



FIRST TIER TRIBUNAL (SOCIAL ENTITLEMENT CHAMBER)

CRIMINAL INJURIES COMPENSATION TRIBUNAL

Chamber President's Guidance Note No 1 of 2025: Open Justice

Introduction

1. This note provides guidance on the approach to open justice in the First-tier Tribunal (Social Entitlement Chamber) (Criminal Injuries Compensation), referred to here as the CICT.
2. The general principle of open justice has been explained as follows:

“Open justice...requires, as a general rule, that the courts must conduct their business publicly unless this would result in injustice. Open justice is an important safeguard against judicial bias, unfairness, and incompetence, ensuring that judges are accountable in the performance of their judicial duties. It maintains public confidence in the impartial administration of justice by ensuring that judicial hearings are subject to public scrutiny, and that ‘Justice should not only be done, but should manifestly and undoubtedly be seen to be done’.”¹
3. Toulson LJ went on to note that there are exceptions to the principle of open justice which must be justified by some even more important principle, the most common example of which is where openness would put at risk the achievement of justice².

Powers of the CICT

4. Rule 30(1) of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 provides that, subject to the provisions of that rule, all hearings of the Social Entitlement Chamber (SEC) must be held in public. Until 27 December 2024 rule 30(2) had provided for a general exception to that rule for CICT hearings, where the default position was that the hearing must be held in private unless the appellant had consented to the hearing being held in public and the Tribunal considered that it was in the interests of justice for the hearing to be held in public.
5. Rule 30(2) has been deleted with effect from 27 December 2024. In consequence the position in CICT is the same as in all jurisdictions of the Social Entitlement Chamber: all hearings in CICT must be held in public unless the Tribunal directs otherwise pursuant to the subsequent paragraphs of the rule. Those paragraphs are:

¹ R (Guardian News & Media Ltd) v City of Westminster Magistrates' Court [2012] EWCA Civ 420, [2013] QB 618 (“Guardian News”) at [2], per Toulson LJ, quoting the Law Commission of New Zealand on Access to Court Records.

² Guardian News at [4], per Toulson LJ

“(3) The Tribunal may give a direction that a hearing, or part of it, is to be held in private.

(4) Where a hearing, or part of it, is to be held in private, the Tribunal may determine who is permitted to attend the hearing or part of it.

(5) The Tribunal may give a direction excluding from any hearing, or part of it—

(a) any person whose conduct the Tribunal considers is disrupting or is likely to disrupt the hearing;

(b) any person whose presence the Tribunal considers is likely to prevent another person from giving evidence or making submissions freely;

(c) any person who the Tribunal considers should be excluded in order to give effect to a direction under rule 14(2) (withholding information likely to cause harm); or

(d) any person where the purpose of the hearing would be defeated by the attendance of that person.

(6) The Tribunal may give a direction excluding a witness from a hearing until that witness gives evidence.”

6. Rule 14(1) of the Rules enables the tribunal to make an order prohibiting the disclosure or publication of specified documents or information relating to the proceedings or of any matter likely to lead members of the public to identify any person whom the Tribunal considers should not be identified. Amongst other things, this provision enables the tribunal to make anonymity orders.
7. Rule 14(2) enables the tribunal to give a direction prohibiting the disclosure of a document or information to a person if the tribunal is satisfied that such disclosure would be likely to cause serious that person or some other person serious harm and that it is proportionate to give such a direction having regard to the interests of justice.
8. Rule 5(1) of the Rules also enables the Tribunal, subject to the provisions of the Tribunals Court and Enforcement Act 2007 and any other enactment, to regulate its own procedure, which may include matters such as deciding the form of any hearing.

General principles.

9. Parties or members of the public may apply for an order under one of the above rules. In some cases, the circumstances will call for the tribunal to consider of its own motion whether to make any such order.
10. The starting point for consideration of rule 14 or rule 30 orders and directions must be the principle of open justice described in the Introduction to this Guidance Note. The relationship between open justice and the need to protect the rights of individuals who may be harmed by disclosure of personal details was examined in A v British Broadcasting Corporation (Scotland) [2014] UKSC 25, [2015] AC 588. The Supreme Court provided guidance on the principle of open justice and the power of the courts to depart from it. The courts have an inherent power to make exceptions to the principle of open justice, including the freedom of the media to report on proceedings, by withholding certain information including the identity of parties or witnesses where that was necessary in the interest of justice. Whether or not a departure is justified will depend on the facts of the case. Central to the court’s evaluation will be the

purpose of the open justice principle, the potential value of the information in question in advancing that purpose, and the risk of harm which its disclosure might cause to the maintenance of an effective judicial process or to the legitimate interests of others. The Supreme Court also gave guidance on how competing Convention rights are to be addressed, which broadly reflected the considerations under the common law or under statute. Any interference with the media's rights should be no greater than is necessary so that it reflects the important role of the media in a democratic society in scrutinising the administration of justice and as a conduit for information about proceedings which might be in the public interest. Restrictions on open justice must be justified and proportionate and no more extensive than is necessary to protect the interests of justice. The question is whether the restriction sought is necessary to secure the proper administration of justice and/or to comply with Convention/common law rights. Any derogations from open justice must be proportionate.

11. The same principles apply to the decision whether to hold all or part of a hearing in private. This should generally be done only in special circumstances where, for instance, it is in the interests of national security, morals, public order or children; for the protection of the private or family life of one or more of the parties; or where publicity might prejudice the interests of justice. In addition, having regard to the overriding objective of dealing with a case fairly and justly, it may be open to a Tribunal to direct that a hearing, or part of the hearing, should be in private on the ground that the interests of justice require that a timid or overwhelmed appellant should be enabled to present their case effectively. Causing embarrassment to witness or the reputation of individuals does not meet the test for necessity³. It should be borne in mind that such concerns may often instead be met by measures such as the imposition of reporting restrictions, which may be preferable to holding a hearing in private.

Circumstances in which the law requires anonymity.

12. In some circumstances the law requires anonymity and/or the imposition of reporting restrictions. Rules 14, 30 and 5 provide the Tribunal with power to implement those requirements. The following are the principal circumstances likely to arise in CICT appeals.

a) Allegations of sexual offences:

Anonymity for a victim or alleged victim of a sexual offence to which the Sexual Offences (Amendment) Act 1992 applies is provided for under Section 1 of that Act, stating "*no matter relating to that person shall during that person's lifetime be included in any publication if it is likely to lead members of the public to identify that person as the person against whom the offence is alleged to have been committed*".

b) Allegations of trafficking: the same life-long anonymity as above is provided by section 2(1) (db) of the Sexual Offences (Amendment) Act 1992 to a person who has made an allegation that he or she has been trafficked contrary to section 2 of the Modern Slavery Act 2015.

³ *Scott v Scott* [1913] AC 417 (p463)

c) Children subject to family law proceedings: Section 97 (2) of the Children Act 1989 prevents publication of material which is intended or likely to identify any child involved in family proceedings as defined in that section, or the address or school of the child. There are equivalent provisions under section 182 of the Children's Hearings (Scotland) Act 2011. There is a power in the court to prohibit publication of certain matters in relation to a child involved in proceedings other than criminal proceedings, including matters calculated to lead to their identification, in section 39 of the Children and Young Persons Act 1933.

d) Children subject to proceedings before Youth Courts⁴: Section 49 of Children and Young Persons Act 1933 prohibits publication of any matter relating to a child or young person concerned in proceedings within that section (youth court and certain magistrates court proceedings or appeals from those proceedings) if it is likely to lead members of the public to identify them as someone concerned in the proceedings. The prohibition includes but is not limited to the person's name, address, school, or other educational establishment, workplace or moving image. The Act makes limited provision for lifting the automatic reporting restrictions. There are similar provisions applicable to Scotland⁵

Other relevant provisions in regard to children and young people involved in criminal proceedings are found in sections 44, 45 and 45A Youth Justice and Criminal Evidence Act 1999 (YJCEA), and in regard to certain adult witnesses in section 46.

e) Female Genital Mutilation: Under section 4A and Schedule 1 of the Female Genital Mutilation Act 2003, no matter likely to lead members of the public to identify a person, as the person against whom a female genital mutilation offence is alleged to have been committed, may be included in any publication during the person's lifetime. Where there is an FGM prevention order made by the Family Court in place, the guidance applicable to material supplied by the Family Court should be applied.

f) Victims of forced marriage: Section 122A and Schedule 6A of the Anti-social Behaviour, Crime and Policing Act 2014 confer on victims of alleged or forced marriage similar protections to those for victims of Female Genital Mutilation.

f) Orders made by another jurisdiction: Tribunals should be alert to the possibility that orders made by other jurisdictions may apply to protect identity or other publication in the tribunal proceedings.

Orders under rule 14 and rule 30.

13. Where not required by law, decisions to make an anonymity order, restrict disclosure of and access to documents, impose reporting restrictions or hold all or part of a hearing in private require weighing of the relevant competing interests of the individual, others, and the importance of open justice. Pursuant to the Human Rights Act, this will require the tribunal to balance competing human rights, e.g. rights under Articles 2, 3 or 8 of the Convention balanced against those under Articles 6 or 10.
14. The fact that publication of the identity of the individual or other material, or holding the case in public, may be painful, embarrassing or humiliating is not of itself a reason

⁴ There is a helpful summary of the provisions in "[Reporting Restrictions in the Criminal Courts](#)", Judicial College, September 2022

⁵ Children and Young Persons (Scotland) Act 1937

for making an anonymity or privacy order. See e.g. Lord Atkinson in Scott v Scott [1913] AC 417 at pg. 463.

15. Circumstances in which the tribunal might decide that anonymity, non-disclosure, or privacy is justified include where there is a real risk of harm. However, every case must be considered on its own facts and the tribunal will need to balance the degree of risk and the nature and degree of possible harm against the strong interest in open justice.

Practice when considering anonymity/non-disclosure/privacy.

16. If a tribunal holds a hearing to consider whether to make an order or direction under rules 14 or 30, the tribunal should also consider whether that hearing should itself be heard in private or be made subject to other restrictions and whether to limit disclosure of any written decision on those matters. This should only be to the extent necessary to preserve the privacy or confidentiality that is the subject of the application.
17. In addition, the duty in rule 33(2) to provide a notice of a decision which finally disposes of all issues in the proceedings or of a preliminary issue is itself subject to rule 14(2).
18. Rule 14 permits the making of reporting restrictions. These would not of themselves prevent journalists from attending the hearing, but they would put limits on what can be reported.
19. The tribunal should give brief reasons for making an order or for refusing an application for an order. The tribunal should remind those present at a hearing of the existence of any order imposing restrictions.
20. In some cases anonymity may be achieved pursuant to Rule 14(1) by using letters for a party's name in the decision or judgment. Additional orders may also be made to ensure, for instance, that references to other identifying details should be redacted or substituted, including address details or details of a person's occupation; that non-party access to documents on the appeal file may, if permitted, only be granted where a document has been properly anonymised; or that an order may be made preventing anyone from publishing or disclosing identifying information and imposing reporting restrictions.
21. Where an anonymity order has been made the title page of the CICT decision will refer to this immediately after the names of the parties and details of representation as ANONYMITY ORDER MADE followed by the terms of the order. For example:
"Pursuant to rule 14 of the Tribunal Procedure (First-tier Tribunal (Social Entitlement Chamber) Rules 2008 [the appellant/ the person referred to in these proceedings as "XX"] is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant/XX, which is likely to lead members of the public to identify the appellant/XX without the permission of this Tribunal. Failure to comply with this order may be a contempt of court."

Or

“Pursuant to rule 14 of the Tribunal Procedure (First-tier Tribunal (Social Entitlement Chamber) Rules 2008, it is ordered that, without the permission of this Tribunal, no one shall publish or reveal the name or address of XX who is the Appellant in these proceedings, or any information that would be likely to lead to the identification of XX or any member of his family in connection with these proceedings.

Any breach of this order is liable to be treated as a contempt of court and maybe punishable by imprisonment, fine or other sanctions under section 25 of the Tribunals Courts and Enforcement Act 2007. The maximum punishment that may be imposed is a sentence of two years’ imprisonment or an unlimited fine.

22. The above wording is by way of example only and it will be for the Tribunal in each case to ensure that the wording clearly and effectively conveys the substance of the order.
23. Where an anonymity order has been applied for or previously made, but it has been decided that no such order should be made, the title page will refer to this fact with the words NO ANONYMITY ORDER MADE.
24. In either case, the body of the determination should give an explanation for making or refusing to make the anonymity order. Where an anonymity order has been made the Principal Judge will then be responsible for ensuring that written submissions, directions and decisions do not reveal information contrary to the terms of the order made.
25. Open justice requires the Tribunal to consider applications made by members of the public or others, for access to the recording of the hearing. Judges must be aware of this possibility and bear it in mind when preparing for the hearing. Reading out any anonymity order at the outset ensures that it appears in a recording of the hearing and will be apparent to anyone listening to the recording. Any requests for copies of recordings by non-parties shall be referred to the Principal Judge.
26. Where an anonymity order has been made but a person with knowledge of the order has breached it by putting the information in the public domain, such conduct may be punishable as a contempt of court either by the Upper Tribunal exercising the powers of the High Court under section 25(2)(c) of the Tribunals, Courts and Enforcement Act 2007 or by any other court of competent jurisdiction. Any breach of an order should be referred to the Principal Judge. A party or other person may make an application for an order to be varied or set aside pursuant to rule 6(5).

Remote hearings

27. The relevant principles and approach are no different for remote hearings.
28. The tribunal should ensure that it is aware of all those who are attending the hearing remotely, that they are all aware of any order requiring anonymity or other restrictions made under Rule 14. At the outset of the hearing the judge should remind all those present that no private recording is permitted..

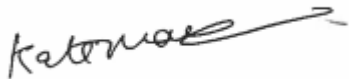
Requests for documents from the court file

29. Any request by a non-party for documents from the file should first be directed to the party or parties. If disclosure is refused, then any application must be made in writing to the Principal Judge who will consider application.
30. In Cape Intermediate Holdings v Dring [2019] UKSC 38, [2020] AC 629, the Supreme Court gave clear guidance to all courts and tribunals on the fundamental importance of open justice and making documents available to other parties. If a person seeks access to written submissions and documents placed before the tribunal, they must explain why and how granting access will advance the open justice principle.
31. The tribunal has the power to allow access, but the applicant has no right to be granted it. It is for the person seeking access to explain why they seek it and how granting them access will advance the open justice principle. The principal purposes of the open justice principle are:
- to enable public scrutiny of the way in which courts and tribunals decide cases, to hold the judges to account for the decisions they make and to enable the public to have confidence that they are doing their job properly.
 - to enable the public to understand how the justice system works and why decisions are taken. For this the public have to be in a position to understand the issues and the evidence adduced in support of the parties' cases.
32. The tribunal has to carry out a fact-specific balancing exercise. The purpose of the open justice principle and the potential value of the information in question in advancing that purpose have to be weighed against any risk of harm which its disclosure may cause to the maintenance of an effective judicial process or to the legitimate interests of others (including the parties), and that granting the request will not be impracticable or disproportionate.
33. Any such application should be referred to the Principal Judge.

The written decision and statement of reasons

34. The duty to provide a decision which finally disposes of all issues in the proceedings, or a preliminary issue takes effect subject to rule 14(2) – see rule 33(2).
35. Rule 14(4) requires the tribunal to conduct proceedings as appropriate in order to give effect to a decision under rule 14(2). So, it is important that the tribunal does not disclose in its written decision or statement of reasons matters which are subject to an order made under Rule 14.
36. In some cases, it may be possible to protect sensitive information without making an order under rule 14. It may be possible to omit certain information without detracting from the decision or reasons. For example, there is rarely, if ever, a reason for giving addresses, bank account details or, in the case of children, precise dates of birth, names of schools and so on. Sensitive medical evidence relating to a witness may be addressed simply by not naming the individual concerned in the decision or reasons.

37. In some cases, it may be necessary for the CICT judge to write two decisions - one confidential to the parties (or in rare cases only one of the parties) as well as an open one with certain information removed or redacted. The confidential decision may be made an annex to the shorter open decision, along with a direction prohibiting or limiting the disclosure of the annex. Such a course of action will not be lightly undertaken and not without canvassing the views of the parties.

A handwritten signature in black ink, appearing to read 'Kate Markus', with a long, sweeping horizontal stroke extending to the right.

Judge Kate Markus KC

President, First-tier Tribunal (Social Entitlement Chamber).

Date: 5th June 2025