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The Widening Of Public Access to Court Documents Under Practice Direction 51ZH: A Review and Comparison to the US Position on Transparency in Proceedings

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The United Kingdom Public Documents Pilot Scheme (the "Pilot") will come into force on January 1, 2026 and will be introduced under the new Practice Direction 51ZH "Access to Public Domain Documents" ("PD 51ZH"). The Pilot will significantly expand and facilitate public access to court documents and follows the U.K. Supreme Court judgment of *Cape v Dring* [2019] UKSC 38 (see also our earlier blog post on this: Can Open Justice Be Too Open? A Review of Proposals to Provide Non-Parties Greater Access to Court Documents in England & Wales | Minding Your Business). A Guidance Note on PD 51ZH has also been published by the Judiciary.

The aim of the Pilot is to test a new form of streamlined access by the public to documents which are referred to in public hearings and, in turn, promote open justice whilst also preserving confidentiality and anonymity protections where appropriate.

The Pilot will run from January 1, 2026 to December 31, 2027 (the "Pilot Period"), with an anticipated review after 6 months. It is likely that if the Pilot is deemed a success, it shall be rolled out to other courts. As such, it is important for parties currently litigating, or expected to litigate, in the U.K. to be aware of its implications.

Pilot courts and scope.

The Pilot will operate in the Commercial Court (including the London Circuit Commercial Court) and the Financial List and will apply to documents filed for, or used in, public hearings during the Pilot Period in both new and existing proceedings.

Importantly, the Pilot only applies to documents referred to in public hearings; private hearings are not caught. Additionally, the requirement to file Public Domain Documents will not apply where a party is unrepresented and has not previously filed a document in the proceedings concerned using CE-File. CE-file is an online filing system for parties through which the public can currently obtain copies of certain case documents for a small fee.

Unless the court orders otherwise, the Pilot does not affect existing access regimes, pre-existing confidentiality/anonymity orders, and existing arrangements for provision of hard-copy skeletons to non-parties.

Public Domain Documents.

The default position is that the following documents which are used, or referred to, at a public hearing will constitute Public Domain Documents:

- skeleton arguments;
    - written opening and closing submissions;
    - other written submissions provided to a judge and relied upon;
    - witness statements/affidavits (not including annexes/exhibits);
    - expert reports (including annexes/appendices);
    - any document critical to the understanding of the hearing ordered by the Judge at said hearing to be a Public Domain Document. This is intended to capture key documents only; it is not the intention that all documents referred to at trial or in skeletons should be made public.
    - any documents agreed between the parties to be Public Domain Documents.

Mechanics and filing periods.

Parties must re-file Public Domain Documents on the public side of CE-File within the applicable “Filing Period”. If a party fails to comply, the court may order filing. Filed Public Domain Documents are then available to any person (including non-parties) via Public Access CE-File, thus significantly widening the scope of public access.

Filing Modification Orders (FMOs).

Though the default position is for documents to be made public under the Pilot, the court can make a Filing Modification Order ("FMO"). Such an order can be made by the court on its own initiative or on application, so as to restrict non-party access, waive or restrict the filing requirement, require redactions/edits before filing, extend/amend the Filing Period, or make any other appropriate order.

It is expected that FMOs will be rarely ordered, particularly in light of the Guidance Note which accompanies the Pilot. As a result, litigating parties should consider carefully the extent of exposure of sensitive matters when drafting documents which will become Public Domain Documents. Additionally, parties may need to consider the merits and procedure of seeking an FMO, especially in cases which involve business secrets or highly confidential matters.

Comparison with transparency in US proceedings

The United States has long recognized a strong presumption in favor of public access to judicial records and proceedings. This principle derives both from the common law and from the First Amendment, reflecting the belief that openness enhances judicial accountability and public confidence in the administration of justice. Supreme Court and lower court precedent has repeatedly affirmed that the public holds a general right to inspect and copy judicial records, subject only to limited exceptions where compelling interests—such as the protection of privacy, trade secrets or national security—justify restriction through a protective order or motion to seal.

While this presumption applies broadly across the United States, the mechanisms for access differ between federal and state courts. Federal courts operate under a unified electronic filing and access system known as PACER (Public Access to Court Electronic Records), through which parties and the public may view case materials for a nominal fee. State courts, by contrast, vary considerably: some provide comprehensive, searchable online databases at no cost, while others continue to rely on local clerks' offices or impose usage fees.

Reform of the federal access regime is currently underway. The Open Courts Act of 2020 mandates that PACER access should eventually become free of charge for most users and requires the federal judiciary to modernize its electronic case management systems. Implementation of these provisions remains ongoing, with the Administrative Office of the US Courts developing the necessary infrastructure and funding mechanisms to support free public access.

The principle of open access extends beyond court filings to encompass the law itself. In a 2020 case, *Georgia v. Public.Resource.Org, Inc*., the Supreme Court held that a state cannot assert copyright in its official statutory code. Although distinct from questions of court record transparency, this decision reinforces the broader constitutional commitment to ensuring that the law and judicial materials remain freely accessible to the public.

Conclusion

The Pilot demonstrates a continued commitment to the principle of open justice and transparency within the U.K., whilst acknowledging a need to balance this against the protection of confidential material. In so doing, the Pilot indicates a clear shift further towards the procedure in the U.S., where openness and judicial access have been a part of the legal landscape for some time.

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