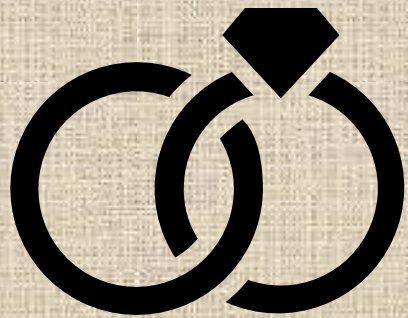


# Financial Remedies Seminar: Updates

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# Law Commission Scoping Report 18<sup>th</sup> December 2024

- “The essence of a scoping report is that it steps back and paints an overview. It presents options (to the government or to Parliament); but does not seek to recommend or even identify a clear way forward. The downside of this exercise is that it doesn’t really solve anything” (HHJ Hess, FRJ, Chair’s Column, Spring 2025).
- It is for government to consider whether any of the models present a desirable route for reform.

# Law Commission Scoping Report 18<sup>th</sup> December 2024

Criticisms of the current law:

- Uncertain and inaccessible
- Lack of clear objective
- Discretionary nature of the law
- Judicial development of general principles
- Fairness= needs, compensation, sharing

Criticisms of the procedure.

# Law Commission Scoping Report 18<sup>th</sup> December 2024

## 1. Codification.

- Bringing existing case law principles into the statutory framework
- Presentation in a cohesive framework/more readily accessible
- Greater transparency and clarity to law
- Helpful for LIPs
- Would not by itself reduce discretion – it would be a framework accommodating flexibility

## 2. Codification Plus

- One step further than codification – reform on a number of discrete issues



# Law Commission Scoping Report

## 18<sup>th</sup> December 2024

### 3. Guided Discretion

- Set of underpinning principles and objectives which guide the exercise of the court's discretion.
- Legislation prescribes how, and when, the discretion can be exercised.

### 4. Default Regime

- The law prescribes explicit rules which regulate the financial consequences of divorce from the date of the marriage.
- Less opportunity for exercise of judicial discretion – law sets the property to be divided and on what basis
- More certainty

# Law Commission Scoping Report 18<sup>th</sup> December 2024

Report also considers whether reform is needed in relation to specific areas:

- (1) Nuptial agreements.
- (2) Spousal maintenance.
- (3) Provision for children aged 18 and over.
- (4) Conduct.
- (5) Pensions.

# Greater Transparency

- On 27<sup>th</sup> January the 'Transparency Pilot' ceased to be a pilot.
- From 1<sup>st</sup> May 2025 it will extend to private law cases.
- On 29<sup>th</sup> September 2025 it will extend to the magistrates' tier.
- Practice Direction 12R
- Transparency Orders
- What documents can be disclosed?
- What cannot be published?



# Vince v Vince (Re Transparency) [2024] EWFC 406

- The accompanying transparency judgment in Vince v Vince [2024] EWFC 389
- Press, who had not attended the pre-trial review, had documents from the hearing & published details from those documents. Such details were not details contained in reports from press who did attend.
- Did the transparency order, or the rules, permit the forwarding of documents to non-attending journalists?
- To what extent are journalists free to share information?
- Cusworth J considered the rules and the guidance....



# Vince v Vince (Re Transparency) [2024] EWFC 406

- It cannot have been the intention of the guidance that only reporters who attend the hearing are to have sight of documents.
- If journalists who did not attend a hearing relied upon those who did attend for their knowledge & understanding of the cases, it would likely lead to ‘double hearsay’ style of reporting – accuracy and independency would be at risk.
- If a document is already in the hands of one reporter, others should also be permitted to see it & comment, provided they have been served with the transparency order and that the documents fall within that order. However, this should only happen after the hearing to which the document relates in case of the need for qualification at the hearing (which only the attending journalists/reporter will be aware of).
- Before any transparency order, documents remain confidential.
- Request for position statements from parties by reporters who do not intend to attend a hearing – if there is a transparency order and the documents fall within that order, this is possible with the agreement of the parties as long as reporter is appropriately accredited and has been served with the TO. If no agreement, release of such documents only after conclusion of the hearing so the issue can be determined. Attending reports must have the documents first so they can understand what they are seeing.

## V v V [2024] EWFC 380 (B)

- Reported – 19<sup>th</sup> December 2024
- Provides useful reminders as to ‘needs’ & cases involving serious disability
- Appeal from a decision made by a DDJ
- Needs of H v needs of W & children = not enough to go around!

# V v V [2024] EWFC 380 (B)

## Facts

- W aged 38, H aged 44
- Cohabiting since 2007, married in 2014
- Two children together = 11 & 8 years old
- The H suffered an accident which rendered him tetraplegic. Insurance payout £103k.
- Used money to buy home together – joint names
- Home was adapted to meet H's needs via donations. While ongoing, parties lived with the H's mother.
- Marriage broke down – W & children moved into rented accommodation. H in the family home.



# V v V [2024] EWFC 380 (B)

## Decision of DDJ....

Family home to be sold in 2 years, net proceeds divided 55% to H, 45% to W.

- Agreed value FMH – 206k
- Both had liabilities & loans
- W had no pension, H had a small pension
- W had part-time business, in receipt of UC – likely to remain the same
- H unable to work, reliant on UC and PIP – will not change
- FMH size was not necessary for H, preferable for him to remain in FMH but not the same as being ‘necessary’
- "I do accept that it will take some time to find a suitable property but also, as already mentioned, neither party is in a position to obtain a mortgage at this stage and evidence has been given that this could take around two years. Therefore, I order that the property is not sold for two years which will enable both parties to clear their debts, identify suitable properties, have adaptations made if necessary, and to obtain mortgages."

**APPEAL**



# V v V [2024] EWFC 380 (B)

- The issue that arises in this case is whether, having concluded that this was a needs case, the Judge made an order that did indeed provide for the needs of one or both parties and the children (para 16)
- (para 17) The difficulties presented by cases involving limited assets was considered in Butler v Butler [2023] EWHC 2453 (Fam) by Moor J. At paragraph 39 he said this :

"The first point to make is an important one. In some respects, it is the answer to this appeal. The fact that a Judge rightly concludes that a case is a 'needs' case does not mean that the Judge must then make an order that satisfies both parties' needs. In one sense, this is obvious, because there may simply be insufficient assets to satisfy the needs of either party, let alone both ... There will, however, be ... cases where the assets may only be barely sufficient to do so or, potentially, not sufficient. These are the most difficult cases, and this is one of those."

# V v V [2024] EWFC 380 (B)

25. An analysis of this conclusion against the findings reveals **the fatal flaw** in the Judge's reasoning. Both parties have insufficient income to meet their current needs so neither can pay down their debts either now or during the next 2 years, (a period within the "foreseeable future"). The Judge found that neither will have any real increase in their income for the foreseeable future. Neither can obtain a mortgage until their debts are paid. They could only pay their debts from the proceeds of sale of the house. Neither would have sufficient left to buy anywhere else. And the scheme run by the relevant local authority to assist with adaptations to a home only applies to a home that is already owned or occupied by a party. In other words, the adaptations cannot take place until after the replacement house has been purchased, for which there is insufficient money.
26. The next issue that led the Judge into error appears in paragraph 44 where she said this:  
"I find that although in principle there should be an equal division, the husband's housing needs will require more assets than the wife's."
27. The Judge said this in the context of considering a fair split, looking at section 25, and the welfare of the children, and the husband's increased housing needs due to his disability. Meeting needs should come first. A cross check against equality adds little value in cases of very limited assets.
28. What the Judge did not grapple with was this fundamental issue: in some cases, there is insufficient to meet the needs of both parties. The court must make a choice. Here, the choice was between the husband's disability generated needs and the interests of the children.



# V v V [2024] EWFC 380 (B)

- Para 29 – reminder as to relevant case law re serious disability

Wagstaff v Wagstaff [1992] 1 FLR 333

C v C (Financial Provision: Personal Damages) [1995] 2 FLR 171

Mansfield v Mansfield [2012] 1 FLR 117

- Consistent point in above cases: “..the disability where it is of the nature of tetraplegia, as here, will invariably take precedence over the welfare needs of the children when it is not possible to adequately meet both.”

## V v V [2024] EWFC 380 (B)

- Appeal court found the disability of H was so significant such that the need for him to be in a home where his needs can be adequately met is the need that dominates.
- H required the use of the adapted house – the only asset available to the family
- H's occupation will be to the exclusion of W and the children = their future in rented accommodation.
- FMH transferred to H's sole name, Mesher Order (H's death or permanently in institutional accommodation), on sale net proceeds split 75% to W, 25% to H



# QW v GH [2025] EWFC 19 (B)

- Financial remedies case number v originating divorce number
- W (48) and H (52) separated in February 2015 – 22 year marriage – 4 children. H remained in the FMH with the children and exclusively made all capital and interest payments since 2015.
- Decree absolute - December 2015
- W remarried in 2016 – child with new partner
- W didn't file Form A until 8 years later in November 2023
- Sole issue – division of the FMH – agreed should be sold in July 2025
- S28(3) MCA 1973 – had W prayed for a financial order?

# QW v GH [2025] EWFC 19 (B)

- S28(3) MCA 1973 – W was not barred – observations made
- Witness bundle reminder even where case on submissions-only basis
- Long marriage, 4 children, non-matrimonial assets accrued post-separation which can be factored in to meet needs
- Net proceeds divided equally once H's 85k interest has been factored in (representing mortgage repayments)
- 65.5% to H, 34.5% to W

END