

IMPORTANT NOTICE:
A Reporting Restriction Order applies in this case. Its terms are set out at the end of this judgment.
Any breach of the order may be a contempt of court, punishable by imprisonment or a fine.



Neutral Citation Number: [2022] EWCA Civ 1492

Case No: CA-2022-001676

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE COURT OF PROTECTION

Mr Justice Hayden
COP13609965

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11 November 2022

Before:

LORD JUSTICE PETER JACKSON
LORD JUSTICE BAKER
and
LORD JUSTICE WARBY

Between :

GOPICHAND PARMANAND HINDUJA

Appellant

- and -

(1) VINOOSRICHAND HINDUJA
(2) SHANUSRICHAND PARMANAND HINDUJA
(3) SRICHAND PARMANAND HINDUJA (by his
litigation friend, the Official Solicitor)
(4) ANDREW HINE

Respondents

BLOOMBERG LP

Intervenor

David Rees KC, Sam Chandler, and Lily Walker-Parr (instructed by Withers LLP) for the
Appellant

John McKendrick KC and Georgia Bedworth (instructed by Kingsley Napley LLP) for the
1st and 2nd Respondents

Gavin Millar KC, Parishil Patel KC, and Alexander Drapkin (instructed by Mackintosh
Law) for the 3rd Respondent

The 4th Respondent did not take part

Clara Hamer (instructed by Reynolds Porter Chamberlain LLP) for the Intervenor

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Hearing dates : 18-19 October 2022

Approved Judgment

This judgment was handed down remotely at 10.30am on 11 November 2022 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Peter Jackson:

Introduction

1. This is the judgment of the court to which each member has contributed.
2. The question on this appeal is whether the Vice-President of the Court of Protection (Hayden J) was wrong when on 23 August 2022 he retrospectively lifted an order restricting the reporting of long-running proceedings heard in public. We consider that in this particular case his core decision was clearly sustainable and we reject the main grounds of appeal. At the same time, we shall vary the judge’s order in one narrow and uncontroversial respect in order to correct a residual error, and the appeal is allowed to that limited extent only. The new reporting restriction order (‘RRO’) appears at the foot of this judgment.
3. The judgments of Hayden J handed down on 23 and 26 August, are to be published at the same time as this judgment.

The litigation

4. The Court of Protection proceedings concern Srichand Parmanand Hinduja (‘SP’), who is 86 years old and suffers from dementia. He is cared for in a private residential setting in accordance with a welfare order agreed between the parties and approved by the judge on 26 August 2022. He is represented in these proceedings by the Official Solicitor.
5. SP is the eldest of four brothers. The second, Gopichand Parmanand Hinduja (‘GP’), is the appellant. The respondents are SP’s daughters, Vinoo Srichand Hinduja (‘VS’) and Shanu Srichand Parmanand Hinduja (together ‘the daughters’). SP’s other brothers, Prakash Hinduja and Ashok Hinduja, are not parties.
6. As is well-known, SP’s family has achieved extraordinary business success. The Hinduja Group operates in many sectors, employs some 200,000 people around the world, and asserts that it strives to inculcate the family concept into its business enterprises. For many years the family presented a united front to the world under the striking code “everything belongs to everyone and nothing belongs to anyone”.
7. Unfortunately, family differences have led to various legal proceedings. In this country, proceedings were brought in the Chancery Division in November 2019 in the name of SP against his brothers in relation to the legal effect of a letter they had all signed in 2014. The brothers challenged the standing of VS as SP’s litigation friend in those proceedings. The challenge was dismissed by Falk J in a public judgment given on 23 June 2020, which provides an amount of information about the family situation: *Hinduja v Hinduja* [2020] EWHC 1533 (Ch). Falk J also substantially dismissed an application by the brothers for restrictions to be placed on the normal access by third parties to court records and transcripts. As an exception, she required any application for certain documents to be made on notice to the parties so that they could be heard before disclosure occurred. One reason for this concerned the sensitivity of SP’s personal position and his interests as a protected party: para. 102.

8. The proceedings in the Court of Protection were started by GP on 5 June 2020 for orders in respect of a Lasting Power of Attorney for Property and Financial Affairs ('LPA') made by SP in 2015 in favour of his wife and, upon her disclaimer, the daughters, and also by separate application for orders relating to contact between SP and his siblings and other family members.
9. There have been some twenty hearings in the proceedings, mostly before Hayden J and almost all in public in accordance with the normal procedure in the Court of Protection. At the first hearing, on 21 July 2020, the judge made a RRO in the standard form provided for by Practice Direction 4C to the Court of Protection Rules 2017. This permitted the reporting of the proceedings, provided that SP and his family were not identified as a result. That order has in substance remained in effect ever since and as a result there has been no reporting of the issues surrounding SP and his family, even though some media reporters have attended many of the hearings.
10. Conscious of this, the Official Solicitor applied as long ago as September 2020 to vary the order to permit the identification of SP and the other parties while maintaining a restriction on the reporting of personal information concerning SP's health.
11. On 21 December 2020, the judge made another RRO in similar terms to the earlier order, and it is that order which currently obtains.
12. These orders were made against the background, more fully described by the judge, of a decline in SP's health, as to which a number of orders concerning care and treatment were necessary.
13. On 25 February 2021, the daughters disclaimed the LPA, having disclosed that they had used SP's funds to fund their own costs of the litigation. The judge described this as a flagrant conflict of interests.
14. On 3 March 2021, SP was admitted to hospital. At the time, his consultant Dr W believed that he had only a short time to live.
15. On 4 March 2021, an application was made by Bloomberg LP and PA Media Group to vary the RRO to permit them to name SP.
16. On 11, 12 and 17 March 2021, a hearing took place that was primarily concerned with end-of-life contact and the care regime. Evidence was given by Dr W. On 17 March 2021, the court made orders about SP's care regime and contact with family members. A solicitor, Andrew Hine, was appointed as SP's deputy for property and affairs. The applications concerning the RRO were adjourned until after SP's anticipated death, the judge recognising the family's particularly difficult circumstances at the time.
17. In the event, SP remained in hospital until 10 September 2022, before being discharged to his current residence.
18. The proceedings, which had been dormant for over a year, were revived by an application made by GP on 27 May 2022. He sought a relaxation of the RRO to allow information from the Court of Protection proceedings about SP's property and affairs to be disclosed into the Chancery proceedings and other proceedings. The motive for the application was said to be to counteract alleged misrepresentations by the daughters

in those proceedings. The application was in similar terms to that issued by the Official Solicitor in 2020 and it did not seek a relaxation in relation to information about SP's welfare. It was listed for hearing on 29-30 June 2022.

19. On 30 June 2022, the family reached a confidential agreement concerning the Chancery proceedings and other litigation abroad, and a consent order was filed in those proceedings on 1 July 2022. It vacated an eight-week trial that was due to take place in the Chancery Division in early 2023 and relisted the matter for a CMC sometime after 1 November 2022 to deal with consequential issues arising from implementation of the agreement. In the light of these developments, GP indicated that he did not wish to pursue his application to relax the RRO. The issues concerning the RRO were adjourned to 14 July 2022 and care and welfare matters were adjourned to a hearing later fixed for 23 August 2022.
20. The parties' positions about the RRO at the hearing on 14 July 2022 were these:
 - i. GP, through Mr Rees KC, formally withdrew his application at the hearing and reverted to the stance that the RRO should remain in full effect.
 - ii. The Official Solicitor started from the stance she had taken in 2020. In a position statement lodged on 28 June, Mr Patel KC wrote that:

“in the absence of specific safeguards to prevent reporting of the most private details of SP's health, mental health and care, it is very likely that these will also become public.”

This was augmented in a position statement on 30 June:

“The Official Solicitor considers that in this case, owing to the Chancery Division proceedings, SP's Art. 8 rights in respect of information about his property and affairs matters are already significantly compromised. However, private information relating to SP's physical and mental condition and the care needed to manage his condition remain largely private. Further, such information will contain extremely intimate matters, which are always most strongly protected by Art.8 and which could be deployed distastefully and sensationally. Reporting that material is likely to be detrimental to SP's Art. 8 rights.”

However, in a position statement of 12 July of which Mr Millar KC was the lead signatory, the Official Solicitor's position changed. She now argued that the only restriction should be on the reporting of SP's location and the identity of the institutions and clinicians presently caring for him. Further:

“As to the health and welfare issues, the Official Solicitor recognises the concerns of the court that “policing” any ongoing reporting restriction in relation to the detail of SP's medical condition and incapacity may be difficult. And so, on careful reflection, she does not seek, at this stage, to argue for any order restricting reporting of such detail. She reserves the right to revisit this issue at a later hearing should it be required.”

The Official Solicitor's position hardened further in a responsive position statement of 13 July in which she asserted that SP had a "presumptive" right to a fully reportable hearing in open court:

"GP suggested that the Official Solicitor's position on behalf of SP was to waive his privacy rights, and that this position was not consistent with his best interests. And (implicitly) therefore that the Official Solicitor was taking a wrong position as his litigation friend in these proceedings. But as explained in the Position Statement of the Official Solicitor at [6] a party has a presumptive human right under Article 6 to a fully reportable hearing in open court. This is the primary human right in play in a situation of this sort, and it sits alongside the common law right which is in similar terms. The position of the Official Solicitor on behalf of SP is, justifiably, to assert this important human right. And it is a mischaracterisation of her position on behalf of SP to characterise it as a waiver of his Article 8 rights. It may be that when a P does not oppose the making of an anonymity order in the COP this is an assertion of P's privacy rights. But that does not mean that a party who asserts the full open justice entitlement is waiving any Article 8 rights they may have. The Official Solicitor maintains the position she has taken on behalf of SP for the reasons already set out in submissions."

- iii. The daughters invited the Court to leave the RRO in place or at least to continue to restrict reporting of private matters concerning SP's health and welfare. Mr McKendrick KC presented a draft order which contained lists of matters that could and could not be reported. This became known as the 'half-way house' option.
- iv. Bloomberg applied to lift the reporting restrictions while expressing neutrality about the restrictions sought by the Official Solicitor regarding the location of care and the identity of clinicians.
- v. On behalf of PA Media, Mr Brian Farmer joined in applying for the lifting of the restrictions, saying that:

"We will only report a minimal amount of information about P's health. We will say he is P, and say he has dementia, and say he has lived longer than expected. We will not go into any detail about his health problems."

The judge's decision

21. On 23 August 2022, the judge ordered that the RROs should cease to have effect forthwith in relation to all previous and future public hearings. A new RRO was made until further order in the form suggested by the Official Solicitor, restricting publication of SP's placement details, his treating clinicians and the addresses of family members. The judgment was sent to the parties' representatives in draft on 29 July, formally handed down on 23 August, and supplemented by a short judgment given on that day refusing GP's application for permission to appeal: [2022] EW COP 36 & 37.

22. Subsequently, on 26 August 2022, further welfare orders were made by agreement, and there has been another welfare order since.
23. The judge’s approach to the RRO can be seen in these passages:

“5. ... Time is not on Srichand Hinduja’s side. Every day of delay in finding a suitable care package for him is inimical to his welfare and represents a failure on the part of those who purport to love and care for him. The Official Solicitor has formed the clear view that notwithstanding Srichand Hinduja’s wealth and the outward respect that is afforded to him, his needs have become marginalised in a family dispute. I agree. Unusually, in Court of Protection proceedings where strong and determined efforts are made to keep P at the centre of the process, Srichand Hinduja’s visibility has been very low, particularly during the course of the last 12 months. The Official Solicitor considers that Srichand Hinduja’s wealth and the infrastructure that surrounds it appears to have enhanced rather than reduced his vulnerability.”

“14. ... Demonstrably, both Gopichand Hinduja and Vinoo Hinduja have changed their positions regarding the utility or ambit of the RRO. It is plain that the driver behind their shifting positions has been a calculation of their respective litigation interests...”

“23. Whether the [open justice principle] is properly described as a presumptive right is perhaps debatable. ... where the court has been sitting throughout with the public in attendance, my focus is primarily on the Article 8 rights of Srichand Hinduja and the Article 10 rights of the press.”

“25. In the light of the extensive case law illuminating how Articles 8 and 10 should be evaluated, I do not consider that it would be logical to analyse the competing rights and interests in play here on the premise that Article 10, in this context, should be afforded presumptive weight. I am prepared to accept a presumption that the Court should sit in open court, unless there are strong countervailing reasons, but, as I have said, that is not in focus here. In any event, as will become clear below, I do not consider that the facts of this case will turn on this point. Mr Rees has advanced his application on the premise that Srichand Hinduja’s Article 8 rights and the Article 10 rights of the press should be evaluated on a parallel analysis of the competing rights and interests engaged, in which neither has precedence. I consider this to be the correct approach.”

“27. The arguments advanced on behalf of Srichand Hinduja are properly rooted in his Article 8 rights but evaluated in the context of Article 10. Frequently, there will be a tension between the two but here, and from Srichand Hinduja’s perspective, it is

submitted that there is no such tension because, on the factual stratum in this case, Article 10 itself serves effectively to promote Srichand Hinduja's Article 8 rights. Thus, what is usually a balancing exercise between rights which have an entirely different complexion, generates, it is argued, a confluence of interests pointing clearly to significant benefits for Srichand Hinduja in removing any reporting restrictions."

"31. It is further argued on behalf of the Official Solicitor that the impact on Srichand Hinduja of any intrusion into his private life, from media reporting on his medical condition, "would be very limited" given his compromised level of awareness. Whilst that is certainly true, insofar as it goes, I do not consider it captures the full ambit of the Article 8 rights engaged by this exercise. Understanding the full range of Srichand Hinduja's Article 8 rights requires a recognition that the importance of privacy to him can only be evaluated by considering his whole life, not only who he is now, but also to the man he has been. Srichand Hinduja as a successful and pioneering businessman has, where necessary, sought to harness the power of the press in his own business interests by way of interviews etc. Insofar as I can analyse it, from the accounts I have been given, that has been driven by business expediency rather than any temperamental instinct to court the limelight. On the contrary, I consider Srichand Hinduja was instinctively a man who very much valued his privacy. In evaluating the weight to be given to this therefore, it may be that I have attached greater weight to it than contended for by Mr Millar."

"54. The Official Solicitor's argument, to the effect that open reporting of these proceedings is more likely to provide a 'protective layer' to Srichand Hinduja's interest is, in my judgment entirely made out. At present Srichand Hinduja remains in hospital where he ought not to be. There is a conflict within the family concerning the financing of his care package. Suitable accommodation and appropriate care have not been identified. I do not consider that this would have occurred if these issues had been ventilated in public and reported.

55. The unique circumstances created by the family's public profile and the ongoing Chancery Division proceedings have served to stultify any effective reporting. The risk of jigsaw identification or inadvertent breach of the RRO has effectively closed reporting down, notwithstanding that this court has been sitting in public throughout.

56. The importance of maintaining probity and integrity in the appointment of attorneys under LPAs is central to the efficient operation of the property and affairs jurisdiction of the Court of Protection. Any departure from the high standards required

plainly ought to be in the public domain, not least to maintain those high standards of practice.

57. Whilst Srichand Hinduja was a man who preferred privacy, he also recognised the expediency of publicity when that was identified as necessary. Here, for the reasons above, publicity is expedient. Srichand Hinduja's Article 8 rights are not in opposition to the Article 10 rights of the press in this case but, in these unusual circumstances, the two are reconciled in the overall objective of promoting Srichand Hinduja's best interests.

58. Whilst variation of the RRO, as contended for by the Official Solicitor, will permit some matters of a personal nature to be reported on, it is correct to say that a good number of those are already ventilated in the Chancery Division proceedings and thus in the public domain. Moreover, the sensitivity of the issues before this court, whilst important, should not be overstated. What now falls to be considered is a practical care plan i.e., identifying suitable property, arranging care and nursing support. Srichand Hinduja's diagnosis and condition are already in the public domain. They require no further exploration in this court."

"60. Accordingly, and for all the reasons set out in the body of the judgment I approve the amendments to the RRO advanced in the application on behalf of the Official Solicitor."

24. GP applied for permission to appeal and on 25 August, Macur LJ adjourned the application to an oral hearing on 5 September. She directed that the judge was to be invited to give any supplemental reasons for his dismissal of the 'half-way house' option. In response, the judge gave these further reasons on 26 August:

"1. There are two significant reasons which cause me decisively to reject what has been referred to as the 'half-way house' option. The first centres upon Srichand Hinduja's vulnerability generally and particularly within these proceedings. This was initially identified by the Official Solicitor some time ago. As Mr Patel QC set out, the OS was struck by "the vulnerability of someone who owing to their wealth exists outside the state health and care system" and in respect of whom therefore, the established state safeguards to his welfare are largely absent... For the reasons the Official Solicitor analysed here, proper public scrutiny is more likely to serve to protect Srichand's interests than militate against them. I agree. It is for this reason that I considered the arguments for lifting of the Reporting Restrictions Orders in respect of the property and affairs issues were cogently established.

2. However, logically, the vulnerability that the Official Solicitor identifies is not confined to one aspect of the litigation. Here, Srichand's vulnerability, properly analysed, is ubiquitous within

the proceedings generally. His interests are neither less nor more likely to be marginalised in the health and welfare context than in that of property and affairs. The risk is identical. Moreover, the property and affairs issues in this case are inextricably linked to those of health and welfare. There is very little within the papers concerning Srichand’s medical issues. The focus has been on how those medical needs are met i.e., in what accommodation, and with what level of support.

3. The second basis upon which I rejected the ‘half-way house’ option, is its likely enforceability in any injunctive framework. This point overlaps with the above, in the sense that the health, welfare, and property issues are so interconnected that however an injunction might be framed, it is almost certain to inhibit reporting, because of a perceived risk of eliding these two spheres of protection. A great deal of attention has been focused on obtaining appropriate accommodation and a suitable care plan for Srichand. The need for this was identified many months ago and the delay in obtaining it reinforces the Official Solicitor’s concern. It is easy to see how a journalist endeavouring to report these issues might be highly apprehensive about what may or may not be reported and in consequence, decide not to report at all. In any event, given that, for the reasons above, I have found reporting to be actively in Srichand’s interests, these are, inevitably, secondary issues.”

25. On 5 September, permission to appeal was granted by Baker LJ and Nugee LJ on three amended grounds of appeal. The judge’s order lifting the RRO was stayed pending the appeal.
26. On 16 September, the Official Solicitor filed a Respondent’s Notice asserting that SP had a presumptive right to publicity and that the judge had been wrong not to recognise that and to give it substantial weight.

The legal framework

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.

The appeal hearing

34. The appeal was heard on 18-19 October under the title *Re JV*. The grounds of appeal advanced by Mr Rees can be summarised in this way:
1. The Court correctly identified the legal framework but erred in considering irrelevant factors and giving inadequate consideration to relevant factors, namely (1) SP's attitude to publicity, (2) the actual extent of information in or likely to come into the public domain, and (3) the likely past and future effect of publicity on the funding of SP's care.
 2. The Court erred in failing to conduct the ultimate balancing exercise with an "intense focus" on the nature of the infringement of SP's Article 8 rights.
 3. Further or alternatively, the Court erred in failing to consider the 'halfway house' solution, whereby matters as to health and welfare remain subject to the RRO, whilst permitting identification of SP and others.
35. On Ground 1, Mr Rees focused on the extent of information in or likely to come into the public domain as a result of the judge's order. Effectively, everything said and done during the twenty hearings would become available to the press and public, and those who were not present would, he said, probably be permitted to obtain transcripts. At para. 58 the judge exaggerated the amount of information in the public domain as a result of the Chancery proceedings. Other matters that arose only in the Court of Protection were the dispute over the LPA, the circumstances in which it was disclaimed, the Deputy's investigations, disputes about privileged documents, disputes about care costs, disagreements about contact and, above all, personal medical information. This last aspect had at one time troubled the Official Solicitor. Of particular concern was the evidence of Dr W, which concerned matters that were described as "exquisitely sensitive" by the judge himself at the hearing in March 2021. Dr W and another doctor also gave evidence at a hearing on 23 August 2022 about medical treatment details. All this would now be publicly available.
36. Under this ground, Mr Rees also challenged the judge's assessment at paras. 31 and 57, saying that he should have found that SP would want privacy in these circumstances. Similarly, the conclusion that publicity would provide a 'protective layer' was not borne out by the facts relating to SP's readiness for discharge and the identification of suitable accommodation for him.
37. On Ground 2, Mr Rees argued that the judge did not pay sufficient attention to the real Art. 8 rights of SP and his wife and was wrong to identify a "confluence of interests" between Arts. 8 and 10. Had he approached the balancing exercise correctly, he would have been bound to find that SP's right to privacy prevailed.
38. Ground 3 was argued by Mr McKendrick, who submitted that the judge was wrong to reject the 'half-way house' order, which prohibited the reporting of details of SP's health, treatment and care arrangements in order to protect SP's dignity without preventing reporting of the family dispute. The judge was wrong to say that the

property and affairs issues were inextricably linked to those of health and welfare. The draft order could have been improved if necessary for clarity but should not have been rejected altogether.

39. Both Mr Rees and Mr McKendrick remarked that adverse observations had been made about their clients by the judge without the court having made any findings of fact.
40. On behalf of the Official Solicitor, Mr Millar submitted that the judge's order should be upheld. In exchanges at the beginning of his submissions, we asked why, when changing her stance, the Official Solicitor had not advanced a solution that protected SP's intimate personal care and treatment information from public view. In response, on the second day of the hearing Mr Patel presented a draft order which sought to achieve this. After the hearing the other parties commented on the draft and we have considered it ourselves. The order would provide that everything was reportable except for a very detailed list of specific matters which by virtue of their highly personal nature would have to be listed in a confidential schedule to the order that would only be available to a non-party on a successful application to the court. Mr Millar said that this proposal represented the Official Solicitor's fall-back position, but that her principal position was to defend the judge's order in its entirety. As to that, he submitted that in reaching a broad evaluative conclusion the judge was entitled to see the benefit of publicity for SP and to assume that there would be responsible reporting.
41. Mr Millar also developed the argument in the Respondent's Notice, which is that there are two aspects to the open justice principle and Art. 6, a public hearing and a right to publicity, and that the judge was wrong at paras. 23 and 25 to shrug at his submission about SP's presumptive right to publicity.
42. On behalf of Bloomberg, Ms Hamer analysed why the high risk of jigsaw identification meant that the RRO had killed the story. She detailed the amount of information already in public as a result of the judgment of Falk J, public documents in the register of the Office of the Public Guardian, and a report in the Swiss press. The family identity was a matter of legitimate public interest, as were the cross-allegations made by the parties against each other concerning the arrangements for SP, the changes in the parties' positions on the RRO, and the circumstances in which the LPA was obtained and disclaimed. There are significant gaps in the information that is currently in the public domain and the RRO makes it impossible to fill them. Although publicity might be painful or embarrassing for the family, it would not breach SP's Art. 8 rights; the judge had struck the correct balance. The 'half-way house' order was unclear and would have a chilling effect on reporting. Bloomberg was not interested in publishing medical information.
43. In written observations on behalf of PA Media, Mr Farmer repeated the assurances he had given to the judge about the limited reporting of SP's health. He agreed that the RRO made meaningful reporting impossible because of jigsaw identification, this being one of the easiest jigsaws he had ever seen and continued:

“I argued, and still argue, that naming SP is in the public interest: because of who he is, because of what his family business interests are, because of who his relatives are and because of how many people they employ world-wide. For example, surely people have a right to know, that Mr Justice Hayden, a High

Court judge and vice-president of the Court of Protection, considered placing SP (a man whose family is worth £28,4 billion according to 2022 The Sunday Times Rich List, \$13 billion according to Bloomberg; a man, whose family group, Mr Browning told Mr Justice Hayden, “employs more than 150,000 people in 38 countries”) in a public nursing home, and his reasons why. If the free press can’t report information of that nature, aired by a judge of Mr Justice Hayden’s standing, at a public court hearing, in London, then what is Article 10 of the European Convention on Human Rights for? What’s the point of free speech? We’re not fighting to report trivialities here.”

Conclusion

44. These proceedings are highly unrepresentative of the bulk of the work of the Court of Protection because of the unique public profile of SP and his family. We accept that the application of a standard RRO to this family has prevented any meaningful reporting of the proceedings and the family issues that lie behind them. In this respect SP’s case is very much a case on its own facts and the judge took an exceptional course that has few if any implications for other cases.
45. We also bear in mind that we have heard very detailed submissions about what was in the end a case management decision for the judge who, at that time, had yet to resolve a number of welfare issues.
46. We can dispose of two preliminary matters:
 - 1) The judge was entitled to make his assessment of the proceedings as a whole and to take a view of the parties’ conduct. He was not obliged to limit his consideration to matters about which findings of fact had been made, and there have anyway been none. It is possible to envisage a case where it might be unfair for unresolved allegations to be published, but in this case it was the fact of the allegations and not their validity that mattered.
 - 2) We do not propose to rule on the argument in the Respondent’s Notice as it did not make any difference to the judge’s decision and cannot make any difference to the outcome of the appeal. If the argument has merit it can wait for a case where it may affect the outcome. Our only observation is that, in a field that calls for the case-sensitive balancing of different kinds of rights, it may be unhelpful to label a particular right as ‘presumptive’.
47. The threshold for appellate interference with an evaluative conclusion of this kind is a high one, particularly in the field of case management. In our view the judge was fully entitled to take the view that he did of the inappropriateness of continued anonymisation of this family. Because of the close association between the family and its business empire, its fortunes matter to many other people. The way in which it has conducted itself in response to SP’s predicament, including events concerning the LPA and disputes about care and welfare issues, are all matters of proper public interest. So too is the way in which the court acts in proceedings of this kind. It follows that, because anonymity is impossible, the RRO represents a heavy interference with the normal right of the media to report on proceedings held in public. It is apparent that the judge was

acutely aware of this: paras. 38-45 and 55. In the particular circumstances, he also attached significant weight to what he saw as the salutary effect of publicity and little if any weight to SP's normal preference for privacy. In the latter regard, the judge's approach conforms to that taken in the Chancery proceedings by Falk J at para. 83. Mr Rees's submission, while emphasising intimate personal matters, also contemplated a much wider restriction on matters that could be reported (see para. 34 above). The judge was entitled to reject that submission, which would have perpetuated an effective news blackout. There was no general error of approach and we reject the first two grounds of appeal, which represent the main challenge to the judge's decision.

48. As to the third ground of appeal, we consider that the judge was entitled to have reservations about the 'half-way house' orders as presented to him. In relation to the Official Solicitor's initial proposal to separate property and affairs matters from health and welfare matters, he remarked that "this dual approach in a case in which the issues revolve around questions of capacity, treatment, care planning etc. present a very considerable challenge if the orders devised are to have any real prospect of enforceability": para. 6. When addressing Mr McKendrick's draft order at para. 46 and para. 3 of his supplementary reasons the judge reiterated that "the health, welfare, and property issues are so interconnected that however an injunction might be framed, it is almost certain to inhibit reporting, because of a perceived risk of eliding these two spheres of protection".
49. Focusing on the latter draft, we accept that it represented a good faith attempt to identify what could and could not be reported, but in a case of this nature the somewhat complex drafting of the standard order led to sustained criticism by the other parties. It also contemplated the existing RRO continuing until the end of the health and welfare hearing in August which, in the event, did not mark the end of the welfare proceedings. We do not consider that the judge can be criticised for rejecting the draft presented to him, but that cannot in our view be the end of the matter.
50. We have sympathy with the judge, who was faced with a kaleidoscope of changing submissions. By the end, and unusually in our experience, SP's litigation friend was not asserting that he was entitled to even a limited degree of privacy and the virtually complete removal of reporting restrictions leaves intimate details of medical and personal care unprotected. There is no conceivable public interest in those matters being made public, something that could understandably cause distress to SP's family. Publication of this material would in our view amount to a disproportionate breach of SP's rights under Art. 8 and it has not been asserted that there is any countervailing interest under Art. 10, or indeed under Art. 6.
51. We conclude that it is possible to protect SP's intimate information without obstructing other reporting, and that, when understandably rejecting the 'half-way house' that was presented to him, the judge should have retained this narrow level of protection. The fact that some aspects of SP's diagnosis and condition are in the public domain and that the court was not expecting to explore them further (judgment para. 58) only takes the matter so far when the lifting of the RRO was to be retrospective and unconditional. Nor does the responsible approach that would certainly be taken by the journalists who have been present in court provide any guarantee about the approach that might be taken by others, here or abroad. To this limited extent, Ground 3 succeeds.

52. In these circumstances, there is no advantage in remitting the matter and we must determine an appropriate order ourselves. We start by considering the Official Solicitor's fall-back proposal. The confidential schedule has been useful in allowing us to identify the nature of the medical and healthcare matters that fall to be protected. At the same time, we agree with other parties that the existence of a schedule of this kind is problematic in a case where true confidentiality of any schedule may be difficult to secure and where reporting outside this jurisdiction is likely.
53. We therefore take a simpler approach. We shall expand para. 10 of the judge's order by adding paras. 10.4 and 10.5, so that the paragraph will now read:
- “10. The material and information (‘the Information’) covered by this injunctive order is:
- 10.1. the name or address of any placements accommodating Srichand Parmanand Hinduja and/or Sareeta Hinduja for treatment care or otherwise, but only while they are accommodated at such placements.
- 10.2. the identity of any clinicians providing care or treatment to Srichand Parmanand Hinduja and/or Sareeta Hinduja, but only while they are under the care of such clinicians.
- 10.3. the addresses or contact details of any party or family member of Srichand Parmanand Hinduja (including any private residence where he may be cared for).
- 10.4 any information about Srichand Parmanand Hinduja's clinical diagnosis or prognosis, healthcare and daily care unless the information is contained in any past or future published judgment given in the Court of Protection, the Chancery Division or another court in England and Wales.
- 10.5 Any information about SP's wife's clinical condition, healthcare, daily care and the time she spends with SP unless the information is contained in any past or future published judgment given in the Court of Protection, the Chancery Division or another court in England and Wales.”
54. The consequence is that until further order the only matters that cannot be published are those specified in para. 10 of the order, and even those matters are modified to allow the publication of information set out in past or future published court judgments in this jurisdiction. In our view this revised order represents the correct balance between the rights engaged in this case. The resulting RRO, being the judge's order as modified by this court, is set out in full below.
55. That is our judgment.

APPENDIX: THE REPORTING RESTRICTION ORDER

IN THE COURT OF APPEAL (CIVIL DIVISION)

Appeal Ref: CA-2022-001676

**ON APPEAL FROM
THE COURT OF PROTECTION
MR JUSTICE HAYDEN
[2022] EWCOP 36**

Lower Court ref: No.13609965

B E F O R E:

**LORD JUSTICE PETER JACKSON
LORD JUSTICE BAKER
LORD JUSTICE WARBY**

ON 11 NOVEMBER 2022

**In the matter of
SRICHAND PARMANAND HINDUJA**

B E T W E E N:

GOPICHAND HINDUJA

Appellant

and

(1) VINOOSRICHAND HINDUJA

(2) SHANUSRICHAND PARMANAND HINDUJA

**(3) SRICHAND PARMANAND HINDUJA
(by his litigation friend, the Official Solicitor)**

**(4) ANDREW HINE
(Srichand Parmanand Hinduja's deputy for property and affairs)**

Respondents

(5) BLOOMBERG LP

Intervenor

ORDER OF 11 NOVEMBER 2022

IMPORTANT If any person disobeys the order in paragraphs 10-12, 19-21 they may be found guilty of contempt of court and may be sent to prison, fined or have their assets seized. They have the right to ask the court to vary or discharge the order.

UPON Hayden J having given a judgment [2022] EWCOP 36 in this matter on reporting restrictions handed down on 23 August 2022 and made an order of that date concerning the reporting restrictions imposed in these proceedings

AND UPON Hayden J having given a further judgment concerning the stay of his order on 23 August 2022 [2022] EWCOP 37 and having given supplementary reasons to his first judgment ([2022] EWCOP 36) on 26 August 2022.

AND UPON the Appellant having appealed the order of Hayden J of 23 August 2022 to the Court of Appeal.

AND UPON the Court of Appeal varying the said order of Hayden J in its consideration of what reporting restrictions should be imposed on these proceedings and imposing such restrictions by this order.

AND UPON the Court of Protection having previously conducted an attended hearing in public in this matter on 21 July 2020 and imposed reporting restrictions under a transparency order of that date in standard form, and such transparency order having been varied by orders dated 21 September 2020, 21 October 2020, 14 December 2020 and 21 December 2020.

IT IS HEREBY ORDERED that:

Disapplication of previous orders and retrospective application of this order

1. The order of 21 July 2020 shall cease to have effect forthwith in relation to all the previous public hearings in this matter, the present hearing and any future attended public hearings.
2. As to the order of 21 December 2020, the restrictions on the publication of information in these proceedings applied therein shall cease to have effect in relation to all the previous public hearings in this matter, the present hearing and any future attended public hearings.
3. The restrictions on the publication of information in this order shall apply to such past and present public hearings, including (for the avoidance of doubt) public hearings in the Court of Appeal.

Direction that further hearings be in public

4. Subject to further orders of the Court of Protection, or other court before whom any hearing in these proceedings is being conducted ("**the Court**"), further hearings in this matter shall be heard in public.
5. The Court may exclude from an attended hearing in public any person (other than a party) on the grounds that it is in the interests of justice to do so (for example if that person refuses a request to sign a document recording their attendance and that they are aware of the terms of this order).
6. Attended hearings are to be listed as follows:

In the matter of Srichand Parmanand Hinduja; Gopichand Parmanand Hinduja v (1) Srichand Parmanand Hinduja (by his litigation friend the Official Solicitor), (2) Vinoo Hinduja; (3) Shanu Hinduja [together with the names of any other person who is party to any application being heard at such hearing]

7. Part 3 of Practice Direction 4A to the Court of Protection Rules 2017 (which permits the communication of specified material and information in certain circumstances when there is no public hearing) shall continue to apply to these proceedings.

8. The parties and their legal representatives are permitted to communicate information or material relating to the Court of Protection proceedings and Court of Appeal proceedings to:
 - 8.1. Srichand Parmanand Hinduja's wife, siblings and their children;
 - 8.2. Srichand Parmanand Hinduja's grandchildren;
 - 8.3. Gopichand Parmanand Hinduja's legal representatives in the Chancery Proceedings (including for the avoidance of doubt Debevoise & Plimpton LLP);
 - 8.4. Srichand Parmanand Hinduja's legal representatives in the Chancery Proceedings (acting by Vinoo Hinduja as his litigation friend); and
 - 8.5. Hanover Communications (media adviser acting for Gopichand Parmanand Hinduja).

The Persons Bound by the Injunctive Order

9. The following persons (the Persons Bound by the Injunctive Order) are bound by this injunctive order:
 - 9.1. the parties and their representatives,
 - 9.2. the witnesses,
 - 9.3. all persons who attend or join remotely all or any part of an attended hearing,
 - 9.4. all persons who by any means obtain or are given an account or record of all or any part of an attended hearing or of any order or judgment made or given as a result of an attended hearing,
 - 9.5. all persons who are provided with or by any means obtain documents and information arising from these proceedings, and
 - 9.6. any body, authority or organisation (and their officers, employees, servants and agents) for whom any such person works or is giving evidence.

The Subject Matter of the Injunctive Order

10. The material and information (the "**Information**") covered by this injunctive order is:
 - 10.1. The name or address of any placements accommodating Srichand Parmanand Hinduja and/or Sareeta Hinduja for treatment care or otherwise, but only while they are accommodated at such placements.
 - 10.2. The identity of any clinicians providing care or treatment to Srichand Parmanand Hinduja and /or Sareeta Hinduja, but only while they are under the care of such clinicians.
 - 10.3. The addresses or contact details of any party or family member of Srichand Parmanand Hinduja (including any private residence where he may be cared for).

- 10.4. Any information about Srichand Parmanand Hinduja's clinical diagnosis or prognosis, healthcare and daily care unless the information is contained in any past or future published judgment given in the Court of Protection, the Chancery Division or another court in England and Wales.
- 10.5. Any information about Sareeta Hinduja's clinical condition, healthcare, daily care and the time she spends with Srichand Parmanand Hinduja unless the information is contained in any past or future published judgment given in the Court of Protection, the Chancery Division or another court in England and Wales.

Duration of the Injunctive Order

11. This Injunctive Order shall have effect until further order of the Court.

What the Injunctive Order prevents people from doing

12. Subject to further order of the Court and save as provided by paragraphs 8, 13, 14 and 15 of this order the Persons Bound by this Injunctive Order shall not by any means directly or indirectly:
 - 12.1. publish the Information or any part or parts of it, or
 - 12.2. cause, enable, assist in or encourage the publication of the Information or any part or parts of it.

What the Injunction does not prevent people from doing and does not apply to

13. Subject to further order of the Court this Injunction does not prevent the Persons Bound by this Injunction:
 - 13.1. otherwise reporting or commenting upon these proceedings and the issues in them in full, save in so far as such reports or comments are prohibited pursuant to paragraph 12 above;
 - 13.2. reporting or commenting upon proceedings in the Court of Protection generally or in relation to applications similar to this one;
 - 13.3. publishing information relating to any part of a hearing in a court in England and Wales (including a coroner's court) in which the court was sitting in public and did not itself make any order restricting publication;
 - 13.4. complying with an order of any court with competent jurisdiction;
 - 13.5. disclosing information to ensure that the medical and care needs of Srichand Parmanand Hinduja are met; and
 - 13.6. publishing the Information so far as knowledge of the Information has been acquired otherwise than in the course of these proceedings
14. Subject to further order of the Court this injunctive order does not prevent the Persons Bound by this Injunctive Order from communicating information relating to these

proceedings on the basis that Part 3 of Practice Direction 4A to the Court of Protection Rules 2017 (which relates to proceedings held in private) applies to these proceedings.

Previous permission to publish the Information

15. Nothing in this order shall restrict the rights conferred under previous orders made in these proceedings to publish the Information.

Variation of this order

16. The parties and any person affected by this order may apply to the Court of Protection on notice to the parties for an order (and the Court may of its own motion make an order) that:

- 16.1. varies or discharges this order or any part or parts of it, or which
- 16.2. permits the publication of any of the Information on the basis that it is lawfully in the public domain or for such other reason as the Court thinks fit.

Further orders

17. In so far as the Court holds the Information, an application may be made to the Court by any person for a direction that they be provided with the Information or some of it on such terms as the Court thinks fit. Any such application must be accompanied by evidence setting out why such a direction is sought and must be made on three days' notice to the parties.

Interim order concerning documents

18. Any application under r. 5.9 COPLR 2017 or (in the case of records of the Court of Appeal) r.5.4C CPR 1998 for the supply of documents from the records to a non-party must be made on no less than three working days' notice to the parties.

19. Pending further order of the Court of Protection no person may make any use of any Category A or Category B Documents (defined below) where such use of the documents would have been in breach of the transparency and reporting restrictions orders in force immediately before the coming into effect of this order and for these purposes pursuant to the orders dated 21 July 2020, 21 December 2020 and 5 September 2022:

- 19.1. Category A Documents in relation to each party are any documents to which COPR 2017 rule 5.10 applies; and
- 19.2. Category B Documents are other documents that contain information of which a party is aware because the information is contained within a Category A Document, regardless of whether such Category A Document has been referred to at a hearing in public.

20. Nothing in paragraph 19 above shall prevent any person from discussing or referring to any matter raised at a public hearing or which is in the public domain by reason of having been contained in a document that has been provided to a member of the public at any

public hearing (not including any document which is simply contained in the hearing bundles).

21. For the avoidance of doubt, nothing in paragraphs 19 and 20 above shall permit any party from using the documents (Category A or Category B Documents) referred to and/or provided to any person at a public hearing for the purposes of other proceedings.

Rights of audience

22. Subject to further order of the Court, any person who would have been entitled under the Legal Services Act 2007 to exercise rights of audience at the attended hearing if this order had not been made and it was held in private (and is not otherwise entitled to exercise such rights), shall be entitled to exercise equivalent rights of audience at that attended hearing and any further attended hearing of this application.

ORDER DATED 11 NOVEMBER 2022