

ENGLAND AND WALES / JUDGMENT

Scorthorne, R (on the application of) v Peterborough County Court

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Neutral Citation Number: [2025] EWHC 3292 (Admin) Ref. AC-2025-LON-001455 IN THE HIGH COURT OF JUSTICE KING'S BENCH DIVISION ADMINISTRATIVE COURT 11th November 2025 Before John Halford sitting as a Deputy High Court Judge IN THE MATTER OF:- The King (on the application of SCORTHORNE) -v- PETERBOROUGH COUNTY COURT (Claimant) (Defendant) THE CLAIMANT appeared in person THE DEFENDANT did not attend and was not represented

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DEPUTY HIGH COURT JUDGE HALFORD: 1. 2. I am going to give a short ex tempore judgment. This is an orally renewed application for permission to proceed with a judicial review brought by the Claimant, Mr Scorthorne. He challenges a decision made by Deputy District Judge Murray-Smith on 31 January 2025 when she was sitting in Peterborough County Court hearing Claim Number 119DC224. Mr Scorthorne represented himself in court today and had prepared for the hearing by producing a well organised bundle and a concise and carefully drafted skeleton argument supported by a bundle of the authorities which he relied upon. As is customary, the Deputy District Judge whose decision he challenges has not been involved in the proceedings in any way. From the names of the parties and the involvement of an insurance company, it is clear to me that the case that the Deputy District Judge was trying was a personal injury claim arising from a road traffic accident and Mr Scorthorne confirmed that was the case.

3. Mr Scorthorne was not a party to that claim, but simply a member of the public who describes himself as having a keen interest in the functioning of the justice system which means that he spends some of his free time observing hearings. In fact, coincidentally, he has appeared in that capacity in a hearing I dealt with some time ago remotely in Canterbury County Court.
4. Mr Scorthorne says, and I have no reason to doubt, that he notified Peterborough County Court on 30 January 2025 just after 5 o'clock in the evening that he intended to observe this particular hearing the following day and wanted to inspect the witness statements tendered as evidence in chief during its course pursuant to CPR 32.13(1). No action appears to have been taken by the court in relation to this, at least not immediately.
5. Mr Scorthorne also told me today in oral submissions that there was a short discussion between the Judge, Counsel for both parties prior to the hearing about his request for inspection. This is also reflected in the transcript which I will come to shortly. That is odd because normally any such discussions would take place in open court as opposed to in chambers or before a case was called on unless there was some special reason to compromise on the default open justice approach. Nothing turns on this, however. Transcribed from the official recording by eScribers 6. Once hearing began, Mr Scorthorne made his request for inspection of the witness statements in order that he could follow the course of the proceedings. He has obtained a transcript of his exchanges with the Deputy District Judge discussing this. They are short and worth setting out in full. "JUDGE MURRAY-SMITH: Very good. Your email, I will read it to the court. "I will be attending Peterborough tomorrow in person to observe various hearings, all of which that are of interest are listed before Deputy District Judge Murray-Smith. The relevant hearing to this email is listed at 10 am for a fast-track trial," and obviously it is this case this morning. "I should be grateful if you would place notification before the judge in advance of the hearing that I intend to seek inspection of witness statement tendered as evidence in chief by virtue of CPR 32.13(1). It would seem unnecessary for me to make submissions to the judge in respect of this as the right is conferred by the same is automatic and only subject to the exceptions set out in the same part. If any of those arise, I can make submissions." First point, Mr Scorthorne, it is not an automatic right, and if you look at the rules to The White Book you will see very clearly there that it is not an automatic right. You do have to make a formal application on notice to the parties in the case supported by evidence. I do not have a formal application. I do not have any evidence in support. The evidence in support would need to set out in any event why you are granting - why your access to the witness statement would further the open justice principle. Your email does not address that at all. The witness statements in this case contain both sensitive, medical and other information so I would be minded in any event, even if you had made a proper application in the proper format, to have refused the application. And I had spoken to counsel in advance of this hearing to ask whether they can - would consent in any event regardless of the lack of formality - formal application in my view, whether they would consent in providing the witness statements to you and they both refused. So you will not be provided with the witness statements, okay? MR SCORTHORNE:

May I come back briefly? Transcribed from the official recording by eScribers JUDGE MURRAY-SMITH: No you cannot because you have not made a formal application I'm afraid, Mr Scorthorne. So I am explaining to you why you are not receiving them." 7. Pausing there, I observe that there is nothing else supplementing the reasons given by the Judge for refusing inspection. From what she said, it is apparent that neither party was happy for inspection to take place. They had communicated this through Counsel as I have said, though not in open court. The Judge had fully read or at least was aware of the content of the witness statements to which inspection was sought and so was able to say that they contained medical information. It is also apparent that her main reason for refusing inspection was that Mr Scorthorne had made no formal application to seek it and in the absence of such an application, she was not willing to hear anything further from him about why inspection should be facilitated. She adds that she would have been "minded to" refuse a formal application even if one had been made because of the medical information in the witness statements, but the use of the words "minded to" cannot be read in any other way than indicating that she had not fully made up her mind on that particular question. This is important for reasons I will come to. 8. The other important thing to draw from the exchange recorded in the transcript is that this was a fast track trial listed for half a day. Mr Scorthorne has confirmed that, soon afterwards, the witnesses were cross-examined about the statements he was seeking. I mention these factors because fast track litigation in a County Court was inevitably dealt with under some time pressure. This is reflected in the comments made by the Judge in the final section of the transcripts which I have: "JUDGE MURRAY-SMITH: "All right? Thank you very much and also this is a three-hour fast-track trial. We do not have time to deal with an application made ad hoc on the morning of a fast-track trial which has been made without notice. It's not within the interests of justice, it's not fair and proportionate to those parties to delay the commencement of trial any further." 9. In the grounds of his judicial review claim which were filed on 9 May 2025, Mr Scorthorne submitted that the Judge's decision was wrong in law for three reasons. The essence of the first was that the right of inspection provided for in CPR 32.13(1) does not need to be sought by way of an application formal or otherwise and, contrary to what the Judge believed, does arise automatically once any statement is relied upon Transcribed from the official recording by eScribers as evidence in chief by a witness in the course of a hearing. The rule provides qualifications to, or more accurately bases to disapply, the right of inspection. However, a positive decision must be made to that effect and, if one is not, then the right must be respected and inspection facilitated. The second ground is that the Judge wrongly relied on commentary in The White Book which was concerned with the fundamentally different situation of inspection of witness statements after a trial is concluded, not during its course. The third was a slightly different way of putting this point underpinned by an important argument that the Judge's decision represented a legally unacceptable derogation from the principle of open justice because it was not based on any of the qualifications to or bases to disapply the rule.

10. Mr Scorthorne's paper permission application was referred to HHJ de Bertodano sitting as a Deputy High Court Judge. She refused permission in an order dated 10 September
2025. The key parts of her reasoning are: "The claimant is correct in his assertion that a witness statement which stands as evidence in chief is open to inspection during the course of the trial "unless the court otherwise directs". In this case the claimant's request was considered by the court. The judge was not correct to say that a formal application for inspection was required during the course of the trial." and: "The passage quoted in The White Book from the judgment of the Supreme Court in *Cape Intermediate Holdings Ltd v Dring* [2019] UKSC 38 to which the Judge refers, deals with applications made after the conclusion of a trial." 11. She then said: "However the judge nonetheless went on to effectively deal with the matter under part 32.13(3). She determined that the witness statements "contain sensitive medical and other information, so I would be minded in any event to have refused the application." Although it is dealt with briefly, it is clear that she was satisfied that the witness statements in question should not be open to inspection for reasons which are set out under CPR 32.13(3)(c) and/or 32.13(3)(d). This was a matter firmly within her discretion and it was a decision she was entitled to make. Transcribed from the official recording by eScribers In those circumstances the application for permission for judicial review of her decision is denied."
12. The Deputy High Court Judge's decision does not mention section 31(3C)-(3F) of the Senior Courts Act 1981 (inserted by the Criminal Justice and Courts Act 2015) which concerns the 'no difference' test which Administrative Court judges are obliged to consider in relation to permission of relief even if a party does not raise it. Its effect is that the court must refuse permission to apply for judicial review if it appears to be highly likely that the outcome for the claimant would not have been substantially different even if the conduct complained of had not occurred. However, that is a fairly high threshold as explained in *R (on the application of Goring-on-Thames Parish Council) v SODCLG* [2018] EWCA Civ 860 and *R (on application of Plan B Earth) v Secretary of State for Transport* [2020] EWCA Civ 2014.
13. Nor did the Deputy High Court Judge say anything in her decision about the possibility that a claim might now be academic in circumstances where Mr Scorthorne readily accepts he has no further need to inspect the witness statements he wanted to see during the course of a County Court trial now that it is now long over. Nonetheless, he has explained that having no access to them was very frustrating because, unsurprisingly, he could not fully follow the evidence that the witnesses were giving in that they were being cross-examined about matters that he had no knowledge of, discussed in documents he could not see. In submissions he told me the same problem has arisen in several other cases in which he has sought to observe court proceedings, including most recently in a case where another judge insisted that he make a formal application, dealt with it orally and then dismissed it.

14. Before moving on I should note that the law on academic cases is succinctly summarised in paragraph 6.3.4.1 of the Administrative Court Judicial Review Guide 2025: “Where a claim is academic, ie there is no longer a case to be decided which will directly affect the rights and obligations of the parties to the claim, it will generally not be appropriate to bring judicial review proceedings. An example is the situation where the defendant has agreed to reconsider the decision challenged. Where the claimant has become academic since it was issued, it is generally inappropriate to pursue the claim.” Transcribed from the official recording by eScribers
15. Like many principles concerning the operation of judicial review, this one is flexible and is qualified in the Guide by the following words: “In exceptional circumstances the court may decide to proceed with a claim even though the outcome has become academic for the claimant. The court may do so, for example, when a large number of similar cases exist or are anticipated, or at least some of the cases exist or are anticipated and a decision will not be fact sensitive.”
16. Reference is made in the footnotes to those paragraphs to R v Secretary of State for the Home Department ex parte Salem [1999] 1 AC 450, R (L) v Devon County Council
- [2021] EWCA Civ 358 at paragraphs 38 and 64. R (Gardner) v Secretary of State for Health and Social Care [2022] EWHC 967 (Admin) further underscores the qualification that, in some circumstances, the public interest may justify a hearing even when the only relief sought is declaratory and an acknowledgement of a past wrong. I raised these issues with Mr Scorthorne during the course of the hearing and discuss his responses below, but before I do so I will summarise the arguments he developed at the hearing.
17. Mr Scorthorne began with the wording of the rule itself. It states at 32.13, which is headed “[a]vailability of witness statements for inspection”: “(1) A witness statement which stands as evidence in chief is open to inspection during the course of a trial unless the court otherwise directs.
 - (2) Any person may ask for a direction that a witness statement is not open to inspection.
 - (3) The court will not make a direction under subparagraph
 - (2) unless it is satisfied that a witness statement should not be open to inspection because of (a) the interests of justice; (b) the public interest; (c) the nature of any expert medical evidence in the statement;
 - (d) the nature of confidential information (including information relating to personal financial matters) in the statement; or Transcribed from the official recording by eScribers (e) the need to protect the interests of a child or protected party.” and subparagraph (4) says: “The court may exclude from inspection words or passages in the statement.”

18. Mr Scorthorne observed that the rule is not qualified by an application to file an application notice in advance, or at all. It follows, he submitted, that the Deputy High Court Judge had correctly identified the error made by the Deputy District Judge which was approaching his request for inspection on the wrong premise that an application was necessary before she could consider matters at all. However, he submitted that the Deputy High Court Judge had then fallen into error herself by characterising the Deputy District Judge's decision as one of 'discretion' which had been correctly exercised in circumstances where there was medical evidence in the statements and possibly also confidential information.
19. That error explained the Deputy High Court Judge's reliance on CPR 32.13(3)(c) and/or 32.13(3)(d). Those parts of the rules were not discretionary factors to be taken into account, but rather qualifications to or basis to supply the right that might have applied had the Deputy District Judge been invited to by someone make a direction under subparagraph (2) of CPR 32.13. She had never been invited to make such a direction and in those circumstances any speculation about what she might have done had that happened took the court nowhere. The same could be said of her comments about what she would have been "minded to" do with an application that had never been made.
20. Mr Scorthorne also pointed out that subparagraph (4) offered an alternative to wholesale refusal of inspection in circumstances where witness statements contained sensitive information of any kind, which was to exclude that sensitive information from inspection perhaps by redacting what was made available for inspection, removing certain passages, or pages from a bundle. Developing Ground 1, Mr Scorthorne highlighted the obiter comments made by Leggatt J as he then was in *Blue v Ashley & Anor* [2017] EWHC 1553 (Comm) at paragraph 11: "I also reject an argument made by counsel for Mr Ashley that it is implicit in CPR 32.13 that a non-party cannot be allowed to Transcribed from the official recording by eScribers inspect a witness statement until the evidence stands as evidence in chief. CPR 32.13 gives a non-party, unless the court otherwise directs, an automatic right to inspect a witness statement which stands as evidence in chief during the course of a trial, without the need to obtain the court's permission to do so." 21. Similar obiter comments were made by Hamblen LJ in the Court of Appeal in *Cape International Holdings Ltd v Dring* and approved in Lady Hale's Supreme Court speech, [2019] UKSC 38. paragraph 27: "Rule 32.13 recognises that the modern practice of treating a witness statement as evidence in chief means that those observing the proceedings will not know the content of that evidence unless they can inspect the statement. The rule puts them back in the position they would have been in before that practice was adopted." 22. In other words, he said, a person exercising the right of inspection is supposed to end up with information about the witness evidence in chief they would have had in circumstances had the witness given it orally, as was formerly the practice.
23. Developing Ground 2, Mr Scorthorne emphasised the default nature of the CPR 32.13(1) reflected the policy of creating a direct automatic right to make open justice meaningful. The Deputy District Judge had misunderstood this as inapplicable during the course of the

trial, as the Deputy High Court Judge had noted. He also pointed out that making the rules subject to an on notice application requirement would be fundamentally inconsistent with the open justice principle, the very principle it had been fashioned to facilitate. For one thing, it would introduce the idea that it was appropriate to charge the exercise of the right because a application court fee would, by default, have to be paid unless there were circumstances in which it would not apply, for example, by waiving the fee when the person seeking access could not afford it (a process which, I note, itself involves an application that can take some time to be determined). Such restrictions on an open justice right had to be strictly justified and they were not justified here, Mr Scorthorne said. In practice, requiring applications in advance would also be problematic because members of the public or the press would not necessarily know when hearings were to take place and be in a position to apply, given the way listing arrangements work. All of these things, Mr Scorthorne said, Transcribed from the official recording by eScribers would frustrate a right which the Rules Committee had never intended to operate in these ways, and make its exercise impracticable.

24. Expanding his submissions on Ground 3, Mr Scorthorne stressed how the right was supposed to operate in practice automatically and without qualification unless one of the parties or the court decided that it might need to be qualified or dis-applied on a subparagraph (2) basis and raised this. In those circumstances the person seeking inspection ought to have the opportunity to respond, something he had been denied in this case.
25. Mr Scorthorne went on to explain that, from his perspective, this was not an academic issue for him in particular, or in general. His experience as a regular court observer was that judges often misunderstood both the rule and The White Book commentary. Counsel also misunderstood it, perhaps deliberately, and made regularly submissions that applications were necessary. The law was not sufficiently clear on the face of The White Book commentary and there was no clear decided authority on the point, he said. Although the declaration he sought in his judicial review would serve no practical purpose in relation to the Fast Track trial which the Deputy District Judge had been dealing with, it would nonetheless be of assistance in future trials which he wanted to attend and that others besides him would want to attend. This meant this claim raised a matter of some personal and public importance. There was a pressing need for authoritative High Court level jurisprudence on the question of how the rule should be interpreted and operated.
26. Turning to my own analysis, at the outset I should record how helpful I found Mr Scorthorne's submissions both in his skeleton argument and orally. Much of them have very real force. Although I disagree with him about the appropriate next stage in the litigation, that should not detract from my view about the merits of the arguments he has advanced which I will shortly make clear.

27. The first point to make is about what CPR 32.13 says on its face. The heading for this rule is in itself telling: “[a]vailability of witness statements for inspection”. These words differ markedly from other CPR provisions which are concerned with routes to non-party access to documents on the court file. The language also chimes with the comments made in the Blue case by Leggatt J and in Cape International Holdings. As Mr Scorthorne says, correctly in my view, these authorities identify this rule as creating Transcribed from the official recording by eScribers a right to see statements whilst at trial is happening, rather than an opportunity to ask to see them, preconditioned on an application. In this I agree with the Deputy High Court Judge. 28. I would add that CPR 23 has no relevance in relation to the exercise of this right in my view because it is concerned with a situation where a person needs to make an application in order to seek a court order that some procedural step be taken that would not otherwise occur. No order is necessary for the right of inspection to arise. It arises on the face of CPR 32.13.
29. The open justice policy underpinning that right and how it has evolved is also clear from the authorities. It is there to ensure that the principle of open justice is not compromised as a result of the modern practice as reflected in CPR of frontloading civil litigation by requiring witnesses to set out their evidence in chief in a written form and then in almost all circumstances limiting oral evidence to cross-examination and re-examination. I agree with Mr Scorthorne that there is nothing in the authorities nor in The White Book commentary which suggests that this right can only be exercised by way of an application, albeit The White Book commentary has been interpreted differently at least on this occasion. I would add that, if the requirement for an application had been the intention of the Rules Committee, it could easily have been incorporated into the body of the rule on its face, as it has been expressly in relation to other rules concerned with third party access to information held by the court.
30. The omission of any application requirement or associated procedure is telling and one cannot properly be implied in my view. I also agree that the Deputy District Judge mistakenly conflated The White Book commentary concerning two different situations. The first concerns post-trial inspection, described in Dring as “access”. On that, The White Book says (my emphasis): “The practical effect of Dring, so far as r.32.13 is concerned, is to extend the period for “inspection” of witness statements beyond the “course of the trial”. But such access is not as of right. The party applying would have to explain why he sought access and how granting him access would advance the open justice principle; that the court would then have to carry out a fact-specific balancing exercise by weighing the potential value of the information sought in advancing the purpose of the open justice principle against any risk of harm which its disclosure Transcribed from the official recording by eScribers might cause to the maintenance of an effective judicial process or to the legitimate interests of others; see judgment at [45].” 31. “[S]uch access” post-trial is distinct from the situation this case is concerned with, which is inspection during the course of a trial falling squarely within CPR 32.13. 32. I disagree with the Deputy High Court Judge about the Deputy District Judge having dismissed the application by applying CPR 32.13(2) because there was some

medical information in the statements. That is not a tenable interpretation of the transcript, in my view. The words “minded to” can only mean that she had not decided one way or the other on qualification or disapplication of the inspection right. This also is the only explanation for her refusal to hear Mr Scorthorne further. Her firm view was that the lack of an application meant that a necessary precondition for the exercise of the right was not satisfied and that was the end of the matter. Besides, it seems highly unlikely that the entirety of the witness statement evidence comprised sensitive medical information. Most of it would have been concerned with the circumstances of the accident. It follows that this cannot be a case where it is highly likely that the Deputy District Judge’s error made no difference to her decision for section 31(3C)-(3F) of the Senior Courts Act 1981 purposes. Had the Deputy District Judge given proper thought to CPR 32.13(2), she would have needed to consider differentiating between the different types of evidence for the purposes of CPR 32.13(4). Her concerns about medical information being inspected, which Mr Scorthorne very properly acknowledges may well have had some foundation, could not be a reason to refuse inspection of all the evidence in the case. 33. For these reasons Mr Scorthorne’s primary arguments in his grounds are strongly arguable in my view.

34. However, as Mr Scorthorne pragmatically accepts, a declaration that the Deputy District Judge erred would change nothing and I disagree with him that authoritative High Court level guidance is needed. In my view, the issues have already been sufficiently ventilated in the High Court on at least one previous occasion in the case of *Greystoke v The Financial Services Authority* [2020] EWHC 1011 (QB). This is mentioned in *The White Book* albeit at the very end of the paragraphs concerned with CPR 32.13. Transcribed from the official recording by eScribers
35. *Greystoke* was a case involving litigation against the authority during the course of which it proactively applied for protective measures to prevent certain confidential information being made public including to the right of inspection being exercised under CPR 32.13. It sought, amongst other things, an order under subparagraph (2) of that rule that certain documents which contained the confidential information should not be provided to any non-party by way of inspection during the course of the trial without further order of the court and that any application for copies of such documents should be determined at an oral hearing on notice. The application was granted by Steyn J. 36. In other words, this was a case in which there was an application made in advance of the hearing because it was seeking qualification or disapplication of the CPR 32.13 right. If the inspection right itself had been preconditioned on an application being made by someone who wanted to exercise it, the authority’s application would never have been necessary. 37. Steyn J’s judgment explains that the principle of open justice is a fundamental and important feature of the justice system in this country, not least because of the need to promote confidence in the court system. Derogations can only be made when strictly necessary. They should not be made simply because the parties agree between themselves that that should happen, not least because others’ Article 8 and 10, European Convention on Human Rights might well be engaged in addition to the common law’s demand that the administration of justice be open. Whenever

derogation is being considered, the court has to turn its mind to whether it is “necessary and proportionate” and whether some lesser steps can be taken, such as restricting inspection rights to parts of a witness statement, see paragraphs 29 to 32 of the

judgment.

38. In my view Greystoke both illustrates and properly explains the principles to be applied in the present context. They can be summarised in this way. 39. First, non-parties have a right to inspect witness statements relied on as evidence in chief during the course of hearings. The exercise of that right is not preconditioned on them making any application, informally or otherwise. It is not preconditioned on the court needing to make an order either. It is automatic and flows directly from CPR 32.13 which is intended to give practical and meaningful effect to the open justice Transcribed from the official recording by eScribers principle in relation to knowledge and understanding of witness evidence in the specific context of the veracity and comprehensiveness of that evidence being tested during the course of a civil trial. 40. Secondly, if there is to be any derogation from that right, it must be on one of the narrow bases provided for in CPR 32.13(3) (or some other special basis separately provided for in the CPR, such as closed material proceedings).
41. Thirdly, to decide whether any one or more of the CPR 32.13(3) bases for derogation applies, the court has to turn its mind to them properly, either of its own motion or, as in Greystoke, as a result of an application made by a party or someone else who is seeking derogation. 42. Fourthly, the court then has to undertake a balancing exercise considering the open justice principle, the rights of the parties, what they are seeking by way of derogation from the open justice principle and the fact that others’ rights and interests may conflict with them. 43. Fifthly, wherever practical and in particular where somebody like Mr Scorthorne is positively relying on their default right of inspection, the court will ordinarily need to hear from them in order to properly and fairly conduct the balancing exercise.
44. This is another concern that I have with the Deputy District Judge’s decision. She was not even willing to hear what Mr Scorthorne had to say about what she considered to be an exercise of discretion, but properly understood was a derogation of the right of open justice. 45. Sixthly, as any CPR 32.13(3) order that delegates from open justice and therefore must only be made if necessary and proportionate, lesser measures short of barring inspection altogether must be considered, such as redactions or the withholding of parts of witness statements because the least intrusive measures should be taken in line with ordinary proportionality principles. 46. I consider that these principles are clear from the authorities, in particular Blue, Dring and Greystoke read together. The White Book commentary could be a little clearer in particular by distinguishing between the particular situation being discussed in Dring and the situation where inspection during the course of a trial is what is sought. Transcribed from the official recording by eScribers However, in Dring, the Supreme Court was at pains to make it clear that it was dealing with the different situation of post-hearing “access”, as it termed it, and so strictly speaking that authority is not concerned with

CPR 32.13 inspection at all. 47. For all of these reasons I consider that this is a case where the issues have become hypothetical and academic and there is no Salem public interest in permitting the judicial review to continue. There is High Court authority on the issue. There is no need for further court time to be taken in effectively having a hearing which would lead to a recitation of the well-established principles that are explained in Steyn J's judgment and catalogued above. 48. For those reasons, I thank Mr Scorthorne for his submissions and the way he has presented his case generally, but I refuse permission notwithstanding its arguability.

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