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Case No: COP 11647854

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12th November 2009

Before :

THE HON. MR. JUSTICE HEDLEY

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Between :

Independent News and Media Ltd and others	**Applicant**
- and -	
'A' (by his litigation friend the Official Solicitor)	**Respondent**

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Mr Guy Vassall-Adams(instructed by **Romana Canneti) for Independent News and Media Ltd, Guardian News and Media, Ltd, Times Newspapers, Ltd, Associated Newspapers, Ltd, Telegraph Media Group Ltd, Independent Television News and the Press Association** for the **Applicant**
Mr Gavin Millar, Q.C. and Ms Barbara Hewson
(instructed by **Irwin Mitchell Solicitors)** for the **Respondent**

Hearing dates: 5th – 7th October 2009

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Judgment

THE HON. MR. JUSTICE HEDLEY

This judgment is being handed down in private on 12th November 2009 It consists of 14 pages and has been signed and dated by the judge. The judge hereby gives leave for it to be reported.

The judgment is being distributed on the strict understanding that in any report no person other than the advocates or the solicitors instructing them (and other persons identified by name in the judgment itself) may be identified by name or location and that in particular the anonymity of the children and the adult members of their family must be strictly preserved.

The Hon. Mr. Justice Hedley :

INTRODUCTION

1. This case concerns a young adult known as 'A' who is severely disabled, resulting in severe learning difficulties which render him incapable of making decisions as to any significant issue in his life. He is and is likely to remain dependant on others for his care and he is currently cared for in accommodation provided and managed by a national charity. However, he also possesses remarkable gifts and the practice of those have brought him to public, indeed international, attention.

2. The practice of these gifts brings very substantial personal and financial consequences and raises issues which will require careful and disinterested decision-making to be made on his behalf in the future. Moreover, the question as to the extent he can make his own decisions will itself need to be kept under careful review as such decisions will carry significant personal and financial implications. All those matters have of course to be set in the context of the proper provision of his care needs.

3. It is therefore unsurprising that these matters are the subject of consideration by the Court of Protection. Such proceedings inevitably involve his close family, the current care providers and no doubt others who may have a legitimate interest in his future. It is equally unsurprising, given the public interest that has been generated by his story and his public exploits, that the media have become aware of these proceedings and have shown a close interest in them.

4. This application in made by certain named media institutions and companies (whom for convenience I will describe as 'the media') for permission to attend the hearings in the Court of Protection and to report those proceedings including, of course, the identification of 'A'. They have been jointly represented by Mr. Guy-Vassall Adams of counsel. 'A''s family have decided, for reasons set out in an affidavit (and which seem sound to the court), to maintain a neutral stance on these applications, but they are opposed by the Official Solicitor, acting as 'A''s Litigation Friend, represented by Mr. Gavin Millar, Q.C. and Miss Barbara Hewson. This application itself has by order of the court been heard in public subject to a general undertaking by the media which restricts the matters that can in fact be reported. I shall therefore seek so far as possible to avoid reference to detailed matters which may in themselves tend to identify 'A'.

THE COURT OF PROTECTION

5. The Court of Protection, in its current form, was created by the Mental Capacity Act 2005. It has its own rules and its own judiciary, though all those nominated as Judges are appointed under the general law, and may sit in other courts. It has very wide powers to deal both with the person and property of those who lack capacity to make decisions for themselves. Early indications suggest that considerable use is being made of the court and, whilst much of its business will comprise matters of interest only to the family concerned, it is likely that some exercise of its powers, for example, in relation to the giving or withholding of medical treatment or deprivation of liberty by removal to a care home will raise matters of genuine public importance and concern.

6. The State has historically always assumed some responsibility for those who lack capacity to manage their own affairs. The Court of Protection has long provided an essentially administrative function in the management of the property of those who lack capacity. Originally presided over by the Master in Lunacy (an expression regularly found in the old cases), it developed a very considerable experience both in the cautious management of property and in the oversight of those who by virtue of Powers of Attorney exercised the management of the affairs of those who lack capacity to manage their own.

7. The Court of Protection did not have powers over the person of those who lacked capacity. The Mental Health Act 1959 (and its predecessors) had regulated in statute the powers of the State in respect of those who fell within the definitions in that Act. There remained, however, a group of people who were not covered by those Acts but who nevertheless lacked capacity. The Family Division, exercising the inherent jurisdiction of the High Court, sought in the latter part of the last century to develop remedies to meet the needs of those who fell into this group. Many of the principles and procedures so developed are now replicated in the Mental Capacity Act 2005 most especially the need to act in the best interests of the incapacitated person. That Act now effectively replaces the old administrative functions of the Court of Protection and the parallel exercise of the inherent jurisdiction with the new statutory Court of Protection.

8. As will become apparent, Parliament was clearly exercised about the question of privacy so far as the new Court was concerned. Although it is wholly distinct from the Family jurisdiction, the problems of privacy and public interest in its proceedings and the actual exercise of its very wide powers were not dissimilar. This case provides the court with its first opportunity to reflect on those problems and the tension between the essentially private nature of the subject matter of the proceedings and the legitimate public interest in the practice and exercise of the powers of the new Court. It does so in the context of a person of whom much is already known by the public and whose story has an almost irresistible attraction to it.

THE MENTAL CAPACITY ACT 2005

9. The Mental Capacity Act 2005 is intended to provide what is effectively a complete code for dealing with issues of capacity subject essentially only to the Mental Health Acts. It provides the principles upon which the jurisdiction is to be exercised, defines the issue of capacity and makes detailed provision for the definition and exercise of the powers conferred by the Act. Whilst no doubt it may be necessary to refer to earlier decisions made under the pre 2005 legal regimes, it will be important to bear in mind that matters relating to those who lack capacity are intended to be regulated by a new Statute.

10. Part 2 of the Act creates the new Court of Protection. Section 51 provides for the making of Rules of Court and Section 51(2) indicates the potential subject matter of those rules. Section 51(2)(h) is in these terms –

> *"for enabling or requiring the proceedings or any part of them to be conducted in private and for enabling the court to determine who is to be admitted when the court sits in private and to exclude specified persons when it sits in public."*

It is therefore apparent that the Legislature was alert to the issue of sitting in public or private and contemplated that both may in due course be permitted or indeed required. The Rules, to which I must now turn, were a direct response to the specific concerns of Parliament.

PART 13: COURT OF PROTECTION RULES 2007 (51 2007/1744)

11. The relevant Rules are 90-93 supplemented by a Practice Direction PD13A. It is necessary to set out in full the terms of Rules 90-93.

General rule – hearing to be in private

90. *(1) The general rule is that a hearing is to be held in private.*

(2) A private hearing is a hearing which only the following persons are entitled to attend—

(a) the parties;

(b) P (whether or not a party);

(c) any person acting in the proceedings as a litigation friend;

(d) any legal representative of a person specified in any of sub-paragraphs (a) to (c); and

(e) any court officer.

(3) In relation to a private hearing, the court may make an order—

(a) authorising any person, or class of persons, to attend the hearing or a part of it; or

(b) excluding any person, or class of persons, from attending the hearing or a part of it.

Court's general power to authorise publication of information about proceedings

91 *(1) For the purposes of the law relating to contempt of court, information relating to proceedings held in private may be published where the court makes an order under paragraph (2).*

(2) The court may make an order authorising—

(a) the publication of such information relating to the proceedings as it may specify; or

(b) the publication of the text or a summary of the whole or part of a judgment or order made by the court.

(3) Where the court makes an order under paragraph (2) it may do so on such terms as it thinks fit, and in particular may—

(a) impose restrictions on the publication of the identity of—

(i) any party;

(ii) P (whether or not a party);

(iii) any witness; or

(iv) any other person;

(b) prohibit the publication of any information that may lead to any such person being identified;

(c) prohibit the further publication of any information relating to the proceedings from such date as the court may specify; or

(d) impose such other restrictions on the publication of information relating to the proceedings as the court may specify.

1 Power to order a public hearing

Court's power to order that a hearing be held in public

92. *(1) The court may make an order—*

(a) for a hearing to be held in public;

(b) for a part of a hearing to be held in public; or

(c) excluding any person, or class of persons, from attending a public hearing or a part of it.

(2) Where the court makes an order under paragraph (1), it may in the same order or by a subsequent order—

(a) impose restrictions on the publication of the identity of—

(i) any party;

(ii) P (whether or not a party);

(iii) any witness; or

(iv) any other person;

(b) prohibit the publication of any information that may lead to any such person being identified;

(c) prohibit the further publication of any information relating to the proceedings from such date as the court may specify; or

(d) impose such other restrictions on the publication of information relating to the proceedings as the court may specify.

Supplementary

Supplementary provisions relating to public or private hearings

93. *(1) An order under rule 90, 91 or 92 may be made—*

(a) only where it appears to the court that there is good reason for making the order;

(b) at any time; and

(c) either on the court's own initiative or on an application made by any person in accordance with Part 10.

(2) A practice direction may make further provision in connection with—

(a) private hearings;

(b) public hearings; or

(c) the publication of information about any proceedings.

12. At the end of the day this application has to be resolved by the proper construction and then application of these Rules. There are certain preliminary observations to be made. The first is that proceedings in the Court of Protection are covered by Section 12 of the Administration of Justice Act 1960, as amended by Section 67(1) and Schedule 6, paragraph 10 of the 2005 Act. In its amended form and so far as is relevant it provides –

"(1) The publication of information relating to proceedings before any court sitting in private shall not of itself be a contempt of course except in the following cases...

(b) Where the proceedings are brought under the Mental Capacity Act 2005...

(4) Nothing in this section shall be construed as implying that any publication is punishable as contempt of court which would not be so punishable apart from this section and in particular where the publication is not so punishable by reason of being authorised by rules of court."

It follows that where an order is made under Rule 91(2) then the effect is to disapply Section 12.

13. The next general observation is that rule 90(1) provides that ordinarily hearings should take place in private. It follows, and the applicants accept, that there is a burden on them to establish that any particular case should be heard in public (not sought here) or that persons other than those listed in Rule 90(2) should be admitted under rule 90(3)(a), which they do seek. Moreover, it follows that they must also make the case for reporting under rule 91(2).

14. Thirdly, it is to be noted that such orders should, pursuant to Rule 93, be made "(a) only where it appears to the court that there is good reason for making the order." There is no statutory commentary on 'good reason' and clearly the meaning of that and its effect lies at the heart of this application.

15. The last general observation relates to the obvious parallel with proceedings under the Children Act 1989 and in particular to the similarity of policy reasons why reporting may or may not be desirable. Those are of course relevant issues but the Court of Protection has its own Rules (and they are quite distinct from the Family Procedure Rules) and they must be individually construed and applied whilst avoiding (so far as is possible) any unjustifiable conflict of policy between the jurisdictions.

THE CASE FOR THE MEDIA IN SUMMARY

16. Mr. Vassall-Adams starts (as indeed does Mr. Millar) with reference to SCOTT -v- SCOTT [1913] AC 417 and what he describes as the "open justice principle" and he refers me to the succinct summary of that by Lord Diplock in A-G -v- LEVELLER MAGAZINE [1979] AC 440 at 451 A-B where he says –

> *"As a general rule the English system of administering justice does require that it be done in public: Scott v Scott [1913] AC 417. If the way that courts behave cannot be hidden from the public ear and eye this provides a safeguard against judicial arbitrariness or idiosyncrasy and maintains the public confidence in the administration of justice. The application of this principle of open justice has two aspects: as respects proceedings in the court itself it requires that they should be held in open court to which the press and public are admitted ... As respects the publication to a wider public of fair and accurate reports of proceedings that have taken place in court the principle requires that nothing should be done to discourage this."*

Of course he recognises that the House of Lords in SCOTT defined three exceptions to the open justice principle, one of which, "in lunacy proceedings", is accepted by all to cover proceedings under the 2005 Act, but he points out that those exceptions are not absolute. The heart of the issue may perhaps be discerned in the speech of Viscount Haldane, LC in SCOTT where at P.437-8 he says this –

> *"As the paramount object must always be to do justice, the general rule as to publicity, after all only the means to an end, must accordingly yield. But the burden lies on those seeking to displace its application in the particular case to make out that the ordinary rule must as of necessity be superseded by this paramount consideration. The question is by no means one which, consistently with the spirit of our jurisprudence, can be dealt with by the judge as resting in his mere discretion as to what is expedient. The latter must treat it as one of principle, and as turning, not on convenience but on necessity.*

It is therefore submitted that open justice should prevail even here if and insofar as "to do justice" so requires.

17. The media submit that that principle remains good and is now to be read subject to the Human Rights Act 1998 with particular regard in that Act to Section 3 (the construction rule) and Section 6 (the duty of compliance on the Court). It is accepted that 'A''s (and his family's) article 8 rights are engaged but it is submitted that the media's Article 10 rights are also engaged. The real essence of their submission is that this case is now governed by the decision of the House of Lords in Re S (A CHILD) (IDENTIFICATION : RESTRICTIONS ON PUBLICATION) [2005] 1 AC 593. It is submitted that the court here must undertake a balancing exercise in accordance with the principles set out in paragraph 17 of the speech of Lord Steyn as follows -

> *"The interplay between article 8 and 10 has been illuminated by the opinions in the House of Lords in Campbell v MGN Ltd [2004] 2 AC 457. For present purposes the decision of the House on the facts of Campbell and the differences between the majority and the minority are not material. What does, however, emerge clearly from the opinions are four propositions. First, neither article has as such precedence over the other. Secondly, where the values under the two articles are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary. Thirdly, the justifications for interfering with or restricting each right must be taken into account. Finally, the proportionality test must*

> *be applied to each. For convenience I will call this the ultimate balancing test. This is how I will approach the present case.*

In essence that is the heart of Mr. Vassall-Adams' submissions. The Article 10 Rights are engaged and if the balance is resolved in their favour, that must constitute 'good reason' and attendance should be allowed.

18. Whilst the Media recognise both under Rule 91(3) that restrictions of what may be reported can be imposed and also that given the private nature of much of the relevant information, there should indeed be some restrictions, they seek a general indication of what reporting might be permitted. The point is made, soundly in my view, that if there is to be reporting then to ensure balance and fairness, attendance at the hearing is essential.

19. It is submitted that the balance should fall in favour of the Article 10 rights. The essence of the argument is that large amounts of the information to be before the court is already in the public arena and that which is not and which is truly private can be controlled under Rule 91. Moreover, it is argued that the public should be informed of the working and the powers of the court and this would provide a valuable opportunity for that. It is contended that when all these matters are drawn together, the Article 8 rights of 'A' and his family can be sufficiently protected without denying the Article 10 rights of the media in this case.

THE CASE FOR 'A' IN SUMMARY

20. Mr. Gavin Millar, Q.C. starts with the proposition derived from SCOTT -V- SCOTT that as this case comes within one of the three recognised exceptions to the 'open justice principle', it is not thereby subject to that principle. In those circumstances he contends that Article 10 is not engaged in this case. His case is that the whole purpose of the general rule for privacy in Rule 90 is, as it always has been in this type of case, both to protect the privacy of the person who lacks capacity and also to encourage frankness in the discussion before the court of such private matters. The effect, in modern terminology, is to protect the Article 8 rights of 'A', an approach which derives support from the Strasbourg jurisprudence. That is why, he submits, there is the 'good reason' provision in Rule 93(1) to act as a gatekeeper to the Article 8 rights. He pointed to the effect of the European jurisprudence as explained by the Court of Appeal in McKENNITT –v- ASH [2008] QB 73 which demonstrates an application of the principles in Re S(Supra) even assuming that Article 10 had in fact been engaged.

21. The whole purpose of the privacy provisions should not be undermined by the fact that material was already in the public sphere. The matters to be considered by the court could never be discussed in public without the consent of a capacitous person and thus should not be in respect of one who lacked capacity however famous in some respects he may be. The fact that he was famous should not be made the reason for discussion of the workings and powers of the court. The former not the latter was the reason for the media's wish to be present and to report. There was not good reason here to displace the basic rule.

THE APPROACH OF THE COURT

22. I have been the beneficiary of much learning in reading and hearing the submissions of counsel. I have been invited to consider the history of the jurisdictions which preceded the 2005 Act. I have had the principles of SCOTT -v- SCOTT traced through up to the present time. I have been escorted through the Strasbourg jurisprudence in respect of privacy and have had the advantage of a thorough review of the relevant statutory provisions.

23. Yet I must bear in mind the proper role of the first instance judge as more than once recently depicted by the Court of Appeal. My task is to find the facts and to identify the issues. It is then to set out the law that I propose to apply and then to reason through the conclusion based on that application. Faithfulness to that role necessarily precludes an exhaustive review or critique of the learning deployed before me and it should not be thought that because not every case nor every point is deployed in this judgment, that I have ignored or overlooked it. I must content myself with the more modest task assigned me by the Court of Appeal and thereby risk a charge of want of respect for the learning deployed.

DISCUSSION

24. The construction of any Rule must in the first instance be done in the context of the purpose of that Rule insofar as that can be discerned in the enabling Act. In this case Section 50(2)(h) of the 2005 Act clearly contemplated the possibility of controversy over the issue as to whether proceedings should be in public or in private. There was consultation on the Rules and it is unsurprising that on the point more than one point of view was expressed. The Rules must be taken as expressing the Legislature's considered conclusion on that issue. In that context real weight must be given to Rule 90(1) that the general rule is that these matters are dealt with in private attended only by those who are listed in rule 90(2). Moreover, real value must be given to the concept of 'good reason' before the court acts otherwise than in accordance with the general rule.

25. As I have indicated there is no statutory commentary on 'good reason'. In my view those words should be given their ordinary meaning. They do not for example import a concept of being exceptional. 'Good reason' may be frequently found or it may not; it is something to be considered on the individual facts of each case that are proffered for the court's consideration. On the other hand the word 'good' must be given proper value and that value should be sought in the context of the purpose of the rule which is both to protect privacy and to encourage frankness in the discussion of such private matters. In other words 'good reason' must address the purposes for which the general rule exists. Beyond those rather general observations, I do not think the court should go further as to do so potentially undermines the importance of the consideration of the individual facts of a case since such facts may not only vary enormously but may be quite unforeseen.

26. Whilst it is uncontentious that 'A''s Article 8 rights are engaged throughout, there was a real issue as to when, if at all, the Article 10 rights of the media are engaged. I have reflected with care on this and in the end I have concluded that I prefer the approach contended for on the part of 'A'. That is to say the proceedings under the 2005 Act are within the exceptions to the open justice principle and are therefore not

immediately subject to it. Accordingly I conclude that the institution of such proceedings does not engage the Article 10 rights of the media. That is, of course, not to say that they have no rights as they clearly have a right to apply under rule 91 and PD13A. Once they apply they undertake to demonstrate 'good reason' for the order. In my judgment that is not synonymous with the immediate engagement of Article 10 rights and the court undertaking the conventional balancing exercise between the respective Article 8 and Article 10 rights. However, once 'good reason' is established then that balance does indeed have to be undertaken. I reject the approach implicit in Mr Vassall-Adam's submissions that the making of the application triggers the obligation of the court to undertake the balance and that if the balance favours the media, then it is that that establishes 'good reason'.

27. In my judgment this is a two stage approach. First, the court should consider whether 'good reason' can be established. That is, as it were, a gatekeeping test and necessarily of a somewhat summary nature. If no good reason is found that is the end of the matter. If 'good reason' is found that should not automatically entitle an applicant to an order under Rule 91 but it should obligate the court in circumstances such as these to undertake the Re S (supra) exercise and make an order in accordance with its outcome, always bearing in mind the statutory purpose.

28. If this approach is right, then the standard required to find 'good reason' should not be set too high. It is apparent from the wording of Rule 93 that the finding of 'good reason' opens the door to the exercise of a permissive power, it does not require the making of an order. On the other hand the absence of 'good reason' precludes the making of any order at all under rules 90-92.

IS THERE A 'GOOD REASON'?

29. Thus the court must first address the question as to whether the media can show 'good reason' for their presence at the hearing with the potential for reporting its outcome. Their case can be put like this. 'A' is well known to the public through the exercise of his gifts; also well known to the public are the nature and gravity of his disability. Thus the need for decisions to be made on his behalf, the financial and personal implications of such decisions and the consequent responsibility that lies on those who take such decision must be self evident to the public. There is accordingly, so it is said, a proper public interest in how the Court of Protection deals with these issues together with its decisions and the reasons for them

30. Mr Gavin Millar Q.C. submits that there is no such good reason. He contends that this case represents in effect the classic confusion between public interest and what the public find interesting. These are intimate matters which no capacitous person would ever have to share in public and it is wrong that 'A' should have to do so. The media's concern is the human interest story and not the workings of the court and, in any event, it is not right that simply because 'DP' (through no choice of his own of course) has become well known that he should be so exposed.

31. These are weighty considerations. In the end I have concluded that 'good reason' within Rule 93 is demonstrated in this case. There are three essential reasons that have led me to this conclusion. First, all these issues in principle are already within the public domain and the questions which they raise are readily apparent. Secondly, the court is equipped with powers to preserve privacy whilst addressing the issues in

the case. Thirdly, the decision of the court will have major implications for the future welfare of 'A' and it is in the public interest that there should be understanding of the jurisdiction and powers of the court and how they are exercised. It can be objected that the second and third reasons above could apply to almost any case and it is important to stress that it is the combination of those three reasons that impels my decision; by the same token it should not be assumed that the first standing alone would necessarily be sufficient.

THE BALANCE BETWEEN ARTICLE 8 AND ARTICLE 10 RIGHTS IN THIS CASE.

32. I turn then to the required balancing exercise. In doing so, I am aware no reference has been made to Article 6 in the discussion. That is not because Article 6 is irrelevant, for clearly it is not, but because I can discern no relevant controversial issue under Article 6 between the parties in this case which calls for my consideration. The statement of the rights of the parties is not particularly controversial and can be stated briefly.

33. 'A''s and his family's Article 8 rights are self evidently engaged. These matters involve issues of family trust, of 'A''s private financial affairs and the way in which decisions are made about how he spends his time. Moreover, they may concern matters of a private medical nature as well as the provision of his personal care needs. As Mr. Gavin Millar, Q.C. put it, these are matters which a person of capacity can discuss with his family around the kitchen table in the full expectation that they were, and would be treated as, wholly private. These rights a public authority (here the court) is bound to respect save insofar as any incursion into them can be justified under Article 8(2).

34. The matters of 'A''s disability and its consequent limitations on his life have been fully aired in the public sphere as have his remarkable skills and the demonstrations of them. It follows that any intelligent member of the public drawn to these stories will appreciate that 'A' must be incapable of managing his earnings and indeed of deciding whether (and, if so, to what extent) he should appear in public at all. That member of the public might therefore have a legitimate interest in knowing, given that proceedings have been instituted, how these matters are regulated, by whom and on what principles. The media contend that their Article 10 rights cover the meeting of those legitimate interests by being able to report those proceedings. They accept that there will be matters (e.g. his actual earnings and the state of his account with the Inland Revenue) in which Article 8 rights will predominate but that otherwise they should have the right to report these proceedings subject to the restraints in Article 10(2) which can be accommodated within the Rules.

35. The court is now required to balance those competing interests for each may (to the extent that it is 'necessary and proportionate') be restricted insofar as that is justified in respecting the other under Articles 8(2) and 10(2). That balance is necessarily fact-specific to the instant case and the factors that carry weight with a court in one case may not bear the same, or may bear greater in another.

CONCLUSION

36. I have come to the conclusion in this case that that balance requires that the media should be allowed to attend these proceedings albeit that in all other respects they will remain private proceedings. I have done so because I am satisfied that it is possible to accommodate the legitimate concerns for privacy and the legitimate aspirations for publicity at the same time. I have further concluded that some reporting should be allowed and that it should be for the media to demonstrate what should be allowed (and thus everything else restricted) rather than 'A' having to show what should be restricted with everything else necessarily allowed.

37. In particular the media should be allowed to report two types of material: first, that which is within the public domain already; and secondly, that which answers the legitimate questions of a reasonable person who knows what is presently within the public domain. These are the principles upon which the court proposes to exercise its regulatory powers under Rule 91. That means that 'A''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 can all be reported. Moreover, it should be known after the proceedings whether all these decisions have been entrusted to his close family or, if shared, with whom and whether, (and if so what), obligations to account for their stewardship have been incurred and, if so, to whom they are bound to account.

38. On the other hand the nature of his 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. All this is said to demonstrate the principles upon which the court would propose to act rather than trying to pre-empt argument over individual issues which cannot at this stage be defined.

39. I set all this out to demonstrate my conclusion that to a significant extent the legitimate concerns of 'A' under Article 8 and the legitimate aspirations of the media under Article 10 could both be met and that accordingly some opening up of these proceedings is justified and that this can be done consistently with his best interests as required by Section 1(5) of the 2005 Act. Of course the Court of Protection must be assiduous to regulate its own procedure in accordance with its own needs and its own rules. At the same time, so it seems to me, the court should take note of the unfortunate consequences that can flow from an over protective concern to ensure privacy at any cost as has been seen from some of the experience within the Family Justice system.

40. I therefore propose to order, pursuant to Rule 90(3), that the media shall be entitled to attend any further hearing (which shall in all other respects remain private) in this matter. I doubt that it is appropriate at this stage to make orders under Rules 91(2) or (3) though I am willing to hear submissions on that matter. I do not propose to identify 'A' in this judgment nor anything relating further to his condition, history or talent; nor do I propose to allow anything that may do so to be reported until after the disposal of any appeal from this judgment or the expiration of the time in which an appeal may be made. I take that course because, of course, I have heard this application in public. A consequence of this judgment may be that the hearing of the

substantive application should be reserved to me; the parties' view on this will be appreciated.