

At its Annual General Meeting in June 2023, the Tribunal set up a small group of Tribunal members to consider whether the Tribunal ought to have a judgement publication policy. The obligations on the Tribunal and the Law Society of Scotland which relate to publication of its decisions are contained in paragraphs 13, 14, 14A, 18, 18A of [Schedule 4 to the Solicitors \(Scotland\) Act 1980](#). The Tribunal had regard to the judgement publication policies of the Solicitors Disciplinary Tribunal for England and Wales, the Medical Practitioners' Tribunal Service, the General Medical Council, the General Dental Council, the General Teaching Council for Scotland and the Institute and Faculty of Actuaries.

The Tribunal website from 2004 had all decisions from 1994 onwards. The Tribunal website from 2014 had all decisions from 2005 and a list of decisions from 1994-2004. The current Tribunal website has all decisions from 2005. The Tribunal is therefore currently making available to the public all of its decisions which have been given publicity from the last eighteen years.

The Tribunal appreciates that there are benefits to making these decisions available to the public on its website. It creates a long record for practitioners, parties, clients and the public of the Tribunal's approach to conduct issues in the profession. The Tribunal does not produce many decisions a year so analogous cases can be quite old. The website provides a helpful research tool. Publishing the decisions on the website helps the Tribunal to be open and transparent about its decision-making. The information is freely available to the Council of Mortgage Lenders, potential employers and others without specific requests to the Tribunal Office.

On the other hand, the Tribunal is mindful of its responsibilities to protect individuals' data. "Right to be forgotten" requests are likely to increase as the cases on the Tribunal website get older. There are decisions about deceased solicitors on the website. Decisions involving details of criminal convictions which are now spent under the Rehabilitation of Offenders Act are easily accessible to anyone on the internet. Very old cases are less useful as guides as attitudes change to various types of misconduct. It could be disproportionate to have very old not guilty decisions, censures, and appeals etc. on the website.

On balance, the Tribunal is in favour of implementing a judgement publication policy. The policy would only apply to the length of time decisions are available on the Tribunal website. Requests for older decisions can still be made to the Tribunal or the Law Society in the usual way (as they are at present for pre-2005 decisions). As this is a significant change in approach for the Tribunal, it was in favour of holding a consultation on this issue.

The Tribunal seeks views on its proposal to implement a judgement publication policy. A draft publication policy is contained in the Annex.

Responses should be sent by email to enquiries@ssdt.org.uk with the subject line "Response to SSDT Judgement Publication Policy Consultation" before 5pm on 31 December 2023 or by post to The Scottish Solicitors' Discipline Tribunal, Unit 3.5 The Granary Business Centre, Coal Road, Cupar KY15 5YQ. Responses will be circulated among Tribunal members and may be used in any report following the consultation. Reports may be published on the Tribunal website. If you do not wish your response or any part of it to be included in the material published on the Tribunal website, please mark this clearly in your response.

The Solicitors (Scotland) Act 1980 requires that Tribunal decisions are published and are made available by the Law Society of Scotland for public inspection on request. As a service to the public and the profession, the Tribunal also publishes its decisions on its website after the conclusion of any appeal, or if there has not been any appeal, at the end of the appeal period.

Having regard to the principles of proportionality, accountability, consistency and transparency, the Tribunal has produced this judgement publication policy to explain how it will deal with publication of decisions on its website. This policy will come into operation at the same time as the Tribunal's new procedural rules (2024).

Publishing decisions is part of the Tribunal's commitment to open justice. It helps to ensure that the Tribunal's processes are transparent. The content of decisions informs and educates users of legal services, the public and the profession. Publication demonstrates that the Tribunal's powers are being exercised proportionately and consistently, and that the Tribunal is accountable for its decisions. Inclusion of older decisions on a public website may not always serve those aims. Continuing publicity may have a disproportionately negative effect on those named in the decision when compared to any benefit to the public or profession. This policy therefore provides a balanced approach to making decisions available via the Tribunal website.

Decisions which are not available on the Tribunal website, and where the Tribunal has ordered publicity, will continue to be made available on request to the Tribunal Office. Contact details for the Tribunal Office are available on the Tribunal website. This policy only relates to continuing publication of the decisions on the Tribunal website.

As is currently the case, decisions will not be published on the website until the expiry of the appeal period, or any appeal has concluded.

If a request is received, supported by relevant documentation, to remove a decision from the website on the basis that a practitioner is deceased, the Tribunal will grant the request unless it considers there to be a continuing public interest in the decision remaining on the website.

Decisions will be available on the Tribunal's website as follows:

Struck Off the Roll / Prohibit Restoration to the Roll

Decisions where the practitioner was struck off the roll, or where their registration was revoked, or where restoration of their name to the roll was prohibited, will remain on the website indefinitely. If the practitioner is restored to the roll, the decision containing the order for strike off and the decision restoring the practitioner to the roll will remain on the website for five years from publication of the decision to restore.

Incorporated Practices

Decisions where recognition of an incorporated practice has been revoked will remain on the website indefinitely.

Suspension

Decisions where a period of suspension was imposed will remain on the website for 10 years.

All Other Cases

Decisions involving all other cases will remain on the website for 5 years. This includes, but is not limited to: complaints where a sanction other than strike off/prohibition of restoration is employed, all appeals and applications cases, and decisions where the Respondent was found not guilty.