

POLICY ON HEARINGS IN PRIVATE, ANONYMITY, AND RESTRICTIONS ON PUBLISHING SDT DECISIONS

To be read in conjunction with the Practice Direction on the publication and display of orders made under SDPR 2019 Rules 34 and 35

1. INTRODUCTION

- 1.1 The Solicitors Disciplinary Tribunal (“SDT”/“Tribunal”) is committed to upholding open justice while protecting individual rights, proceedings are fair and complying with the European Convention on Human Rights (“ECHR”), the Human Rights Act 1998 (HRA), and the Solicitors (Disciplinary Proceedings) Rules 2019 (SDPR 2019).
- 1.2 This policy sets out how the SDT approach to applications or orders that derogate from open justice, including private hearings, anonymity orders, and restrictions on publication of judgments.
- 1.3 The Tribunal’s starting position is:
- All hearings are held in public, except in exceptional circumstances.
 - Respondents’ and witnesses’ names will not normally be anonymised, except in exceptional circumstances.
 - Client names will generally be anonymised where their identity is not directly relevant to the matters in issue. This reflects considerations of confidentiality and proportionality rather than an assertion of legal professional privilege. Legal professional privilege, where applicable, is a distinct doctrine and remains subject to recognised exceptions, including the iniquity exception (*see glossary*). Anonymisation may not be appropriate where the client’s identity is central to the allegations or already public.

2. PRINCIPLE OF OPEN JUSTICE

- 2.1 Open justice is a fundamental common law principle (*Scott v Scott [1913]*). It requires:
- Proceedings to be held in public; and
 - Proceedings to be publicly reportable, including identification of parties and witnesses.
- 2.2 There is a strong public interest in the public being able to attend SDT hearings and in knowing the identity of solicitors subject to disciplinary proceedings. Transparency maintains confidence in due process.

- 2.3 The starting point is full openness. Any departure must be justified and strictly necessary (*Scott v Scott [1913]*; *Attorney General v Leveller Magazine Ltd [1979]*). The burden rests on the party seeking the derogation (*Re Guardian News and Media Ltd [2010]*).
- 2.4 In determining any application, the Tribunal applies the structured, fact specific balancing approach identified in *re S (A Child) [2004]*, giving appropriate weight to Articles 6, 8 and 10 ECHR alongside the common law principle of open justice as follows:

| Step | Key Question/Action |
|------|----------------------------------------------------------------------------------------------------------|
| 1 | Identify rights engaged – Article 6 (fair trial), Article 8 (privacy), Article 10 (expression) |
| 2 | Assess importance in context: Which rights carry greater weight here? |
| 3 | Evaluate harm: What risk arises if the right is not protected? |
| 4 | Consider open justice: Is transparency maintained? Restriction justified? |
| 5 | Check proportionality: Could a less restrictive measure suffice? |
| 6 | Make decision: Weigh rights; apply restriction only if necessary (e.g., Article 8 outweighs Article 10). |

3. DEROGATIONS FROM OPEN JUSTICE

- 3.1 Orders that derogate from open justice include:
- Anonymity orders;
 - Reporting restrictions; and
 - Private hearings.
- 3.2 Such orders will not be granted merely because:
- A party requests it;
 - Parties agree; or
 - A party may be embarrassed or concerned about reputational damage.
(*Re Guardian News [2010]*; *Spector v Law Society [2016]* ; *Lu v Solicitors Regulation Authority [2022]*).
- 3.3 Derogation orders are exceptional and will only be made where the application meets the high threshold test of ‘strict necessity’. They must be supported by clear and cogent evidence demonstrating a real risk of serious harm (*Re Guardian News [2010]*; *In re Trinity Mirror plc [2008]*) .
- 3.4 Before making an order, the Tribunal will consider whether a less restrictive measure would suffice.

3.5 Applications Based on Risk of Self-Harm

- 3.5 An assertion that publication or identification may lead to self-harm or suicide is not, of itself, sufficient to justify a derogation from open justice. Article 2 ECHR does not require the Tribunal to refrain from exercising its regulatory function on the basis of such assertions alone (*Haas v Switzerland (2011)*; *R (AM (Belarus)) v SSHD [2024]*)
- 3.6 Any such application must be supported by independent and cogent evidence demonstrating a real and immediate risk to life arising specifically from publication or identification.
- 3.7 The Tribunal will consider whether the identified risk can be addressed by other measures, rather than restricting open justice.
- 3.8 Absent sufficient evidence meeting this threshold, the public interest in open justice will prevail, particularly where the individual is a regulated professional (*Spector; Lu*).

4. HEARINGS IN PRIVATE

- 4.1 Hearings will be held in private only where strictly necessary.
- 4.2 The test is whether, by nothing short of the exclusion of the public, justice can be done (*Scott v Scott*).
- 4.3 Even where part of a hearing is conducted in private, the Tribunal's final decision will ordinarily be delivered in public (Rule 35(8) SDPR 2019).
- 4.4 Examples of less restrictive alternatives:
- Holding only part of a hearing in private to consider sensitive evidence, returning to public hearing for other matters.
 - Making a limited anonymity order.
- 4.5 Applications for private hearings must be made in writing, supported by evidence, and served on all parties, unless there is a demonstrated reason to depart from this course.
- 4.6 The SDT may direct a private hearing on its own initiative if it considers it necessary and in the interests of justice (Rule 35(5)).

5. ANONYMITY ORDERS

- 5.1 The Tribunal may make an anonymity order under Rule 35(9) SDPR 2019 to prevent identification of any person where appropriate.

- 5.2 Anonymity orders are exceptional and require compelling evidence to outweigh the public interest in open justice.
- 5.3 Embarrassment, reputational concerns, or preference not to be named are insufficient (*Spector; Lu*).
- 5.4 Anonymity may be necessary to protect clients where evidence involves LPP or confidential communications.
- 5.5 Any anonymity order will be reviewed at the conclusion of proceedings to ensure it remains necessary and proportionate (*Venables & Thompson v News Group Newspapers Ltd [2001]*).

6. NON-PUBLICATION OF JUDGMENTS

- 6.1 Under Rule 35(10) SDPR 2019, the Tribunal may restrict disclosure or publication where:
- Disclosure would be likely to cause serious harm, and
 - It is in the interests of justice.
- 6.2 Such directions are high-threshold, exceptional measures, and require clear justification.
- 6.3 Non-publication does not displace the statutory requirement under section 48(3) Solicitors Act 1974 that orders and findings be filed and available for inspection.
- 6.4 Publication of regulatory decisions naming respondents pursues legitimate aims and reflects the balance between privacy and the public interest in transparency (*In re S (A Child); Re Guardian News*). There is a strong public interest in a respondent in regulatory proceedings being named.
- 6.5 Where allegations are proved, a respondent cannot ordinarily rely on Article 8 to avoid being named (*Spector; Lu; SRA v Williams [2023]*).
- 6.6 Different considerations may arise in relation to third parties. The Tribunal will consider whether identification would cause disproportionate interference with private or family life (*In re S (A Child); RXG v Ministry of Justice [2019]*).

7. THE CAUSE LIST (RULE 34 SDPR 2019)

- 7.1 Rule 34 permits anonymisation of the cause list in appropriate cases. The cause list is a public document identifying matters listed before the Tribunal.
- 7.2 Anonymisation of the cause list is a preliminary measure. It does not determine whether:

- A hearing will be private;
- A party or witness will be anonymised at the hearing;
- A judgment will be anonymised or withheld from publication.

7.3 Its purpose is to prevent exceptional hardship or exceptional prejudice pending determination of any substantive application.

7.4 The Tribunal will only anonymise the cause list where there is compelling evidence to do so at the listing stage

7.5 Cause list anonymisation is temporary and must be separately justified if further derogation is sought under Rule 35.

8. PROCEDURE

8.1 Applications must be made as early as possible, in writing, and supported by evidence.

8.2 Applications will be determined by a Panel. This may be on the papers, or if it is necessary, upon hearing oral submissions/evidence.

8.3 Any order must give reasons demonstrating:

- Consideration of the open justice principle;
- The balancing of relevant statutory and Convention rights;
- Why the order is necessary and proportionate.

Example wording for endorsement:

“Upon considering an application made by the Respondent, the Tribunal has imposed an [Anonymity Order / Privacy Order] in respect of the Judgment. In doing so the Tribunal took account of the open justice principle and the statutory right of inspection under section 48 of the Solicitors Act 1974 and carefully balanced this against the Respondent’s rights under [e.g., Article 2 of the ECHR].”

8.4 In determining any application, the Panel will consider:

- Is there clear and cogent evidence of a real risk of serious harm?
- Is the order strictly necessary?
- Would a less restrictive measure suffice?
- Does the order properly balance open justice with statutory and Convention rights?
- Is LPP or client confidentiality engaged.

9. REVIEW OF ORDERS

- 9.1 At the conclusion of proceedings, the SDT must review any anonymity or non-publication order, particularly those favouring a respondent, to confirm they remain necessary and proportionate.

10. GLOSSARY OF TERMS

- Private hearing: a hearing from which the public is excluded under Rule 35(2).
- Anonymity order: a direction under Rule 35(9) preventing identification of a person.
- Non-publication order: a direction under Rule 35(10) restricting disclosure/publication of documents or judgments.
- Cause list anonymisation: temporary removal of identifying information from the Tribunal's published cause list under Rule 34. The Cause List is a public document setting out a formal schedule or list maintained by the Tribunal that details the cases or matters that are to be heard on a particular day or during a specific period.
- Iniquity principle: Legal Professional Privilege protects confidential lawyer–client communications, but it cannot be used to hide or further fraud, crime, or dishonest conduct. In short, privilege does not cover communications tainted by wrongdoing.

APPENDIX A – LEGAL FRAMEWORK

SDPR 2019

- Rule 4: Overriding objective – deal with cases justly and proportionately.
- Rule 34: Power to anonymise the Cause List.
- Rule 35(1): Hearings generally public.
- Rule 35(2): Private hearings in cases of exceptional hardship or prejudice.
- Rule 35(5): Tribunal may direct private hearing without application.
- Rule 35(8): Final decision normally public.
- Rule 35(9): Anonymity orders – prevent identification of individuals.
- Rule 35(10): Restrict disclosure/publication where serious harm likely and in interests of justice.

ECHR

- Article 2: Positive obligation to protect life.
- Article 6: Right to fair and public hearing; exceptions for morals, public order, private life, or administration of justice.
- Article 8: Right to respect for private and family life; interference must be proportionate.
- Article 10: Right to freedom of expression and to receive information.

Statutory Bars on Identification

- Sexual Offences (Amendment) Act 1992
- Modern Slavery Act 2015, s.2
- Children Act 1989, s.97(2)
- Children and Young Persons Act 1933, s.49
- Female Genital Mutilation Act 2003, s.4A

Other Obligations

- Solicitors Act 1974, s.48 – filing orders and findings with SRA; public inspection.
- CPR guidance – CPR 5.4C, 32.13, 39.2 as benchmarks for good practice.

TABLE OF CASES

| | Reference |
|-----|--------------------------------------------------------------------------------------------------------------|
| 1. | <i>Scott v Scott</i> [1913] AC 417 |
| 2. | <i>In re Guardian News and Media Ltd</i> [2010] UKSC 1; [2010] 2 AC 697 |
| 3. | <i>Spector v Law Society</i> [2016] 4 WLR 16 |
| 4. | <i>L v Law Society</i> [2008] EWCA Civ 811 |
| 5. | <i>Lu v Solicitors Regulation Authority</i> [2022] EWHC 1729 (Admin) |
| 6. | <i>R v Chief Registrar of Friendly Societies, ex parte New Cross Building Society</i> [1984] Q.B. 227 |
| 7. | <i>Haas v Switzerland</i> , App. No. 31322/07 |
| 8. | <i>R (Tozhlukaya) v SSHD</i> [2006] EWCA Civ 379 |
| 9. | <i>GMC v Lamming</i> [2017] EWHC 3309 |
| 10. | <i>SRA v Williams</i> [2023] EWHC 2151 (Admin); <i>SRA v Sa'id</i> [2024] EWHC 1619 (Admin) |
| 11. | <i>In re Trinity Mirror plc (A intervening)</i> [2008] QB 770; <i>Spector v Law Society</i> [2016] 4 WLR 16 |
| 12. | <i>Attorney General v Leveller Magazine Ltd</i> [1979] AC 440 |
| 13. | <i>In re S (A Child) (Identification: Restrictions on Publication)</i> [2004] UKHL 47; [2005] 1 AC 593 |
| 14. | <i>Venables & Thompson v News Group Newspapers Ltd</i> [2001] Fam 430 |
| 15. | <i>RXG v Ministry of Justice</i> [2019] EWHC 2026 (QB); <i>GMC v X</i> [2019] EWHC 493 (Admin) |
| 16. | <i>R (Leger) v Secretary of State for Education</i> [2025] EWHC 665 (Admin) |
| 17. | <i>Gillberg v Sweden</i> (2012) 34 BHRC 247; <i>R (AM (Belarus) v SSHD</i> [2024] UKSC 13; [2024] 2 WLR 1075 |