

REVISED STANDARD DIRECTIONS AND AUTOMATIC DISCLOSURE POLICY (“ADP”)

1. INTRODUCTION

- 1.1 On 15 January 2025 the Tribunal introduced revised Practice Directions (SD’s) and an additional disclosure policy (ADP), following approval by the Policy Board.

Standard Directions [Part 1](#), [Part 2](#), [Practice Direction 2](#), [ADP](#) and [Explanatory Note & Glossary](#).

- 1.2 The attached documents represent a response to stakeholders’ requests for changes to the SD’s and our own identified need to enhance our commitment to the principal of open justice Tribunal’s and were produced following two rounds of consultation with UGC, RPC of the Law Society, SRA, Press, and other stakeholders.

2. THE TRIBUNAL’S OBJECTIVES IN MAKING THE PROCEDURAL CHANGES:

- 2.1 Primary objectives:

- To give parties more time to understand each other’s cases before requiring Answer/Reply and before setting a substantive hearing date;
- Minimise opportunities for distracting non party applications for disclosure during the substantive hearing through introduction of ADP;
- Reinforce our collective commitment to open justice.

- 2.2 Secondary Objectives:

- Reduce the parties’ costs;
- Reduce the number of ‘lost’ hearing days for the Tribunal;
- Reduce the cost per court.

3. EXPLANATION OF THE CHANGES

Revised SD's

- 3.1 Split into 2 parts: Part 1 SD's and Part 2 SD's.
- 3.2 In Part 1 SD, directions are only given up to the point where a Reply, if any, is to be served. The substantive hearing will not be listed and instead a Case Management Hearing (CMH) will be listed in every case to take place remotely on a date approximately 3-4 months from the date proceedings are issued. All parties will be expected to have completed an agreed [checklist of requirements](#) which should be filed with the Tribunal and uploaded into the CMH bundle on CaseLines at least 1 week prior to the CMH.
- 3.3 At this stage one of two things will happen:
- (i) If it has been agreed by the Tribunal and the parties that the listed CMH should be vacated because it is not required Part 2 SD's will be issued *administratively* by the Tribunal to include a substantive hearing date and the usual procedural steps leading up to the substantive hearing.
- Or,
- (ii) If the CMH is not vacated, then the Part 2 SD's will be given by the Tribunal at the CMH and recorded in its memorandum along with other directions it may give.
- 3.4 The rationale of splitting the SD's and not providing a date for the substantive hearing at the outset is to provide the parties with more adequate time to evaluate each other's cases and their own position without the constraints of an unworkable timeline and thereby avoiding inevitable applications for extensions of time.
- 3.5 To this end:
- The time for the Answer to be filed and served is increased from 4 weeks to 8 weeks from issue of the proceedings.
 - Time for the Reply is increased to 10 weeks from issue.
- 3.6 The Part 2 SD's remove the requirement to complete a certificate of readiness, but certain information must still be provided as set out in Part 2 SD's.

Practice Direction 2 (PC2) and revised application procedure to vary SD's

- 3.7 The Tribunal has introduced a new PC as follows:

3.7.1 If the following three conditions are fulfilled then the [application](#) will be approved, administratively:

- I. *Each party agrees the terms of the variation sought.*
- II. *The variation will not cause the date of the CMH (if one is listed) nor the date of the substantive hearing to be altered, amended or vacated.*
- III. *The parties have submitted their request on the prescribed form with a draft of the amended directions they seek.*

Automatic Disclosure Policy (ADP)

3.8 The automatic disclosure of certain documents (R12 minus anonymity schedule and exhibits; Answer, less exhibits, Reply and Skeleton Arguments) without application at the start of the substantive hearing.

The Principle

3.9 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.

3.10 Open justice applies in the SDT in the same way that it applies in the civil courts *SRA v Spector* [2016] EWHC 37 (Admin).

3.11 The press and public act as watchdogs of procedural regularity.

4. THE PRESENT POSITION AT THE TRIBUNAL AND WHY MODIFICATION IS REQUIRED

4.1 The Tribunal already has a policy in relation to non party applications for disclosure (NPD). The policy sets out how the Tribunal will deal with applications made to the Tribunal by non-parties for disclosure of documents held on the court file.

4.2 When the policy was created it was likely envisioned it would be used infrequently and only in circumstances where a reader of a published judgment required sight of an underlying source document to complete their understanding of the decision.

4.3 However, there has been greater interest in the Tribunal's cases due to the 'traditional' areas of misconduct being added to by matters concerning sexual misconduct; protest; antisemitism; misuse of social media, racism and other counter-inclusive behaviour. The press and members of the public cannot be criticised for using the NPD policy to obtain

information and to understand a case while it is happening. Nevertheless, such applications cause administrative problems and take up the Tribunal's time and resources when received from press and public immediately prior to or during the substantive hearing. It is also a distraction for the Panel and the parties.

5. ADP: A NEW MECHANISM FOR NON-PARTY DISCLOSURE

- 5.1 The proposal is to add a new procedure and policy on non-party disclosure to permit a specified class of documents to be disclosed under an automatic process (“the Automatic Disclosure Process” or “ADP”) without the need for an application. Documents subject to ADP would be disclosed automatically on the first day of the substantive hearing. [Note ADP does not replace the NPD policy which remains for applications outside the ambit of ADP].

6. ADP: AN UNREASONABLE AND UNLAWFUL CHANGE?

- 6.1 The Tribunal considers it 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.
- 6.2 There is nothing within the Solicitors Act 1974 nor the SDPR 2019 which would prevent the implementation of ADP.
- 6.3 ADP would also be subject to the application of Rule 35 (10) SDPR 2019. Rule 35(10) 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”.

- 6.4 The change of procedure would accord with Rule 4 SDPR 2019 and give real effect to the Overriding objective set out in that rule.

7. ADP: TOO DIFFICULT TO IMPLEMENT?

- 7.1 The present NPD procedure is cumbersome and apt to cause disruption to the flow of a substantive hearing at a time when the Tribunal and parties total focus should be on the case. This results in parties and non-parties feeling frustrated by disruption and delay.

- 7.2 ADP would streamline the process and remove the problems set out above , as press and public would have the assurance that e.g. the R12 Statement (less exhibits and anonymity schedule) would be available without application at the start of the hearing. Neither the Tribunal nor the parties would need to give the matter any further thought unless there was an application to prevent ADP. Documents disclosed under ADP would be placed on the Tribunal’s website during the currency of the hearing and for a period thereafter.
- 7.3 The Rule 12 Statement is a document produced by the Applicant (usually the SRA). It is created in a format where clients are usually referred to by cipher, as are complainants and victims. Other matters which would render “jigsaw identification” possible are also redacted. On this basis it is already a substantially redacted document at the point when proceedings are issued.
- 7.4 Under ADP the parties would be aware at the outset, when proceedings are issued, that core documents would fall to be disclosed automatically on the first day of the substantive hearing and they would have time to consider their position and either make an application for ADP not to apply or produce a redacted and/or summarised version capable of disclosure.

January 2025