



Neutral Citation Number: [2024] EWCOP 50 (T3)

Case No: 13816446

IN THE HIGH COURT OF JUSTICE
COURT OF PROTECTION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/08/2024

Before:

MR JUSTICE HAYDEN

Between:

The British Broadcasting Corporation

Applicant

- and -

Cardiff Council

First
Respondent

-and-

MC

(By his Litigation Friend)

Second
Respondent

-and-

CD

Third
Respondent

-and-

Cardiff and Vale University Health Board

Fourth
Respondent

-and-

Swansea Bay University Health Board

Fifth
Respondent

Ms Claire Overman (instructed by **BBC Legal Department**) for the **Applicant**
Mr Alexander Drapkin (instructed by **Hugh James**) for the **First Respondent**
Ms Bridget Dolan KC (instructed by **CJCH Solicitors**) for the **Second Respondent**
The Third Respondent appearing in person.
Mr Thomas Jones (instructed by **NHS Wales Shared Services Partnership**) for the **Fourth**
and Fifth Respondents

Hearing dates: 29th July 2024

Approved Judgment

This judgment was handed down at 1pm on 30th August 2024 by circulation to the parties by e-mail and by release to the National Archives.

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This judgment was delivered in public but a transparency order is in force. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the protected party and members of their family must be strictly preserved. All persons, including representatives of the media and legal bloggers, must ensure that this condition is strictly complied with. Failure to do so may be a contempt of court.

MR JUSTICE HAYDEN:

1. This is an application brought by the British Broadcasting Corporation (BBC) concerning a Transparency Order relating to MC. I have been concerned with MC over a number of years in proceedings in the Court of Protection. He has a range of difficulties, chiefly stemming from attachment and anxiety disorders; he also has a moderate learning disability and a diagnosis of Attention Deficit Hyperactivity Disorder (“ADHD”). His mother, who is a party to this application, acting in person, has told me that he has relatively recently begun taking medication for his ADHD and, whilst she does not interpret its effect as transformative, nonetheless considers it has made a positive impact on his ability to concentrate and regulate some of his anxiety.
2. Over the time I have been concerned with MC, he has participated in the court process by attending remotely and on those occasions that he has attended, he has always insisted on speaking to me directly. I find him to be a striking, rather flamboyant, effervescent personality. For all the time I have known him, he was, if he will forgive me for saying so, quite significantly overweight. As his mother says, “*for all the wrong reasons*”, he no longer is. He has been on hunger strike, from which he is gradually recovering, and has lost five stones in weight.
3. Going on hunger strike is the most recent manifestation of the manner in which MC, dysfunctionally tries to establish some control over a life which he feels does not afford sufficient respect to his autonomy. He has now started eating again, his ADHD medicine has had some positive effect. He has re-engaged with the professionals around him, including a specialist dietician and has, in recent months, made some encouraging progress. It is obvious to me that the professionals involved in his care take pleasure, perhaps even a sense of professional accomplishment, in the improvements he has made. Though the journey, I have been told, will be a long one, there remains a real possibility, perhaps probability, that at some point MC will be able to achieve safe, independent living.
4. Some months ago, his behaviour was such that he required 4:1 supervision. It is not difficult to see how an individual supervised to that degree, and necessarily so, might feel he has little control over his day-to-day life. That strikes me as a fundamentally human reaction. MC has experienced several traumatic events during the course of his life. These go some significant way to understanding the difficulties he faces with attachment and consequent anxiety. It is not necessary for me to discuss this further in this judgment. I have been reminded, properly but consistently, throughout the case, that MC also suffers from ‘*extreme night terrors*’. Accordingly, even during the night, when asleep, he requires somebody to be with him, available or proximate to him through an open door.
5. The Court of Protection proceedings, which I have been hearing, were adjourned and remain adjourned in consequence of a dramatic deterioration in MC’s behaviour. The proceedings were stayed and MC was detained for treatment under the aegis of the Mental Health Act 1983 at, a mental health unit in South Wales. There is no doubt that both MC and his mother found that period, and the months that followed to be extremely distressing.

Both MC's sadness and that of his mother is viscerally apparent within the papers, and it has led to MC's mother becoming angry, frustrated, and despairing about the quality of treatment available for her son and what she regards as the paucity of resources within the system for people in his situation. Her resolve to help him and others in his situation, I am impressed, is genuine and public-spirited. In her submissions to me, she told me that if the stories of people like MC are not told and understood, the treatment available in South Wales, which she regards as unsatisfactory, will not change because the issue is not sufficiently on the public radar. I paraphrase her words but that is the essence of what she said. It was undoubtedly genuine, and a great many people, probably all the professionals in the court, would have a great deal of sympathy with her views.

6. This application is for review of the Transparency Order, made on 28th June 2022, with a view to inclusion of MC's situation within a BBC documentary. The BBC applies for the discharge or variation of paragraphs 6(i)(a), (b) and 6(ii) of the Court's Transparency Order (the "Transparency Order"). These variations are sought to permit the BBC to: (i) identify MC, CD (his adoptive mother), JD (his adoptive father), and CD's parents; and (ii) to identify MC's current accommodation as a secure specialist mental health unit in Cardiff. The BBC does not seek to name the mental health unit, nor any individual involved directly in MC's care (save for PM, a clinical psychologist formerly involved in MC's care, with her consent).
7. It is proposed that there will be images of MC included in the programme, but that those images will be from at least 12 months ago. It is further said that there will or may be voice notes of conversations with MC. Ms Overman who has represented the BBC with characteristic care and sensitivity, submits, and I accept, that the intention of the journalists involved in this planned programme is altruistic and that they are alert to many of the sensitivities of MC's challenging situation.
8. The real question, as I see it, is whether if this programme were to go ahead involving MC to the circumscribed extent that is contemplated, it could do so without interfering with his Article 8 rights. He is, on any view, an extremely vulnerable young man. The evidence of his vulnerability is, as will emerge below, so cogent as to be redundant of any contrary coherent argument.

The Legal Framework

9. Jackson LJ summarised the applicable legal framework in *Hinduja v Hinduja* [2022] EWCA Civ 1492:

"[27] The combined effect of Part 4 of the Court of Protection Rules 2017 and Practice Direction 4C, entitled 'Transparency' creates a supposition in favour of a public hearing with accompanying reporting restrictions. That is achieved in a rather roundabout way.

[28] Rule 4.1 states that the general rule is that a hearing is to be held in private. However, the court may make an order for a public hearing (r. 4.3(1)) and when doing so may impose reporting restrictions under r. 4.3(2), which reads:

“4.3(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.”

[29] Rule 4.3(3) contemplates a practice direction providing for the way in which the court may exercise these powers.

[30] Rule 4.4(1)(a) states that an order for a public hearing may only be made where it appears to the court that there is good reason for making the order, but this is subject to provision in a practice direction.

[31] Practice Direction 4A provides for the orders the court will ordinarily make at para. 2.1:

“2.1 The court will ordinarily (and so without any application being made)—

(a) make an order under rule 4.3(1)(a) that any attended hearing shall be in public;

and

(b) in the same order, impose restrictions under rule 4.3(2) in relation to the publication of information about the proceedings.”

[32] However, by para. 2.4, the court may decide for good reason not to make an order under para. 2.1, or to make an order for part of a hearing only to be held in public. Para. 2.5(1)

contains a list of factors for the court to take into account when making this decision. Para. 2.3. provides that an order under paragraph 2.1 will ordinarily be in the terms of the standard order approved by the President of the Court of Protection.

[33] The Practice Direction accordingly reverses the general position signalled by the Rules by requiring there to be a good reason for the court to sit in private rather than in public with reporting restrictions. This balance reflects well-known case law articulating the principles of open justice and personal privacy, while giving the court the ability to tailor its arrangements to the circumstances of the individual case. Although we were addressed in detail about the established principles in this area, we do not consider it necessary to say more about them.

10. These now established principles were further summarised by the Court of Appeal in ***Abbasi & Haastrup v Newcastle upon Tyne Hospitals NHS Foundation Trust*** [2023] EWCA Civ 331 (“*Abbasi*”):

*“[36] Turning to the substantive dispute between the article 8 and 10 rights in play, the President accepted that he was required to conduct a balancing exercise in the manner set out in *Re S* [2004] UKHL 47; [2005] 1 AC 593. He held that the existence of this analytical framework satisfied the requirement that any interferences with Convention rights be prescribed by law.*

*He also observed that it gave equal weight to articles 8 and 10. Given this, he considered that it was time to draw a line under the remarks of Sir James Munby P in *A v. Ward* [2010] EWHC 16 Fam; [2010] 1 FLR 1497 insofar as they suggested that anonymity should not be afforded to a class of individuals in the absence of “compelling reasons”. Such a requirement would undermine the presumptive parity between articles 8 and 10 which lay at the heart of *Re S*”.*

11. The above reference to *Re S* is to the judgment of Lord Steyn who at §17 explained that:

“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”.

12. It is convenient to set out Articles 8 and 10:

Article 8 Right to respect for private and family life

1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*
2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others...*

Article 10 Freedom of expression

1. *Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*
2. *The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*

13. There are two competing rights involved. One is freedom of expression, freedom of the press, a fundamental right protected by Article 10 which requires jealously to be guarded. And the other is the broad umbrella of MC's rights to family life i.e., to privacy, and to appropriate and proportionate protection of his vulnerability as an adult with disabilities.

14. Whilst these are, manifestly, rights which have a wholly different complexion, they require to be balanced in a parallel analysis. Lord Steyn expressed that balance in the terms referred to above. The emphasis is that neither right has precedence over the other. Where they are in conflict, the focus is on the comparative importance of the specific rights on the individual facts of the case. In this exercise, the justification for interfering with each right requires to be considered, in which process proportionality is the lodestar.

15. In her methodical submissions, Ms Overman emphasised the danger of conflating the approach to the making of a Transparency Order or Reporting Restriction Order during

proceedings, with the analysis of the factors properly in play at this application. She emphasised, correctly to my mind, that the scope of the existing order is rooted in Rule 4 of the Court of Protection Rules 2017 and section 12 of the Administration of Justice Act 1960. This is not a steamroller which tramples all before it, in terms of freedom of expression. The provisions are focused on protecting the identification of the individual involved in the Court of Protection proceedings. They go that far and no further.

16. What then of the competing rights themselves? An important piece of evidence filed in this application is the statement of Dr R. She is employed by the Health Board as a Consultant learning disability psychiatrist. She has been involved with MC's care since the commencement of the Mental Health Act proceedings in February 2024. It is obvious that she has got to know MC well and feels strongly that he should be protected from what she sees as the inevitable intrusion into his life, in consequence of his involvement and profile in the proposed documentary. The Health Boards' position, articulated succinctly by Mr Jones, is that they oppose the application made by the BBC because of real concern about the potential for adverse impact on MC's personal and private life should the application be granted. In the course of exchanges Mr Jones agreed that the essence of his clients' case is that there can be no advantage of any kind at all for MC of participating in this programme. Conversely however, he submits, there is real potential for harm. From this perspective, the Health Board consider that an evaluation of the parallel analysis comes down very heavily against MC's participation in the programme. Whilst this is an important analysis, the exercise is wider than that. Even were there to be likely harm to MC in consequence of the BBC's programme, I am still required to evaluate any such harm alongside the competing rights and interests under Article 10. This is not solely a welfare issue.
17. There is, as I have said, no doubt that MC has latterly made real progress. Perhaps the most powerful evidence of that comes not from the evidence of the Trust, nor indeed from the litigation friend, but from MC's mother (CD). Her obvious delight and relief in her son's recent improvement, having gone through what have plainly for both been the darkest of hours in some very difficult years, was almost palpable. In my judgement, the risk of jeopardising that progress, recognising the enormous importance of it in unlocking (almost literally) MC's potential to live a more unrestricted life which promotes his autonomy, weighs very heavily when considering his Article 8 rights. Evaluation of MC's "*private and family life*" requires me to consider not just his present circumstances but the whole of his life and the importance of his treatment regime in providing potential for his future happiness and wellbeing.
18. In what I found to be an impressive statement, Dr R highlighted the main concerns, both her own and those of the team with whom she works. They are set out at paragraph 11 of her statement in subsections (a)-(j) and require to be set out in full:

"11- For the purpose of clarity and ease of reference I would highlight the main concerns as follows. (I have provided up to date information on MC's current care and treatment as context as Appendix 1 to this statement):

a) A significant risk of MC becoming aware of the programme and his story being told, however peripherally, and destabilising the positive progress MC has achieved during his current admission as well as the risk of disrupting the therapeutic work which is positively impacting on reducing restrictive practices and which unfortunately has not been possible to progress in the community. This is despite the assurances within the application and evidence submitted. Please see Appendix 1 below for detail on progress made. MC is a highly vulnerable young man who is acquiescent and suggestible. This is despite his strong determination shown at times of heightened anxiety with him reverting to the use of dysfunctional coping mechanisms and fixating on extreme behaviours in an attempt to have some control on his life, for example his “peaceful protest”, requests for physical restraint and more recently his “hunger strike”. There is a real potential that MC will expect and see discharge from hospital and a permanent residence because of media attention and not because of the therapeutic gains, he has made. This would halt the therapeutic long-term gains of him consolidating a more secure attachment (what he refers to intuitively as wanting to feel and being kept safe) and an improvement of his comorbid anxiety which are key to optimising the chances of a successful and sustainable discharge to a Community placement that can support his needs. As an example, MC was aware his mother attended a ‘homes not hospital’ protest and was advised that ‘she was fighting for him’ giving him a perspective that perhaps the MDT are not working toward that goal which was difficult to manage. The MDT have consistently given MC and CD the message that we are all working together with him to help him achieve care within the community and that has been key to the progress that he has made.

b) MC needs to feel secure in his relationships and trust those supporting him. This is best achieved by providing MC with consistent information, having a united front where he experiences good communication from those supporting him and keeping clear agreed boundaries. Any divide between professionals, staff and family is likely to be detrimental to MC’s well-being and therapeutic progress. It is possible that varying/discharging the transparency order might have a negative impact on the unity of his supporting MDT acknowledging many of the professionals feel strongly it would not be in his best interest. This is a concern for the clinicians supporting him and which we need to reflect upon continuing to strive to achieve that unity from the whole MDT including his family.

c) The Health Boards are concerned that MC’s current care provider, who have been providing MC with care and support for over a year (therefore in the community and now in hospital), and provide a consistent core team of which is a priority for MC’s current care, to be worried about what would be disclosed in any proposed programme and may withdraw their involvement due to staff declining shifts as a result of public interest and concerns that they could be identifiable as individuals or as a company. There is also a risk of undermining and alienating the staff currently caring for MC.

d) The proposed programme has the potential to deter the available opportunities for identification of a permanent long-term placement for MC with providers being fearful of future media attention. Whilst exploring providers previously it was disclosed by one provider that they were already aware of MC and the challenges he was posing at that time to support in the

community given there is only a small number of providers of that nature in the area and they declined to assess him at that time.

e) Whilst it is noted that it is not proposed that MC is informed about or directly involved in the BBC programme as highlighted above there are concerns that he may become aware of it in some way and he does not have the capacity to understand and weigh up the implications that such a programme may have on his well-being. This is not to say that he is not likely to enjoy the media attention. MC relies on others to help him navigate and understand information: what things actually mean for him? What needs to be shared with him in his best interest needs careful consideration by his support team and network.

a. Whilst MC's expressive verbal skills are good, this can be attributed to repeating what others have said, and more so if portrayed to him in a way that he feels with limited understanding of the meanings or implications of the communication.

b. In my view the proposed BBC programme premise risks him being used as a 'poster boy' for an unclear hypothesized individual gain. In my view this would go against his rights under Article 8 of ECHR.

f) I believe that the current work to reduce restrictive practice including reduction in staff support, reduction on physical restraint interventions and engagement in his care plan is being positive in moving [MC's] closer to a permanent community placement. The next steps include attempting to assess [MC's] ability to co-habit with peers and without the need for direct registered nurse support. This continued progress is likely to be more effective in sourcing a permanent long-term placement for MC than discussing his case publicly.

a. His current admission under the Mental Health Act has led to significant improvements in his mental health and also to improvements in his physical health with the use of the current Mental Health legislation being submitted to the scrutiny of both the Mental Health Tribunal and Hospital Managers Hearing.

g) Further negative impact on the Clinical Team's capacity to focus on [MC]'s clinical care at a critical stage of his progress. [CD]'s concerns about what she perceives as ongoing failures of the system or particular professionals who have supported [MC] understandably are something she is passionate about as a strong advocate for her son. Given she is a key partner in [MC]'s treatment plan it would be preferable to the MDT that there is a focus on building up a trusting relationship with her and the BBC programme may impact negatively on the ability to do so.

h) MC is a very sociable person often speaking to members of the public whilst out in the community. The application refers to MC not being aware of the broadcasting of a programme however there is no way for care staff to manage who MC comes in to contact with whilst in the community or their reactions if they were to have observed the proposed programme and given MC is very recognisable in his appearance. It is entirely possible he could approach a member of the public and initiate a conversation and be met with

a response regarding the programme. There is real potential for this to startle MC, dysregulate him and to subsequently increase his sense of unease and distrust of those supporting him. There is also a potential risk of members of the public approaching MC and reacting negatively or trying to provoke a reaction should he and his vulnerabilities be made known to the public.

i) It is unclear at this point how filming/reporting will be completed should MC become aware that something is planned he will need significant support on how to understand this and what this means for him. This unusual situation may cause him unnecessary and additional anxiety and distress and could impact the progress he has made to date.

j) If the BBC application is authorised any programme, given the nature of the media today could be available on-line and via streaming services for a considerable period of time. This means that there could be long term implications for MC into his future, when his situation may have changed significantly hopefully in a positive direction and any programme might act as a upsetting reminder of a difficult time in his life”.

19. As I have stated, I have spoken to MC on a number of occasions. I agree with both his mother and Dr R that he is a very sociable person. I can easily recognise the descriptions of him speaking to members of the public whilst out in the community. Even within the constraints of a video conference, I noted that he engaged fulsomely with the court staff facilitating our meetings. In July 2022, I was provided with a very helpful document to understand MC’s style of interaction, to facilitate his participation in the proceedings most effectively. Aspects of that guidance, which I accept may now have evolved, strike me as important. Some of these I propose to repeat in this judgment, many others are very personal and do not require reference:

“[MC] is described as a “Peter Pan” character in that he is clear that he does not want to grow up;

He likes to know “everyone” knows about him and this provides reassurance and helps to keep his anxieties low;

The litigation friend has noted some topics and words to avoid when speaking to [MC]. These include any sort of reference to being a grown up, big, tall, independent or any sort of reference to [MC]’s height. [MC] refers himself to a child and does not want to be thought of as an adult. He also does not like to be referred to as “young man”.

20. It is not an exaggeration to say that MC sometimes puts his own life at risk. The hunger strike is a graphic example of this. Indeed, MC contemplated that he might die. This was not a hunger strike gesture, it was persistent, invasive and could very easily have led to his death. Sometimes his behaviour is frightening and violent, generated by his anxiety. Those witnessing it who did not know about MC’s experiences and functioning would undoubtedly be critical of him. The behaviour has been described to me as a dysfunctional

mechanism intended to assert control over a situation which has spiralled out of his control. It is this combination of MC's gregarious, engaging sociability and his frightening and violent behaviour, when distressed, which makes him so vulnerable. It also requires to be said that MC is very recognisable. He has a consuming interest in dying his hair, which has been a variety of colours in the time I have known him. Mostly, the colours are vibrant, bold and conspicuous. I have no doubt that there is a real risk of him being recognised in his community and that he will be defenceless in protecting his own privacy.

21. MC and his mother are extremely close. CD has come to regard her role in her son's life as a fighter for his rights. She has used the term "*fighting*" very frequently and it is not difficult to understand why it is that she should do so. However, as Dr R has explained, this term and the thinking that underpins it, is inimical to MC's therapeutic progress and wellbeing. MC needs a coordinated, cooperative, multi-disciplinary approach with his mother very much onside and at the fore, working together with the professionals, to build upon his achievements and to maximise his potential. Effectively, she has to do that which is counterintuitive for her, namely, to work with the professionals in a system which she believes does not have the resources to provide a satisfactory standard of care for her son. She has found herself confronted by a terrible paradox in which her desire to help others in MC's situation and to campaign for better resources cannot be reconciled with the therapeutic treatment plan for her son. Though she would not express herself in the terms that I have, I have watched her wrestle with these competing thoughts during the hearing. She is devoted to her son and it is a pleasure to see them together.
22. Ms Overman submits that the application here is generated by the identification of issues of real public interest. She contends that it is unlikely to make any difference to MC's life. However, in the discussions that followed, it was said that there was a real and not merely fanciful risk that knowledge of MC's involvement in the contemplated documentary might impact adversely in the quest to obtain a suitable placement for him. Ms Sutton KC, who prepared the written submissions on behalf of the Litigation Friend, accepts that "*the moral and ethical questions surrounding the provision of care and accommodation for young adults in positions similar to [MC], generate intense public interest to which Article 10 attaches*". However, she submits that the existing Transparency Order correctly balances the competing interests in focus and remains a necessary and proportionate intervention. Ms Sutton allies herself to Dr R's '*concern*' that if the Transparency Order is relaxed, the current care provider may withdraw their involvement, to avoid any disruption generated to their staff and the other adults in their care. Ms Overman cautions me not to speculate on an issue of this kind where there is no evidence before the court. As a statement of general principle, Ms Overman is of course correct. However, the Family Court and the Court of Protection encounter such a scenario on a depressingly regular basis. I do consider it forms part of the balancing exercise but for the reasons I have set out above, I do not consider the weight to be afforded to it to be as significant as the risk of disruption to MC's therapeutic relationships.

23. Unusually, in applications of this kind, the ‘ground rules’ for what is being proposed are somewhat nebulous. I was not sure, for example, having read the papers, whether MC was to be named in full or by his first name only, nor do I think the BBC was either. I had the distinct impression that the decision to confine the identification to MC’s first name alone was taken whilst Ms Overman was in fact on her feet. I do not say that to be critical of her but it does illustrate the challenges presented by this application. There is in the court bundle a statement from Matthew Eltringham, a senior adviser of editorial policy. His statement is dated 24th July 2024, and engages, with integrity in my view, in the mitigation of risks for vulnerable individuals such as MC which are well-established and understood. It was he who identified the use of MC’s first name alone, which is why I raised it with Ms Overman, but he also suggested that there could be other mitigations including the use of identifying images of MC and possibly preventing audio recordings. He further suggested that there should be no inclusion of details of MC in any content shared on social media, as the BBC recognised “*the heightened risks of abuse on these platforms, where we don’t have the control that we have on our own.*”
24. But those mitigations, it transpired, were not, at least at time of this application, being contemplated. Indeed, it emerged that thought was being given to the publication of a voicemail left by MC to his mother. That strikes me as a very significant intrusion on the rights of MC. MC can be eloquent and voluble, a little bit like his mother in some respects, if I may say so. But he is entirely unable to engage in the exercise which I am charged with, that is to say he is unable to weigh and assess the advantages to him, personally, of participation in the contemplated programme and weigh them against any identified disadvantages. Were he asked, there is no doubt he would agree with alacrity to participate in the programme. It would doubtless appeal to the gregarious and outgoing side of his personality. But it would entirely omit any contemplation of the negatives. I am clear that MC’s treatment is poised at a very delicate stage. His participation, however limited, in a programme which will inevitably and no doubt properly contain criticisms of the mental health system, is fraught with danger for MC. That danger is not confined to his immediate situation but risks having an adverse impact on his whole life. I reiterate the professional aspiration for MC is to afford him the opportunity to develop his potential to the full and achieve some degree of independent living. Jeopardising that opportunity would require me to identify a competing interest that should be afforded greater weight. That has not been established in this case and I am entirely satisfied that MC’s Article 8 rights are supported by qualitatively greater evidence than that which can be afforded to the Article 10 rights of the BBC. For these reasons, I dismiss the application.
25. It was necessary to deliver this judgment ex-tempore. I am grateful to the lawyers for their careful note which I have taken the opportunity to add to and perfect.