



TRIBUNALS
JUDICIARY

UPPER TRIBUNAL IMMIGRATION AND ASYLUM CHAMBER

GUIDANCE NOTE 2013 No 1: Anonymity Orders

This guidance note is issued by the Hon Mr Justice Blake, Chamber President under paragraph 7 of Schedule 4 to the Tribunals, Courts and Enforcement Act 2007.

I. Introduction

1. [Rule 14\(1\) of the Tribunal Procedure \(Upper Tribunal\) Rules 2008](#) (the UT Procedure Rules) contains a power 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 Upper Tribunal considers should not be identified. The effect of such an “anonymity order”¹ (as it will be called in this guidance note) may therefore be to prohibit *anyone* (not merely the parties in the case) from disclosing relevant information. Breach of the order may be punishable as a contempt of court (see further paragraph 25 below).
2. [Rule 14 \(2\) of the UT Procedure Rules](#) provides that the Upper Tribunal may give a direction prohibiting the disclosure of a document or information to a person if the Tribunal is satisfied that disclosure ‘would be likely to cause that person or some other person serious harm’ and that it is proportionate having regard to the interests of justice to give such a direction.
3. The work of the Upper Tribunal, Immigration and Asylum Chamber (UTIAC) makes it appropriate in certain classes of cases to exercise rule 14 powers to prevent certain information from entering the public domain².
4. All determinations of UTIAC are available on its web site, but in the past only Reported Decisions of the Upper Tribunal could be searched for by name,

¹ An example of an anonymity order is as follows:

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] is granted anonymity throughout these proceedings. No report of these proceedings (in whatever form) shall directly or indirectly identify [the appellant]. Failure to comply with this order could lead to a contempt of court”.

² In addition to rule 14, the Upper Tribunal has, by virtue of section 25 of the TCEA, the same powers etc as the High Court (or, in Scotland, the Court of Session) as regards certain specified matters, which include all “matters incidental to the Upper Tribunal’s functions”. In certain circumstances, it may be appropriate for the Tribunal to utilise these powers, in cases with which this guidance note is concerned, instead of, or in addition to, rule 14.

subject and other indicators. This has now changed and all Unreported Decisions made after 1 June 2013 can be searched for on the web site.

5. Such a development makes it particularly important that UTIAC judges follow a consistent practice where anonymity has been granted and that parties to an appeal and others are aware of the practice to be adopted.

II. Principles to be applied

6. The starting point for consideration of anonymity orders in UTIAC, as in all courts and tribunals, is open justice. This principle promotes the rule of law and public confidence in the legal system. UTIAC sits in open court with the public and press able to attend and nothing should be done to discourage the publication to the wider public of fair and accurate reports of proceedings that have taken place.
7. Given the importance of open justice, the general principle is that an anonymity order should only be made by UTIAC to the extent that the law requires it or it is found necessary to do so.

Cases where the law requires anonymity

8. The law requires anonymity to be respected in certain circumstances, whether or not the Tribunal has made an order. These circumstances include:
 - a. [Section 1 of the Sexual Offences Amendment Act 1992](#), as amended, requires anonymity for a victim or alleged victim of a sexual offence listed in [section 2](#) of that Act.
 - b. [Section 97 \(2\) of the Children Act 1989](#) requires anonymity for a child subject to family law proceedings and includes a prohibition on the disclosure of any information that might identify the address or school of that child.
 - c. [Section 49 of the Children and Young Persons Act 1933](#) prohibits publication of the name, address, school or any other matter likely to identify a person under 18 as being concerned in proceedings before the Youth Courts. A child or young person is concerned in proceedings if they are a victim, witness or defendant.
 - d. Another jurisdiction has made an order forbidding disclosure of certain information, for example a temporary restraint on publication under [section 4 of the Contempt of Court Act 1981](#).

Cases where the law permits anonymisation

General

9. UTIAC has power to make an anonymity order or otherwise direct that information be not revealed, where such an order is necessary to protect

human rights, whether (for example) the private life of a party subject to the jurisdiction or the life, liberty and bodily integrity of a witness or a person referred to in proceedings. The Tribunal may also make such an order where it is necessary in the interests of the welfare of a child or the interests of justice would otherwise be frustrated.

10. Parties may apply for an anonymity order or UTIAC may consider making one of its own volition. Where anonymity is an issue, the UTIAC judge should deal with the matter as a preliminary issue and decide, first, the extent of any anonymity order made, if any.
11. A decision to make an anonymity order where not required by law may require the weighing of the competing interests of an individual and their rights (for example, under Articles 3 or 8 of the ECHR or their ability to present their case in full without hindrance) against the need for open justice.
12. An anonymity order will not be made because an appellant or witness has engaged in conduct that is considered socially embarrassing to reveal. In particular, that the fact that someone has committed a criminal offence will not justify the making of an anonymity order, even if it is known that such a person has children who may be more readily identified if the details of the person are known.

Asylum and other protection claims

13. It is the present practice of the First-tier Tribunal, Immigration and Asylum Chamber that an anonymity order is made in all appeals raising asylum or other international protection claims. An appellant will be identified by initial and country in such cases unless and until a judge has decided that anonymity is not necessary. UTIAC will follow the same general practice, with the result that anonymity will remain, unless a UT judge decides it is unnecessary.
14. Where details of witnesses or relatives abroad form part of a protection case, particular consideration should also be given as to whether publication of those details would be likely to cause serious harm.

Medical issues

15. The revelation of the medical condition of an appellant will not normally require the making of an anonymity order unless disclosure of the fact of such a condition gives rise to a real likelihood of harm to a person, or UTIAC has required confidential medical details to be provided to it.
16. [Rule 14 \(7\) of the Tribunal Procedure \(Upper Tribunal\) Rules 2008](#) contains a presumption that information about mental health cases and the names of the people concerned in such will not be disclosed in the absence of good reason.
17. It will not normally be necessary for the Tribunal to disclose intimate medical or other information about a witness or third party, but if it is then

consideration should be given to whether the identity of the person concerned should not be disclosed.

Children etc

18. The identity of children whether they are appellants or the children of an appellant (or otherwise concerned with the proceedings), will not normally be disclosed nor will their school, the names of their teacher or any social worker or health professional with whom they are concerned, unless there are good reasons in the interests of justice to do so. Such good reasons will normally exist if a criminal court has directed that the identity of a child offender be disclosed.
19. Where the identity of a child is not to be revealed the name and address of a parent other than the appellant may also need to be withheld to preserve the anonymity of a child.
20. In other cases, UTIAC may need to make an order to protect the identity of a child or vulnerable person where there is good reason to do so. It will be necessary to do so where information about the child or family proceedings concerning a child has been supplied by the Family Court under the terms of the [Joint Protocol between the President Family Division and the Senior President of Tribunals dated 19 July 2013](#).

III. UTIAC Practice when making an Anonymity Order

21. Where an anonymity order is made the title page of the UTIAC determination will refer to this immediately after the names of the parties as **ANONYMITY ORDER MADE** and a footnote or paragraph in the determination will explain the reasons for the order and its scope³.
22. 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** and a footnote or paragraph in the determination will give any explanation.
23. Where an anonymity order has been made the determination shall refer to the person who is the subject of the order by initial or pseudonym.
24. Where an anonymity order has been made the judge will then be responsible for ensuring that determinations do not reveal information contrary to the terms of the order made (rule 14(11)).
25. 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](#)

³ Unusually, UTIAC may decide to make an order under rule 14, the purpose of which is not to confer anonymity on a party or other person but merely to prohibit disclosure of specified information.

[the Tribunals, Courts and Enforcement Act 2007](#) or by any other court of competent jurisdiction⁴.

26. Where an anonymity order has been made but any party contends that the order should not have been made, an application can be made to the Office of the Chamber President giving reasons why the order should be set aside in whole or in part.

Other useful links:

[Presidential Guidance Note No 2 of 2011: Anonymity Directions in the FtT\(IAC\)](#)

[The Family Courts: Media Access & Reporting – July 2011](#)

[CPS Guidance on Contempt of Court and Reporting Restrictions](#)

[Family Court Practice Guidance issued by President of the Family Division - 16 January 2014](#)

The Hon Mr Justice Blake
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⁴ See fn 2 above.