

In brief: Open justice—CPR Part 5.4C(2) (Dring v Cape Distribution Ltd and others)

02/01/2018

Dispute Resolution analysis: Andrew Butler, barrister at Tanfield Chambers, London, considers the case of *Dring v Cape Distribution Ltd & others* [2017] EWHC 3154 (QB). An interested party was permitted to see certain documents which had been the subject of disclosure in asbestos litigation and included in the trial bundles, even though the claims had settled before judgment was given.

What are the practical implications of this case?

The main practical implication of this case is that parties to litigation do not have the right to determine, by private agreement between them, the extent to which others may have sight of documents referred to in the litigation. Once documents have been read, or treated as read, in open court, there may be little if anything that a litigant can do to prevent them from being open to public scrutiny. There is no suggestion in the case that the successful implementation of an agreement to retrieve them from Court, and destroy them, would be a contempt; but it seems likely that a third party who was opposed to that course, and could show a legitimate interest in having sight of the documents, would be able to prevent it by injunction.

The court also accepted that there were limits to the specificity which an applicant could bring to an application under [CPR Part 5.4C\(2\)](#). There was however a difference between e.g. a request 'for all witness statements' (which, while broad, was permissible) and a request for 'all material relied on by X to establish Y' (which lacked practical precision and prevented the court from knowing what documents were sought).

What was this case about?

Mr Dring (D) acted on behalf of the Asbestos Victims Support Groups Forum (UK), a voluntary organisation offering advice to asbestos victims on available benefits and possible compensation claims. Cape (C) had been a defendant in two related asbestos claims. The claims had reached trial but, before judgment was given, were compromised on terms requiring *inter alia* destruction of documents which had been disclosed in the proceedings. D, having found out about this and obtained an injunction preventing their destruction, applied for an order giving him access to the trial bundles, skeleton arguments, submissions and daily transcripts.

While C accepted the principle of open justice, which generally permitted third parties with a sufficient interest to have access to documents on the court record, it argued that this was merely a means of facilitating scrutiny of the decision-making process, and did not apply in circumstances where the case had settled before a decision had been reached. C also argued that the contents of trial bundles were not within the scope of 'documents filed by a party', within the meaning of [CPR Part 5.4C\(2\)](#), and that D did not have a legitimate interest so as to justify the grant of access.

What did the court decide?

The court rejected C's argument that the principle of open justice was not engaged if a case settled before a decision was reached. The court held that the test was whether the purpose of access was to scrutinise the judicial process as it was taking place. That test was satisfied in the present case.

The court also rejected C's argument that the contents of trial bundles were not within the scope of 'documents filed by a party'. Accordingly, such documents were susceptible to an order requiring access to be given to them. So too (on the particular facts of this case) were various documents deployed in court, such as skeleton arguments, written submissions and transcripts. However, a digital bundle of documents which had not been physically filed was not within the scope of [CPR Part 5.4C\(2\)](#) and D would not be granted access to that.

The court also held that D had a legitimate interest in having access to the documents. The effect of that was to create a 'default position' in favour of the principle of open justice, although even then, the Court was still required to balance that with harm to the legitimate interests of other parties. Undertaking that balancing exercise here, the Court held that the public interest in facilitating a better understanding of the history of asbestos safety, and promoting consistency of advice on the merits of future claims, were factors weighing in favour of the grant of access, and the court so ordered.

Case details

- Case name: *Dring v Cape Distribution Ltd & Anor (Constitution - access to courts - open justice)* [2017] EWHC 3154 (QB)
- Court: High Court
- Judge: Master Victoria Mccloud
- Date of judgment: 5 December 2017

The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor.

FREE TRIAL