Media and the Family Courts: Lights, in Camera, but no action?

The much hyped, hoped for and desired changes to media attendance have now been put into place, but as Divorce Manual observed several months ago, these new directions are unlikely to strike at the heart of the difficulties within the system nor offer the openness the system so desperately needs in order to vindicate itself and to purge itself of its problems.

The government would no doubt insist that the system is suffering because it is financially underpowered and understaffed. This has become part of the truth now, as we move into the depths of the recession, but the problems haunting the family courts have done so since before the seventies and are more a product of inefficient use of resources available than a monetary deficit.

As Divorce Manual reported in February of this year, the proposals that promised clear and uncompromising access to justice are, by and large much of the same and really not much at all. There is a lack of finesse about the whole affair, superimposed by a simulated rush to mitigate a pretty poor effort (despite the many months legislators have had to work on drafts for these new laws). The implicit assumptions being made however in relation to the philosophy, the idea behind the legislation is the heart beat of this body of law and ultimately what is going to drive this most squeamish of directions forward.

There is no doubt though that the transformation of family law as we know it has already begun; solicitors, keen not to lose out on business most notably at the high profile end of Divorce Law, have used their keen sense of commerce to set up organisations promising a media-free divorce on the back of the impending new media laws. One such organisation, the Central London Collaborative Forum, promises a collaborative, no-court approach with the exclusion of the media in full. Choosing to separate themselves from Resolution, these CLCF solicitors are in for the big kill, citing on their website that their " goal is for the collaborative process to become the preferred method of resolving cases, including those involving families where assets are substantial or where there is an international dimension".

All of the solicitors who are part of this forum are members of law firms who work at the top end of the system; securing future clients is part of their remit. Is this is a bad thing? In some respects, no. Legal organisations must respond to change and these laws, although ineffective at present, may unwittingly send couples running into the arms of lawyers like these. This will mean that published details of their divorce will hopefully be kept to a minimum and any children involved will be spared some anxiety. What these lawyers cannot guarantee though is media exclusion outside of the conference room.

Have the new laws then unwittingly struck fear into the hearts of divorcing celebrities, who will now rush to forums like these and dispense exorbitant amounts of cash to keep their affairs private? Yes, this is most likely to be one outcome of these new laws, not because they are highly effective or probative but because the promise of transparency has created an entire industry for lawyers in and of itself. What remains to be seen is whether lawyers will respond to the challenge with integrity or whether they will see Collaborative Law as just another cash cow.

Worlds away from the glamour of celebrity and Armani clad solicitors the psychological effects of these new laws can be seen at every level. Another organisation, Resolution, which aims to offer Collaborative divorce for every income bracket, has much to say about the new laws. They view them as a missed opportunity to allow the public to see how the system really works and go as far as to suggest a Family Courts' Inspectorate made up for the most part by individuals without legal backgrounds, to safeguard standards in the family courts. This is a superb idea but it does need to offer more detail, specifically in relation to what criteria would be used to decide which cases are appropriate for media exposure; a point which has not even been addressed by the legislation itself.

Whilst there can be little doubt that subconscious fears the new laws have stirred in the public may mean a huge demographic shift away from the courts (perhaps even freeing up the court system considerably thereby giving the court more time to deal with public family law), this fear factor has also been heightened by the lack of preparation by the courts themselves. Yesterday was the first day the press were allowed in to various family courts and not unsurprisingly, for those who know the courts well, the first day did not run smoothly. In fact, the courts in London embarrassed themselves with their lack of knowledge about the changes; from ushers who did not even know the directions existed, to judges who pontificated on ground breaking applications and then failed to follow the guidelines entirely. It is a sorry state of affairs when the general public is more clued up about court business than the court itself.

Of even greater concern is quite what constitutes meriting report. The new legislation does not touch upon this at all, favouring to focus heavily in its guidelines on press exclusion and anonymity. This is understandable but quite telling to note that no attempt has been made to tease out the vulnerable cases in the system. Another aspect of grave concern is quite how those vulnerable cases will make their way to the media to access the exposure they so desperately need. As journalists in London found out, much to their chagrin, cases are only listed by number; stripped of any opportunity to assess the substantive issues of any case, journalists were left to roam the courts, looking for hearings that may have warranted attention.

The reversal of Clayton v Clayton only serves to aggravate the problem as families are now no longer able to speak out about the injustices they are suffering in their own case, other than telling their MPs about their case or alerting journalists but the publishing of those details will still be subject to a judge's discretion. This will impact most seriously upon public family law, which specialises in adoptions and care orders, where much of the injustice occurs. Our most vulnerable members in society have now been denied any meaningful access to the press, so their presence in the court room is nothing more than an illusion.

In fact, the new legislation itself has, overall, decreased transparency and turned family court houses into bustling bazaars filled with baffled journalists and angst ridden court goers; a jammed venue packed with empty promises at a time when even a small piece of effective legislation would have made a difference.

A good place to start would have been by setting up an independent body of laymen with an interest in the system, like a jury, to read through cases and to see which ones appear to suffer from inaccuracies or controversy that strike at the heart of the problems in the system. There should be clear guidelines as to what constitutes inaccuracy or controversy, specifically relating to failures within the system, such as evidence gathering, witness competence, quality of representation and

judicial integrity. These panels should have the opportunity to read statements from parents or partners who wish to expose their cases; a demonstrative and tangible way of exposing potential injustice.

Once a case has been spotted, journalists could then be alerted. If the case synopsis sounded of interest, the journalists should then have the opportunity to read the documents in full with an undertaking not to report names of parties if children are involved and only if those children cannot consent to being named or should not be named for good reason. The journalists, if they then decide to report a case, can continue to do so. Having removed judicial discretion, the system at once becomes fairer, faster and smarter. Journalists would not have to skulk around court rooms, eavesdropping on barristers' conversations to see which hearings might tickle their fancy and then spend inordinate amounts of time arguing with judges and lawyers who may wish to block applications for reporting of a case.

Yes, the new legislation is much ado about nothing; but the psychological effect of its potential is what we need to hold on to, as the landscape of Family Law changes forever.