Case No: MK24F00207 / MK24F00212
Neutral Citation Number: [2025] EWFC 81 (B)

IN THE MILTON KEYNES FAMILY COURT

351 Silbury Blvd, Milton Keynes MK9 2DT

Date: 13/03/2025

Before :

DISTRICT JUDGE NUTLEY

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Between :

Professor James Tooley	**Applicant / Respondent**
- and –	
Cynthia Tooley	**Respondent /Applicant**

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- -

Rhiannon Lloyd (instructed by **Griffin Law**) for **Professor Tooley**
Cynthia Tooley appeared as a litigant in person

Hearing dates: 10 and 13 March 2025

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Approved Judgment

This judgment was delivered orally on 13 March 2025.

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District Judge Nutley:

1. The parties in this case are Professor James Tooley and Cynthia Tooley. Both have made applications in these proceedings. For convenience and to avoid confusing the terms ‘applicant’ and ‘respondent’, I will refer to Professor Tooley as ‘the husband’, and to Cynthia Tooley as ‘the wife’ respectively. No disrespect is intended.

2. The parties met in 2021, married in February 2022, and are now separated. These proceedings concern applications under the Family Law Act 1996 for protective injunctions, known as non-molestation orders.

3. Such applications are heard frequently by the Family Courts, primarily by District Judges and Magistrates. For example, In Milton Keynes Family Court alone during 2024, in the region of 250 such applications were received. In that sense, there is nothing remarkable about these proceedings.

4. But, these proceedings are notable in two respects. Firstly, the litigation resulting from the dispute between these parties has taken up a disproportionate amount of the Family Court's limited resources. Most recently, a day of court time was set aside on 10 March, for what was expected to be a contested hearing of the wife's application. On the preceding Friday, the court was informed that the parties had reached agreement and the contested hearing would not be required.

5. On 10 March the court accepted undertakings from the husband, and the wife withdrew her application. It has not therefore been necessary for the Court to hear evidence, make factual findings or decide whether to grant the injunction sought by the wife.

6. These proceedings are secondly notable because of the press interest in them. This interest appears to arise not particularly from the nature of the case, or a wider interest in the workings of the Family court, but from the husband's position as Vice Chancellor of the University of Buckingham. At an earlier hearing, I refused the husband's application to exclude reporters and ruled that they could attend and observe hearings in this case.

7. This judgment is about whether reporters and others should be allowed to publish what they have seen and heard during those hearings, and to what extent. I am also deciding an application made by the husband to vary an earlier order of District Judge Baumohl, which restricts the interactions which the parties are allowed to have with the press.

The parties’ positions

8. I will deal firstly with the parties’ positions. The husband opposes publication in this case. His primary position is that no publication should be allowed, and the parties’ names should be anonymised in any published judgment. His secondary position is that I should restrict publication of certain aspects of these proceedings. At my request, the husband's counsel, Ms Lloyd, prepared a draft of the order that she would seek where I to adopt that secondary position.

9. The proposed order prohibits the publication of:

i) the identity or any information which may lead to the identification of any third parties or witnesses mentioned within the applications;

ii) the identification of or information in relation to the current police investigation into alleged breaches of the Family Law Act orders, in particular, so far as to mention any third parties or witnesses that have been mentioned within hearings, or in the application itself;

iii) any of the substance of the allegations or conduct alleged within these proceedings by either party, or identification of any conduct alleged or allegations made in these proceedings; and

iv) anything that has not already been reported in the press to date, and in any event not to report on or refer to the substance of any allegations concerning the husband's relationship with the third party…

10. Despite seeking those restrictions, the husband also seeks a relaxation of restrictions on what he can speak to the press about.

11. According to paragraph 27 of the husband's position statement dated 12 February:

> "he does ask that he is permitted to…provide a response to any allegations made or information passed on by [the wife] or otherwise to reporters or in the press in so far as they relate to his employment. provided he does not refer to any matters before this court relating to the breakdown of the parties' relationship."

12. Again at my request, the husband's counsel provided draft wording of the variation order sought. It is proposed that there be limited circumstances in which the husband can interact with the press. The proposed circumstances are:

> "The [husband] and any persons instructed on his behalf are permitted to speak to, communicate with, or otherwise disclose information to the press in respect of his employment with the University of Buckingham including in respect of his suspension, reinstatement and any litigation relating to the same. Specifically, the [husband] and any persons instructed on his behalf shall be permitted, if necessary, to rebut in confidential pre-publication correspondence, the substance of the allegations which gave rise to his suspension and to explain any matters relating to any litigation arising out of his suspension or reinstatement and the conclusions reached within the investigation conducted in respect of that suspension, but only on the basis that he or they do not make any direct or indirect reference to [the wife] or to any information relating to (or disclosed in) both [applications in the Family Law Act proceedings]."

13. The wife takes a fairly neutral stance. She does not seek anonymisation or object to publication of what has happened during hearings. She says that press interest has been

caused by the husband's vengefulness towards her and that, in terms of press reporting, "the horse is well and truly out of the stable".

14. The wife says that Judge Baumohl's order should not be varied because the husband's employment matters are intrinsically linked to the allegations made to the university, and so he cannot speak to those employment matters without mentioning the substance of the allegations. She intimated that she, too, has lost contracts which she might otherwise have obtained, but for the press reporting, and if the order is to be varied it should be varied for both parties.

15. I have also considered written representations provided by a reporter, Lucy Osborne of The Guardian. They highlight the principle of open justice as a fundamental right and argue there should only be a departure from that principle as far as is necessary. She asks the court to balance Articles 8 and 10 of the European Convention on Human Rights. She says that, if there are to be any restrictions on publication, they should go no further than is necessary. She argues that a blanket ban on reporting would prevent reporting on a matter of legitimate public interest, given that the husband is a public figure and there has been much reporting already. Her colleague, Tom Burgis, described at a previous hearing their wish only to report fairly and accurately about what has happened during the proceedings.

Background

16. Before I explain my decision and the reasons for it, I need to give some background to these proceedings.

17. The husband's application for a non-molestation order was made on 29 October 2024. He alleged that [the wife] had coerced him to do what she wanted and:

> "to bend to her will and the main mechanism she uses is the threat of damage to my public reputation and/or employment. She does this by making threats to release private information she has stolen from me to the press, my employer and third parties. She has now made good on at least one of those threats and has, I believe, made a series of malicious allegations to my employer, who has suspended me as a result pending further investigation… the main source of the [wife's] coercion is in respect of…information she obtained of my previous relationship with a woman in or around 2009."

18. He refers to this woman as 'X', and continues:

> "In or around 11 April 2022, [the wife] discovered my journals. She became fixated on my relationship with X, even though the relationship ended years before we met and I have been open with her about my past. She was, and is, intent on suggesting that there is something sinister or improper in this relationship…"

19. He alleged that [the wife] collated the journals and electronic data from his phone, confiscated them and made copies. He alleged that she threatened violence if he did not let her check his phone.

20. The husband explained that he was told on 11 October 2024 he had been suspended as Vice Chancellor as a result of matters raised confidentially with the University. It was later confirmed that the allegations included reference to the relationship with X. That was the basis of the husband's application, dated 29 October 2024.

21. The wife also made an application for a non-molestation order on 4 November 2024, with a witness statement dated 31 October in support. She said in her witness statement that she started dating the husband in September of 2021. They married in February of 2022 and two months later, in April, she discovered the husband's diaries.

22. The wife accepts that she took copies of the diaries, confronted the husband about them and disbelieved the husband when he told her that there was nothing improper about the relationship. She decided to make a safeguarding report to the university.

23. She alleged in her witness statement that the husband became:

> "…surly and emotionally unpredictable when we were alone. If I said anything he deemed critical, he would fly off into a rage, his expressions contorted and spit out cruel verbal abuse at me…eventually in August I started transcribing the diaries…on 9 October 2024 I notified the University and showed them the evidence. On 11 October the University suspended the respondent."

24. The wife further alleged that the husband had made misrepresentations to the press, to the effect that she was making vindictive allegations against him because of their separation.

25. She requested that a non-molestation order prohibit the husband from:

    i) using verbal abuse against her;

    ii) communicating with her children [from another relationship] in any way at all; and

    iii) writing or permitting to be written falsehoods about [the wife] in national newspapers, in a manner intended to destroy her reputation and turn the public against her.

26. Having summarised the two applications, I observe that the undertakings given to the Court by the husband, leading to the resolution of the wife's application, go beyond what the wife was seeking in the first place. For example, he has undertaken not to use or threaten violence against the wife, despite there never having been an allegation that he has done so in the past.

27. The husband's counsel has helpfully provided me with an agreed schedule of articles published in the press to date. As far as I am aware, there has been no direct reporting of these Family Law Act proceedings; and up until the end of October 2024, the press reporting was limited to:

    i) the fact of the husband being suspended from his role at the university following "a number of serious allegations".

ii) an allegation by the wife of there being an unlicensed firearm at the home address and the subsequent police investigation revealing this not to be the case.

28. On 29 October 2024 District Judge Warriner made a non-molestation order which remains in force until 29 October 2025. That order prohibited the wife, in summary, from contacting the husband, going to his address or behaving in a threatening or violent manner towards him. It also contained the following provisions at paragraph 7:

> "The [wife] must deliver up to the [husband's] solicitors within 7 days of the date of this order any and all hard copies, electronic copies and/or other copies of any information, documentation and/or communication that remain in her possession or control that belong to, or which she obtained from, the respondent."

29. At a further hearing on 13 November 2024, before District Judge Baumohl, the wife consented to the non-molestation order remaining in place on the basis that she made no admissions to the husband's allegations. The court made the non-molestation order final, recording that the court had made no findings of fact.

30. A non-molestation order was also made pursuant to the wife's application by District Judge Dodds, but later discharged by Judge Baumohl at the 13 November hearing. Judge Baumohl however made a non-molestation order in the following terms:

> "Neither the [husband or wife] shall speak to or communicate with, or otherwise disclose information in respect of the other or themselves to the press directly or indirectly and neither must they instruct, encourage, or otherwise suggest any other person shall do so, and this prohibition shall extend to the publication of any information by them on social media."

31. It is this order, which remains in force until the 29 October 2025, which the husband now seeks to vary.

32. From 5 December 2024, reports emerged in the press regarding the husband's relationship with X. Several reports stated that this was a consenting relationship. It is apparent that some reporters have spoken to the woman concerned on the understanding that she would remain anonymous.

33. On 16 December 2024, Her Honour Judge Brown heard a committal application made by the husband. He alleged the wife had failed to comply with paragraph 7 of Judge Warriner's order. That application was not pursued in view of undertakings given to Judge Brown by the wife, that she would destroy any confidential documents of the husband's, including diaries and WhatsApp messages, and would not disseminate them to any third party. The court's order preserved the anonymity of several third parties to whom the wife had admitted sending confidential documents.

34. On 5 February 2025, the wife applied for a without notice non-molestation order against the husband. That without notice hearing was listed before me. The wife informed me that she had been arrested by police for an alleged breach of the non-molestation order imposed by Judge Baumohl, and released on bail. She alleged in her application that

the actions of the husband and his solicitors were behind the arrest, and those actions amounted to molestation.

35. The majority of the wife's allegations were made against the husband's solicitors rather than the husband directly. I declined to make an order without notice. At a subsequent hearing, held on notice to the husband, I struck out the application under Rule 4.4 of the Family Procedure Rules.

36. From 12 February 2025, reports appeared in the press questioning the integrity of an investigation conducted by a barrister, appointed by the University, which led to the husband being reinstated as Vice Chancellor. It was reported that the barrister did not have access to all relevant documents including the diaries or WhatsApp messages.

The current context

37. It therefore remains the position that the Court has not heard evidence or made factual findings. Had the contested hearing proceeded on 10 March, the allegations concerning the husband's previous relationship would, in my judgment, have been largely irrelevant. The relevant issues for the court to determine would have been (a) whether the allegations of molestation were proved; and if so, (b) whether there was an ongoing need for protection and (c) a requirement for judicial intervention to control the behaviour.

38. The applications were based on allegations that the parties molested each other; or as the caselaw puts it, acted in a way "which could be properly regarded as constituting such a degree of harassment that it calls for the intervention of the court". Essentially, the wife was said to have behaved in this way by distributing private documents, and the husband by being verbally abusive. In this context, the nature of the husband's previous relationship was little more than background information.

39. Much about the parties is already in the public domain. But the nature of the applications in these Family Law Act proceedings, and the allegations made in support of the wife's application, are not.

The application to vary Judge Baumohl's order

40. I will deal firstly with the application to vary Judge Baumohl's order, before turning to the issue of publication. The question for me to consider is whether the order, restricting the ability of the parties to interact with the press, remains necessary. Is there an ongoing need for the parties to be protected and their behaviour controlled by this order to prevent molestation?

41. In my judgment, the order does remain necessary given the history of both parties' interactions with the press. I am persuaded, however, that the husband should be able to communicate with the press in limited circumstances and that the order does not remain necessary to this extent. Those circumstances must be very limited and must not undermine the purpose of the order.

42. The limited circumstances proposed on the husband's behalf are difficult to follow and could give rise to confusion. In my judgment, the limited circumstances referred to should be defined as follows:

> "Except that [the husband] may communicate, whether directly or through his solicitors, with reporters in confidential pre-publication correspondence, and only concerning his employment by the University of Buckingham and/or the integrity of the investigation process which led to his reinstatement."

43. I do not agree that the same amendment needs to be made in respect of the wife. The difficulty encountered by the husband, which lead to his application to vary, concerns his ability to comment on his suspension as Vice Chancellor of the University and the subsequent investigation. The wife has not identified any such specific difficulty arising from the order.

44. If in the future the wife encounters some specific difficulty, which requires variation of the order as far as she is concerned, it will be open to her to make an application to vary. However, the argument 'if it is varied for him, it should be varied for me' is not sufficient.

Publication

45. These proceedings have been heard in private in accordance with Rule 10.5 of the Family Procedure Rules.

46. Reporters are allowed to attend in accordance with Rule 27.11, unless there is a successful application to exclude them under Rule 27.11(3).

47. There is a climate of transparency in the Family Court. The power of judges to make Transparency Orders in cases involving children, subject to any necessary anonymisation, is now permanent law; and a transparency pilot continues in financial remedy (formerly ancillary relief) proceedings. The provisions concerning Transparency Orders do not apply to proceedings under the Family Law Act but the sentiments behind the transparency project are nevertheless relevant.

48. Those sentiments were referred to in a report of the President of the Family Division, Sir Andrew McFarlane, entitled Confidence and Confidentiality: Transparency in the Family Courts (21 October 2021). At paragraph 22 the President said:

> "The level of legitimate media and public concern about the workings of the Family Court is now such that it is necessary for the Court to regard openness as the new norm. I have, therefore, reached the clear conclusion that there needs to be a major shift in culture and process to increase the transparency of the system in a number of respects."

49. The President went on to refer to the genuine and legitimate public interest in the Family Justice System, for the purpose of gaining public confidence in the system and greater knowledge and understanding of issues such as domestic abuse.

50. In the context of Family Law Act proceedings, the Court of Appeal decision in *Allan v Clibbery [2002] EWCA Civ 45* remains the leading authority:

i) Firstly, the fact proceedings are held in private does not mean that they are held in secret. The starting point is open justice.

ii) Secondly, there is no automatic statutory restriction on publication, but FLA proceedings may come within scope of a statutory restriction. For example, section 12 of the Administration of Justice Act 1960 would apply if the FLA "proceedings relate wholly or mainly to the maintenance or upbringing of a minor". Neither party argues that section 12 applies here.

iii) Thirdly, it is possible for an implied undertaking of confidentiality to arise in FLA proceedings. The undertaking commonly arises in financial remedy proceedings because the parties have a duty of disclosure, and such proceedings are therefore quasi-inquisitorial in nature. At paragraph 63 of *Allan v Clibbery*, the then President of the Family Division quoted the authority of *Prudential Assurance Co Ltd v Fountain Page Ltd* [1991] 1 WLR 756, suggesting that the implied undertaking is:

> "…confined to documents and information which a party is compelled, without any choice, to disclose. Where a party has the right to choose the extent to which he will adduce evidence or deploy other material, then there is no compulsion even though a consequence of such choice is that he will have to disclose material to other parties."

iv) Fourthly, an implied undertaking does not arise simply because the court is required, under Section 42 of the Family Law Act, to 'have regard to all the circumstances'.

v) Fifthly, paragraph 77 of the judgment is of note:

> "It does not, in my view, follow that a hearing of a [FLA] application which is in private, even one which is to some extent inquisitorial with the requirement that 'the court shall have regard to all the circumstances', is to remain for ever entirely confidential. [Such] applications do not necessarily come within section 12 [of the AJA 1960] nor is the element of compulsion, thereby triggering an implied undertaking, always present. In my judgment the court must look at the application before it and come to a conclusion whether that application falls within the ambit of section 12 or within the recognised categories of cases, those of children and ancillary relief issues, or whether there are other factors as a result of which, if the proceedings are not treated as secret, there will be prejudice to the administration of justice. Family proceedings are not and should not be seen to be in a separate category from other civil proceedings, other than in recognised classes of cases or in other situations which can be shown manifestly to require permanent confidentiality."

51. I have also been referred to the judgment of Her Honour Judge Reardon in *G v S [2024] EWFC 231 (B)*. This was an authority decided at Circuit Judge level and is not therefore

binding on me. At paragraphs 39-40 Judge Reardon expressed concerns, which were echoed by the husband's counsel Ms Lloyd during submissions, that:

> "As was recognised in *Allan and Clibbery* itself, a starting point which depends on the court's evaluation of the nature of the particular proceedings, whether they can properly be characterised as quasi-inquisitorial, and whether the implied undertaking of confidentiality has arisen, is unsatisfactory…these applications are often made and responded to by litigants in person. It is difficult to see how such litigants can be expected to know whether or not they are permitted to speak freely about their FLA proceedings if the answer to that question is not straightforward even for lawyers…the information contained in the applicant's witness statement is often detailed, intimate and raw".

52. Judge Reardon concluded, "albeit tentatively, and in the absence of authority", that the starting point in Family Law Act proceedings was one of confidentiality; and the burden of making an application should lie with the person seeking to publish the information.

53. From my perspective, I think I am bound by the Court of Appeal decision in *Allan v Clibbery*. In other words, the starting point is open justice unless a statutory restriction or implied undertaking applies; and the burden of making an application should lie with the person seeking to restrict publication. I agree that this is an unsatisfactory starting point, which creates uncertainty. But this is a matter for either a higher court or Parliament to resolve[1], not a District Judge.

54. In my judgment, there is no statutory restriction or implied undertaking applicable to these proceedings, which were embarked upon through choice, just as the parties have on occasion engaged with reporters by choice. It is argued on behalf of the husband that the implied undertaking applies because his FLA application stemmed from the use of private information, obtained in breach of confidentiality. In my judgment, that feature is not sufficient to satisfy the test referred to in *Allan v Clibbery*.

Reporting Restriction Order

55. I nevertheless have discretion to restrict publication, if necessary to comply with the Human Rights Act 1998, and so have treated the issue as an application by the husband for a Reporting Restriction Order. I have considered whether features of this case justify any restriction on publication, by balancing the parties' rights under Articles 8 and 10 of the European Convention on Human Rights. This is my "intense focus on the comparative importance of the specific rights being claimed in the individual case", as required by the House of Lords Authority of *Re S (A Child) [20024] UKHL 4*.

56. I have had regard to the analysis of Mr Justice Mostyn in *Xanthopoulos v Aleksandrovna [2022] EWFC 30*. At paragraph 121 he said:

[1] Mr Justice Mostyn expressed a similar view at paragraph 140 of *Xanthopoulos v Aleksandrovna [2022] EWFC 30*, in the context of financial remedy proceedings.

> "…anonymisation can only be imposed by the court making a specific anonymity order in the individual case. Such an order can only lawfully be made following the carrying out of the ultimate balancing test referred to by Lord Steyn in *Re S*. It cannot be made casually or off-the-cuff, and it certainly cannot be made systematically by a rubric. On the contrary, the default condition or starting point should be open justice, and open justice means that litigants should be named in any judgment, even if it is painful and humiliating for them…"

57. I also take note of what was said by Lord Roger in *Re Guardian News and Media Ltd* [2010] 2 AC 697 at [63]:

> "What's in a name? "A lot", the press would answer. This is because stories about particular individuals are simply much more attractive to readers than stories about unidentified people. It is just human nature. And this is why, of course, even when reporting major disasters, journalists usually look for a story about how particular individuals are affected. Writing stories which capture the attention of readers is a matter of reporting technique, and the European Court holds that Article 10 protects not only the substance of ideas and information but also the form in which they are conveyed….judges are not newspaper editors…a requirement to report in some austere, abstract form, devoid of much of its human interest could well mean that the report would not be read and the information would not be passed on."

58. In relation to Article 10 rights, in favour of publication, I have considered the following:

i) Firstly, that there is a legitimate public interest in reporting because of the public position held by the husband, and the implications of the allegations on his position within the University.

ii) Secondly, there is a wider public interest in being able to report on the work of the Family Courts. These proceedings have, in my view, taken up a disproportionate amount of the limited resources available to the Family Court.

iii) Thirdly, the effect of further publication will be limited to the extent that there is already material about the parties and their separation in the public domain. The includes information about the husband's previous relationship and that allegations around that relationship led, in part, to his suspension.

iv) Fourthly, the husband himself seeks to publish further information, to correct material already in the public domain, albeit to a limited extent. I have given him permission, through the variation of Judge Baumohl's order, to communicate with the press for that purpose. Allowing publication by the press would assist him in this aim.

v) Fifthly, some of the allegations were based only on the wife's personal interpretation of confidential documents, looked at without the husband's

consent. They were contradicted by clear evidence to the contrary, which was before the court in the form of a signed witness statement of another witness. It could be argued that publication would enable full and accurate reporting.

59. In relation to the husband and wife's Article 8 rights, but particularly those of the husband, given he is the party opposing publication, I have considered the following:

i) Firstly, much of the information relied upon by the parties is of a nature which would usually be entirely private to them, but for these proceedings. The husband's previous relationship is an obvious example.

ii) Secondly, the alleged harassment which formed the basis of the husband's application involved the disclosure of confidential information to the press by the wife. Publication might have the consequence of allowing abusive behaviour to continue.

iii) Thirdly, not all allegations in this case are currently in the public domain. Some are not directly relevant to the applications before the court, and publishing them would significantly interfere with the husband's Article 8 rights.

iv) Fourthly, publication may add to speculation that the investigation commissioned by the university did not consider all relevant evidence.

v) Fifthly, I have been shown credible evidence that the husband's physical and mental health has been severely affected by his suspension and the surrounding publicity. Publication will potentially have a further detrimental impact on the husband's health.

vi) Sixth, there has been no factual resolution of the various allegations which have either been made to this court or referred to within witness statements. The husband argues that publication will lead to 'no smoke without fire'-type conclusions by members of the public.

vii) Seventh, the third parties who have provided witness statements in these proceedings have not had an opportunity to comment on the potential publication of their names.

Conclusion

60. Having balanced the comparative importance of the above factors, I have decided that it is necessary for there to be some restriction on publication, and therefore departure from open justice; but this is only necessary in two respects which will be set out in a separate Reporting Restriction Order.

61. I have concluded that, with these restrictions in place, the balance otherwise falls in favour of publication. The Article 8 factors which I have referred to are, in my judgment, sufficiently counterbalanced by the following matters:

i) Firstly, the limited restrictions which I am putting in place;

ii) Secondly, the fact that otherwise there is already a substantial amount of material concerning the parties and their separation in the public domain;

iii) Thirdly, because of the protection which remains in place in the form of Judge Baumohl's order, preventing the parties from engaging with the press, except (in the husband's case) in the very limited circumstances which I have allowed; and

iv) Finally, because the starting point is open justice. The importance of open justice - and the legitimate public interest in reporting of this case - justify publication.

62. To the extent that I am invited to restrict publication in relation to any ongoing police investigation, concerning alleged breaches of Judge Warriner's non-molestation order by the wife, I refuse to impose any restriction.

63. In my judgment this would go beyond the scope of orders which I can properly make in the context of these Family Law Act proceedings. Also, were I to make such an order, I would be doing so in the absence of any information about the investigation and without the police having had an opportunity to respond.

64. That is my judgment.