

Draft Publishing Policy for Court Judgments and Tribunal Decisions

Background

1. Court Judgments and Tribunal Decisions are important public records.
2. From 19 April 2022, The National Archives will be receiving selected new Court Judgments and Tribunal Decisions from the Supreme Court, the Upper Courts, and the Tribunals, for preservation and publication on the web.
3. The National Archives is working in partnership with the Ministry of Justice, HMCTS, and the Judicial Office.
4. The National Archives is receiving judgments from the Courts and Tribunals through the Transfer Digital Record service.
5. The National Archives is publishing judgments through the Case Law service, which will be made available to the public at <https://caselaw.nationalarchives.gov.uk>.

Legal basis

6. The Public Records Act 1958 (PRA) provides the legal basis for The National Archives work to archive and publish Court Judgments and Tribunal Decisions.
7. The PRA defines public records. The definition is expansive and includes records of the courts and tribunals. The Supreme Court confirmed that the judgment is part of the court record and therefore constitutes a public record in *Cape Intermediate Holdings Ltd v Dring* [2019] UKSC38.
8. The Secretary of State for Justice, in his capacity as Lord Chancellor, is responsible for “*the public records of every court of record or magistrates’ court which are not in the Public Records Office or a place of deposit*” (PRA Section 8(1)).
9. The practical effect of the Secretary of State’s decision is that from 19 April 2022 important judgments will be transferred to The National Archives straight away.
10. Once judgments are transferred, the Keeper is required to “*take all practicable steps for the preservation of records under his charge*” (PRA Section 2(3)) and to “*arrange that reasonable facilities are available to the public for inspecting and obtaining copies of those public records in the Public Records Office which fall to be disclosed in accordance with the Freedom of Information Act 2000.*” (PRA Section 5(3)).

Open justice

11. Open justice is a fundamental constitutional principle and necessary for the rule of law.
12. It is important that significant Court Judgments and Tribunal Decisions are published, unless there is a strong reason to withhold a judgment from publication.

13. Some judgments received by The National Archives may be closed from public access entirely under the relevant provisions of the Freedom of Information Act 2000.

Personal data

14. Judgments contain information about people. This typically includes the names of parties and other people mentioned in the judgment, as well as the representatives, and the names of the judges hearing the case. The information about people varies and can be very extensive. It can include a variety of types of special category personal data, depending on the subject matter of the case. The details given in a judgment about the facts of a case may sometimes constitute distressing content (particularly in criminal cases, or cases involving children).
15. The courts are not subject to data protection regulation when acting in their judicial capacity.
16. The National Archives is subject to data protection regulation. The PRA provides the legal basis for The National Archives processing of personal data in judgments under UK GDPR.
17. The Data Protection Impact Assessment for the Case Law service notes that there is a risk that the wrong version of a judgment is sent to The National Archives, for example without appropriate anonymization. To mitigate this risk, the transfer service ensures there is a chain of custody from the court to The National Archives; and there is a risk based approach to due diligence checking of judgments prior to publication.

Transfer and preservation

18. The National Archives is receiving a publication version of the judgment. That means any redactions / anonymization needed for publication, should already have been made by the court.
19. The National Archives requires that clerks and judges use the Transfer Digital Records (TDR) service to pass the publication version of the judgment to The National Archives.
20. Judges (those without clerks) can email a Judicial Office Helpdesk for support. The Helpdesk may also use TDR to transfer judgments to The National Archives.
21. The transfer process has been made as easy as possible for the clerks and judges. The clerk logs in, uploads the document, and receives a reference number. They are then emailed confirmation when the judgment is published.
22. There are some controls and checks as part of the TDR process. The publication version of the judgment must be a Word document. The TDR service creates a check-sum of the judgment on the clerk's computer, transmits the judgment, and runs various checks on receipt. These include virus scanning, file format signature identification, as well as creating another check-sum and compares the two. TDR creates an audit trail that provides the chain of custody for the judgment from the court to The National Archives.
23. The Word file The National Archives receives through TDR is the digital record of the publication version of the judgment.
24. The National Archives will preserve the digital record in the Digital Records Infrastructure and creating a digital surrogate of the record, for publication and re-use. The surrogate is in the Legal

Document Mark-up Language (LegalDocML). The surrogate will be used to generate HTML and PDF versions of the judgment the public service.

Creating digital surrogates

25. The National Archives will never change the digital record (the Word document we receive).
26. The National Archives will never change the text of the digital surrogate (i.e. we will not undertake redactions).
27. The digital surrogate will retain as much styling and formatting information as can be extracted from the digital record. This enables The National Archives to present the judgment with fidelity to the original.
28. The National Archives will create and adapt the mark-up of the digital surrogate and adapt the styling and layout in the HTML. This is to make the content as accessible as possible to people using the web. Rarely, we may need to change symbols (e.g. bullet points) in the digital surrogate, for example to replace characters using the Wingdings font.

Managing versions

29. The National Archives anticipates that there may be several publication versions of the same judgment sent to by the court over time.
30. The National Archives will keep the digital record of each of the versions that are sent to it, but only publish the latest version authorised by the court.
31. Changes, refinements or corrections to the text of the currently published judgment can only be made by the court sending another publication version of the judgment to the archive through the TDR process.
32. Deleting earlier versions of the digital records will only be done with the explicit instruction from the court.

Due diligence checks

33. The National Archives will undertake due diligence checks before publishing each judgment.
34. The checks are to mitigate the risk that a judgment is sent in error by the court; and for The National Archives to comply with its obligations as a publisher, in relation to reporting restrictions.
35. The checks will be carried out by a trained legal editor.
36. The checking process takes a risk based approach to achieve the right balance between speed of publication and the depth and thoroughness of checking.
37. The checking process involves an initial assessment of all judgments and a more detailed assessment of high risk judgments.
38. As a result of the checking process, The National Archives will either

- a) publish the judgment (using the digital surrogate that has been created); or,
 - b) ask for clarification / confirmation from the court.
39. The judge has the final word on suitability for publication and The National Archives will always publish judgments having received confirmation from the clerk or judge.
40. The initial assessment involves:
- a) checking for any obvious errors in the judgment header (dates / neutral citations)
 - b) checking whether the judgment says it is “Approved” and has been “released to The National Archives” for publication
 - c) reading the first few sentences of the judgment body to see if there is a restriction or condition on publication (e.g. anonymization requirements). With practice, this can be done very quickly. There is also potential for these initial checks to be machine assisted in future.
41. In the case that the judgment has some conditions on publication (e.g. regarding anonymization), the editor will make an overall assessment whether the version of the judgment supplied complies with any notice requiring anonymization or redaction.
42. In high risk areas the editor will assess:
- a) whether the anonymization has been consistently applied throughout the body of the judgment
 - b) whether the anonymization appears to have been carried out in accordance with the applicable anonymization guidelines.
43. High risk areas include:
- a) judgments delivered in private;
 - b) sexual offences;
 - c) FGM;
 - d) national security / public interest immunity;
 - e) children / family;
 - f) divorce;
 - g) vulnerable / protected parties;
 - h) privacy in general;
 - i) medical / clinical negligence (especially concerning children);
 - j) mental health / psychiatric injuries;
 - k) social welfare (housing benefits etc);
 - l) data protection / privacy / misuse of confidential information;
 - m) defamation (especially statements alleging criminal/sexual offences);
 - n) bankruptcy;
 - o) asylum / immigration;
 - p) crossover cases involving at least one high risk area.
44. The National Archives will iteratively develop this checking process in light of operational experience and feedback.
45. The National Archives will provide reports on the operation of the checking process to the Ministry of Justice, HMCTS, and the judiciary.

Timing of publication

46. The rapid publication of judgments is important for service users.
47. The National Archives has a target to publish low risk judgments within 20 minutes of receipt.
48. The National Archives has a target to publish all medium and high risk judgments within 24 hours of receipt and will seek to do so more quickly.
49. The National Archives will measure the time it takes from receipt to publication and report on the results, including the reasons for delays.

Withdrawal from publication

50. Once a judgment has been published, The National Archives will only withdraw it from publication if we are instructed to do so by a judge / court.
51. The National Archives expect to receive takedown requests from the public. The usual response will be to deny the request.
52. In the case that The National Archives believes a takedown request to be well founded, we will contact the judge or court concerned for a decision.