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Open Season

Does the Steven Neary case herald the beginning of a more open approach to Court of Protection judgements? *Natalie Boorer* reports

I have been noting with enthusiasm, but also a degree of anxiety, the media’s growing interest in the cases heard by the Court of Protection.

Before Daniel Paravicini case in 2009 (which involved a pianist who was blind and had acute learning difficulties but was also in possession of astonishing musical gifts), the Court of Protection remained the only court not to grant media access. Now, under the Court of Protection Rules 2007, the court can allow for a hearing to be in public if it determined that there is “good reason” for doing so. “Good reason” remains undefined by statute, although it has been often equated with “legitimate public interest”.

Antisocial behaviour

The latest Court of Protection case to receive media attention involves 20-year-old autistic man Steven Neary. When Steven’s primary carer, his father Mark, fell ill with flu in December 2009, Steven was placed into a Local Authority “positive behaviour unit” for what was only intended to be three days while his father recovered. As a result of Steven’s alleged challenging behaviour in the unit, Hillingdon Council obtained a deprivation of liberty “standard authorisation”, which meant that Steven was not allowed to return home.

Steven’s father says that much of the behaviour reported by staff and the centre was as a result of Steven’s unhappiness at being kept away from his home and has since then conducted a tireless

and public campaign to have Steven returned home. Steven's case was taken up by local and national media. Mark Neary also set up a group on Facebook and an online petition.

Shortly after Mark Neary's application to the Court of Protection for, among other things, a reversal of the "standard authorisation", a separate application was made by five media organisations for journalists to be allowed to attend the hearings and to identify the family involved.

The High Court Judge, Mr Justice Peter Jackson, issued a ruling on 28 February 2011 confirming that media organisations can attend hearings involving Steven's case, and that the parties in the proceedings can be identified. Much weight has been attached to this letter element as it is believed to be the first time that a judge in the Court of Protection has agreed at the outset that the parties can be identified.

Giving his reason for ruling, Mr Justice Jackson was keen to emphasise that the ruling was "not intended to set a precedent". This is some comfort when you consider the highly personal and sensitive nature of many cases which come before the court. The linchpin of the decision appears to stem from the fact that Steven Neary's case was already in the public domain long before it came before the court. From this, the judge appears to have regarded two factors as persuasive.

Compelling evidence

First, the judge could not find any evidence that the prior publicity had had any detrimental impact on Steven (although he was quick to point out that the media would be excluded if this situation appeared to change); second, as Steven's circumstances were already in the public domain, then the court's finding deserved to be known to the public. Hopefully this will ensure the future fair reporting of this case from the perspective of all the parties involved, including Hillingdon Council, the perceived villains in this case.

It is hard to be enthusiastic about the increased publication of Court of Protection Judgements. The issue regarding Steven Neary's deprivation of liberty is of particular significance because the rules and safeguards governing when someone can be deprived of their liberty, in place since

April 2009, have not yet been subject to a great deal of judicial scrutiny.

However, in cases involving such vulnerable parties, there will always be anxiety surrounding media access and reporting. The preceding publicity surrounding this case made it difficult for the judge to refuse media access, but Mark Neary's pursuit of publicity appears to have been the only way he could think of to get this case taken on.

Does it then follow that the media who take on such causes should always be granted access to the subsequent hearings? Let us hope that in Steven Neary's case, the media that supported him do not turn out to be a destructive force – I think it unlikely. While we are told that this ruling is not to be regarded as a precedent, it will certainly be employed as persuasive argument in future cases. But each case must be decided on its own facts, which is likely to lead to the ongoing frustration of the media with this secretive court.

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