

Annex 3

BTAS Policy on access to tribunal documents by non-parties

Introduction

1. This policy sets out BTAS' approach to providing access to non-parties (that is, any person who is not the BSB or the respondent barrister) to documents that relate to Disciplinary Tribunal proceedings.
2. The policy provides for the automatic publication of certain categories of documents served or filed during proceedings (see 'Publication of Public Domain Documents' below) and the handling of requests made by non-parties, including members of the public and the press, for other documents (see 'Applications for disclosure of other documents' below).
3. This Policy is separate and additional to BTAS' Publication Policy and the publication requirements set out in the BSB Disciplinary Tribunals Regulations 2027. In accordance with those regulations and BTAS' Publication Policy, certain other documents relating to Disciplinary Tribunal proceedings will be routinely published, including the charge sheet and the report of finding and sanction, but are not covered by this Policy.

Principles of Open Justice

4. Open justice is a common law principle that requires justice to be administered in public. It involves the following key elements:
 - Proceedings must be held in public;
 - Evidence must be communicated publicly; and
 - Fair, accurate and contemporaneous media reporting of proceedings should not be restricted, unless strictly necessary.
5. BTAS aims to act within the spirit of open justice, particularly having regard to the regulatory objectives in section 1 of the Legal Services Act 2007 (including protecting and promoting the public interest and improving access to justice), as well as the need for regulatory activities to be transparent under s28 Legal Services Act 2007.
6. Access to documents is a key part of open justice as it ensures that the information communicated to the Tribunal by the parties is available to the public. Providing access enables members of the public and the press, who are not party to the proceedings, to understand the issues in a case and the conclusions reached. In many cases, this understanding cannot be properly or reliably

achieved without access to some of the written material placed before the Tribunal. This enhances public confidence and understanding of the justice system, which supports better quality of decision-making and the proper administration of justice. It also builds trust with the profession as to the conduct and outcome of cases.

7. However, the principle of open justice is not absolute. Limitations may be required where unrestricted transparency would risk undermining the interests of justice or cause harm or prejudice to individuals or disrupt efficient conduct of a case. Such limitations may arise, for example, where it is necessary to protect vulnerable individuals, preserve confidentiality or safeguard other legitimate interests. However, personal or reputational embarrassment of the parties is not a reason to justify any limitation.

Open justice and BTAS disciplinary tribunal proceedings

8. While this policy establishes a framework for the application of the principle of open justice, the Disciplinary Tribunal retains the discretion to determine how that principle should be applied, having regard to the circumstances of any particular case.
9. In applying this policy, the Disciplinary Tribunal will routinely consider the interests of the public and the press, including the importance of freedom of expression. This includes, for example, decisions concerning anonymity or applications for a hearing to be in private. In all cases, the Tribunal will have regard to the rights of individuals, including the individual right to privacy under Article 8 of the European Convention on Human Rights and under data protection. Any departure from the principle of open justice must be justified and proportionate in the circumstances.
10. The Disciplinary Tribunal will also consider what steps, if any, are necessary to enable the public and the press to follow, understand and report proceedings effectively. This consideration applies irrespective of whether a member of the public or the press is observing the case, either in person or remotely, or at all. Remote observers must be able to access the same documents that would be available if attending the hearing in-person.
11. Certain documents will therefore be routinely published and made available to non-parties (see '*Publication of Public Domain Documents*' below). Non-parties may request access to other documents, which are not subject to automatic publication, in accordance with this Policy. Before making a request, non-parties should consider whether the document is already publicly available through other means.

Publication of Public Domain Documents

12. In addition to the information and documents published in accordance with the BTAS Publication Policy, during the course of Disciplinary Tribunal proceedings, certain other categories of documents will normally be routinely published in accordance with the timing and method set out below, subject to any objections and unless the Disciplinary Tribunal decides otherwise. For the purposes of this Policy, the documents referred to in paragraph 16 below are Public Domain Documents and their publication will, unless the Disciplinary Tribunal decides otherwise, occur without the need for a non-party (including the press) to make a request.
13. The purpose of publishing these documents is to ensure that the public and the press are able to follow proceedings as they take place and understand the nature of the case and the key issues of fact and law.
14. The expectation of routine publication only applies to Public Domain Documents (specified at paragraph 16 below) and is subject to the limitations set out in this policy. It applies to all substantive hearings which take place in public before the Disciplinary Tribunal after 1 February 2027.

Categories of Public Domain Documents to be published

15. The following documents are Public Domain Documents and will normally be published in accordance with the timing, method and format specified below.

Public Domain Document	Timing of publication	Method of publication
Skeleton arguments and any written submissions made in substantive hearings held in public	At the commencement of the substantive hearing in public or during the hearing day at which the skeleton argument or written submission, is relied upon and to be removed seven days after the end of the substantive hearing.	On the BTAS website. .

16. If a Public Domain Document refers to another document, that other document will not be published unless it also falls within the categories of Public Domain Documents specified above.
17. The classes of Public Domain Documents that are subject to this publication process may be reviewed and amended from time to time.

Non-party access to hard copies

18. Non-parties attending the disciplinary hearing in person may want hard copies of the skeleton arguments and written submissions to facilitate immediate access to published documents. Parties should therefore consider bringing additional copies to the hearing.

Exceptions to the publication of Public Domain Documents

19. For the avoidance of doubt, the publication of Public Domain Documents does not apply where a hearing is conducted in private.

20. The publication of Public Domain Documents may also be restricted, for example where disclosure would reveal:

- confidential information;
- legally privileged information;
- sensitive personal information;
- other private and materially prejudicial information; or
- the identity of persons otherwise protected by law, including by operation of section 1 of the [Sexual Offences \(Amendment\) Act 1992](#), the [Children and Young Persons Act 1933](#) and the [Youth Justice and Criminal Evidence Act 1999](#).

21. Where the Disciplinary Tribunal has ordered that the publication of Public Domain Documents should be restricted, or the identity of a person should not be disclosed, or anonymisation is otherwise required under the Regulations or by law, any document released under this Policy must comply with such orders or restrictions.

22. The publication of Public Domain Documents under this Policy also does not override any anonymity orders or impact the Disciplinary Tribunal's power to make such orders in a case.

23. In appropriate cases, such concerns may be addressed through redaction (see '[Redacted Publication](#)' below).

24. In addition to restrictions on publication, the Disciplinary Tribunal may make any other order in relation to a document that it would otherwise be able to make and any obligation, right or permission in this Policy is subject to any such order.

Objections to publication

25. Any party may object to the publication of a Public Domain Document. An objection should be made prior to the commencement of the hearing or as soon as reasonably practicable thereafter.

26. Although a formal application is not required, an objection should normally be made in writing to BTAS and on notice to the other parties. Objections made by other methods may also be considered, as appropriate and in accordance with the Equality Act 2010 and BTAS' Reasonable Adjustments Policy.

27. Written objections should refer to the following:

- the document(s) to which the objection relates;
- the reasons why publication should not occur (in part or full) or should be delayed;
- any evidence in support; and
- any harm that would be caused by publication.

28. The party making the objection must bear in mind (and, where necessary, address) the tests set out in the authorities on derogations from open justice.

Determination of objections to the publication of documents

29. Any objection to the publication of Public Domain Documents will be determined by the Chair of the Disciplinary Tribunal, or a Directions Judge, as appropriate, which may be on the papers or at a hearing. For ease, we will refer to 'the Chair' as the decision-maker in this Policy but these decisions can also be taken by a Directions Judge or a Disciplinary Tribunal panel, where the Chair is not available or as appropriate.

30. The presumption is that Public Domain Documents should be published, to provide public access.

31. When determining objections to the publication of Public Domain Documents, the Chair must consider any submissions from the parties and balance the open justice principle against the potential risk of harm or prejudice to individuals or the administration of justice, based on the circumstances of the case.

32. In determining an objection, the Chair may:

- a. Direct that the Public Domain Document(s) should not be published;
- b. Permit publication of the Public Domain Document(s) subject to conditions, including redaction or anonymisation or delay;

- c. Reject the objection so that publication of the Public Domain Documents takes place; or
- d. Make such other orders as they see fit.

33. Any decision not to publish a Public Domain Document will be noted on the BTAS website.

Redacted publication

34. When determining objections, the Chair may decide that any risk of harm or prejudice may be addressed by appropriate redactions.

35. However, redactions in themselves are likely to amount to a derogation from the principle of open justice. Therefore, only redactions that are strictly necessary should be applied to the documents.

36. Examples of redactions may include removing references to:

- matters relating to Legal Professional Privilege;
- individual's personal or identifiable details, such as home addresses;
- information relating to minors;
- commercially sensitive and irrelevant financial matters;
- health information;
- information identifying bystanders or third parties;
- as required by law (e.g. under section 1 of the [Sexual Offences \(Amendment\) Act 1992](#) or by Court Order; and
- other confidential matters which do not touch directly upon the substantive issues to be decided.

37. Redactions should not typically be permitted simply because they are sought or agreed by the parties, or to avoid reputational risk or embarrassment, although consideration may be given to the impact that reputation may have on an individual's wellbeing and/or circumstances if the unredacted material was to be published.

38. Where redactions are necessary, the parties will be expected to propose and agree appropriate redactions. The Chair will then confirm or vary the redactions to ensure they are necessary and proportionate.

Deferral of publication

39. In certain circumstances, the Chair may defer publication of a Public Domain Document that would otherwise be published in accordance with this Policy.

40. When deciding whether publication should be deferred, the Chair may have regard to the following factors:
- whether it is appropriate to defer while an objection is under consideration;
 - the potential risk of harm or prejudice caused to individuals or the proceedings if immediate publication was to occur.
41. Where publication is deferred, the Chair will determine when the Public Domain Document should be published and for how long. Publication of Public Domain Documents should not be deferred to a later stage on the sole basis that it would be more convenient for the parties or the Tribunal.

Applications for disclosure of other documents

42. Consistent with open justice, BTAS aims to make as much information about its public hearings publicly available as possible. Open justice and disclosure of case documents is a means of ensuring the best quality of justice and securing the confidence of the public.
43. Case documents that do not fall within the scope of the Public Domain Documents set out in paragraph 16 above may still be disclosed to non-parties upon request. However, the disclosure of such documents to non-parties is not automatic and will be determined on a case-by-case basis.

Requests by non-parties

44. A non-party seeking access to other case documents may make a written request to BTAS.
45. While no formal application form is required, the written request should include, where possible:
- details of the case that the request relates to;
 - the document or category of documents sought;
 - details of the requestor and proof of identity and, if a member of the press, proof that they are a member of the press (e.g. UK press card);
 - the purpose and reasons for the request; and
 - how the request advances the principle of open justice.
46. Applications made by other methods may also be considered, as appropriate and in accordance with the Equality Act 2010 and BTAS' Reasonable Adjustments Policy.

Determination of requests

47. Requests for disclosure under this section will be considered by the Chair (or a Directions Judge as per paragraph 29). The request may be determined on the papers or following a hearing.
48. Before reaching a decision, the Chair will invite and consider the views of the parties in relation to the request.
49. The Chair may:
- a. Grant the request;
 - b. Grant the request in part or subject to conditions, including redaction or anonymisation or delay;
 - c. Refuse the request;
 - d. Make such other orders as they see fit.
50. When determining a request for disclosure made by non-parties, the Chair will need to exercise their discretion based on the facts of the case and an assessment of proportionality. Each request should be considered on its merits, balancing the principle of open justice, on the one hand, against any risk of harm or prejudice that may arise from disclosure.
51. The decision-maker should take into account the following:
- the nature and reason for the request;
 - the public interest in disclosure;
 - the risk of harm or prejudice that disclosure may cause to the administration of justice or the legitimate interests of individuals; and
 - any other relevant factor.
52. In furtherance of the open justice principle, where documents have been placed in the public domain as before the Tribunal and referred to during a public hearing, the presumption should be that they are available for public access.
53. There is an additional presumption in favour of granting media requests for disclosure of material referenced in public proceedings, unless there is a compelling reason against it. This presumption applies where the applicant is a bona fide journalist (e.g. by producing a UK Press Card) and the request is made for proper journalistic purposes.
54. However, the presumption in favour of granting media access to documents does not mean that disclosure should take place by default. Requests for disclosure made by the press will need to be considered in each case and may be refused where there are compelling and countervailing reasons.

55. Any determination made by the Chair in relation to disclosure to non-parties will be published on the BTAS website.

56. Where a request is refused, reasons will be provided. It should be noted that reasons will only be provided to the extent that they do not undermine the refusal to disclose and reasons may be redacted, as necessary.

Method of disclosure for other documents

57. While the Chair will have the overall responsibility for determining whether documents should be disclosed, BTAS will be responsible for providing any documents which are approved for disclosure directly to the requesting non-party. Unlike Public Domain Documents, documents disclosed following a request by a non-party will not be published on the BTAS website.

58. Where redactions are required, the parties should agree and make the redactions, in accordance with any directions given by the Chair. Once the Chair is satisfied with the redactions, BTAS will provide the redacted documents to the requesting non-party.

Limitations and restrictions on non-party access to documents

59. As above, requests made by non-parties for access to documents may be subject to the same limitations and restrictions that apply to the publication of Public Domain Documents. Please refer to the sections on 'Redacted Publication' and 'Deferral of publication' above for further detail on how these limitations may operate.

Preliminary, directions or interlocutory hearings

60. This part of the policy also applies to preliminary, directions and interlocutory hearings held in public, provided that the hearing determines substantive or otherwise determinative issues in the case. Requests will generally be determined by the Directions Judge with conduct of the hearing, unless unavailable.

3. Process and Costs of accessing documents

Appeal

61. There is no right of appeal by a party or non-party against any decision made under this policy.

Fees

62. BTAS aims to minimise barriers to access and promote public engagement so access to documents is generally free of charge when shared electronically.

63. For physical copies of documents, BTAS may charge a small fee to cover copying and printing costs.

Fee Waivers

64. Physical copies of documents may be supplied free of charge to individuals who cannot access them electronically or afford to pay the copying and printing fees.

65. Requests for fee waivers should be submitted to BTAS when making a request for a document under this policy. Where possible, any fee waiver request should include information and evidence to address financial hardship and why electronic access is not practicable.

Review of the Policy

66. The President may review this policy from time to time, in consultation with BSB and others as appropriate, to ensure that it continues to operate effectively and appropriately balances the principles of open justice, transparency, accountability and fairness.