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Secretary to the Civil Procedure Rule Committee
c/o Access to Justice Policy Division
Ministry of Justice
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Dear Sir/ Madam,

Access to Court Documents by Non-Parties: proposed new CPR 5.4C

APIL is grateful for the opportunity to provide comments on the proposed new CPR 5.4C about access to court documents. We recognise the importance of open justice to ensure transparency and accountability within the legal system, and to foster public confidence in the fairness and integrity of judicial proceedings. However, APIL believes there needs to be a balance between the concept of open justice and Article 8 of the Human Rights Act on the right to respect for private and family life. We have highlighted our concerns with the proposed new drafting of CPR 5.4C below.

Proposed new (1)(a) would allow non-parties to obtain skeleton arguments, witness statements and expert reports (except medical records) without the court's permission, unless the relevant party makes an application for an order to restrict access. We have reservations concerning this blanket presumption that these documents will be disclosed and made accessible from the court records. The new rule risks disproportionate public scrutiny and disputes being more prominently discussed in the media than they currently are. Access to skeleton arguments, witness statements and expert reports should be decided on a case-by-case basis to ensure the balance between the principles of open justice and the need to protect the privacy and rights of individuals involved in legal proceedings, particularly in cases involving sensitive information, vulnerable parties or children.

We also query how this blanket presumption of access would interact with abuse cases. Most abuse cases are subject to anonymity orders and access to documents is only permitted via a request to the court.

Another issue is the additional work created by the proposed new rule. Despite medical reports being exempted, expert reports (including reports of what might be described as 'quasi-medical experts' such as occupational therapy, physiotherapy, prosthetics and care experts), witness statements and skeleton arguments also include confidential, highly personal and sensitive information about a party (including medical details) and would need to be redacted. If solicitors are required to carry out this work, there will be a substantial cost associated with redacting, given that it is a time-consuming and meticulous process due to the risk of a data breach involving the party's confidential information. Considering recent reforms to fixed recoverable costs in personal injury claims, we believe further clarification is needed as to who would be responsible for carrying out this work, and how this extra work would be remunerated if solicitors are required to do it. Further, this proposal may also have implications for client care. Legal representatives will have to consider and discuss with their clients whether they oppose the disclosure and whether the client would instruct the legal representative to apply for a court order restricting access to the documents in every claim.

Alternatively, if redactions are to be carried out by court staff, we believe careful consideration is needed regarding the additional administrative burden for the courts if the proposed new rule is introduced. The court system is already fraught with delays, short-staffed and lacking funding. For instance, APIL analysis of the Ministry of Justice data found that county court delays reached a record-high in the fourth quarter of 2023 – it took an average of 85.7 weeks (over a year and a half) for fast and multi-track claims to reach trial. This is up 41% when compared to the same period in 2019 and is up 62% on the same period in 2016.¹ Furthermore, if implemented as it is, the proposed rule would significantly increase applications for the court to restrict access to the documents, given the default right to access in the proposed 5.4C (1)(a), which could potentially exacerbate court delays. Additional resourcing, staffing and funding will be crucial to embed the proposals.

The proposed new (1)(b) requires parties to provide copies of skeleton arguments and witness statements upon request during a hearing. Additionally, proposed section 5.4C (10) stipulates that the party submitting the skeleton argument or relying on the relevant witness's evidence is responsible for providing the copy unless otherwise instructed by the court. We believe there is a need for additional information regarding the procedure for making such requests, including timing; whether it should be directed to the party or the court; and regarding the remuneration of legal representatives for the additional work required.

We hope our comments prove useful.

Yours sincerely,



Ana Ramos

Legal Affairs Assistant

¹ Ministry of Justice, *Civil justice statistics quarterly: October to December 2023*

<https://www.gov.uk/government/statistics/civil-justice-statistics-quarterly-october-to-december-2023>