

Sent by email to responses@solicitorsdt.com



10 January 2020

Dear Sir/Madam

Consultation: Amendments to the SDT's policy on the provision of documents to non-parties

The Legal Services Consumer Panel (the Panel) welcomes the opportunity to respond to the Solicitors Disciplinary Tribunal's (SDT) consultation on amendments to the policy on the provision of documents to non-parties. Please find our views on the consultation questions below.

Question 1: Do you consider that the revised policy is fit for purpose?

The Panel is supportive of the SDT's plans to extend access of non-parties to documents filed within the Tribunal's proceedings, from written submissions and arguments to documents placed before the courts and referred to during hearings. We also endorse the general principles¹ outlined by the SDT's guide which accompanies this policy.

We have previously said that documents and information relating to the proceedings should be made available by the SDT.² This is crucial for transparency, consumer protection and public confidence in the Tribunal's work. However, we did accept that there may be limited circumstances where information and/or identities of individuals cannot be readily shared, until the end of a matter, or indeed wherever whistleblowers are involved. However, the SDT should clearly define these scenarios and use exemptions in these cases, which should be clearly communicated to non-party applicants.

We recognise the SDT retains the power to disclose the documents after the proceedings are completed. However, if no prohibitive circumstances are applicable we endorse the point made by Lady Hale that it is "highly desirable that the application is made during the trial when the material is still readily available, the parties are before the court and the trial judge in is day to day control of the court process."

¹ The common law principle of open justice and the principles outlined by the Supreme Court in *Cape Intermediate Ltd v Dring* [2019] UKSC38, the importance of transparency, but also the interests of the parties involved in the disciplinary process, if they require any protection.

² LSCP, Consultation on making of procedural rules in relation to applications to the Tribunal, October 2018.

Question 2. Do you have any detailed comments on the drafting of the revised policy?

We believe that the application form for non-party disclosure of documents should ask the applicants if they have any disability or communication needs (including language), which might impact on how the Tribunal can ensure that its response is communicated in the appropriate style or format, matching the specific needs of the applicant. For example, it may not be useful if the documents or rejection of the application are sent in a written format in small font to a visually impaired person or one with learning disability that affects their reading.

The SDT requires application for disclosure by a non-party to be made in writing addressed to the Clerk to the Tribunal. The Panel would encourage the SDT to make available the option to submit electronic applications as well. The latter will allow for a flexible, streamlined and modern process to submit the application.

We would encourage the SDT to go even further by sending the requested documents or response to the application in an electronic format and to send a printed copy only on request. If possible, such electronic communication should be free of charge. If there are unavoidable costs associated with such communication, this should not exceed the marginal (additional) cost to the SDT of compiling and sending the information.

Finally, we believe it would be useful for the policy to include clear timeframes in which the SDT will respond to non-party applicants.

I hope you find these comments helpful. Please contact Lau Ciocan, Consumer Panel Associate, with any enquiries.

Yours sincerely,



Sarah Chambers

Chair

Legal Services Consumer Panel