

Closing the Open Justice Gap: Widening Public Access To Court Documents In England

UK – January 2026

Since 1 January 2026, a two-year pilot has been running in the English Commercial Court (including the London Circuit Commercial Court) and the Financial List, which changes how public access to court documents works.

If you are involved in litigation in these courts, documents used or referred to in public hearings during the pilot period must also be filed in a new, public section of the courts' online (CE-File) system. This means that witness statements, expert reports and other key documents in your case could now become publicly accessible more easily, unless steps are taken to try to protect their confidentiality.

What Has Happened?

A new pilot scheme ([Practice Direction 51ZH – Access to Public Domain Documents](#)) started on 1 January 2026, and will run until 31 December 2027.

It requires parties to file certain documents used in public hearings during the pilot period in the court's public section of CE-File.

It applies to:

- Skeleton arguments
- Written opening and closing submissions (and any other written submissions provided to a judge and relied upon in the hearing)
- Witness statements and affidavits (excluding annexes and exhibits)
- Expert reports (including annexes and appendices)
- Any document deemed critical to the understanding of the hearing as ordered by the judge at the hearing
- Any documents agreed by the parties

If the pilot proves successful then it could be extended, and its effect could be rolled out to further divisions of the English court.

Why It Matters Now

The pilot program responds to the practical reality of modern litigation and hearings, which increasingly rely on written materials. The concern is that a member of the public who attends court might not be able to understand the dispute without seeing the written submissions and evidence relied on. The pilot's [Guidance Note](#) explains that it is a first step towards making access to the documents that most directly inform public understanding of proceedings easier, reflecting the concerns expressed in [Cape v Dring \[2019\] UKSC 38](#) about how open justice operates in practice.

However, the pilot applies only where the relevant hearing takes place in public, and therefore not when hearings are conducted in private. The new filing requirement is also disappplied where a party is unrepresented (a litigant in person) and they have not already filed a document in the proceedings using the court's online CE-File system. Existing confidentiality or anonymity orders, and the court's power to make these and any such other orders in respect of documents that it previously had jurisdiction to, will also remain unaffected by the pilot.

Practical Implications

- **Greater transparency** – Once re-filed, it will be much easier for the public to access those documents and share them. This shifts the risk profile as compared with the prior model of openness, which previously limited access to certain documents and required a targeted application to obtain them.
- **Risk exposure** – Sensitive commercial information, and other information that might not normally be widely publicised could more readily become public, unless managed.
- **Impact on litigation strategy** – This development might impact forum selection considerations and shift some parties with confidentiality concerns towards other court divisions, other legal jurisdictions or even arbitration. Written advocacy and document drafting also may need tighter control, with more disciplined treatment of sensitive material, and clearer document structuring to enable targeted redaction.
- **Risk of satellite disputes** – What might make a document "critical to the understanding of the hearing" may require a highly fact sensitive inquiry in many cases.

Reflections on the Changes

- **Transparency is the new default** – Expect more scrutiny from the public, media, competitors and stakeholders.
- **Advocacy may evolve** – Counsel may shift more sensitive points to oral argument.
- **Forum shopping pressure** – Confidentiality concerns could drive the choice of jurisdiction/venue and dispute resolution methodology.
- **Corporate risk management** – In some situations, litigation might now carry additional reputational and disclosure risks; this would need to be factored into any risk/benefit analysis and broader litigation strategy.

What Next?

- **Plan early** – Identify sensitive material before any hearings. Early thinking on confidentiality and privacy issues is likely to be crucial.
- **Use Filing Modification Orders (FMOs)** – Consider early applications for FMOs to seek to restrict non-party access, waive or narrow the filing requirement, require redaction before filing or extend the filing period. Once a request is made, the filing period is suspended until the request is determined. The court can also impose an FMO of its own motion.
- **Review agreements/contracts** – Revisit dispute resolution clauses; in some instances arbitration might be preferable to assist with confidentiality concerns.
- **Update workflows** – Ensure legal teams (in-house and external) know about the new regime and its deadlines for filing publicly available documents in respect of forthcoming hearings:
 - **Skeleton arguments and written submissions** – Within 2 days of hearing start
 - **Other documents** – Within 14 days of their use in a public hearing

The pilot is a big shift, but planning early makes all the difference. If you want to talk through practical steps or simply get a second opinion, please contact the Squire Patton Boggs disputes team, we're here to help.

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