Should people in the public eye have a right to privacy?

Any student of legal history knows the notorious reputation the 'Free Press' has for pushing the grey areas of law into question. Had the 'London Evening Post' and others not dared to risk prosecution for seditious libel in 1769 by printing letters critical of the Monarch and government of the day[1], we would not now have the comments section in newspapers where such libel is considered the norm. In the same way, we should use the upheaval caused by the Mosley case and others to examine whether the law needs to be reformed. In the wake of an increasingly celebrity-obsessed culture, where technological innovations make what is considered private increasingly uncertain and mass media seems to have developed an insatiable hunger for scandal and speculation, is it time for change?

The main question thrown up by the Mosley is where the meeting ground should be between the inherent right to privacy and the inherent right to freedom of expression, both protected under the European Convention on Human Rights (articles 8 and 10 respectively). Article 8 essentially states that a person's privacy can only be interfered with when in the public interest to do so, whereas Article 10 states that freedom of expression can only be stifled if doing so is in the public interest, or if it involves 'disclosure of information received in confidence'. Here we can see the real conflict between the two articles, and the questions arise, how are we to judge when it is in the public interest for a person's privacy to be broken, and is it then right for that information to be divulged to the general public even if the information has been received in confidence.

[1] R v Miller (1770)

To answer the first question, we need to assess when it is in the public's interest for the privacy of a well-known person to be broken. George Bernard Shaw once said "Democracy is a device that ensures we shall be governed no better than we deserve", but surely a democracy is only truly functional when the people have a right to know what kind of person they are electing. In the case of Mosley, he was elected by the FIA (Fédération Internationale de l'Automobile) general assembly to be president, but after allegations came out of 'S & M' (Sadomasochistic) behaviour, many in the FIA questioned whether he was fit to continue being president. The privacy rights of the individual could be said to be weaker than the public's democratic right to be able to pass judgement on those in charge of them. In order to apply for a teaching job, the applicant needs to be police checked to ensure it is safe for them to work with children, surely we should be allowed to vet our leaders in a similar way.

This argument only works, however, if the deficit that has been revealed actually impinges on the person's ability to fulfil their duties. While those who are under the leadership of Max Mosley might feel a moral sense of disgust, these 'S &M' activities arguably did not affect his ability to govern the FIA, indeed he has been so successful he had been elected President for four consecutive terms. Whilst a teacher needs to be police checked before employment, the public interest is simply in protecting the children, so criminal records of tax evasion would be unimportant. Private information should only be revealed when directly relevant to the work they are doing; had Mosley been caught evading tax, his presidency of the FIA would surely have been compromised. If we were to demand that all the private facets of an individual's character be laid bare before assuming democratic leadership, we would soon find our country leaderless.

The second question asks when is it acceptable for information to be released to the public even if it has been received in confidence. Here, we should think again about what 'public' we are talking about. In Max Moseley's case, he was quite an unknown figure to most people before news of the scandal was splashed across the tabloids. Surely, if what he was doing really affected his ability to continue as President of the FIA, only those in the FIA needed to be told about it, and it should be up to them to decide what action to take, without the probing self-righteous scrutiny of the public eye influencing their decision. On the other hand, the 'celebrity' who is a household name and has already made their private life a public spectacle should not be surprised to learn, like in the case of Catherine Zeta-Jones[2] and Naomi Campbell[3], that if what has been 'received in confidence' has already been disclosed freely there is nothing they can do to stop it from happening again. Akin to the way precedents work in the legal system, newspaper reporters can only assess what is considered private to someone by what they have already freely made public.

The conclusion that must be taken from this case is that more responsible journalism is needed in deciding what should and shouldn't be published. Too often private information is divulged in the newspaper's interest rather than the public's. If information is to be disclosed in the public's interest, it must be because it reveals some reason why the person is unsuited to fulfil the duties the public entrusted to them. A distinction needs to be made between what the public needs to know and what 'gossip' the public wants to know. Although a macabre interest may be exhibited after a tragedy has taken place, such as in the Madeline McCann case, no public good is being served by such intense, remorseless and probing reporting of the events. However, the blame should not always rest on the media, people in the public eye should be responsible in the exploitation of their own privacy, and be aware that privacy is something, which once given away, cannot be easily taken back.

[2]Michael Douglas and others v Hello! Ltd (2000)
[3]Naomi Campbell v Mirror Group Newspapers Ltd (2004)