



The Bar Council

Provision of documents to journalists, law reporters and other non-parties

Purpose:	To assist barristers in deciding how to respond to requests for case documents from third parties
Scope of application:	All practising barristers
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Status and effect:	Please see the notice at end of this document. This is not “guidance” for the purposes of the BSB Handbook I6.4.

Introduction

1. Barristers frequently encounter requests from journalists, law reporters and other persons with an interest in following a particular case to provide copies of documentation such as skeleton arguments, written submissions, or other documents referred to in the course of proceedings, such as witness statements.
2. The purpose of this guidance is to explain the legal framework governing access to documents referred to in open court and to give practical guidance to assist barristers in making informed decisions about what documents it may be appropriate to provide in a given case, subject to their client’s instructions.

The legal framework

3. It is important to be aware of the legal framework governing access to case documents from third parties. This framework not only informs the guidance given below, it will also govern any application for access to a document, if you decline to provide it voluntarily. The legal framework should therefore be borne in mind when you advise clients about requests for access to documents from third parties.
4. There are number of legal provisions giving non-parties specific rights of access to certain documents in particular situations (although in each case a court may make

an order restricting that right). A journalist and a law reporter have a right to obtain a copy of a party's skeleton argument in any appeal heard in the Court of Appeal. Non-parties have a right of access to statements of case and judgments and orders held on the court file under CPR 5.4C, but must apply for an order granting access to any other document. Any person including a journalist has the right to inspect a witness statement which stands as a person's evidence in chief in the course of a civil trial, under CPR 32.13(1). In the criminal courts, applications for access to documents are made under rule 5.8 of the Criminal Procedure Rules 2020, with the court applying the open justice principle.

5. In addition to these minimum rights, all courts and tribunals have an inherent jurisdiction under the open justice principle to allow access to any document referred to in the course of proceedings in open court. The key cases on the practical operation of the right of access are *R(Guardian News and Media Limited) v City of Westminster Magistrates' Court* [2012] EWCA Civ 420 and *Dring v Cape Intermediate Holdings Limited* [2019] UKSC 38. Similar principles also apply in the employment tribunal: [*Guardian News & Media Ltd v Rozanov and EFG Private Bank Ltd* \[2022\] EAT 12](#) where it was stated;

"It is important that in drafting skeleton arguments and witness statements parties remember that such documents can generally be inspected at hearings, and may be provided thereafter. Parties should also bear in mind that the bundle of documents will generally be open for inspection at or, in appropriate circumstances, after a hearing."

6. The default position under the open justice principle is that the court should grant access to the parties' skeleton arguments and written submissions, as well as documents which have been placed before the court and referred to during the hearing, unless there is some strong countervailing reason to the contrary. A person does not have a right to be granted access to such documents and should explain why he is seeking access and how granting access would further the open justice principle. This should usually be relatively easy for a journalist or a law reporter, but many other people may have legitimate reasons for wanting information about a case.

7. Where there is opposition to granting access to documents, the court has to undertake a fact-specific balancing exercise, weighing up the potential value of the information sought in advancing the principle of open justice against any risk of harm which its disclosure might cause to the maintenance of an effective judicial process or to the legitimate interests of others. There may be good reasons for denying access, such as national security, protecting the interests of children or mentally disabled adults, privacy interests, trade secrets and commercial confidentiality.

However, a court should always consider whether it is possible to cater for any legitimate concerns through limiting the documents that are supplied, or ordering the anonymisation or redaction of documents, rather than refusing access altogether.

Family Proceedings

8. The presumptive starting point in favour of openness does not apply in family proceedings, where most cases are heard privately. Journalists do however have a right to attend family proceedings heard in private, however there they must apply for permission to report any such proceedings and in any event cannot publish anything that risks identifying a child in the proceedings. Journalists also need to apply for permission to report any Court of Protection cases heard in private, although increasingly the practice is for those hearings to be in public.

9. On 29 October 2021 Sir Andrew McFarlane, President of the Family Division completed his report on transparency in the family courts, recommending that accredited media representatives be permitted not only to attend hearings but to report them publicly, subject to maintaining the anonymity of children and families and keeping confidential the details of their private lives. There followed a pilot scheme in three courts (Cardiff, Carlisle and Leeds) and further legislative amendments are expected.

Criminal Proceedings

10. While the same general 'open justice' principles apply, care must be taken not to disclose the identities of protected individuals such as complainants in sex offences cases or children. It is also a contempt of court to make unauthorised disclosure of unused material that has not been displayed or communicated to the public in open court (Sections 17 and 18 of the Criminal Procedure & Investigations Act 1996).

Guidance

11. Every barrister will be aware that their primary duty is to act in the best interests of their own client, to preserve their client's confidentiality and to respect legal professional privilege. These are core duties under the Bar Standards Board Handbook and they apply as much to decisions about what information is to be provided about a case to a third party as to other aspects of a barrister's work.

12. However, in most cases it is possible for a barrister to adhere to these fundamental principles while still allowing a third party to have access to documents that have been used at a hearing in open court.

13. You may be concerned that the publication of information might infringe a reporting restriction. There are a wide range of automatic and discretionary reporting restrictions, which may apply by operation of law or be imposed in an individual case. Detailed guidance is contained in "Reporting Restrictions in the Criminal Courts", published by the Judicial College. The responsibility for complying with these reporting restrictions is that of the publisher, not the barrister in a case. Media organisations, in particular, have access to specialist legal advice and are well placed

to make these decisions. However, if a discretionary reporting restrictions order has been made in your case, it is good practice to draw a journalist's attention to the order when providing them with information or documents.

14. Usually, it will be appropriate for a barrister to seek their solicitor and/or client's instructions before providing documents to a third party. However, barristers should be willing to advise their clients robustly, bearing in mind the strong presumptive starting point in favour of open justice and also that judges generally do not welcome having to rule on contested applications for access to documents at the start of a hearing. In sensitive cases you may be able to address any legitimate concerns by involving your client in agreeing to anonymisation or redactions.

Skeleton Arguments

15. Skeleton arguments play a particularly important role in our legal system, summarising the key issues of fact and law that the court has to decide and the main arguments advanced by the parties. For this reason, they are often the single most useful resource for a third party trying to understand the issues in a case.

16. Where a party has deployed a skeleton argument in open court, the starting point is that copies of it should be made available on request to a journalist, law reporter or other person with a legitimate interest in the case, unless there are compelling reasons to the contrary. This may involve providing that person with a hard copy at the time of a hearing, or emailing over a copy after a hearing.

17. In cases raising sensitive issues, such as privacy, or commercial confidentiality, those concerns can usually be addressed by anonymising or redacting a skeleton argument, rather than refusing to provide access to it altogether.

18. In the Court of Appeal (Civil Division), there is now a requirement on all legal representatives to bring two extra copies of their skeleton argument to the appeal hearing, to be provided to accredited law reporters and accredited journalists, under CPR PD 52C, para 33. These additional copies must be supplied to the usher or other court official before the start of the hearing. In appeals in family proceedings involving a child, the copies of the skeleton must be in anonymised form and must omit any detail that might, if reported, lead to the identification of a child. Any party may apply for a direction lifting or varying these requirements e.g. asking for redactions; the factors the court will take into account in its decision are set out in CPR PD 52C, para 33(6).

Documents prepared by Counsel

19. A wide range of documents may be prepared by barristers to assist the court with mastering the issues in a case, from written opening and closing speeches, chronologies and *dramatis personae*, to summaries of the evidence.

20. Written opening and closing speeches are a direct substitute for oral speeches which in previous times would have been the norm and thereby accessible to any member of the public attending court. There is therefore a strong argument for making written opening and closing speeches available on request. In addition, where other documents have been prepared and deployed in open court that are likely significantly to assist a third party's understanding of the case, the default position should be one of granting access and you should apply the same principles as set out above in relation to skeleton arguments.

Witness Statements

21. A witness statement that has been served by the opposing party in your case can only be used for the purpose of the proceedings, unless you have their written consent, the court has given permission for another use, or the witness statement has been put in evidence at a hearing held in public (CPR 32.12).

22. However, once a witness statement has been adopted by a witness as his or her evidence in chief in the course of the trial, any third party has the right to inspect it, unless the court orders otherwise (CPR 32.13). The purpose of this rule is to ensure that the practice of a witness adopting a written statement instead of giving oral evidence does not have the consequence of depriving the public of knowledge of their evidence. For this reason, requests by third parties such as journalists to inspect witness statements which have stood as evidence in chief should be granted, unless the court has ordered otherwise.

Other Documents

23. A wide range of other documents may be important to understanding the issues in a case or may contain material that the media argues relates to a matter of important public interest or a topical news story. Past cases have involved requests for access to reports on topical issues, or expert reports, or correspondence. Whatever the document to which access is sought, the guiding principles set out in paragraphs 5-8 above apply.

24. The starting point is that documents that have been deployed in open court should be accessible in accordance with the open justice principle, unless there is a strong countervailing reason to the contrary.

25. However, there may be documents in a case that have not been mentioned in open court, where the case for access is not that they are already public, but that access to them would further a public interest debate. In those cases the strength of the case for access will depend on all the circumstances, including the nature of the document, how it has been deployed in the case, its subject matter, its relevance to any issue of general public interest or topical news story and any prejudice that providing it would cause to the legitimate interests of a party or witness.

Important Notice

This document has been prepared by the Bar Council to assist barristers on matters of professional conduct and ethics. **It is not “guidance” for the purposes of the BSB Handbook I6.4, and neither the BSB nor a disciplinary tribunal nor the Legal Ombudsman is bound by any views or advice expressed in it.** It does not comprise – and cannot be relied on as giving – legal advice. It has been prepared in good faith, but neither the Bar Council nor any of the individuals responsible for or involved in its preparation accept any responsibility or liability for anything done in reliance on it. For fuller information as to the status and effect of this document, please refer to the professional practice and ethics section of the Bar Council’s website [here](#).