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official functions”. Where no contribution was made to any debate of general interest, article 10 must be given a narrow interpretation. Judge Zupančič observed that the courts have to some extent and under American influence “made a fetish of freedom of the press”. Consequently, even a famous

musician like Ms MacKennitt was entitled to withhold intimate details about her personal life and commercial arrangements from the public gaze.

Hedley J decided that, on the facts of this case, the media had shown ‘good reason’. First, there was a lot of information about DP in the public domain already. Second, the media should be entitled to report ‘that which answers the legitimate questions of a reasonable person who knows what is presently within the public domain’.

That included publishing DP’s name, the nature of his talent, the nature of his disability, his reliance on others for his care and the management of his affairs, and the outcome of the CoP proceedings could all be reported. He accepted also that there was a public interest in informing the public how the CoP works, though he agreed that consideration could apply to any CoP hearing.

Nevertheless, he stressed that ‘the nature of [DP’s] earnings, the details of his care, the nature of family discussions about these matters, the question of medical treatment and the criteria the family wish to employ (if such be entrusted to them) in relation to decisions about public appearances should all enjoy privacy and not be reportable’. DP appealed.

The Court of Appeal, at the hands of the Lord Chief Justice, the Master of the Rolls and the president of the Family Division, dismissed the appeal on 31 March. They said that Hedley J had exercised a discretion, which means that an appellate court could only interfere if the judge had made an error of principle or acted perversely. They were equally impressed by DP’s achievements, and concluded that this was an exceptional case.

So the case came back to the High Court for a final hearing on 13 May, with the press present. DP’s father and sister gave evidence. Hedley J gave a short *ex tempore* judgment, announcing first that if the parties or the press took exception to anything which he said in his judgment, they could apply for an order restricting publication of details given in the judgment, or authorising publication of further details. Some submissions were accordingly made, at the conclusion of his judgment, by both counsel and the press.

That is why newspapers on 14 May were able to report DP’s name, the circumstances which gave rise to the application, and the outcome. What lessons can be learnt from this case for practitioners?

Limited application

As parties to high-profile divorces have discovered, perhaps the only way to exclude the media altogether is to undertake private mediation.

However, most incapacitated adults are not celebrities, and would have a stronger case for saying that their affairs should be managed by the court sitting in private.

If there is some important point of legal principle involved, that can be put in the public domain by the publication of a suitably anonymous judgment. It seems unlikely, therefore, that there will be more than a few cases per year where the media can show ‘good reason’ why the proceedings should not be in private.

What if a party to CoP proceedings seeks to involve the media? Careful consideration would need to be given as to whether ‘good reason’ exists for letting the media in. In cases where the state is making allegations of abuse against private carers, for example, it might be argued that the role of the press as ‘public watchdog’ might justify them being given access to the hearing, albeit subject to some reporting restrictions to protect the privacy of the incapacitated person.

The onus of proving that ‘good reason’ exists lies on the person seeking to open up the proceedings. A CoP9 form filed in support of such an application should be carefully scrutinised to see how the media became aware of the proceedings, and what the nature of their interest is.

None of this means that the workings of the court, or the way in which it reaches decisions in the best interests of incapacitated adults, should remain private: on the contrary.

There is a great deal of information about the work of the court available on the internet and decisions of the court are increasingly being published.

While there is a need for more frequent reporting and for greater public access to reported judgements in the CoP it is noteworthy that the media have shown little or no interest in any case either before or since DP’s case. Its interest in his story seems due to the exceptional circumstances of his personal situation, rather than an overarching interest in the workings of the Court itself.

Barbara Hewson of Hardwicke and Alex Rook of Irwin Mitchell LLP were instructed by the official solicitor to represent Derek Paravicini in these proceedings. Gavin Millar QC was also instructed in relation to the media application.