

## CLIENT ALERT

# Open Justice – Enhanced Public Access to Documents Used in Court

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Clients often query whether sensitive documents deployed during litigation can be shared with third parties, or obtained by the press and competitors. Since documents referred to in open court at a hearing or trial become public, typically the answer is “yes”. However, there has been a practical barrier to non-parties obtaining copies of such documents from the court or the parties to the proceedings. Then, in terms of the court’s file, the Civil Procedure Rules (“CPR”) have restricted the rights of non-parties (i.e. the public) to freely access only statements of case (i.e. claim form, pleadings, trial witness statements (during trial) (each without attachments)), judgments and orders. Obtaining copies of other documents required the court’s permission, via an application providing justification for the request.

### New practice direction

From 1 January 2026, it has become easier for members of the public (including the press and interested third parties) to obtain documents deployed at public hearings. A new practice direction 51ZH (“PD51ZH”) has come into force, as part of a pilot to advance the principle of open justice in the civil courts. PD51ZH works by designating

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certain documents used at a hearing of an application or a trial as “*Public Domain Documents*”. Such documents must be electronically filed at court, where they become available to “*any person, including a non-party*”. Public Domain Documents include: skeleton arguments; written opening submissions; written closing submissions; other written submissions provided to a judge and relied upon in the hearing; witness statements and affidavits (both for trial and applications – but not including their annexes and appendices); and expert reports (both for trial and applications – including annexes and appendices). A further category is “*any other document or documents critical to the understanding of the hearing ordered by the judge at the hearing to be a Public Domain Document*”.

#### Filing obligation

PD51ZH creates a new obligation to electronically file a Public Domain Document. There are time limits to do so. Practically, the electronic filing will assist court staff in making a set of documents available for access by the public.

#### Limited implementation for now

For now, the pilot has been launched in the Commercial Court and the London Circuit Commercial Court of the King’s Bench Division and the Financial List (Commercial Court and Chancery Division), which deal with corporate, commercial and financial cases that are of high-value or of a complex nature. The pilot is widely expected to expand to other courts in due course. It is worth noting that the pilot will not apply to hearings held in private (or subject to confidentiality and anonymity orders) or hearings involving litigants in person.

#### Sensitive evidence

Most hearings and trials will feature references to contemporaneous documents (e.g. emails, board minutes, presentations, financial information, and contractual agreements) which are sensitive or confidential in nature. These documents will become public once used or referred to in open court, unless the court orders that such documents should remain confidential or that they may be redacted prior to the non-parties gaining access. Under PD51ZH, there is some leeway in how such documents will be treated, as they will only become a Public Domain Document (and subject to the filing requirement) if they are “*critical to the understanding of the hearing*” and “*ordered by the judge at the hearing to be a Public Domain Document*”. How this is implemented in practice remains to be seen. In some cases, it will be a contentious issue that requires submissions, and may increase the length of a hearing or a trial.

Since PD51ZH does not restrict the court’s discretion, and expressly caters for a “*Filing Modification Order*”, we expect that it will now become typical at hearings or trials for advocates to address the court on bespoke approaches to the requirement to file Public Domain Documents under PD51ZH.

#### Impact

If the changes have the desired effect, there will be greater publicity of documents that are the subject of litigation. This may lead non-parties to follow ongoing court proceedings more closely and intervene if they are concerned that documents relating to their business could be made public.

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The changes may also affect the way in which litigation is conducted, with parties thinking twice about seeking hearings or going to trial if there are sensitive documents in play, and publicity presents a risk.

**If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.**

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