

BETWEEN:

- (1) LONDON CAPITAL & FINANCE PLC (IN ADMINISTRATION)
(2) FINBARR O'CONNELL, ADAM STEPHENS, HENRY SHINNERS,
COLIN HARDMAN AND GEOFFREY ROWLEY (JOINT
ADMINISTRATORS OF LONDON CAPITAL & FINANCE PLC (IN
ADMINISTRATION))
(3) LONDON OIL & GAS LIMITED (IN ADMINISTRATION)
(4) FINBARR O'CONNELL, ADAM STEPHENS, COLIN HARDMAN AND LANE
BEDNASH (JOINT ADMINISTRATORS OF LONDON OIL & GAS
LIMITED (IN ADMINISTRATION))

Claimant

- and -

- (1) MICHAEL ANDREW THOMSON
(2) SIMON HUME-KENDALL
(3) ELTEN BARKER
(4) SPENCER GOLDING
(5) PAUL CARELESS
(6) SURGE FINANCIAL LIMITED
(7) JOHN RUSSELL-MURPHY
(8) ROBERT SEDGWICK
(9) GROSVENOR PARK INTELLIGENT INVESTMENTS LIMITED
(10) HELEN HUME-KENDALL

Defendants

Open justice application by Daniel Cloake for non-party access to court documents

Introduction

1. Daniel Cloake was described in The Times¹ as someone who “*runs the investigative court reporting blog, Mouse in the Court*”.

¹ The Times 27/06/2022 “Discord’ at watchdog over peer-to-peer lending as early as 2016”

<https://www.thetimes.co.uk/article/confusion-and-discord-at-fca-over-peer-to-peer-lending-as-early-as-2016-32xv3ltzx>

2. The blog is crowdfunded by members of the public and by the sale of information to the press.
3. He earns more than half his income from non-newsgathering activities and therefore does not qualify for a press card.
4. The blog has covered litigation involving FCA regulated entities, historically having a specific focus on the so-called peer-to-peer lending industry.

The Applications

5. To assist with his understanding of the trial, to increase his ability to fairly and accurately report on the trial, and to make the documents available to other members of the public who may also be interested, Mr Cloake would like access to the following categories of documents:
 - a. The Skeleton Arguments of the parties
 - b. The witness statements deployed.
 - c. A so-called 'Wallis Order' granting access to the daily transcripts.
6. Mr Cloake intends to publish the documents on his website.

Category A – Skeleton Arguments

7. Mr Cloake relies upon the decision of Nicklin J² in *Hayden v Associated Newspapers Ltd* [2022] EWHC said at para 32:

"The availability of skeleton arguments, and witness statements, deployed in open court hearings is essential to any meaningful concept of open justice."

8. And Judge LJ³ who said:

"...the principle of open justice leads inexorably to the conclusion that written skeletons arguments, or those parts of the skeleton arguments adopted by the counsel and treated by the court as forming parts of his oral submissions, should be disclosed if and when a request to do so is received."

Category B – Witness Statements

² *Hayden v Associated Newspapers Ltd* [2022] EWHC 2693 (KB) §32
<https://www.bailii.org/ew/cases/EWHC/KB/2022/2693.html>

³ *Howell & Ors, R. v* [2003] EWCA Crim 486. §197
www.bailii.org/ew/cases/EWCA/Crim/2003/486.html

9. Mr Cloake relies upon the authority of Nicklin J in paragraph 7 above.
10. And Mr Cloake relies upon CPR 32.13(1)⁴

(1) A witness statement which stands as evidence in chief is open to inspection during the course of the trial unless the court otherwise directs.

Category C – Daily Transcripts ‘Wallis Order’

11. Mr Cloake requests that the court orders that copies of any transcripts be e-mailed to him ([E-mail address]) within a reasonable time of them being made.
12. Hale P in Cape Intermediate Holdings Ltd v Dring (Asbestos Victims Support Groups Forum UK) [2019] UKSC 38⁵ at Para 43 stated (inter alia) that Open Justice:

“is to enable the public to understand how the justice system works and why decisions are taken. For this they have to be in a position to understand the issues and the evidence adduced in support of the parties’ cases”.
13. The publication of the transcripts, Mr Cloake submits, are the best way for *“the public to understand how the justice system works and why decisions are taken”*
14. Mr Cloake submits that the court has jurisdiction under the open justice principle. This is described by Hale P in Cape Intermediate Holdings Ltd v Dring [2019] UKSC 38 where at Para 41 she states (inter alia) that all courts and tribunals have:

“an inherent jurisdiction to determine what that principle requires in terms of access to documents or other information placed before the court or tribunal in question. The extent of any access permitted by the court’s rules is not determinative (save to the extent that they may contain a valid prohibition). It is not correct to talk in terms of limits to the court’s jurisdiction when what is in fact in question is how that jurisdiction should be exercised in the particular case.”
15. A civil trial where the court made an order for publication of the daily transcripts was Bates & Ors v Post Office Ltd. This was in response to a request by the journalist Nick Wallis, hence ‘Wallis Order’.
16. Fraser J (as he then was) discussed the request in his Judgment⁶ of Bates & Ors v Post Office Ltd ((No.3) "Common Issues") [2019] EWHC 606 (QB) (15 March 2019) where at Para 26 he stated:

⁴ <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part32#32.13>

⁵ <https://www.bailii.org/uk/cases/UKSC/2019/38.html>

⁶ <https://www.bailii.org/ew/cases/EWHC/QB/2019/606.html>

"I refused Mr Wallis' application to record the proceedings himself. However, neither party objected to his being provided with the daily transcript at the end of each day, or the finalised version thereafter. [53] of Cape Intermediate Holdings v Dring makes it clear that although the proper means for a nonparty to obtain a trial transcript is set out in CPR 39APD6, "if, as in this case, a private transcription service was provided at trial then the appropriate and most cost effective course of action is likely to be to seek a copy from the provider...." This was not opposed by either the Claimants or the Post Office who were sharing the cost of the electronic trial bundle between them in any event. This meant that Mr Wallis, and by extension all those who read his reports (which would have included many of the hundreds of Claimants), had access to fully accurate passages of evidence and argument."

17. Mr Cloake understands from submissions made on day 1 that LCF sold bonds to 11,625 members of the public
18. Mr Cloake submits that these bondholders will likewise benefit from *"access to fully accurate passages of evidence and argument"*.
19. Mr Cloake understands that the trial is listed through to July. It is submitted that publication of the daily transcripts is likely to be the only way for the public to fully understand what is happening in court.
20. Mr Cloake has been provided copies of the two reporting restrictions orders and will redact accordingly.

Conclusion

21. Mr Cloake asks the court to take into account CPR 39.2A:
"The court shall take reasonable steps to ensure that all hearings are of an open and public character, save when a hearing is held in private."
22. It is submitted that it is entirely reasonable and proportional for the court to grant these three applications which will plainly advance the principle of open justice.
23. Mr Cloake respectfully requests the court grants these applications.