



**Spotlight on Corruption’s Submission to the Civil Procedure Rules Committee (CPRC) Consultation:  
Access to Court Documents by Non-Parties: Proposed New Civil Procedure Rule (CPR) 5.4C**

8 April 2024

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**About us**

1. Spotlight on Corruption (“Spotlight”) is an anti-corruption charity that shines a light on the UK’s role in corruption at home and abroad.<sup>1</sup> We strive to ensure the UK has transparent, accountable institutions that prevent corruption and allow democracy to flourish. To achieve this we highlight corruption and the harm it causes, and campaign to ensure the UK implements and enforces its anti-corruption laws effectively and has strong systems in place to prevent corruption. We also act as policy entrepreneurs, researching and advocating robust and innovative policy recommendations to make the system better.
2. We have a strong legal focus, and run a unique court monitoring programme to track corruption-related cases in the courts of England and Wales. This involves checking daily cause lists for a wide range of courts, regularly attending and reporting on hearings, requesting court documents, publishing analyses of cases, providing comment to journalists, and building an evidence base to inform our advocacy for reforms to strengthen the enforcement of the UK’s anti-corruption laws.
3. Transparency in court proceedings is essential for us to do our work. We have therefore consistently championed the principle of open justice and advocated for greater transparency in how the courts operate.<sup>2</sup> This includes a submission to the Ministry of Justice’s (MOJ) recent consultation on “Open Justice: The Way Forward”.<sup>3</sup> We are a member of the Courts and Tribunals Observers’ Network, which is a UK-based initiative focused on how the public can be supported to observe courts and access court information in digital and physical environments.<sup>4</sup>

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<sup>1</sup> Registration number 1185872. Website: <https://www.spotlightcorruption.org/>

<sup>2</sup> See our recent work on open justice here: <https://www.spotlightcorruption.org/category/open-justice/>

<sup>3</sup> <https://www.spotlightcorruption.org/submission/submission-moj-open-justice/>

<sup>4</sup> <https://courtobservers.org>

## **Our experience seeking non-party access to court documents**

4. As regular observers of court proceedings, our experience is that the public access rights which flow from the principle of open justice are not always a practical reality. The most frequent and frustrating challenge we encounter in this regard relates to our requests for non-party access to court documents. We make almost weekly requests for documents across a range of courts and tribunals, including various divisions of the High Court and the Civil Division of the Court of Appeal. This encompasses requests submitted via CE-File, enquiries to court staff, informal requests made in person or by email to barristers and their instructing solicitors, and letters to the court seeking the supply of certain documents.
5. While the courts have developed a strong body of case law affirming the public access requirements that flow from the principle of open justice and CPR 5.4C, we frequently encounter difficulties obtaining copies of core court documents such as skeleton arguments, witness statements and affidavits. Notwithstanding the current rights of access set out in CPR 5.4C(1), we have also encountered practical difficulties obtaining statements of case, court orders and on occasion even public judgments.
6. We therefore welcome this consultation by the Civil Procedure Rule Committee (CPRC) on proposed changes to CPR 5.4C that would provide non-parties like ourselves with more effective access to documents from court records. Given the complexity and scale of documentary material in modern court proceedings, we believe that the effective supply of documents relating to cases is essential for promoting the purposes served by the principle of open justice.<sup>5</sup>

## **The uneven practice across different courts and tribunals**

7. We have observed how the principle of open justice, and CPR 5.4C in particular, is unevenly and inconsistently applied across different courts and tribunals. In motivating for non-party access to court documents, we find ourselves making similar arguments again and again to different court staff, lawyers and judges. We frequently cite passages from *Cape Intermediate Holdings Ltd v Dring* [2019] UKSC 38 (*'Cape v Dring'*) and other leading case authorities to support our requests for the supply of court documents. In our view, it should not be necessary to rehearse these well-established principles to obtain access to documents which should be publicly available.

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<sup>5</sup> See the purposes identified in *Cape Intermediate Holdings Ltd v Dring* [2019] UKSC 38 at paras 42-43

Although we are usually successful in obtaining copies of documents we request, particularly where the court is asked or required to rule on our non-party access, these requests are time-consuming to make while the parties and courts are often slow to respond.

8. While we work closely with journalists and media organisations who encounter similar practical barriers to obtaining court documents, we have also observed that open justice is sometimes wrongly conflated with media access to the courts. The principle of open justice is much broader and more inclusive, but for the wider public – including civil society organisations, academic researchers and other public interest reporters – a transparent and open justice system is not always our practical experience.
9. We therefore welcome the proposed new CPR 5.4C which expands the core set of documents that *all* non-parties should, as a matter of course, be given access to under CPR 5.4C(1). In our view, this gives effect to the general principles that have already been set out in *Cape v Dring* and other authorities but it will help achieve a more consistent and streamlined application of these principles in practice.

#### **The importance of providing timely access to skeleton arguments**

10. In the absence of a clear rule or uniform guidance applicable across all courts and tribunals that skeleton arguments should be made available to non-parties, we frequently encounter practical difficulties and resistance to our requests for these documents. The result is that instead of receiving copies in time for the start of a hearing, we may get delayed access or no access at all.
11. Our experience in this regard is not confined to the lower courts and tribunals. For example, in a recent Supreme Court case we followed, it took us weeks to get hold of the government's Case while we have still not received the respondent's Case because our emails to the general enquiries email of the law firm and chambers went unanswered.<sup>6</sup> While the Supreme Court advises non-parties to request these documents from the parties' legal representatives,<sup>7</sup> we were informed by court staff that we would need to make a formal application for disclosure of the instructing solicitor's contact details and pay the relevant fee of £350. This is highly unsatisfactory and goes against the aspirations of open justice in our apex court, including the

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<sup>6</sup> <https://twitter.com/EndCorruptionUK/status/1671500960705724416>

<sup>7</sup> <https://www.supremecourt.uk/faqs.html#5i>

recent suggestion by Lord Briggs that members of the public should ideally have access to the same court documents that are before a judge during a hearing.<sup>8</sup>

12. We have observed first-hand the benefit that can be gained from having clear guidance about the supply of skeletons to non-parties. This is most notable as a result of the position set out in the Commercial Court Guide that “parties and their legal representatives should be prepared to provide a copy of that party’s skeleton argument for the hearing, by email, to any law reporter, media reporter or member of the public who requests it. Unless a party has solid grounds for declining to provide a copy, a party should comply with the request voluntarily, without the need for intervention by the Court.”<sup>9</sup> In most commercial trials we attend, the parties’ legal representatives come prepared with hard copies on hand for any member of the public attending the hearing, and are willing to send copies by email too. On occasions when there has been a reluctance or delay in providing copies on request, we have observed judges express their displeasure at having to intervene to ensure parties comply with their duties to provide these skeletons.
13. It is also encouraging that the Bar Council recently reviewed its guidance on the provision of documents to non-parties, shifting from an approach that emphasised confidentiality over the open justice principle<sup>10</sup> to a greater appreciation of the rights and interests of non-parties to certain documents.<sup>11</sup> In practice, however, our experience has been that some barristers (and their instructing solicitors) are reluctant, unresponsive or even refuse to share their skeleton arguments so it is clear that this revised guidance has not been embedded in practice.
14. We therefore welcome the clarity that would be provided by setting out an authoritative position in the proposed new CPR 5.4C(3) that skeleton arguments should be made available unless an order to the contrary has been made. In particular, we wish to underscore the importance of the proposed new CPR 5.4C(8) for ensuring effective and timely access to skeleton arguments. Having copies of the parties’ skeleton arguments in advance of the hearing makes a very significant difference to our ability to follow the arguments as they unfold in a hearing, and for ensuring the accuracy and fairness of our contemporaneous reporting on court proceedings.

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<sup>8</sup> <https://www.legalfutures.co.uk/latest-news/supreme-court-to-put-documents-online-in-transparency-push>

<sup>9</sup> Commercial Court Guide Eleventh Edition (2011) at J7.3: <https://www.judiciary.uk/wp-content/uploads/2022/06/Commercial-Court-Guide-11th-edition-1.pdf>

<sup>10</sup> See the 2019 version of the Bar Council guidance: <https://www.barcouncilethics.co.uk/wp-content/uploads/2019/10/Journalists-law-reporters-and-other-non-parties-provision-of-documents.pdf>

<sup>11</sup> See the latest version of the Bar Council guidance issued in June 2023: <https://www.barcouncilethics.co.uk/wp-content/uploads/2019/10/Provision-of-Documents-to-journalists-law-reporters-and-other-non-parties-June-2023.pdf>

## **The mechanism for obtaining non-party access to documents**

15. Through our court monitoring programme, we have learned more about where to look and who to contact for access to court documents but these processes lack transparency and are highly inefficient. In navigating these processes, we rely on the good relationships we have developed through regular engagement with court staff, law enforcement agencies and counsel to assist us with access to court documents, but this is unsatisfactory as a system for non-party access. There needs to be a formal, clear and efficient mechanism for non-parties (whether press or other members of the public) to request documents from the court records.
16. In particular, we have found that official channels for seeking access are often unresponsive or ineffective in providing access, largely because court staff are overstretched and do not have the capacity to answer the number of queries they receive on a daily basis. It often takes several follow-up emails or phone calls to obtain documents that should be readily accessible to enable us to report contemporaneously on court proceedings. In respect of skeleton arguments and witness statements, we are in any event directed to approach the parties' legal representatives as the court staff may not readily have these materials to hand at the time of our request.
17. As a result, our current practice is that we usually rely on a party's barrister or their instructing solicitor to share documents – skeletons and witness statements in particular. In the absence of clear rules requiring legal representatives to supply these documents to us, however, our access depends on the willingness of the parties to respond to our requests without court intervention. It can also be difficult to get the names and email addresses for the parties' legal representatives.
18. We therefore welcome the proposed new CPR 5.4C(10) which squarely places responsibility on the parties to supply skeleton arguments and witness statements. In our view, this aligns with what is currently happening much of the time, but introducing a clear rule to this effect would ensure parties cannot ignore requests when they are reluctant to give a non-party access to these documents. It would ensure a far more efficient process that avoids burdening judges and court staff with requests for documents that the parties themselves are best placed to provide.