

Transparency in the Family Courts: Publicity and Privacy in Practice

Foreword

Written by The Rt. Hon. Sir Andrew McFarlane, incoming President of the Family Division

Just 25 years ago, when the *Children Act 1989* was coming into force, I doubt that many, if any, family lawyers would have acknowledged the relevance of the term ‘transparency’ to the work of the family courts. Events have moved swiftly and there can now be no family lawyer or judge who is unaware of the justified impetus towards greater transparency in family cases or of the importance of the need for a clear understanding of just where the line is drawn between what can or cannot be disclosed to those outside the court about what has gone on within it. Affording due transparency to family proceedings has turned out to be, as Sherlock Holmes might say, ‘a two-pipe problem’ which has, at its core, two entirely conflicting policy drivers: the need for the public to know what goes on in their name in the Family Court and, conversely, the need to protect the privacy of individuals at the centre of any particular case. Whilst it may not have delivered a solution, the title of the 2006 government consultation paper issued by Lord Falconer, who was then Lord Chancellor, was spot on target – ‘*Confidence and Confidentiality*’ – in highlighting the conflicting needs of public confidence and private confidentiality.

Over the years, the understanding of what transparency may require has developed. Initially, many of us will have held an unduly simplistic view that the issue was to be resolved in a binary manner by either letting the press and the public into the Family Court, or keeping them out. Thanks to the ground-breaking and inspired work of The Transparency Project, and now this book, transparency is to be seen as a much more subtle, sophisticated and flexible concept. There is much that can be achieved to ‘open up’ the Family Court in terms of describing and explaining its workings and decisions which falls short of allowing unrestricted access to all and sundry.

The publication of this excellent book is extremely welcome. It is a work written by those who have been on the front-foot on the issue of transparency throughout and who understand the subtleties both of the law and of the policy debate that lies behind it. There is real value in having a detailed and neutral account of the route that has been travelled thus far set out, as here, with clarity and in one place. Above all, this is a practically-based text written by practitioners for practitioners, giving a thorough account of the relevant statutory law, case law and procedure. With the publication of this work, there will be no need to look elsewhere for an account of the law relating to transparency in family proceedings and this will rapidly become the ‘go-to’ book on the subject, not just because it is the only one but because of the comprehensive, clear and insightful nature of its coverage. Inevitably, given the topic, this first edition of ‘*Transparency in the Family Courts*’ can only tell the story so far. As the section on ‘Looking Ahead’ records, the book goes to press at a time when thought is being given to what, if any, further steps towards greater transparency may be taken. Given the impossibility of totally squaring the ‘Confidence and Confidentiality’ circle, any development will involve an element of compromise and sacrifice of one or both of these competing principles. Whatever the future may hold, it will, however, be a ‘must’ for all those involved in charting and implementing its course to have read and understood the contents of this important book.

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