



Neutral Citation Number: [2024] EWFC 406

Case No: 1690-8004-0586-6795

IN THE FAMILY COURT
Sitting in the HIGH COURT OF JUSTICE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20 December 2024

Before :

The Honourable Mr Justice Cusworth

Between :

Dale Andrew Vince

Applicant

- and -

Kate Vince

Respondent

Lewis Marks KC and Janine McGuigan (instructed by **Katz Partners LLP**) for the
applicant

Richard Todd KC and Lily Mottahedan (instructed by **Dawson Cornwell LLP**) for the
respondent

Hearing date: 16 December 2024

TRANSPARENCY JUDGMENT

This judgment was handed down remotely on 17 January 2025 by circulation to the parties or their representatives by e-mail and by release to The National Archives.

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This judgment was delivered in public but a transparency order is in force. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

Cusworth J :

1. In addition to the substantive financial remedy judgment between these parties which I am handing down today, I have also to deal with an issue which has arisen between them in relation to the transparency order which I made in this matter on 26 March 2024. Mr Vince's legal team have suggested that some documents from the PTR in this matter on 2 October 2024 have found their way to members of the press who did not attend that hearing, as they have later published details from those documents not contained in reports from the journalists who did attend the hearing. The question arises as to whether the order in this case, or if not, the current transparency rules for financial remedy applications such as this, permit the forwarding of court documents to non-attending journalists, implicitly by the legal representatives of one or other party to the proceedings, and if so in what circumstances. There is also the wider issue of the extent to which accredited journalists themselves may be free to share the information, and if so on what terms.
2. I heard argument in relation to this issue on 16 December 2024, not just from leading counsel for the two parties Mr Todd KC for the wife and Mr Marks KC for the husband, but also from Mr Parke of the Press Association, who filed a skeleton argument which I have read. I have also read and considered a skeleton sent on behalf of Associated Newspapers by Hannah Gilliland. Given that this appears to be a comparatively grey area in the guidance documents, I have then adjourned to produce this short written judgment alongside the main financial remedy judgment.
3. Publishing details of financial remedy cases has always involved a balancing exercise between Article 6, the right to a fair trial, Article 8, the right to a private and family life, and Article 10, freedom of expression, of the ECHR. As to the balancing of Articles 8 and 10, Lord Steyn explained in *Re S (Identification: Restrictions on Publication)* [2004] UKHL 47 that:

“The interplay between articles 8 and 10 has been illuminated by the opinions in the *House of Lords in Campbell v MGN Ltd* [2004] 2 WLR 1232... What does ... emerge clearly from the opinions are four propositions. First, neither article has as such precedence over the other. Secondly, where the values under the two articles are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary. Thirdly, the justifications for interfering with or restricting each right must be taken into

account. Finally, the proportionality test must be applied to each. For convenience I will call this the ultimate balancing test.”

4. In financial remedy proceedings in the Family Court, proceedings (including for financial remedies) usually take place in private. ‘In private’ means the public have no right to be present (FPR 27.10(2)). However, and pursuant to FPR 27.11 and FPR PD 27B, accredited media representatives and legal bloggers are allowed to attend family hearings held in private, including financial remedy cases. In his report *Confidence and Confidentiality in the Family Courts* (28 October 2021), Sir Andrew McFarlane P explained at [16] how:

‘the court restricts publication of confidential financial information disclosed in financial remedy proceedings pursuant to the powers and principles established in *Clibbery v Allen* (No 2) [2002] EWCA Civ 45, *Lykiardopulo v Lykiardopulo* [2010] EWCA Civ 1315 and *HRH Louis Xavier Marie Guillaume v HRH Tessy Princess of Luxembourg & Anor* [2017] EWHC 3095 (Fam). Accordingly, the Financial Remedy Courts now ordinarily control the release of information for publication, where this is sought, by an express order.’

5. In January 2024, ‘*The Transparency Reporting Pilot for Financial Remedy Proceedings*’ began in different parts of the country, and was rolled out to the Royal Courts of Justice from 11 November 2024. From January 2025 they will be established nationwide. The pilot contained the Annexe II Order which provides a template for final transparency orders in financial remedy proceedings. The Pilot was accompanied by a Guidance document: ‘*The Transparency Reporting Pilot for Financial Remedy Proceedings: Guidance from the President*’ dated 15 December 2023.

6. That guidance included the following provisions:

- a. **14.** As at present, reporters will be allowed to attend and report on what they see and hear in court, save that they shall not be permitted to attend a FDR. The details of any reporter attending a hearing should appear on the face of the court order
- b. **16.** Reporters are encouraged to inform the court and the parties in advance of their intention to attend and report on a particular hearing.
- c. **17.** In principle, reporters shall be entitled to attend any hearing in person, where it is an attended hearing, and if the hearing is remote, the

reporter shall be entitled to attend remotely, provided that advance notice is given...

- d. **19.** Where a reporter attends, the court will consider making a standard Transparency Order in accordance with Annexe II. The court retains the discretion to direct that there should be no reporting of the case...
 - e. **26.** The Transparency Order provides for provision of position statements and ES1 to a reporter. The ES2 is not to be provided without permission of the court. It is not envisaged that the position statements and ES1 will be redacted, save that the court may permit redaction if the documents include information prohibited from publication by the Transparency Order, notably information likely to be contained within the ES2, including details of properties, private companies and specific financial instruments.
 - f. **27.** The court retains the power to vary this provision, either by widening the scope of documents to be provided, or by restricting it. The reporter may quote from the documents, provided that any such publication is in accordance with the ambit of reporting permitted under the Transparency Order. If a document is referred to during a hearing, that does not entitle the reporter to see the document without permission of the court.
7. It is therefore clear that the primary situation which the guidance has in mind is one where a reporter physically attends court, they receive documents (primarily position statements and ES1s) relating to the case which they witness, and may then report upon it. In many cases that will be sufficient. However, in a case which has excited significant press interest such as this, three or four journalists have been in attendance throughout the hearing, and most major newspapers have run articles during the trial reporting on the progress of the case. In such a situation I have to determine whether sight of the court documents, once a transparency order has been made, is to be limited strictly to those who have attended.
8. As matters of principle, a number of questions arise from the skeleton arguments I have received and submissions heard, to which I offer these responses:

- a. Are any non-attending reporters to be limited in what they can access, to not the documents seen by those attending, but only to what those attenders choose to report from the documents? That would appear to be Mr Marks' position for the husband. He argues that those reporters who attend are the only journalists who should have access to the documents, which became available to them by reason of their attendance at court. He says that any who receive documents but do not attend must destroy those documents forthwith. I do not consider that that was the underlying intention behind the guidance, as I will explain, nor that that would fairly balance the competing rights and duties in play here.
- b. What would be the consequences if other journalists were to be dependent upon the attendees for their knowledge and understanding of the parties' respective cases? That would be very likely in my judgment to lead to a 'double hearsay' style of reporting where reports would become distillations of distillations and journalistic accuracy and independence would risk being seriously undermined. In principle, if a document is suitable for press consideration and comment, and is already in the hands of at least one reporter, other accredited journalists should also be permitted to see and comment on the same document, provided they too have been served with the relevant transparency order.
- c. If an attending journalist decides to only report partially, are other reporters prevented from obtaining a balanced view by considering the documents at the attendees' disposal? The court should not in effect be in a position of offering exclusive rights to original documents to attendees, when those original documents should properly form the basis for all responsible reporting of the case. Nor is it realistic to expect every journalist who wishes to report on the details of a particular case to attend the whole of each hearing throughout its passage through the courts. And if mere attendance for a few minutes on day one of a hearing is sufficient, is that person really better qualified to express views on the rest of the case than a reporter who hasn't been there but also has the court documents? I would suggest usually not.
- d. Should parties be able to simply send their position statements out on demand at the request of interested reporters who do not propose to attend, ahead of any

hearings in a case? Provided that there is already a transparency order in the case, and provided the documents clearly fall within the terms of that order, then this *might* be possible, provided that the parties' respective representatives agree, and are satisfied that the recipient is appropriately accredited, and has been served with the terms of the transparency order. However, there may always be a risk that something in a document might prompt objection to publication from another party, as has happened in this case. In those circumstances, and absent agreement between the parties, I would suggest that, if the request is from a journalist who is not proposing to attend, release of documents should only happen after the conclusion of the hearing, so that any issues about the content of what is to be disclosed can be determined at the hearing. Clearly attending reporters must have the documents first so they can understand what they are seeing. In any event, any request from a non-attending reporter should clearly be recorded, notified to all other parties in the case, and the fact also recorded along with references to other attending reporters in the court's order.

- e. If a journalist need not attend, how will the court regulate what they see and can comment on? Clearly, any reporter who receives court documents must be bound by the same transparency order as attending journalists, and cannot be in a position to report matters which the court has prohibited for those who have been present. Therefore, there should be no release of documents which the court has not authorised other reporters to see, pursuant to the transparency order in the case. Before such an order has been made, the documents will remain confidential. And as above, if a reporter is not attending a hearing, they need not have the documents before its commencement, but only once approved by the court. However, once any document has been made available to an attending reporter, it follows that it should also, potentially, be available, together with the transparency order which governs its use and availability, to any other reporter, provided they fall within the appropriate definition for the purposes of the guidance :

'duly accredited representatives of news gathering and reporting organisations and duly authorised lawyers [seeking the documents] for journalistic, research or public

legal educational purposes (legal bloggers) (together referred to ...as 'a reporter') who are entitled to attend a hearing under r.27.11 of the Family Procedure Rules 2010 ('FPR').

- f. May reporters who have attended themselves later pass court documents to those who have not? It has been established that transmission within a journalistic team, governed by the transparency order, is necessary and acceptable. I see no reason why reporters should not be able to pass on, should they wish to, the court documents that they have received to others who are suitably accredited, and have been served with and will be bound by the transparency order, even if those others work for different organisations. Such transmission can by definition only happen once a document has been legitimately received by the first reporter. It should not happen before the court hearing to which the document relates, in case of the need for qualification at the hearing which the attending journalist will be aware of but the other will not. Thereafter, I consider that there should provisionally be no bar to such proportionate and managed transmission.
9. I hope that the above is clear, and consider it to be entirely in accordance with the letter and spirit of the guidance referred to above. Whilst that guidance was plainly drafted in anticipation of the dissemination of documents to actual attendees, it cannot have been its intention that once any such documents were in the hands of a particular reporter, no other would ever have sight of their contents unless the first reporter chose to publish them. I acknowledge that the media world simply does not operate in that way, and that journalistic resources do not permit that each paper will send a reporter to court for all or most of every case the progress of which it wishes to report. Further, if each non-attender were required to seek the documents from the court rather from the parties or other reporters, the court's in-boxes would regularly be clogged up with such requests. What however will remain important is that court documents are only released to reporters who have been served with the transparency order in each case, and that they will remain bound by its terms throughout their reporting. And further, contentious documents should not be released to reporters prior to their production in court, so any case specific issues can be considered and dealt with prior to any reporting. In those premises, I will turn to the specific issues that have arisen in relation to the terms of the transparency orders in this case.

10. This hearing has been conducted in private, albeit subject to the transparency reporting pilot's rules and guidance. The order should therefore record this.
11. Whilst the transparency order made at the conclusion of this hearing will replace the order which I made on 26 March 2024, it will not do so with 'retrospective effect'. Any acts done during the currency of that order must be judged by reference to its terms alone, and not by anything in this order. I make no findings, as I am not today asked to, about whether there have been any breaches of that original order.
12. In line with what I have said above, I have added a requirement that the order should be served on any reporter who receives documents which derive from a hearing in this case, even if they have not been in attendance.
13. Plainly, there should be a bar on the publication of any photographs of the child of the family, which I do not consider to be controversial. The usual bar on the naming of witnesses save for expert witnesses should apply as standard to all such orders as this.
14. I have removed the provision suggested for the husband that would prevent the reporting of unevidenced allegations. If such are made, they should be identified to the court and an application made for redaction before publication. It is to manage the risk that such allegations will be made tactically to embarrass a party, amongst other things, that I consider that documents should not usually be sent to non-attending journalists before the hearings to which they relate. I agree that such a provision would place an impossible burden on reporters in their having the responsibility to establish, or determine, whether an allegation had been sufficiently evidenced to warrant reporting or not, ahead of any judgment in the case. That must be a function for the court and not for the reporter. However, in this case, the contentious matters have been redacted and should remain so, in the absence of any further evidence.
15. The word 'only' at the commencement of paragraph 11 of the draft as suggested for the husband is inappropriate, for the reasons which I have explained above. He wishes to limit the dissemination of documents in any circumstances to only those who attend. In fact, I agree with him that only such an attending reporter should be entitled to sight of such a document *in advance* of the hearing, but the order does not need to record that

fact. Other such orders may do so in future. I have made clear that once a hearing has concluded, documents made available to the attending press should also be released, with the appropriate safeguards, to those who have not been present.

16. Paragraph 12 has been restored to its original form prohibiting disclosure by the parties of other documents to reporters without permission of the court. However I have added a further provision permitting disclosure to other accredited reporters subject to the terms of the transparency order, of documents already in the press domain, in accordance with what I have said above.
17. Paragraph 13 relates to a request at or in advance of a hearing by an attending reporter, and therefore should stay. Absent such a request a court may not have occasion to make a transparency order. However, as explained, no subsequent strictures against non-attending reporters later obtaining documents are justified, if those documents have been given to attending reporters and/or have been considered and approved by the court as appropriate for reporting.
18. As explained above, the sharing of documents between accredited reporters, always subject to the transparency order then in force, and not simply limited to journalistic teams is not, in principle, objectionable. There may of course be specific cases where it could be considered inappropriate, but I am not satisfied that this is such a case given the large amount of information that is already in the public domain. Notwithstanding this, the restrictions at paragraph 17 remain appropriate, notwithstanding Mr Todd's objection for the wife, given that the documents must only be held securely, and as long as necessary, by anyone who receives them. That must remain the case.
19. There should be no additional requirement for a non-attending reporter to destroy documents received at once if they have not attended court. However, in that case they should not report the content of those documents until after the hearing has taken place, and in light of any reporting restrictions imposed at that hearing.
20. I attach the amended transparency order that I propose to make, subject to any typographical or grammatical suggestions from counsel.