

Commercial Court Documents to Be Made Publicly Available: What Practice Direction 51ZH Changes from January 2026

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Introduction

The “*Access to Public Domain Documents Pilot*” (the “**Pilot**”), established under Practice Direction 51ZH (“**PD 51ZH**”), will run from 1 January 2026 to 31 December 2027 in the Commercial Court, London Circuit Commercial Court, and Financial List. The Pilot applies to certain documents filed for or used in hearings taking place in public during the period of the Pilot both in new and existing proceedings.

It requires parties to make certain court documents available via the CE-File system, replacing the previous “by application” approach.

The scheme will be reviewed after six months, with the potential to expand to other divisions of the Business and Property Courts.

Why?

Currently, only a small category of documents such as the statements of case, public orders, and judgments are automatically available to the public (*CPR 5.4C*).

Witness statements that stand as evidence in chief are also open to inspection, but only during the trial.

All other documents such as skeleton arguments, witness statements and expert reports are not routinely available, and non-parties are required to make an application to the Court if they want to access such documents. The Court can decline an application under *CPR 5.4C(4)* or impose restrictions and redactions.

Related People

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Related Capabilities

- Commercial Litigation
- International Arbitration & Litigation

The intended rationale of the Pilot Scheme is to promote the principle of open justice, addressing concerns raised in *Cape Intermediate Holdings Ltd [2019] UKSC 38*, which highlighted the inaccessibility of written evidence and arguments in civil litigation. By default, the Pilot mandates the disclosure of certain documents to promote transparency and public confidence in court proceedings.

Changes under PD 51ZH

1. **Filing requirements:** under the Pilot, solicitors must upload “**Public Domain Documents**” to CE-File within the “**Filing Period**”. Once uploaded, these documents will be publicly available for non-parties to download on CE-File, without the need for approval from the parties or an application to the Court. Public Domain Documents already filed on CE-File in ongoing cases before the start of the Pilot must be re-filed and made accessible on the “public view” of CE-File.
2. “**Public Domain Documents**” (*defined in paragraphs 7 – 9 of PD 51ZH*) are:
 - a. skeleton arguments;
 - b. opening and closing submissions;
 - c. witness statements;
 - d. expert reports (including annexes and appendices); and
 - e. any other document critical to understanding the hearing can be designated public by the judge.
3. “**Filing Period**”: the deadline to file Public Domain Documents is:
 - a. Skeleton arguments and written submissions: by 4pm, two clear days after the hearing in which they are used.
 - b. All other documents: by 4pm, 14 days after the day on which they are first used or referred to in a hearing (unless the Court orders a different timeline, for example, staged filing for longer hearings, or the parties' consent to earlier filing).
4. **Exceptions:** the Pilot does not apply to the following cases:
 - a. hearings in private;
 - b. where there is an unrepresented party that has not used CE File in the case;
 - c. any documents referred to in another Public Domain Document, which are not themselves Public Domain Documents (as above); and/or
 - d. where there are any pre-existing orders in place, for instance, a confidentiality order under CPR r. 39.2.
5. **Filing Modification Orders:** PD 51ZH allows parties to object to the public filing of Public Domain Documents by seeking a Filing Modification Order (“FMO”). Any non-party named or referred to in a Public Domain Document (or in what would be expected to become a Public Domain Document) may also apply for an FMO or to access documents which are not made public and may also challenge an FMO that has been made. Where a request for an FMO has been submitted, the Filing Period is suspended until the request is determined. The Court may also make an FMO of its own initiative.
6. **Non-compliance:** if a party does not comply with PD 51ZH, it risks being found in contempt of court, which can result in a fine or imprisonment.

Key takeaways

1. The Pilot ushers in changes that represent a very substantial shift. Parties to litigation in the relevant courts will now face information in witness statements and expert reports (including, in the case of expert reports the annexes and appendices to those statements), becoming public (albeit only after they are used or referred to at a hearing).
2. Given that more of the core hearing documents and evidence will be readily available to the public, parties' positions will be opened up to public scrutiny.
3. More importantly, participation in litigation runs the risk of confidential or highly sensitive materials, information and documentation becoming, not just public, but easily accessible online.
4. Parties can be expected to become more privacy sensitive about what they put in court submissions and the evidence that they bring, may act, in some cases, to deter parties from litigating disputes, or to seek other forms of dispute resolution, such as arbitration.
5. If there are privacy or confidentiality issues, parties' legal representatives will have to consider their drafting practices to minimise making adverse information publicly available, as well as protect personal data of mentioned individuals. For instance, unnecessary inclusions of trade secrets should be avoided, and sensitive details should be potentially grouped in a specific section that can be easily redacted before the relevant document is uploaded on CE-File.
6. Parties to litigation in the affected courts should factor in additional costs and time spent on determining what is considered a Public Domain Document or whether an FMO should be sought. For instance, the provision allowing judges to declare additional documents public is open-ended and will depend on the judges' discretion. The Guidance Note published by the Judiciary website states that it is for "objectively key" documents that have been made public in court, but parties might initially disagree on what qualifies, potentially raising debates at trial.

If you would like to discuss how the Pilot Scheme might affect a current or contemplated Commercial Court/Financial List dispute, please get in touch with our Commercial Litigation and Arbitration team.