note: The Civil Procedure Rule Committee is currently considering a revision of CPR 1998 Rule 5.4C: [court-documents-consultation-cover-note.pdf](#). The ADP will be reviewed if/when 5.4C is revised.
- 2.5 A party affected by ADP may make an application on notice seeking to prevent or delay automatic disclosure. Such application may be made at any point along the timeline from proceedings being issued. Any such application must be supported by evidence and identify and address any harm which the party believes would be caused by automatic disclosure. When doing that, the party must bear in mind (and, where necessary, address) the tests set out in the authorities on derogations from open justice.
- 2.6 In deciding such an application, the Tribunal may:
- Grant the application in full and make a direction under Rule 35 SDPR 2019. Any such direction shall be published on the Tribunal's website in accordance with paragraph 2.7 below and shall make clear that it is not finally determinative of non-parties' rights and that non-parties are at liberty to ask the SDT to set aside or vary the direction; or
 - Make direction under Rule 35 which permits a document or documents to be anonymised and/or redacted by the producing party. Anonymisation/redaction must be made only to the extent strictly necessary to allow automatic disclosure. Any such direction shall be published on the Tribunal's website in accordance with paragraph 2.7 below and shall make clear that it is not finally determinative of non-parties' rights and that non-parties are at liberty to ask the Tribunal to set aside or vary the direction; or

- Refuse the application so that ADP takes place .

Rule 35(10) SDPR 2019 states :

“The Tribunal may give a direction prohibiting the disclosure of a document or information to a person if it is satisfied that (a) the disclosure would be likely to cause any person serious harm and (b) it is in the interests of justice to make such a direction”.

[It should be noted that (a) and (b) are not alternatives: both must be satisfied, if any direction is to be made]

- 2.7 If the Tribunal makes an order under Rule 35 (10) SDPR 2019 the Cause List (published 4 weeks before the date of the substantive hearing) will state:

‘On [Date] the Tribunal made a direction in this matter under Rule 35(10), prohibiting the disclosure of [specify document(s)] on the basis that it is satisfied that (a) the disclosure would be likely to cause any person serious harm and (b) it is in the interests of justice to make such a direction. This direction is not finally determinative of the rights of any non-party under the principle of open justice (or any other relevant principle) and may be set aside or varied. Any non-party wishing to make representations in relation to this direction should provide representations in writing no later than 7 days before the commencement of the hearing’.

3. GUIDANCE

General

- 3.1 The Tribunal’s default starting position will be that the public should be allowed access to certain documents, as specified in this policy, and referred to during a public hearing.
- 3.2 Any risk of harm may be addressed by suitable redactions by editing out e.g. matters relating to Legal Professional Privilege; home addresses of individuals; commercially sensitive and irrelevant financial matters; health and other confidential matters which do not touch directly upon the substantive issues to be decided. It should be noted that redactions are in themselves likely to amount to derogations from open justice. They are therefore subject to the “strictly necessary” test and should not be permitted simply because one (or both) of the parties wants them or to avoid causing embarrassment to someone.

The Public Interest

- 3.3 The press and members of the public have a natural interest in the Tribunal’s cases, and it is contrary to open justice to delay applications for disclosure of essential documents to a time when it is more convenient for the parties and the Tribunal to deal with them and

when the crucial moment has passed. The press and public act as watchdogs of procedural regularity. Deferring disclosure of essential documents to the public and press is likely to result in requests for such documents to be made during the substantive hearing. Part of the aim of the ADP is to help ensure that the public, press and Tribunal are not put in that potentially problematic position.

- 3.4 As set out in [Supreme Court in Cape Intermediate Holdings Ltd v Dring \[2019\] UKSC 38](#)

[38] “... where documents have been placed before a judge and referred to during proceedings... the default position should be that access should be permitted because of the open justice principle; where access is sought for a proper journalistic purpose the case for allowing it will be particularly strong.”

- 3.5 In the event that the Tribunal gives leave for a Rule 12 to be amended before the commencement of the substantive hearing, it is the amended Rule 12 that will be disclosed under the ADP.

- 3.6 If, at a substantive hearing the Applicant’s case is presented in a way which deviates radically from the matters set out in the R12 statement (certified as showing a case to answer) and this eventuality had not been indicated at an earlier time, then (i) this will need to be explained to the Tribunal panel at the hearing and (ii) the Panel will need to consider what steps (if any) need to be taken to ensure that the public and press can properly follow, understand and report the case which is now being presented. It must be borne in mind that whether any member of the public or press is actually observing the case (whether in the courtroom or online) is not a relevant consideration: open justice does not depend on whether a member of the public/press is physically observing the case. See the Justice Committee report on [Open justice: court reporting in the digital age - Justice Committee](#)

Alison Kellett
President of the Solicitors Disciplinary Tribunal
On behalf of the Policy Committee
Dated this 15th day of January 2025