

Opening the doors of the Family Courts — a major change from 27 April 2009

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In December 2008 the Government announced that the Family Courts, which until now have been almost entirely private, were to be opened up to the media to allow better insight into the mechanics of family court proceedings. The stated purpose was to lift the veil of secrecy that protected family court proceedings from public scrutiny. No underlying detail was published at the time and only on 20 April 2009 was any court guidance produced.

The key change brought about by the new rules

- From 27 April 2009 accredited members of the media will be permitted to attend most family law hearings that would otherwise be held in private (except those hearings designed to aid negotiations)

The ability of the media to report

The media will be subject to existing reporting restrictions but we are concerned that they will not necessarily provide comprehensive protection to parties to family law proceedings

- Where proceedings relate to children nothing can be published during the course of the proceedings which is likely to identify any child
- Where proceedings relate to finances it is unclear at present to what extent the press will be able to publish information related to the detail of the case

What the changes mean

These changes expose parties to family law proceedings to significant risk that the detail of their private lives may be heard by the media. With inadequate reporting restrictions in place, there is every possibility that private matters will become public knowledge directly through the media, indirectly on the grapevine via burgeoning electronic avenues, or through journalists using the background information to conduct their own investigations.

Protecting clients' privacy and confidentiality

The policy objective underlying these rule changes may be commendable but the implications are potentially far reaching for high profile individuals. The frankness and honesty that is a cornerstone of the effective resolution of financial disputes (whether in the context of an out of court settlement or a final hearing) may be compromised if one of the parties fears media scrutiny. The threat of media interest may also be used by one spouse against the other as an effective 'blackmail' opportunity to seek a higher financial award in return for silence.

The new law is unclear and has been drafted and implemented quickly with little guidance available at this stage as to how the changes should operate in practice or how the cost burden of the additional court time and work necessary to clarify the position should be met. Only time and test cases will tell.

Withers is recognised as having market leading Family Law and Reputation Management practices. The two teams have been working closely together to identify the issues involved and those clients at risk and have established case management plans for current and future clients where privacy and confidentiality forms a key component in their family law proceedings.

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