



BIRMINGHAM LAW SOCIETY
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**Response to Solicitors Disciplinary Tribunal Consultation
on Amendments to the policy on the provision of
documents to non-parties**

January 2020

**RESPONSE OF BIRMINGHAM LAW SOCIETY CONSULTATION COMMITTEE TO
SDT CONSULTATION ON AMENDMENTS TO THE POLICY ON THE PROVISION
OF DOCUMENTS TO NON-PARTIES**

(1) Do you consider that the revised policy is fit for purpose?

Yes

(2) If the answer to question (1) is no, please explain why

Not applicable

(3) Do you have any detailed comments on the drafting of the revised policy?

The original policy dated 10 July 2017 at paragraph 6 refers specifically to the fees charged for copy documents - based upon the Civil Proceedings Fees Order 2008. Paragraph 7 provides for the fees to be paid before the documents are disclosed and this requirement is also made clear in the application form. Paragraph 8 provides for reduction or remission of fees on grounds of financial means.

As far as we can determine, the draft revised policy does not refer to specific fees to be charged by the Tribunal before copy documents are provided to non-parties. It is not clear why the fee arrangement for copy documents has been omitted from the draft revised policy. We would support a fee being charged for the provision of copy documents.

We would also support the imposition of an application fee for non-party disclosure in the same way that a fee is charged for an application in the civil courts. For example, the fee is £255 for a general application in the High Court. In the majority of these applications, a non-party will have an interest usually a financial interest in obtaining copies of the documents. The non-party could be a former client engaged in a professional negligence claim or a complaint to the Legal Ombudsman or a challenge to a bill of costs or it could be a journalist requiring information for a front-page scoop. It would be rare that such an application would be made for entirely altruistic reasons. As such an application requires considerable administrative work on the part of the Tribunal and as the Tribunal is funded ultimately by the profession, we would support an application fee being

charged in addition to a fee for copy documents and for this fee to be paid before disclosure.

Further, the original policy (bottom of page 3) states that, as a starting point, no disclosure is to be made prior to the expiry of the time limit for appeal against the Tribunal's substantive determination and that the non-party would need to demonstrate a compelling case before documents were disclosed before this date. This guideline is not specifically mentioned in the draft revised policy. We consider that, in order to save time and costs, this explanatory note should be made clear in the revised policy document particularly for the benefit of unrepresented parties so as to avoid premature applications.

Under "Preliminary Points" in the draft revised policy, there is a reminder that any party to the proceedings can apply for an order that no disclosure of specified documents should be made in the event of a non-party disclosure request. It may be appropriate for this procedure to be highlighted within the bundle of documents provided to respondents when proceedings are first instigated. The non-party policy document when finalised could also be provided to respondents as an appendix. The SRA would of course be aware of this procedure but respondents many of whom are unrepresented would not necessarily be acquainted with this provision. Disclosure to a non-party would be more likely to prejudice a respondent than the SRA hence this suggestion.

(4) Do you consider that the revised policy could result in any adverse impacts for anyone with protected characteristics under the Equality Act 2010?

No

6 January 2020



**Linden Thomas, President
Birmingham Law Society**