

Public access to court documents: Commercial Court pilot

New rules on public access to court documents will be piloted in the Commercial Court and the Financial List for two years, starting on 1 January 2026. Although the pilot will only apply to documents that are already considered to be in the public domain because they have been used or referred to at a public hearing, in practice, the changes are likely to mean that many more court documents will become publicly available than under the current rules.

The pilot will be governed by Practice Direction (PD) 51ZH "Access to Public Domain Documents". A guidance note (the guidance) has also been published to explain how the pilot is intended to operate (www.judiciary.uk/wp-content/uploads/2025/10/Guidance-Note-Access-to-Public-Domain-Documents-Pilot-CPR-Practice-Direction-51ZH-.pdf). A review of the pilot is planned after six months, with a view to extending the pilot to further courts if successful.

The pilot rules

The pilot will apply in both new and existing proceedings where a public hearing is taking place in the Commercial Court, including the Circuit Commercial Court, or the Financial List during the pilot period. This includes both trials and public hearings of interim applications. The pilot will not, on the face of it, apply where an interim application is heard in private or dealt with on the papers.

The pilot provides for certain categories of documents to become public domain documents (PDDs) from the point at which they are used or referred to at a public hearing (see box "Public domain documents").

Appendices and annexes to witness statements are not included, but are included for expert reports. The guidance explains that this is because the main results of an expert's evidence, or material required to understand an expert report, are frequently appended to the report, such as accountants' spreadsheets or cases analysed by legal experts.

PDDs will be available to the public through the court's electronic filing system (CE-file) on payment of a small fee, in the same way as statements of case and orders made in public are currently available. The onus will be on the parties to refile these documents in the public-facing section of the CE-file.

For skeleton arguments, this must be done within two days from the start of the hearing and, for other documents, within 14 days from when they are used at the hearing.

Existing orders that impose confidentiality or anonymity regimes will not be affected, and it will be possible to seek a filing modification order (FMO) to exclude documents or sections of documents from the public CE-file where there are particular confidentiality concerns.

If a party does not comply with the requirement to refile a document, the court may order it to do so. If that order is not complied with, the usual sanctions will be available, including potential proceedings for contempt of court.

Impact of the pilot

As the guidance explains, the aim of the pilot is to advance the principle of open justice. It is intended to capture only a subset of the documents that, at common law, are already in the public domain as they have been placed before the court and referred to at a hearing, as the Supreme Court established in *Cape Intermediate Holdings Ltd v Dring* ([2019] UKSC 38; see *News brief "Non-party access to litigation documents: open justice"*, www.practicallaw.com/w-021-8260).

Therefore, in theory, the pilot will not give non-parties any additional rights, since under the existing rules they can apply to the court to obtain a copy of the document. In practice, however, the change is likely to be significant. The default position will become providing the identified documents on payment of a small fee, rather than requiring an application to court. This removes a major barrier and is likely to result in many non-parties accessing documents in situations where they would not have been willing to invest the time and cost of making a court application.

In addition, as things currently stand, and as the Court of Appeal clarified in *Moss v The Upper Tribunal and others*, the non-party bears the burden of explaining why obtaining access will advance the open justice principle ([2024] EWCA Civ 1414). This appears to be a relatively low threshold if the purpose of the application is to understand or report on the proceedings, but it is less clear whether the threshold is met where documents are sought for other purposes, such as for use in related

Public domain documents

The categories of documents that will become public domain documents (PDDs) from the point at which they are used or referred to at a public hearing are:

- Skeleton arguments.
- Written submissions.
- Witness statements.
- Affidavits.
- Expert reports.
- Any other documents that are either agreed by the parties or are critical to the understanding of the hearing and ordered by the judge at the hearing to be PDDs.

proceedings. The pilot could, therefore, result in some non-parties obtaining documents when an application might not have succeeded under the current rules.

Practical steps

The pilot will apply to documents that have already been filed or served before 1 January 2026, if they are to be used at a public hearing taking place after that date. If the pilot is later expanded to other courts, it seems likely that its application will similarly extend to documents that are filed in advance of the start date for hearings that take place after that date.

Court directions. The position is not entirely clear for hearings that start before the pilot period and continue thereafter. In these cases, parties may wish to seek a direction from the court as to how the pilot will be applied.

Increased public scrutiny. Parties preparing documents that will fall within the scope of the pilot, or may fall within any expanded regime, should consider carefully the potential for increased public scrutiny resulting from these changes and whether anything can be done to mitigate the risks. In witness statements, for example, there may not always be a need to refer to more sensitive

matters, as the underlying documents may speak for themselves. PD 57AD on trial witness statements in the Business and Property Courts makes it clear, in any event, that trial witness statements should not quote at length from documents, set out a narrative derived from the document, or include commentary on the documents or other evidence.

Filing modification orders. Where highly confidential material has been included in a document that falls within the pilot, parties may wish to seek an FMO. An application for an FMO may also be made by any non-party that is named or referred to in a relevant document. PD 51ZH does not address the test for making an FMO but the guidance states that, since the pilot reflects the law on PDDs, the cases where it would not be appropriate to make the documents available are likely to be rare. This reflects the current position

where parties wish to persuade the court to derogate from the principle of open justice, for example by sitting in private or restricting access to statements of case.

The future

Some may wonder whether the changes to be piloted might reduce the appeal of the English courts, particularly for international commercial parties that are not keen on airing their dirty laundry in public. It should be remembered, however, that the open justice principle has long been a fundamental part of the UK's legal system. Statements of case, judgments and orders are normally public documents, hearings are almost always held in public, and restrictions on the collateral use of disclosed documents are lifted automatically, unless otherwise ordered, once those documents have been referred to at a public hearing.

Accordingly, parties litigating in the English courts have always had to accept that information about the dispute will enter the public domain, subject to the court's ability to put in place appropriate protections for confidential material. While some parties may choose arbitration to reduce the potential for public scrutiny, the English courts have other advantages over arbitration, including the quality of the judiciary, the ability to compel an opponent to comply with procedural requirements, and the more ready availability of summary procedures and appeals. Overall, therefore, these changes seem unlikely to have a significant impact on the willingness of commercial parties to litigate in the English courts.

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