Neutral Citation Number: [2022] EWCOP 36

Case No: 13609965

**COURT OF PROTECTION**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/08/2022

**Before**:

**MR JUSTICE HAYDEN**
**VICE PRESIDENT OF THE COURT OF PROTECTION**

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**Between:**

**GOPICHAND PARMANAND HINDUJA**

**Applicant**

**- and –**

**(1) VINOO SRICHAND HINDUJA**
**(2) SHANU SRICHAND HINDUJA**
**(3) SRICHAND PARMANAND HINDUJA**
**(by his Litigation Friend the Official Solicitor)**
**(4) A PRIVATE HOSPITAL**
**(5) Bloomberg LP (Intervening)**
**(6) Andrew Hine (as Deputy for Property and Affairs for Srichand Parmanand Hinduja)**

**Respondents**

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**Mr David Rees QC, Mr Mark Baxter and Sam Chandler** (instructed by **Withers LLP**) for the **Applicant**
**Mr John McKendrick QC, Ms Sarah Haren QC and Ms Georgia Bedworth** (instructed by **Kingsley Napley LLP**) for the **First and Second Respondents**
**Mr Gavin Millar QC, Mr Parishil Patel QC and Alexander Drapkin** (instructed by **Mackintosh Law**) for the **Third Respondent**
**Ms Claire Watson QC** (instructed by **DAC Beachcroft**) for the **Fourth Respondent**
**Ms Clara Hamer** (instructed by **Reynolds Porter Chamberlain LLP**) for **Bloomberg LP**

**Mr Nikki Singla QC** (instructed by **Taylor Wessing LLP**) for the **Deputy**
**Mr Brian Farmer** (in person) for the **Press Association**
**Professor Celia Kitzinger** (in person) for the **Open Justice Court of Protection Project**

Hearing date: 14th July 2022

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# Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MR JUSTICE HAYDEN

## MR JUSTICE HAYDEN:

1. These proceedings concern Srichand Parmanand ("SP") Hinduja, who is represented by his litigation friend, the Official Solicitor. The litigation began, in June 2020, in consequence of an application made by Srichand Hinduja's brother, Gopichand Parmanand ("GP") Hinduja. The application was a challenge to the legitimacy and legal status of the Lasting Power of Attorney (LPA) for property and affairs, made by Srichand Hinduja initially in favour of his wife, Madhu Hinduja, and upon her disclaimer, in favour of his daughters, Vinoo Srichand Hinduja and Shanu Srichand Hinduja. Additionally, it was contended by Gopichand Hinduja, along with other siblings, that Vinoo Hinduja and Shanu Hinduja were restricting their contact with their brother. Further, it was strongly suggested that they had deliberately isolated him from the rest of his family. The legitimacy of the LPA was attacked on the basis that having regard to his dementia, Srichand Hinduja would have lacked the capacity to have created a Lasting Power of Attorney at the relevant time. A consultant psychiatrist was instructed to evaluate Srichand Hinduja's current and retrospective capacity to make an LPA. It was insinuated, at very least, that Srichand Hinduja had been manipulated and that undue pressure had been applied.

2. Increasingly, there were significant concerns about Srichand Hinduja's health. He had been cared for, at home, by his daughter Vinoo Hinduja and care staff. Vinoo Hinduja was anxious to preserve this arrangement, but the Official Solicitor clearly had evolving anxiety as to whether the true range of Srichand Hinduja's needs were being met satisfactorily. At the Official Solicitor's request, I directed that Ms Lynne Phair, Independent Consultant Nurse specialising in the care of older people and, a Ms Katharine Lees-Jones, physiotherapist, be instructed to survey the full panoply of Srichand Hinduja's care needs. Ms Phair and Ms Lees-Jones prepared several reports which made helpful recommendations for Srichand Hinduja's care and in particular, led to the appointment of Mr Greg McDonnell as case manager. It was the objective of Mr McDonnell's appointment to drive all aspects of Srichand Hinduja's care package, including recruitment of care staff. Srichand Hinduja was living at home at that point. The Court's orders of December 2020 and March 2021 emphasise, in entirely unambiguous terms, the need to ensure that Mr McDonnell was regularly updated by Vinoo Hinduja. The Official Solicitor was granted leave to restore the matter to court in the event of any concerns arising relating to Srichand Hinduja's welfare.

3. In addition to the above, it was necessary for me to make orders to permit Gopichand Hinduja and other family members to have contact with Srichand Hinduja to the degree that was achievable against the backdrop of the pandemic, in that period. Unfortunately, Srichand Hinduja's health deteriorated, and he was admitted to hospital in March 2021. The Court was told by Dr W, Srichand Hinduja's treating consultant, that he had only a very short time to live. Srichand Hinduja has confounded his doctors. The professional consensus is now clear i.e., that the hospital is no longer the correct environment for him. Indeed, it would appear that the acute hospital environment has been the wrong place for Srichand Hinduja now for some time.

4. Srichand Hinduja is amongst the richest people in the United Kingdom. However, he now suffers from severe Lewy Body Dementia. This is a progressive, fatal disease and there are no treatment options. A private residence with a full care package is

likely to be required. This is the best way to achieve peace and dignity for Srichand Hinduja for his remaining months. Manifestly, such a plan requires a financial settlement to be put in place to ensure the resilience of the care package. For many people, that might be a challenge, both administratively and financially. For this family, it could be the work of few days. However, I am told that there are some difficulties with the financial arrangements.

5. It would seem that it is necessary to state that which is obvious. 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.

6. A hearing was set down, to commence on the 8th March 2021, addressing the issues I have set out. An enormous volume of paperwork was generated. Highly experienced legal teams were assembled for each of the parties and two weeks of court time allocated to the case. It is perhaps pertinent to note that very few cases in the Court of Protection take more than 3 or 4 days at maximum. However, on the 24th February 2021, events took an entirely unexpected turn. Vinoo Hinduja and Shanu Hinduja informed the parties that they drew on Srichand Hinduja's assets to fund their own costs of this litigation. It was further recognised and acknowledged that they drew on those funds for their own private purposes. This is a family who have repeatedly emphasised and publicly so, that their family code is munificent, bounteous, and open-hearted: *"everything belongs to everyone and nothing belongs to anyone"*. Quite how this principle is realised in day-to-day life is difficult to appreciate, having regard to the complexion of the litigation in this court and its very similar parallel in the Chancery Division, ***Hinduja v Hinduja [2020] EWHC 1533 (Ch).***

7. In any event, the identified conflict of interest was so flagrant and so manifestly contrary to the fiduciary obligations of the Attorneys, that both Vinoo Hinduja and Shanu Hinduja disclaimed the role. It is important to state, however, that Vinoo Hinduja and Shanu Hinduja had previously been questioned as to the source of their funding and had both expressly stated, through their lawyers, that they were not reliant on Srichand Hinduja's assets. I make no further comment on this, other than to say that every member of this family has had the benefit of some of the country's most experienced lawyers throughout. In consequence of the disclaimer, it was plainly unnecessary to resolve the substantive issue in the proceedings i.e., whether Srichand Hinduja had the capacity to enter into the LPA or whether it had been induced by undue pressure. I subsequently appointed Mr Andrew Hine, an experienced private client solicitor to act as Srichand Hinduja's deputy for property and affairs.

8. It is important to understand that at this point, it was thought by everybody that Srichand Hinduja was at the very end of his life. That was a phrase used by Dr W following Srichand Hinduja's admission to the hospital with pneumonia. I particularly recall that as Srichand Hinduja was thought to be dying, and in accordance with the

Covid-19 regulations in existence at the time, the family were able to visit the hospital and say prayers. This was the backdrop against which I reviewed the ambit of the Reporting Restriction Order (RRO). At that time the proceedings were subject to a Reporting Restrictions Order in the standard terms provided for by Practice Direction 4C to the Court of Protection Rules 2017 which had originally been imposed at the first hearing in July 2020. The Official Solicitor had made applications in September and December 2020 to vary and relax the terms of that order, and these fell to be considered by me shortly after Srichand Hinduja's admission to hospital. Recognising the family's grief, the suddenness of Srichand Hinduja's deterioration and the public safety constraints imposed by the pandemic. I decided to continue the existing RRO to protect Srichand Hinduja's privacy in those particularly difficult circumstances and made directions for the issue to be restored me for further consideration following Srichand Hinduja's death.

9. The Official Solicitor has, for some time, been concerned that the restriction on reporting, partly in relation to the Property and Affairs issues, does not serve Srichand Hinduja well. It is argued that it impedes scrutiny in circumstances where that is more likely to protect Srichand Hinduja's interests than compromise his privacy. However, the Official Solicitor has not, until recently, taken the view that the health and welfare issues fall into the same category. These, she has argued, should be withheld from the public domain. Superficially, this was an attractive position, realistically, however, it is unachievable. All the issues in these proceedings are interwoven. When put to the assay in exchanges, Mr Patel QC, acting on behalf of the Official Solicitor, recognised that crafting orders to implement 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. Latterly however, the Official Solicitor has reviewed her position. In their document, dated 12th July 2022, Messrs Millar QC, Patel QC and Drapkin state:

> *"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 [Srichand Hinduja]'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 a later hearing should it be required."*

10. Whilst I note that position, I am bound to say that the argument that public scrutiny is likely to protect Srichand Hinduja's interests in relation to the financial issues, applies, to my mind, with equal force to the health and welfare issues, for all the reasons that have been identified. At this hearing, the Official Solicitor invites me to rescind the Reporting Restrictions Order subject to some minor provisions.

11. Mr Rees QC, on behalf of Gopichand Hinduja, advances the opposite case. He contends that the reporting restrictions should remain in place. As a *"fallback position"* he suggests that it continues until Srichand Hinduja has died and should thereafter be reviewed. This, however, has not always been Gopichand Hinduja's position. As recently as 29th June 2022, Mr Rees was strenuously arguing for the discharge of the orders. It was expedient to do so at that time because Gopichand Hinduja considered that Vinoo Hinduja was taking active steps to ensure the counter-

allegations that she was making about Gopichand Hinduja and his brothers were brought to wide public attention through the Chancery Division proceedings. The tenor of those countervailing allegations is that it is she who is being marginalised within the family. Mr Rees argued that Vinoo Hinduja's strategies were serving to provide the Chancery court with *"a partial and incomplete account of events"*. He particularly identified evidence seeking to portray Srichand Hinduja and what Mr Rees describes as *"his branch of the family"*, as victims of a financial *"squeeze"* by the rest of the family. Mr Rees summarised the case advanced against his client in these terms:

> *" 60.1. [Srichand Hinduja] and his branch of the family have been denied access to [Srichand Hinduja]'s funds by other members of [V] family;*
>
> *60.2. That this was achieved by [Gopichand Hinduja] and the other brothers using the J14 Agreement; and*
>
> *60.3. That as a result [Srichand Hinduja] has been very short of funds to meet his basic expenses."*

12. Further, and consonant with my analysis above, Gopichand Hinduja recognised that any attempt to maintain reporting restrictions on health and care arrangements, *"may prove unsustainable"*. In his June argument, Mr Rees stated:

> *"There is a further important point that the Court needs to be aware of. [Gopichand Hinduja]'s application to vary the RRO broadly mirrors the variation previously sought by the Official Solicitor and does not seek to permit the reporting of [Srichand Hinduja]'s current health or care arrangements.*
>
> *However, within the Chancery Proceedings [Vinoo Hinduja] has filed a witness statement in which she set out in some detail her involvement over the past 15 months with [Srichand Hinduja]'s care regime. The statement provides some detail of [Srichand Hinduja]'s life in the Hospital and his current care arrangements (although it may not be wholly consistent with the version of events that now appears to be emerging from the Hospital). [Gopichand Hinduja]'s concern is that if this statement is relied upon by [Vinoo Hinduja] in the Chancery Proceedings, information about [Srichand Hinduja]'s current care arrangements will be placed in the public domain and such restrictions on the reporting of these parts of [Srichand Hinduja]'s life that are retained in the RRO will be rendered nugatory."*

13. Addressing his case to vary the RRO more broadly, Mr Rees contended the following:

> *"As the Court is aware from the presence of reporters and the public at previous hearings before this court, the dispute between members of the Hinduja family has attracted a significant amount of public interest. Sadly, within the*

> *Chancery Proceedings [Vinoo Hinduja] has been taking active steps to ensure that the allegations that she has made about [Gopichand Hinduja] and his brothers are brought to wide public attention. Due to an administrative oversight the most recent hearing in the Chancery Proceedings (a case management conference in May 2021) was listed on an anonymised basis. [Vinoo Hinduja]'s solicitors recently took the unusual step of writing to the Chancery Court to ensure that the forthcoming hearing on 5 July 2022 is listed by reference to the parties' names. It is difficult to envisage what purpose this letter could possibly have had other than to ensure that [Vinoo Hinduja]'s allegations against [Gopichand Hinduja] and his brothers are widely disseminated."*

14. Thus, the application made by Gopichand Hinduja, dated 27th May 2022 to lift the RRO, was also identical to that made by the Official Solicitor, now as long ago as 2020. As Mr Rees noted, wryly, in his June submissions, *"[Vinoo Hinduja] raised no objection on that occasion and to raise such an objection now smacks of opportunism"*. 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. Insofar as it might be contended that these are connected with their evolving perceptions of Srichand Hinduja's best interests, I am bound to say, I find that connection to be tenuous.

15. On the 30th June 2022, I was informed that the family have now agreed *"heads of terms"* intending to end not only the Chancery Division proceedings but all disputes existing between them in all jurisdictions. I am unclear whether those heads of terms have yet been reduced to an agreement or whether that drafting process continues. I note that any compromise to the Chancery Division proceedings will require approval from that Court pursuant to Part 21 of the Civil Procedure Rules 1998. The anticipated hearing on the 5th July 2022 has been vacated, as has the lengthy trial listed in early 2023. The Chancery proceedings have been relisted for directions in November 2022. I have been told it is anticipated that there will be formal approval of the compromise agreement by then, or even before it.

16. Now that the litigation decks appear to have been cleared, other than in the Court of Protection, Mr Rees contends that this leads Gopichand Hinduja to reassess his position on the RRO. He submits that the *"factual landscape"* is now very different from that obtaining at the time Gopichand Hinduja issued his own application to lift the RRO, on the 27th May 2022. Now that the Chancery Court and other court proceedings have fallen away, it is argued that the need for disclosure of collateral documentation and information to the Chancery Division no longer arises. I remind myself that the basis for that application for disclosure was said to have been to correct a partisan and partial account filed in those proceedings by Vinoo Hinduja. I assume that the pragmatic view has been taken that those partial accounts may now be permitted to wither away unadjudicated and no longer require correction.

17. It is necessary to identify the applications before the Court. Gopichand Hinduja now invites the court to retain the existing RRO; the Official Solicitor now invites the court to rescind the RRO almost entirely; Vinoo Hinduja now invites the court to

discharge those features of the RRO which relate to Property and Affairs issues whilst retaining restrictions on reporting what I will for convenience call the health and welfare matters. In addition, I have written representations by Mr Brian Farmer, Press Association and Professor Celia Kitzinger, Open Justice Court of Protection Project. I also have the benefit of written and oral argument by Ms Clara Hamer, on behalf of Bloomberg News. Bloomberg is a New York based global news organisation, particularly noted for its financial journalism. Mr Jonathan Browning, a senior reporter for Bloomberg, has been at nearly every public hearing and has filed a supporting witness statement arguing for the lifting of the reporting restrictions. Mr Farmer and Professor Kitzinger also contend that the restrictions should be lifted.

## The legal framework

18. It is important to recognise from the outset that the submissions advanced by Mr Millar QC, on behalf of Srichand Hinduja, focus, as they must do, on Srichand Hinduja's rights and interests as a party to this litigation.

19. In common law, the Open Justice Principle (OJP), applies to all Courts and Tribunals exercising judicial power conferred by the state, see: ***R (oao Guardian News and Media Ltd) v City of Westminster Magistrates Court [2012] EWCA Civ 420 [70] (Toulson LJ).*** The principle embraces two central premises, namely that proceedings should be in open court, with press and public admitted, and that nothing should be done actively to discourage fair or accurate reporting of what has taken place in open court. It is presented, on behalf of the Official Solicitor, in this way:

> *"The application of the OJP is always ultimately a matter for the court, exercising its inherent jurisdiction to control the proceedings before it and/or exercising powers given to it under a particular statutory regime applicable to it (as to which see below). The court will consider the positions of the parties in relation to open justice considerations. But it has wider responsibilities to the public and the public interest in the maintenance of/ derogation from the OJP (as appropriate)."*

20. In ***Global Torch Ltd v Apex Global Management Ltd & Ors [2013] EWCA Civ 819***, Kay LJ observed:

> *"Public airing of the allegations may embarrass one side or the other. It often does, but that is not in itself a good reason to close the doors of the court."*

21. Toulson LJ articulated the established principle in ***R (oao Guardian News and Media Ltd) v City of Westminster Magistrates Court [2012] EWCA Civ 420 at [1]:***

> *"…In a democracy, where power depends on the consent of the people governed, the answer must lie in the transparency of the legal process. Open justice lets in the light and allows the public to scrutinise the workings of the law, for better or for worse…"*

22. This case has, in its course, been heard both remotely on a video conferencing platform, in consequence of the restrictions required by the pandemic, and latterly in a courtroom in the Royal Courts of Justice. Press and members of the public have attended at every hearing both physically in the courtroom and remotely. There can be no question that the principle of open justice applies here, and nobody has sought to argue to the contrary.

23. Whether the OJP is properly described as a presumptive right is perhaps debatable. Mr Millar suggests that it is, relying on ***Kent CC v P [2022] EWCOP 3***. There, Lieven J was considering whether, in challenging circumstances, against a backdrop of terrible abuse and neglect, it was *"fair"* for the case to be conducted in private. She concluded that it would not be. The decision was manifestly predicated on Article 6, which was in primary focus. Here, however, 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.

24. The Human Rights Act 1998 (HRA) is well-established as protecting rights to respect for private and family life, pursuant to Article 8, which may justify reporting restrictions as a necessary and proportionate intervention, curbing or outweighing the countervailing rights to freedom of expression protected by Article 10. Mr Millar contends that reference, by the advocates, to the court's inherent jurisdiction as the source of its power to control the conduct of proceedings before it, should not be conflated with the exercise of the substantive common law jurisdiction in the Family Division of the High Court (eg the *parens patriae*). This, he submits, *"is a different thing"*, albeit that the language is, somewhat confusingly, identical. The jurisdictional route that exists in every court and tribunal, is a power, not always a common law one, to control the conduct of the proceedings before it. This, Mr Millar submits, is the jurisdiction which falls to be exercised when the Court considers derogating from the OJP. In his supplemental submissions, he refers me to the judgment of Toulson LJ, ***R (Guardian News & Media Ltd) v Westminster Mags' Court [2013] QB 618:***

> *"69. The open justice principle is a constitutional principle to be found not in a written text but in the common law. It is for the courts to determine its requirements, subject to any statutory provision. It follows that the courts have an inherent jurisdiction to determine how the principle should be applied.*
>
> *70. Broadly speaking, the requirements of open justice apply to all tribunals exercising the judicial power of the state. The fact that magistrates' courts were created by an Act of Parliament is neither here nor there. So for that matter was the Supreme Court, but the Supreme Court does not require statutory authority to determine how the principle of open justice should apply to its procedures."*

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.

## The competing submissions

26. Mr Rees now advances his client's case in uncompromising terms:

> *"In all the circumstances, a proper balancing of [Srichand Hinduja]'s Art.8 rights and the media's Art.10 rights comes down in favour of continuing the existing RRO: any other conclusion would be contrary to [Srichand Hinduja]'s best interests and put him in a worse position than any other subject of Court of Protection proceedings simply on the basis of his wealth.*
>
> *Even if the RRO is not continued in totality and indefinitely, it ought at least to be continued in respect of [Srichand Hinduja]'s health and care and in respect of all other matters until after [Srichand Hinduja]'s death or the recent agreement reached by the family has been successfully implemented."*

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.

28. Central to the Official Solicitor's analysis is her view that the proceedings in the Court of Protection have become hijacked by the other parties' own dynamic agenda. The evolution of the parties' respective positions in relation to this application might be said conveniently to illustrate that point. Additionally, the extent to which investigation of Srichand Hinduja's health and welfare has been marginalised, during the course of the proceedings, troubles the Official Solicitor greatly, as it does me, as I have expressed on a number of occasions.

29. Mr Millar submits that full reporting of these proceedings will *"self-evidently deter continuation of those disagreements, whether inside or outside of any court room."* The litigation history seems to indicate the force of this submission, at least *"inside the court room"*. The proper scrutiny of the case by the press, it is argued, *"will also deter the other parties from continued tactical behaviour that has little to do with [Srichand Hinduja]'s interests"*. The nature of the allegations and counter-allegations

made by this family in these proceedings require to be identified. Mr Millar constructs them as follows:

*i. Whether Srichand Hinduja lacked capacity to make the property and affairs lasting power of attorney ("PF-LPA") and/or whether he was induced by undue pressure to make it;*

*ii. the behaviour of Srichand Hinduja's daughters and previous attorneys under the PF-LPA;*

*iii. Srichand Hinduja's daughters' restrictions on his contact with his brothers;*

*iv. the behaviour of Srichand Hinduja's brothers towards him and his immediate family;*

*v. the financial disputes between the parties in which both sides are said to have prejudiced him;*

*vi. the provision and funding of appropriate care for Srichand Hinduja.*

30. The above list characterises the conflict, but it is certainly not exhaustive. Something of the above is, in any event, apparent from the judgment in the Chancery Division, which is in the public domain. Mr Millar submits that reporting of these proceedings is required to be *"fair and accurate",* under the general principles of media law i.e., if it is to be privileged in defamation. Moreover, it is argued, the fact that Srichand Hinduja's interests are protected and guarded by the Official Solicitor, who provides an independent voice for Srichand Hinduja in the court room, creates a bulwark against Srichand Hinduja's best interests or wishes being deliberately misrepresented by the parties, in pursuit of their own objectives. There is, to my mind, very significant force in this point.

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.

32. I have already alluded to the concern that has been expressed by the Official Solicitor as to why Srichand Hinduja is still in hospital when that is plainly no longer suitable

for him. Additionally, the feedback to the Official Solicitor as to Srichand Hinduja's health and clinical situation has not been effective. Further, and notwithstanding that this is a case where money should not have been a problem, I have been told that there are financial issues and disputes surrounding the financing of Srichand Hinduja's care. To put that in context, one of the parties in this case has spent £13.5 million in one year on legal expenses.

33. The Official Solicitor has identified a paradox. She has been 'struck by' the extent to which Srichand Hinduja's wealth effectively takes him to 'another world' outside the structures of the State's health and care systems. This may in many cases lead to a protected party receiving a very high level of care and attention. Here, it has made Srichand Hinduja's situation unclear, inaccessible, and at times impenetrable. That, in turn, has served to increase, rather than reduce, his vulnerability. I have shared that concern and have been equally *"struck by"* it.

34. Responding to Mr Rees's argument that identifying Srichand Hinduja would be effectively to discriminate against him as a billionaire, Messrs Millar, Patel and Drapkin set out the following in their supplemental written submissions:

> *"There is not, and has never been, any question of [Srichand Hinduja] being treated differently from another P because he is a billionaire. The reporting restrictions order has been in place for two years. Nor would the outcome sought by the Official Solicitor at this hearing mean that he is being treated differently from another P for this reason. If there was a case in which P was of more modest means, but with comparable issues, for example about family disputes and litigation in relation to P's health/welfare and financial interests, the Official Solicitor's thinking would have been the same. Whilst any case is fact specific the same concerns about the interests of P, open justice and transparency would have arisen."*

35. This is a rather complicated submission which requires to be teased out a little further. For all the reasons analysed above, the extensive means available to this family and the core issues in the case, cannot be severed. Thus, the proposition that the Official Solicitor's thinking *"would have been the same"* were there to be *"comparable issues"* in a family with *"modest means"* is not a valid one.

36. Moreover, I strongly doubt that if the issues identified, in summary, at para. 29 above, were to have emerged in a family who did not have this kind of public profile, the Official Solicitor would be seeking to lift the anonymity of P. There would be no need to. The issues could go into the public domain whilst preserving P's anonymity. The point made by Ms Hamer, on behalf of Bloomberg, which I find to be persuasive, is that it is precisely because of the profile of this family that it has been impossible to report the proceedings in the case without risking breach of the reporting restriction orders. Any substantive or investigative reporting of the facts threatens jigsaw identification of the parties. All this is further exacerbated by the fact that some of the key issues in this case have already been ventilated in a public judgment in the Chancery Division. It is entirely illogical for proceedings to be stultified by the withholding of information which is already in the public domain. It conjures an

image of endeavouring to force a reluctant genie back into a bottle! From this perspective, it is the principle of freedom of expression which is compromised.

37. Finally, I should emphasise that whilst the Official Solicitor has very carefully considered whether any of the health and welfare aspects of this case can be separated from the Property and Affairs issues, in terms of reporting restrictions, she has ultimately come to the view that the two are so inextricably connected that such a division could not generate a workable or coherent reporting restriction regime. Mr Rees, as I read his argument, arrives at a similar conclusion.

38. As I have said at paragraph 17 above, the arguments on behalf of Bloomberg are advanced by Ms Hamer and supported by a statement from Mr Jonathan Browning, a senior reporter at Bloomberg News in London. At an earlier hearing, Mr Browning made short submissions in relation to the lifting of the reporting restrictions. I found those submissions to be clear, well thought through and, if I may say so, reflective of what I assessed to be a sincere and professional commitment to the principles of transparency and public interest.

39. In his statement dated 13th July 2022, Mr Browning emphasised *"the exceptional nature of these proceedings"*. He put it this way:

> *"The Proceedings have at their heart a dispute between [Srichand Hinduja]'s daughters [Vinoo Hinduja] and [Shanu Hinduja] on the one hand and [Srichand Hinduja]'s brothers, including [Gopichand Hinduja], on the other. [Srichand Hinduja]'s relations are some of the wealthiest people in Britain (as reported by The Sunday Times Rich List) and have for at least two years been fighting in the courts over control of [Srichand Hinduja]'s wealth as a result of his incapacity. The Proceedings are closely connected with a dispute about the validity of a letter dated 2 July 2014 signed by [Srichand Hinduja] and his brothers (the 'J14 letter') and ultimately the future of [Srichand Hinduja]'s holdings in the family business empire, which is the main focus of the Chancery Division proceedings. The Proceedings and the Chancery Division proceedings are so closely linked, that it is difficult to separate them."*

40. Mr Browning also emphasised the public interest in reporting on matters impacting on jobs and livelihoods where the assets in focus identify a combined wealth of $13 billion, and where the family group employs more than 150,000 people in 38 countries. In an empire of this size, there is, Mr Browning contends, a particular public interest in reporting a dispute for control, when it concerns governance and ownership of a business of this magnitude. Mr Browning also identifies himself with the Official Solicitor's assessment that the oxygen of publicity could offer a *"protective layer"* for Srichand Hinduja, for the reasons I have discussed above. In his wide ranging and reflective statement, Mr Browning goes on to consider the public interest in reporting judicial criticism of Srichand Hinduja's family and their representatives, emphasising the degree to which the case in the Court of Protection *"appears at times to have been used as a leverage in the commercial litigation"*. The following passage in Mr Browning's statement requires to be set out in full:

*"Particularly notable has been how the threat of publicity, and how [Vinoo Hinduja], [Shanu Hinduja] and [Gopichand Hinduja]'s respective positions on reporting restrictions in these proceedings (and the Chancery Division proceedings) shift where it suits their position in one case or the other. Reading [Gopichand Hinduja]'s position statement dated 27 June 2022 alongside [Gopichand Hinduja]'s position statement dated 12 July 2022 is extraordinary. In the former, little store is put on [Srichand Hinduja]'s Article 8 rights, and it is stated that any [Vinoo Hinduja]'s objection to lifting the current reporting restrictions 'smacks of opportunism' (paragraph 67.1). At paragraph 67.3, [Gopichand Hinduja] stated that where (as in this case) attorneys or deputies are removed for having acted contrary to P's best interests 'there is public interest in these matters being known,' and at paragraph 64 he said that '[Srichand Hinduja]'s best interests and the interests of justice weigh in favour of relaxing the current reporting restrictions so as to permit publication of the matters that have arisen in the Court of Protection proceedings'. I understand that [Gopichand Hinduja] filed three witness statements in support of his application to lift the reporting restrictions, which presumably set out the evidence as to why he said they should be lifted, but [Gopichand Hinduja]'s lawyers have refused to provide these to me or my lawyers, so I am not currently able to point to anything in those statements which might support Bloomberg's position on this issue.*

*Two weeks later and [Gopichand Hinduja] is insisting the reporting restrictions could not be varied in part because [Srichand Hinduja] is likely to pick up on the 'subtle signals' of stress caused to his family if the restrictions are lifted (paragraph 38). It appears similar games have been played by [Vinoo Hinduja] and [Shanu Hinduja], saying in their 27 June 2022 position statement that they 'agree the reporting restriction order can be relaxed to name the parties' (paragraph 2(d)) and that they 'do not oppose the relaxation of reporting restrictions, and in particular do not oppose the identification of the parties' (paragraph 24), but now saying that the public interest in reporting these proceedings can be satisfied 'without need to identify [Srichand Hinduja]' (paragraph 33 of their position statement dated 12 July 2022). It seems to me from their 27 June position statement that they are particularly concerned to avoid reporting of the embarrassing allegations about them that have come to light in these proceedings, and they are concerned about these allegations infecting the Chancery Proceedings. In my view, the oxygen of publicity is desperately needed to put a stop to this behaviour."*

41. Charting the ebb and flow of the parties' shifting positions in this succinct way is a valuable and constructive exercise, though I do not consider that it fully, for understandable reasons, captures the subtlety of Vinoo Hinduja and Shanu Hinduja's present position. I recognise that it must be the fruit of very careful preparation and have involved a good deal of time. It serves to craft a powerful and persuasive argument.

42. By way of completeness, Mr Browning adds that there is a separate public interest in reporting the circumstances in which Srichand Parmanand Hinduja's LPA for property and affairs was disclaimed. I have already averted to this (above) and need not repeat it. There are, however, two further important points that Mr Browning identifies. They are interconnected. First is the fact that proceedings have been before this Court, in a way that simply could not have been contemplated in March 2021, for over 2 years. The Official Solicitor first applied to lift the reporting restrictions, or more accurately to vary them, in September 2020. In the intervening period, virtually nothing has been reported. This is Mr Browning's second point, namely, the impact of the reporting restrictions. He expresses this as follows:

> *"The reporting restrictions currently in place have had a real chilling effect on the media's ability to report these proceedings. For example, information about the LPAs and appointment of the deputy is in the public domain on the register of the Office of the Public Guardian, which I exhibit at pages 23 to 26 of JB1. However, we felt that even citing such a public document may infringe the reporting restrictions as they currently are. It is very important to me as a journalist that it is made clear exactly what legally can, and cannot, be published about these Proceedings."*

43. Later in his statement, Mr Browning develops this point, thus:

> *"The Court of Protection's time and resources are limited, and the Court should resist any request to delay reporting so as to accommodate [Vinoo Hinduja], [Shanu Hinduja] and [Gopichand Hinduja]'s commercial interests in relation to the 'Heads of Terms'. This request in effect would be again using the threat of public reporting as a 'carrot' to settle. A derogation from the Open Justice Principle must be strictly necessary, not a commercial convenience."*

44. Mr Browning overstates the position in that last paragraph, but it is certainly true that yielding to a request to delay reporting might be perceived as *'a carrot'* to encourage settlement of the Chancery proceedings. Indeed, it does not take a great deal of imagination to see that it might well be argued by one of the parties, at some date in the future, that it led to their feeling an undue sense of pressure to agree terms.

45. In her written submission, Ms Hamer describes the very limited reporting which has taken place of these proceedings as *"disembodied"*. She highlights the dangers that an anonymity order generates in precipitating *"uninformed and inaccurate comments"*. This was articulated by Lord Woolf in ***R v Legal Aid Board ex p Kaim Todner (A firm) [1999] QB 966 (at 977):***

> *"The need to be vigilant arises from the natural tendency for the general principle to be eroded and for exceptions to grow by accretion as the exceptions are applied by analogy to existing cases. This is the reason it is so important not to forget why proceedings are required to be subjected to the full glare of a public hearing. It is necessary because the public nature of the proceedings deters inappropriate behaviour on the part of the court. It also maintains the public's confidence in the administration of justice. It enables the public to know that justice is being administered impartially. It can result in evidence becoming available which would not become available if the proceedings were conducted behind closed doors or with one or more of the parties' or witnesses' identity concealed. It makes uninformed and inaccurate comment about the proceedings less likely … Any interference with the public nature of court proceedings is therefore to be avoided unless justice requires it."*

46. Mr McKendrick QC, Ms Sarah Haren QC, and Ms Georgia Bedworth appear on behalf of Vinoo Hinduja and Shanu Hinduja. They advance a somewhat intricate proposal. Their position finds its clearest iteration in their position statement, dated 12th July 2022:

> *"[Vinoo Hinduja] and [Shanu Hinduja] do not take the position that there can be no reporting of matters relating to [Srichand Hinduja]'s condition or of the Health and Welfare Hearing. A blanket ban on reporting matters relating to [Srichand Hinduja]'s care would mean that any judgment given at the Health and Welfare hearing could have no content and would not adequately recognise the public interest in understanding the work of the Court of Protection. Their position is simply that any reporting of those matters should not identify [Srichand Hinduja]. That approach satisfies the extremely important public interest in there being a proper understanding the operation of the Court of Protection and public scrutiny of its practices, whilst protecting [Srichand Hinduja]'s dignity towards the end of his life, now he is no longer able to protect his own privacy, and at a time when it is vitally important that his dignity be preserved."*

47. The substance of their case, as I understand it, is that the Court ought to take an approach which prevents any identification of the parties in relation to health and welfare issues and in any report which makes any reference to Srichand Hinduja's general health and the care provided to him. It is reasoned that such an approach would permit the parties to be identified in relation to the Property and Affairs issues before the Court, excising any description of Srichand Hinduja's health and care. To this is added a further layer, namely, that in order to prevent any risk of identification prior to the determination of the health and welfare issues, the present reporting restrictions should remain until judgment has been handed down following that hearing.

48. Notwithstanding the risk that Mr McKendrick would appear to identify above, he submits that the Official Solicitor is mistaken in her ultimate conclusion that it is impossible to draft an enforceable order which severs any reference to health and welfare matters. He submits that Vinoo Hinduja and Shanu Hinduja's approach is different from that previously adopted by the Official Solicitor i.e., the reporting of specific details of matters of Srichand Hinduja's health and care. It is said that Vinoo Hinduja and Shanu Hinduja recognise that the public has *"an interest in understanding how the Court deals with matters concerning medical treatment"*. However, he argues these aspects of medical treatment can be satisfied by an anonymised report. I am not entirely clear what is being envisaged but I assume a separate report containing anything which might reveal the identities of the parties is excluded. Mr McKendrick extrapolates that if Vinoo Hinduja, Shanu Hinduja, Gopichand Hinduja and Srichand Hinduja were to be named, this *"would accord little or no weight to [Srichand Hinduja]'s important Article 8 rights in relation to these intensely private matters"*.

49. Mr Rees tells me that a new dawn has broken. It is said that the Chancery proceedings were being fought in public as hostile litigation, and that the Heads of Terms, identified on the 30th June 2022, unfold *"a very different landscape"*:

> *"[Gopichand Hinduja] is very concerned that any publication of contentious (and highly personal) matters ventilated in the Court of Protection could prejudice the accord that has been reached and the steps that need to be taken to implement it, i.e., could prejudice the resolution of all disputes within the family that has been achieved. Accordingly, and very much as a fallback position, [Gopichand Hinduja] contends that – at the very least – if the Reporting Restrictions Orders are to be varied at all, then:*
>
> > *14.1. That variation should not take effect until the earlier of 1 month after the (i) implementation of the Heads of Terms (currently intended to have taken place by 1 November 2022) and (ii) [Srichand Hinduja]'s death; and in any event*
> >
> > *14.2. It should continue to be prohibited to publish information about: 14.2.1. The name or address of any place at which [Srichand Hinduja] or his wife reside or are being treated;*
> >
> > *14.2.2. The care and treatment [Srichand Hinduja] or his wife have received or are receiving;*
> >
> > *14.2.3. The identity of any person providing care or treatment to [Srichand Hinduja] or his wife who is not also a member of [Srichand Hinduja]'s family;*
> >
> > *14.2.4. The address or contact details of [Srichand Hinduja], any family member, or any party."*

50. Mr Rees emphasises the *"deeply personal and private details"* revealed by the evidence in the case. He lists these, thus:

> *"36.1. The dispute within [Srichand Hinduja]'s family as to access to [Srichand Hinduja], including the details of how that dispute arose and was pursued;*
>
> *36.2. The dispute within [Srichand Hinduja]'s family as to the making of the LPA-PFA, including as to whether undue pressure was exerted on [Srichand Hinduja] by family members;*
>
> *36.3. The dispute as to whether [Srichand Hinduja]'s family have acted in his best interests in connection with his care and medical treatment;*
>
> *36.4. The wider dispute within the family as to control of and entitlement to various family assets;*
>
> *36.5. Details of family occasions, including what took place and who was present;*
>
> *36.6. Details of [Srichand Hinduja]'s conduct in his private and family life as well as in his business and legal affairs.*"

51. These identified issues are of varying cogency and weight. It is a fact that very little has been said about family occasions and certainly nothing at all that was negative. Similarly, nothing has been suggested about Srichand Hinduja's conduct, either in his family life or his business affairs, which is in any way negative either. On the contrary, it has been entirely pleasant and respectfully unobtrusive. Certainly it concerns the private sphere but, as I have commented already, Srichand Hinduja himself made utilitarian calculations with the press in the past. Mr Rees has identified that ventilation of the Court of Protection issues could prejudice the accord that it is said has been reached and risk derailing the steps needed to be taken to implement it. This is coupled to Srichand Hinduja's best interests by the assertion that this is what he would have wanted i.e., to draw the curtains from public gaze and to bring peace to a family who have been at loggerheads.

## Conclusions

52. As is clear from the above, I entirely accept the Official Solicitor's analysis that Srichand Hinduja's best interests have been consistently marginalised in consequence of the parties' shifting positions in the Chancery Division litigation. The chronology of their changing arguments in relation to this application to vary the reporting restrictions is powerful evidence of this.

53. I consider Mr Browning's view that the COP proceedings *"appear at times to have been used as leverage in the commercial litigation"* is both justified and accurate. Public confidence in the fair and effective administration of the justice system goes to

the heart of the right to freedom of expression protected by Article 10. Manifestly there is a powerful argument for this being placed in the public domain.

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.

59. I have considered carefully the suggestion, advanced by Mr Rees as 'a fall back', that the variation of the RRO contended for by the Official Solicitor should be adjourned or postponed until after Srichand Hinduja has died. In different circumstances, historically, I yielded to that suggestion for the reasons I have set out. Rather than protecting Srichand Hinduja, as it was intended to, the reporting restrictions served to render him more vulnerable. It is clear that such a risk continues. Moreover, the concept of freedom of speech incorporates not only the right to comment but the choice as to when comment is made. For effective journalism, topicality is crucial. This principle finds clear expression in: ***Re British Broadcasting Corporation [2018] EWCA Crim 1341, [2018] 1 WLR 6023,*** where Lord Burnett CJ explained at [26]:

> *"Sometimes, as in this case, judges are urged to grant an order postponing reporting because it is expected that the trial will last only for a short period. But the practical effect of even a relatively short postponement order is likely to reduce the chances of any reporting at all. In order to publish a postponed report of a trial, the media organisation would have to commit the resources of a journalist attending the trial in the certain knowledge that only a fraction of what would have been published in daily reports will be likely to be published when the order is lifted. In the modern era of communications, it is truer than ever that "stale news is no news": **Sherwood** at [16] per Longmore LJ; **Kelly v BBC** [2001] Fam 59, at 90A per Munby J. Postponement orders, even if only of short duration, are likely to have a damaging effect on the very important public interest in reporting proceedings in courts: **In re S** at [35] per Lord Steyn". (Emphasis added)*

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.