



SARAH JANE LENIHAN

Transparency is key to balancing privacy and justice in divorce

To achieve openness that allows journalistic reporting, attempts to muzzle the press in the family courts must be resisted

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Privacy remains a paramount concern to high-profile individuals during divorces as confidentiality routinely influences where and how people choose to conduct proceedings.

Against that, there is gaining momentum for greater transparency in family law to increase public confidence and systemic accountability.

Simultaneously, the use of non-disclosure agreements in family cases has increased. Although confidentiality is a valid concern, the agreements contradict the principle of open justice and courts are increasingly wary of their misuse to restrict legitimate public interest.



Journalists were present and reported on the green entrepreneur Dale Vince's recent divorce proceedings

BEN WHITLEY/PA

The transparency reporting pilot for financial remedy proceedings was introduced at the beginning of last year in a few courts, before being extended to the Royal Courts of Justice last November, and rolled out nationwide last month.

Sir Andrew McFarlane, the president of the family division of the High Court, has stated that the present system — where journalists can attend hearings, but not always report on them — is unsustainable. The Law Society, the professional body for solicitors, has also emphasised the importance of transparency in helping the public to understand legal decision-making.

My law firm represented Kate Vince, the wife of the Ecotricity founder Dale Vince, in their recent divorce. Journalists were present and reported on the proceedings. A separate transparency judgment addressed key issues, particularly the dissemination of court documents to non-attending journalists.

In addressing the fundamental dichotomy of balancing rights under the European Convention on Human Rights, including the right to a fair trial and the right to privacy, with freedom of expression, Mr Justice Cusworth provided clarity on several points.

Journalists who cannot attend hearings should not be denied access to key documents that are available to attending reporters; limiting access to documents could lead to second-hand or incomplete reporting; transparency orders should ensure balanced reporting, preventing selective disclosures; position statements and key documents should generally only be shared after hearings unless both parties agree; journalists must be bound by transparency orders when accessing court documents; attending journalists can share documents with accredited colleagues, but only after the hearing.

Transparency in financial remedy proceedings will now be considered on a case-by-case basis, factoring in public interest, case sensitivity, and the prominence of those involved. However, the message is clear: divorce and financial remedy cases will receive media attention.

The right to privacy must be carefully balanced against open justice. This shift may encourage some to explore alternative dispute resolution methods to avoid publicity. However, arbitration is still rarely used, as one party often benefits from media attention to apply pressure on the other.

To achieve transparency that allows journalistic reporting, attempts to muzzle the press in the family courts must be resisted. This will not require the guidance on transparency to be extended, but it does need to be applied consistently and robustly.

Sarah Jane Lenihan is a partner at the law firm Dawson Cornwell