# OPEN JUSTICE & ANONYMITY IN THE SOLICITORS DISCIPLINARY TRIBUNAL


**"Justice must not only be done but be seen to be done" is the foundation stone upon which the principle of open justice is based. Allowing the public to scrutinise and understand the workings of the law is said to build trust and confidence in the justice system. The Ministry of Justice launched a Call For Evidence on Open Justice in May 2023 to which the Birmingham Law Society responded in full, the results of which should prove interesting reading. The President of the Family Division has recently announced that journalists will be able to report proceedings in sixteen more family courts across England, a pilot having already taken place in three family courts.**

**Is nothing private? Asks Jayne Willetts Solicitor Advocate of Jayne Willetts & Co Solicitors Ltd.**

The courts do ultimately have an inherent jurisdiction to decide how the principle of open justice should be applied. It is not an absolute right so when there is a specific legitimate justification i.e. to protect vulnerable parties a case may be held in private. The Solicitors Disciplinary Tribunal ("SDT") with its Panel of experienced practising solicitors and lay members has always been alert to the need for private hearings and anonymity orders in certain cases - whether for clients or for those appearing as witnesses or participating as respondents.

The Rules[1] provide that every hearing must take place in public and this includes Case Management Hearings as well as substantive hearings. Any person affected can apply for the hearing to be conducted in private on the grounds of exceptional hardship or exceptional prejudice. The grounds most often relied upon are that the solicitor appearing before the Tribunal is suffering from ill health such as mental health problems and the publicity of the hearing would exacerbate his or her condition. However, even if the hearing takes place in private, the judgment is still announced in a public session. Anyone planning to make an application for an anonymity order is well advised to apply at the earliest possible opportunity. Once the respondent's name has been published on the listing section of the SDT website and a Case Management Hearing has taken place in public, the SDT is less likely to consider that the anonymity of an individual is necessary. By then the respondent's details are out in the public domain so it would be a matter of shutting the door after the horse has bolted – so to speak.

The SDT can at any time, of its own volition, order that the hearing or part of it should be held in private if it is in the interests of justice to do so. With many solicitors being unrepresented before the Tribunal due to lack of resources for legal costs, the Tribunal is always vigilant for any potential difficulties arising during the hearing.

The SRA's focus on sexual misconduct cases provides an example of cases which are ideal candidates for anonymity orders. The victims would be very unlikely to give evidence in the Tribunal if their identities were not anonymised. The recent case of Oliver Bretherton[2] is a case in point where the three female witnesses were referred to as Person A; Person B & Person C. Factors such as the age of the witnesses and the sensitivity of the very embarrassing evidence are always taken into account.

However, in 2022, the SDT was given a "dressing down" by the Administrative Court in the case of Linda Lu[3] . Ms Lu was acquitted of all the allegations that she faced before the SDT. Her challenge and therefore her appeal to the Administrative Court was against the SDT's decision to identify her whilst anonymising others mentioned in the SDT judgment. The Judge criticised the SDT for agreeing to sit in private and to anonymise the two complainant firms of solicitors as well as the individual employees from those firms, as well as a barrister and an expert.

The Judge said that: "A common misconception is that if the identity of a person in legal proceedings is not directly relevant, there is no public interest in that person's name being known. The justice system thrives on fearless naming of people, whether bit part players or a protagonist.
Open reporting is discouraged by what George Orwell once called a "plague of initials" [4] . Clarity and a sense of purpose are lost. Reading or writing reports about nameless people is tedious."
He went on to say that: "In my judgment, the sweeping anonymity orders in respect of the third parties ought not to have been made.
Courts and tribunals should not be squeamish about naming innocent people caught up in alleged wrongdoing of others. It is part of the price of open justice and there is no presumption that their privacy is more important than open justice."

The Linda Lu appeal was heard in the Administrative Court in May 2022 but Mr Justice Kerr made no mention of clients and whether their anonymity should be preserved. In July 2022, the SDT considered an application by the SRA for anonymity orders for the clients of Edward Williams[5] . The allegations related to misappropriation of client money and other breaches of the Accounts Rules. The evidence emanated from the client files and ledgers for various property clients.

The SRA has always referred to clients by their initials in SDT proceedings in order to protect their privacy. Clients expect their affairs to be kept confidential so unless the SRA approaches each client and asks for permission to name them publicly the use of initials is the preferred option. However, the SDT, conscious of the Linda Lu judgment and reference to the "plague of initials", decided to refuse the SRA's application for anonymisation of the individuals, companies and properties caught up in the allegations made against Mr Williams. Those clients would then have been referred to by name in the SDT's judgment available to the public on its website.

The SRA appealed the SDT's decision not to anonymise the clients. Mr Justice Julian Knowles[6] held that the Linda Lu judgment was not a decision about legal professional privilege ("LPP") and in fact LPP had not been mentioned once. The Judge said that the SDT's "main error" was that a claim for LPP "does not involve the balancing of competing interests" and "either applies to a communication, or it does not". In allowing the SRA's appeal to anonymise the clients, the Judge said that "LPP was absolute unless it was waived by the client".

The principle of open justice has always applied but with the internet and social media the risks of harassment and plain breach of privacy are so much higher. A general awareness of these issues needs to be fostered by all those who become involved in disciplinary investigations in whatever capacity in order to protect the interests of clients, witnesses, and employees.

1. Rule 35 The Solicitors (Disciplinary Proceedings ) Rules 2019
2. Solicitors Regulation Authority Limited v Oliver Bretherton SDT 12355-2022
3. Lu v Solicitors Regulation Authority [2022] EWHC 1729 (Admin)
4. Homage to Catalonia, Appendix 1, page 1 (in the Penguin Orwell Centenary edition; formerly chapter V).
5. Solicitors Regulation Authority Ltd v Edward James Williams SDT 12360-2022
6. Solicitors Regulation Authority v Edward James Williams [2023] EWHC 2151 (Admin)