

CHAMBER PRESIDENT'S GUIDANCE NOTE

THIRD-PARTY APPLICATIONS FOR COPY DOCUMENTS FROM THE TRIBUNAL'S FILE

made on or after 30 July 2019

1. This Guidance Note is intended to assist as to the appropriate procedure when a person who is not a party to proceedings in the General Regulatory Chamber (a "third party") wishes to obtain a copy of documents from the Tribunal's file regarding an on-going or recently completed¹ appeal.
2. The First-tier Tribunal (General Regulatory Chamber) is bound by the judgment of the Supreme Court in *Cape Intermediate Holdings Limited v Dring* [2019] UKSC 38².
3. However, it is important to note that Tribunals' procedural rules are different from the Civil Procedure Rules. The General Regulatory Chamber seeks to adopt a lighter-touch procedure than that of CPR 5.4 C and CPR 32.13, whilst seeking to observe the important principle of open justice. The Chamber President is also concerned to prevent the disproportionate use of the Tribunal's own resources on dealing with matters which could be resolved without the need to involve the Tribunal.
4. The General Regulatory Chamber's Rules include an overriding objective at rule 2³. The Upper Tribunal has described the overriding objective as:

"...an express obligation upon the parties to assist in the furtherance of the objective of dealing with cases fairly and justly, which includes the avoidance of unnecessary applications and unnecessary delay. That requires parties to cooperate and liaise with each other concerning procedural matters, with a view to agreeing a procedural course promptly where they are able to do so, before making any application to the tribunal. This is particularly to be expected where parties have legal representation. Parties should endeavour to agree disclosure issues without the need for the tribunal to make a ruling. However, even where a direction from the tribunal may be requiredit will assist the tribunal to further the overriding objective if the parties can identify any directions they are able to agree, subject to the approval of the tribunal. Where they are unable to agree every aspect, this liaison will at least have the advantage of crystallising their positions, and more clearly identifying the issue(s) upon which the tribunal will have to rule". 4

¹ Tribunal files are usually destroyed six months after the end of proceedings.

² <https://www.bailii.org/uk/cases/UKSC/2019/38.html>

³ <https://www.gov.uk/government/publications/general-regulatory-chamber-tribunal-procedure-rules>

⁴ [Dorset Healthcare NHS Foundation Trust v M H \[2009\] UKUT 4 \(AAC\)](#)

5. In keeping with this approach, the Chamber President expects third parties who are requesting copies of documents initially to approach the party which created those documents directly, with a request for copies of specified documents which they have submitted to the Tribunal. If contact cannot be made, the Tribunal may agree to pass on a request.
6. Accordingly, any application by a third party to the Tribunal for it to supply copies of documents should be accompanied by a statement from the requester that (a) the relevant party has already been approached directly and (b) that the relevant party has refused to provide a copy of the requested document.
7. It will be a matter for the relevant party to decide whether they agree to provide any documents at all to third parties and/or if they will provide redacted copies only.
8. Following the approach of the Court of Appeal at paragraphs [112] and [113] of its earlier judgment in *Cape Intermediate*⁵, a party would not normally be expected to provide a third party with copies of the entire hearing bundle or exhibits, but it would normally be expected to supply copies of : (i) witness statements of witnesses, including experts, whose evidence stands as evidence in chief in the Tribunal hearing; (ii) Documents which have been read out in a public hearing; (iii) Skeleton arguments/written submissions relied on by the Tribunal in reaching its Decision and (iv) any other documents which it is necessary for a non-party to read in order to meet the principle of open justice (for example where it is not possible for a reasonable observer to understand the trial evidence, argument or issues without inspection of the document or documents in question.). The Supreme Court has mentioned the possible availability of trial bundles at paragraph [48] but left that issue up to the Judge hearing the application to decide.
9. Reasonable copying charges can be made by the supplying party.
10. The third party may, if access to documents is refused, make an application to the Tribunal and request a formal determination of the dispute. There is no set form for making such an application, a letter or an e-mail will suffice, directed to presidentsoffice.grc@justice.gov.uk
11. As the Supreme Court makes clear at paragraph [47] of its judgment, the third party requester must explain the reason for their request and show why their request will advance the open justice principle.
12. On receipt of a third party application, the Tribunal will ask the party which created the document to make its objections to disclosure in the form of an application for a direction under rule 14 of the Tribunal's Rules. The procedure to be followed in considering such an application thereafter will be determined by the relevant Chamber's Procedure Rules, Composition Statement, and any delegation to staff. The Tribunal will issue any necessary case management directions to bring the matter to a determination. The matter

⁵ <https://www.bailii.org/ew/cases/EWCA/Civ/2018/1795.html>

may be decided on the papers if the parties and the Tribunal agree, but if not there will be an oral hearing.

13. The third party requester will be made a Respondent to the rule 14 application so that they are bound by the Tribunal's Rules and any directions, including the duty of co-operation under rule 2.
14. Whilst the General Regulatory Tribunal is generally a non costs-shifting jurisdiction, the party and the third party should be aware of the possibility of a costs determination under rule 10.
15. In deciding the rule 14 application, the Tribunal will conduct a fact-specific balancing exercise having regard to the following principles:
 - (1) The extent to which the open justice principle is engaged;
 - (2) Whether the documents are sought in the interests of open justice;
 - (3) Whether there is a legitimate interest in seeking copies of the documents and, if so, whether that is a public or private interest;
 - (4) The reasons for a party refusing copies of documents;
 - (5) Any reason for seeking to preserve confidentiality; and
 - (6) The harm, if any, which may be caused to the maintenance of an effective judicial process or the legitimate interests of other parties by granting access to the requested documents.
16. The Tribunal's decision on the rule 14 application would generally be published.

Judge Alison McKenna

Chamber President

30 July 2019