

OPENING UP: NEW PUBLIC ACCESS RULES FOR COURT DOCUMENTS

From 1 January 2026, a new [pilot scheme](#) in the Commercial Court, the London Circuit Commercial Court, and the Financial List will make it much easier for third parties, including the public, press, and competitors, to access a wide range of documents deployed by parties in court hearings and at trial.

While these documents have long been considered to enter the public domain when they are relied on in a public hearing, in practice, obtaining them has required a formal application to the court, together with a justification for the request. The pilot changes this by introducing default access (for a nominal fee) to "*Public Domain Documents*", being a defined set of document categories used or referred to at public hearings. This includes skeleton arguments, opening/closing submissions, witness statements, expert reports and, perhaps most significantly, any other document deemed "*critical to the understanding of the hearing*". The pilot will run for two years, with a review after six months, and a possible extension to other courts.

This scheme is founded on principles of transparency and open justice. However, what documents may be "*critical*" to understanding a hearing is unclear: the category is not precisely defined, leaving considerable discretion to Judges (and uncertainty for parties) as to which documents may ultimately become public. One way to prevent publication will be to seek a "*Filing Modification Order*", though [Guidance](#) published by HM Courts & Tribunals Service ("HMCTS") indicates that these "FMOs" will be granted only rarely.

Parties will need to be proactive in identifying and justifying any requests for confidentiality or redaction at an early stage. Above all, parties should be mindful that any document referred to in court at any stage of the proceedings (including in any interim hearing) could become publicly accessible under the pilot.

Why the Pilot has been introduced

The pilot aims to advance the principle of open justice by providing ready access to documents which inform the public's understanding of proceedings. It responds to judicial concerns that documents already in the public domain as a matter of law were difficult to obtain in practice. The Supreme Court confirmed in *Cape Intermediate Holdings Ltd v Dring* [2019] the Court's power to grant non-party access to such documents, but the process often required a formal application, which often proved prohibitively burdensome for both interested non-parties and for the Court.

Key issues

- Increased public access to key court documents in commercial cases from 1 January 2026.
- Two-year pilot scheme in the Commercial Court, London Circuit Commercial Court, and Financial List.
- Certain court documents will be designated as 'Public Domain Documents'.
- 'Filing Modification Orders' - to prevent disclosure of sensitive material.

What are "*Public Domain Documents*"?

The pilot covers most, but not all, documents which are already considered to be in the public domain as a matter of law. "*Public Domain Documents*" are defined in the Practice Direction as:

- skeleton arguments;
- written submissions relied on in the hearing (including opening/closing submissions);
- witness statements and affidavits (excluding their exhibits);
- expert reports (including annexes and exhibits);
- any other document "*critical to the understanding of the hearing*" and ordered by the judge to be a Public Domain Document; and
- any document agreed by the parties to be a Public Domain Document.

Importantly, a document does not become public simply because it is referred to in a Public Domain Document.

It is the "*critical to the understanding of the hearing*" category which is likely to prove to be the most contentious. While this category appears to be a simple sweep-up, it is subjective and open to interpretation, which creates uncertainty about which documents may ultimately be made public. The HMCTS Guidance indicates that it is intended that this category will only capture those documents which are so central to the hearing that it would be artificial to treat them as not being public. For example, the agreement or agreements at the heart of a contractual dispute which are read out or extensively referred to during trial (or during any interim hearing) is likely to fall within this category.

The pilot applies to all hearings, including both trials and interim applications, with no materiality threshold. As a result, any document deemed critical to understanding any hearing could become public. This could include (or could be argued by one or more of the parties to proceedings to include), for example, confidential financial information discussed during a security for costs application; or evidence provided during Initial Disclosure which is heavily relied on in a contested disclosure application.

It remains to be seen how Judges will exercise the discretion afforded to them by the pilot. They may decide unilaterally that a document is "*critical*"; they may invite submissions from the parties, or respond to party requests for designation; or they may do both. In any event, disputes over designation are likely to take up additional Court time and may need to be factored into the management of hearings.

How will it work?

Parties must file any Public Domain Documents on the publicly-accessible part of the Court's electronic filing system (CE-File) within a set filing period (regardless of whether the documents have already been filed). Skeleton arguments and written opening/closing submissions will need to be filed within 2 days from the start of the hearing. Other documents must be filed within 14 days from when they are used or referred to in Court, unless the Court orders otherwise. In the case of longer hearings, orders will be made for staged filing to avoid multiple and/or rolling filing deadlines.

Are there any exceptions?

The pilot will not apply to (i) hearings held in private, (ii) hearings involving litigants in person, or (iii) documents covered by confidentiality and anonymity orders under CPR 39.2. It also does not apply to Statements of Case which are already accessible on the public CE-File portal, or to other categories of documents placed before the Court and referred to during the hearing (e.g. a document on which someone is cross examined) which, though they may still be accessible under the open justice principles established in *Dring*, will continue to require a separate application to the court.

Parties (as well as non-parties) will also be able to apply for Filing Modification Orders ("FMOs") which modify or disapply the filing obligation. Where appropriate (e.g. in the case of sensitive or confidential material), the Court may order that the relevant documents are filed with redactions, or not at all. The HMCTS Guidance provides further detail, but makes clear that such orders will be rare.

Will the Pilot apply to arbitration proceedings?

Applications under the Arbitration Act 1996 for the determination of (i) a preliminary point of law (section 45), and (ii) an appeal of an award on a question of law (section 69), will be heard in public unless ordered otherwise and, as such, should fall within the scope of the pilot. Subject to judicial discretion, all other Court proceedings relating to arbitration claims will be heard in private (and so will fall outside its scope). Notably, the rules of several leading arbitral institutions, including the LCIA and ICC, waive non-mandatory rights of appeal, such as those arising under section 69. Parties are also free to opt out of sections 45 and 69 in their arbitration agreements, to maximise confidentiality and the finality of awards.

How can we help?

If you would like to understand more about the wider implications of the pilot scheme or to discuss the practical steps which litigants should be considering to protect their sensitive information, we would be happy to share further insights and guidance. Please do not hesitate to get in touch.

CONTACTS



Christopher Ingham
Partner

T +44 207006 4518
E christopher.ingham
@cliffordchance.com



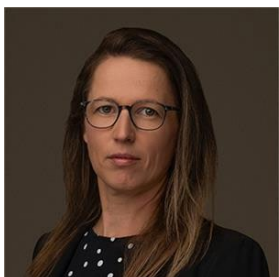
Simon James
Consultant

T +44 207006 8405
E simon.james
@cliffordchance.com



Jonathon Caunt
Senior Associate

T +44 207006 4186
E Jonathon.Caunt
@cliffordchance.com



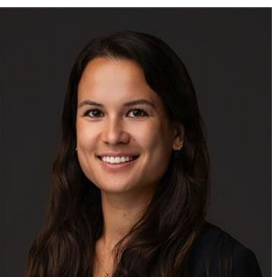
Hannah Veitch
Senior Associate

T +44 207006 5003
E hannah.veitch
@cliffordchance.com



Benjamin Barrat
Knowledge Director

T +44 207006 1696
E benjamin.barrat
@cliffordchance.com



Emma Marshall
Senior Associate

T +44 207006 4889
E emma.marshall
@cliffordchance.com



Ella Ditri
Lawyer

T +44 207006 1212
E ella.ditri
@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

cliffordchance.com

Clifford Chance, 10 Upper Bank Street,
London, E14 5JJ

© Clifford Chance 2025

Clifford Chance LLP is a limited liability partnership registered in England and Wales under no. OC323571. The firm's registered office and principal place of business is at 10 Upper Bank Street, London E14 5JJ. The firm uses the word "partner" to refer to a member of Clifford Chance LLP or an employee or consultant with equivalent standing and qualifications.

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi • Amsterdam • Barcelona • Beijing • Brussels • Bucharest** • Casablanca • Delhi • Dubai • Düsseldorf • Frankfurt • Hong Kong • Houston • Istanbul • London • Luxembourg • Madrid • Milan • Munich • Newcastle • New York • Paris • Perth • Prague** • Riyadh* • Rome • São Paulo • Shanghai • Singapore • Sydney • Tokyo • Warsaw • Washington, D.C.

*AS&H Clifford Chance, a joint venture entered into by Clifford Chance LLP.

**Clifford Chance has entered into association agreements with Clifford Chance Prague Association SRO in Prague and Clifford Chance Badea SPRL in Bucharest.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.