IMPORTANT NOTICE

This judgment may be published on condition that the anonymity of the incapacitated person and members of their family must be strictly preserved. Failure to comply with that condition may warrant punishment as a contempt of court.

Neutral Citation Number: [2019] EWCOP42

Case No: 12478443

COURT OF PROTECTION

MENTAL CAPACITY ACT 2005

IN THE MATTER OF P

First Avenue House
42-49 High Holborn,
London, WC1V 6NP

Date: 1st October 2019

Before :

Her Honour Judge Hilder

BETWEEN

(1) M
(2) H

Applicants

and

P
(through his Litigation Friend, the Official Solicitor)

Respondent

- -
Hearing: 13th September 2019
- -

Ms. Harrison (instructed by Knights plc) for the Applicants
Ms. Winston (instructed by The Official Solicitor) for the Respondent

The hearing was conducted **in private** pursuant to Rule 4.1 of the Court of Protection Rules 2017 and an order made on 27th June 2019. The judgment was handed down to the parties by e-mail on 1st October 2019. It consists of 15 pages, and has been signed and dated by the judge. The numbers in square brackets and bold typeface refer to pages of the hearing bundle.

I. The Issue

1. M and H have jointly made an application for authority to execute a statutory will on behalf of P. Within that application they seek orders to dispense with any requirement to serve X, who is P's son.

2. Evidence [**65**] has been filed that P lacks capacity to execute a will. The Official Solicitor acts as his litigation friend and supports the application to dispense with normal service requirements.

3. By order made on 27th June 2019 [**296**] I provided for the hearing to be conducted in private, being satisfied that there is good reason for not making an order pursuant to Rule 4.3 of the Court of Protection Rules 2017, commonly referred to as "a transparency order." Since the transparency provisions were introduced in the Court of Protection in January 2016, first as a pilot and now as a standard rule, hearings in public (subject to an injunctive order restricting publication of identifying details) have become the norm. This is the first occasion on which I have positively determined not to make the transparency order.

4. In order to make this judgment public, I have used initials for individuals which do not correspond to their names and I have summarised the facts so as to omit details which may be recognisable.

II. The Background

5. P was married to J, and they had two children, H and X. The marriage ended in divorce many years ago, and P formed a long-term partnership with M. H is now married and has two children of her own. X has never married. His adult years have been plagued by alcohol and drug addiction.

6. X's behaviour towards his family has been extreme. The Applicants describe an incident more than a decade ago when X physically attacked P, threatening to kill him and requiring intervention from an armed police team [**260**]; and numerous acts of violence towards other family members and strangers. They have provided transcripts of voicemail messages left by X for J [**217 -221**] and H [**266 -274**], and I have listened to the recordings of a sample of them. They are exceptionally ugly and oppressive. They focus on demands for money, accompanied by explicit threats to hurt or kill the Applicants, H's children or himself. Of course, the Court has not heard X's account of these described incidents but the Applicants have also filed evidence of his violent behaviour which is beyond dispute: a copy of a restraining order [**223**], and confirmation [**225**] from a 'Witness Care' police officer that X pleaded guilty to three counts of acting in breach of that order, for which he received a lengthy prison sentence from which he has been released quite recently.

7. Several years ago P suffered a stroke. He has lived in residential care ever since and the Applicants were appointed as property and affairs deputies for him shortly afterwards. They visit him regularly. Their account is that X has only visited occasionally and uses very pejorative terms to describe his father's current medical condition.

8. Before his stroke, P was an enterprising businessman and conscious of the need to make provision for his estate after death. He is known to have made at least 5 wills, the latest (and therefore current) one some 10 years ago ("the 2009 will"). This will included provision for X as a beneficiary of two trusts. In respect of the second trust, P wrote a letter of wishes making clear that the benefit of the trust was primarily intended for X, but a trust structure had been provided because of concerns that outright inheritance would be contrary to his interests.

9. It is the Applicants' account that, shortly before his stroke, P was considering a new will to reflect the changed position of his companies. A draft found on his computer and in his 'to do' folder suggests that P may have been considering making provision for an outright interest to X. Nothing of that nature was ever concluded however before P's stroke intervened. The Applicants' account is that P would have gone on to take professional advice about his draft will and it is 'inconceivable' [**214**] that P would not have imposed a trust structure when he finalised the draft.

III. The proceedings to date

10. The COP1 statutory will application [**25**] was made in December 2018. On 7th January 2019 a preliminary directions order was made in standard terms, including the appointment of the Official Solicitor as Litigation Friend for P. There were two extensions of the time limit for reporting to the Court before, by COP9 dated 20th June 2019 [**278**], the Applicants applied for orders to dispense with any requirement to serve or notify X. By order made on 27th June 2019 [**296**] this hearing was listed.

11. I have read a COP24 statement dated 4th December 2018 signed by both Applicants [**39**] and also a further COP statement by each of them individually, both dated 4th June 2019 [**210** and **258**]. Additionally Ms. Winston and Ms. Harrison have each filed position statements for the hearing and made oral submissions.

12. The substantive application originally proposed a statutory will which would have reduced X's benefit as compared to the 2009 will by reducing the size of the second trust by £50 000, widening the class of beneficiaries, and losing the benefit of the letter of wishes. However, over the course of the hearing, matters moved on. By the time of Ms. Harrison's final submissions a written memorandum was signed by both Counsel in the following terms:

> "The Applicants confirm that they intend to proceed with their statutory will application on the basis that

(1) The executrix appointed under the statutory will shall be [a named solicitor];
(2) The residue of P's estate shall be divided into 100 shares of which 20 shares shall be held on discretionary trust of which the class of beneficiaries shall be [X], his issue, the spouses and widow/ers of [X] and such issue as well as any beneficiaries added by the trustee or trustees;
(3) [X] shall be described as being the only Principal Beneficiary of the said trust;
(4) The said trust shall not include any provisions allowing for the reduction of the shares to be held within the said trust;

so that [X]'s interests shall not be materially or adversely affected."

IV. The Law

13. The normal requirements as to "HOW TO START AND RESPOND TO PROCEEDINGS, AND PARTIES TO PROCEEDINGS" are set out in Part 9 of the Court of Protection Rules 2017 ("the Rules"). Rules 9.6, 9.10 and 9.11 are relevant:

> **9.6 Applicant to serve the application form on named respondents**
>
> (1) As soon as practicable and in any event within 14 days of the date on which the application form was issued, the applicant must serve a copy of the application form on any person who is named as a respondent in the application form, together with copies of any documents filed in accordance with rule 9.4 and a form for acknowledging service.
>
> (2) The applicant must file a certificate of service within 7 days beginning with the date on which the documents were served.

> **9.10 Applicant to notify other persons of an application**
>
> (1) As soon as practicable and in any event within 14 days of the date on which the application form was issued, the applicant must notify the persons specified in the relevant practice direction –
> (a) that an application has been issued;
> (b) whether it relates to the exercise of the court's jurisdiction in relation to P's property and affairs, or P's personal welfare, or to both; and
> (c) of the order or orders sought.
>
> (2) Notification of the issue of the application form must be accompanied by a form for acknowledging notification.

(3) The applicant must file a certificate of notification within 7 days beginning with the date on which notification was given.

9.11 Requirements for certain applications

A practice direction may make additional or different provision in relation to specified applications.

14. Practice Direction 9E sets out the specific procedural requirements of statutory will applications. Paragraph 9 is relevant:

Respondents and persons who must be notified of an application

9. The applicant must name as a respondent –
(a) any beneficiary under an existing will or codicil who is likely to be materially or adversely affected by the application;
(b) any beneficiary under a proposed will or codicil who is likely to be materially or adversely affected by the application; and
(c) any prospective beneficiary under P's intestacy where P has no existing will.

(Practice Direction B accompanying Part 9 sets out the procedure for notifying others of an application.)

15. The effect of PD9E paragraph 9 is that there are specific requirements for who should be named as respondent to statutory will applications but the requirements as to who should be notified are the general ones of Practice Direction 9B:

Who is to be notified

2. The persons who should be notified will vary according to the nature of the application.

3. A person who has been named as respondent in the application form should not also be notified. Any reference in this practice direction to a person to be notified does not apply where the person has already been named as a respondent.

4….

5. Members of P's close family are, by virtue of their relationship to P, likely to have an interest in being notified that an application has

been made to the court concerning P. It should be presumed, for example that a spouse or civil partner, any other partner, parents and children are likely to have an interest in the application.

6. This presumption may be displaced where the applicant is aware of the circumstances which reasonably indicate that P's family should not be notified, but that others should be notified instead. For example, where the applicant knows that the relative in question has had little or no involvement in P's life and has shown no inclination to do so, the applicant may reasonably conclude that that relative need not be notified. In some cases, P may be closer to persons who are not relatives and if so, it will be appropriate to notify them instead of family members.
...

16. The Court has a general power to dispense with the requirements of any rule, pursuant to Rule 3.3:

3.3 Court's power to dispense with requirement of any rule
In addition to its general powers and the powers listed in rule 3.1, the court may dispense with the requirements of any rule.

17. Specifically, the Court has power to dispense with any requirement to serve a document, pursuant to Rule 6.10:

6.10 Power of court to dispense with service
(1) The court may dispense with any requirement to serve a document.

(2) An application for an order to dispense with service may be made without notice.

18. I have been referred to the decision of Senior Judge Lush in *I v. D* [2016] EWCOP 35, where the parties agreed and the judge endorsed (at paragraph 40) the following guidance for an application to dispense with service:

> "(1) A decision by the court to dispense with the service of an application on a person who would otherwise be entitled to it is not "an act done, or decision made, under the [Mental Capacity Act] 2005 for or on behalf of P" within the meaning of section 1(5). It is therefore not a decision which is to be determined only by reference to an assessment of P's best interests.

(2) The court's decisions on procedural matters should be considered with regard to the obligation to give effect to the overriding objective… [now set out at rule 1 of the Court of Protection Rules 2017].

(3) The court should recognise that a decision to dispense with service on an individual otherwise entitled to it may engage that individual's rights under the European Convention on Human Rights, especially articles 6 and 8. In any event, P's own Convention rights are certainly engaged. More broadly, even if Convention rights are not engaged, issues of procedural fairness arise.

(4) A decision to dispense with service on an affected party will mean that the court may have to decide the substantive application without all the relevant material before it.

(5) Any decision to dispense with service on an individual will be taken by the court on the basis of untested evidence. The apparent merits of the substantive application should not be used to justify dispensing with service.

(6) Fears about the consequences to P or the applicant of service on the individual in question can in many ways be ameliorated by the use of the court's powers under [rule 5.11] to redact relevant details, such as addresses.

(7) The consequences of the application succeeding to the individual who is not to be served should also be considered.

(8) Before a decision is taken to dispense with service because of practical difficulties, consideration should be given to the possibility of effecting service by means of an alternative route under [rule 6.3(4)].

(9) Matters of procedural fairness should be given a high regard, and it is submitted that cases where it is appropriate to dispense with service on an individual who is directly and adversely affected by an application are likely to be exceptional.

(10) Different factors may apply in cases where the application is to dispense with service on P or where there is genuine urgency and there is a need to balance the prejudice of proceeding in the absence of an affected party against the prejudice to P or another party of not proceeding at all.

19. Ms. Winston referred me to various provisions in respect of Convention rights:

a. Pursuant to section 3(1) of the Human Rights Act 1998, "so far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights."

b. Article 6 makes provision in respect of a right to a fair trial: "In the determination of his civil rights and obligations…everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

c. In *A Local Authority v. M & F* [2009] EWHC 3172 (Fam) Hedley J, considering an application to keep a father ignorant of care proceedings in respect of his children, observed that

> "24. All parties have Art 6 rights… The mother has the right to participate without the proceedings in themselves being the means of endangering life and limb. The children too have a right to have their future determined in proceedings to which both parents have contributed but through which they themselves (or a potential carer) are not thereby endangered.
>
> 25. The vital question is whether all these rights can be accommodated. If they cannot the court must determine which rights are to predominate and how that is to be accomplished. By the same token the court must consider how, if some rights are to be compromised or even superseded, that is to be affected by the least interference in any such rights."

d. Article 6 is not a qualified right, but neither is it absolute. In *Ashingdane v. United Kingdom* (1985) 7 EHRR 528 it was held that it may be subject to limitation provided that the limitation is not of such a degree as to impair the essence of the right, is in pursuit of a legitimate aim, and is reasonably proportionate to that aim.

e. Article 8 makes provision in respect of a right to respect for private and family life: "Everyone has the right to respect for his private and family life, his home and his correspondence."

f. Article 8 is a qualified right: "There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

g. In *A v. Croatia, Application no. 55164/08* [2011] 1 FLR 407 the European Court of Human Rights considered whether Croatia's failure to protect a woman from the violence of her husband had breached her Article 8 rights. There was said (at paragraphs 58 – 60) to be "no doubt" that "the physical and moral integrity of an individual is covered by the concept of private life. The concept of private life extends also to the sphere of the relations of individuals between themselves….. While the essential object of Art 8 is to protect the individual against arbitrary action by the public authorities, there may in addition be positive obligations inherent in effective 'respect' for private and family life and these obligations may involve the adoption of measures in the sphere of the relations of individuals between themselves….Under Art 8 States have a duty to protect the physical and moral integrity of an individual from other persons. To that end they are to maintain and apply in practice an adequate legal framework affording protection against acts of violence."

20. In respect of whether Court of Protection hearings are conducted in private or in public, the relevant provisions are set out in Part 4 of the Court of Protection Rules 2017 and Practice Directions 4A and 4C.

21. The general rule is that a Court of Protection hearing is to be held in private:

4.1 General rule – hearing to be held in private

(1) The general rule is that a hearing is to be held in private.

(2) A private hearing is a hearing which only the following persons are entitled to attend –

a. the parties;
b. P (whether or not a party)
c. Any person acting in the proceedings as a litigation friend or rule 1.2 representative;
d. Any legal representative of a person specified in any of the sub-paragraphs (a) or (b); and
e. Any court officer.

(3) In relation to a private hearing, the court may make an order –

a. authorising any person, or class of persons, to attend the hearing or a part of it;
b. excluding any person, or class of persons, from attending the hearing or a part of it.

(4) …

22. However the 'ordinary' position is effectively that hearings are held in public subject to an injunctive order which prohibits publication of specified information, by virtue of Rule 4.3 and Practice Direction 4C:

4.3 Court's power to order that a hearing be held in public

(1) The court may make an order –
   a. for a hearing to be held in public; or
   b. for a part of a hearing to be held in public; or
   c. excluding any person, or class of persons, from attending a public hearing or a part of it.

(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.

(3) A practice direction may provide for circumstances in which the court will ordinarily make an order under paragraph (1), and for the terms of the order under paragraph (2) which the court will ordinarily make in such circumstances.

Practice Direction 4C – Transparency

1.1 This practice direction is made under rule 4.3. It provides for the circumstances in which the court will ordinarily make an order under rule 4.3(1) and for the terms of the order under rule 4.3 (2) which the court will ordinarily make in such circumstances.

1.2 This practice direction applies to hearings in all proceedings except applications for a committal order (for which rule 21.27 makes specific provision).

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.

….

23. The court may however, pursuant to PD4C paragraph 2.4, decide not to adopt the 'ordinary' position if there is good reason:

> 2.4 The court may decide not to make an order pursuant to paragraph 2.1 if it appears to the court that there is good reason for not making the order, but will consider whether it would be appropriate instead to make an order (under rule 4.3(1)(b) or (c) –
>
> a. for a part only of the hearing to be held in public; or
>
> b. excluding any persons, or class of persons from the hearing, or from such part of the hearing as is held in public.
>
> 2.5 In deciding whether there is good reason not to make an order pursuant to paragraph 2.1 and whether to make an order pursuant to paragraph 2.4 instead, the court will have regard in particular to –
>
> a. the need to protect P or another person involved in the proceedings;
>
> b. the nature of the evidence in the proceedings;
>
> c. whether earlier hearings in the proceedings have taken place in private;
>
> d. whether the court location where the hearing will be held has facilities appropriate to allowing general public access to the hearing, and whether it would be practicable or proportionate to move to another location or hearing room;
>
> e. whether there is any risk of disruption to the hearing if there is general public access to it;
>
> whether, if there is good reason for not allowing general public access, there also exists good reason to deny access to duly accredited representatives of news gathering and reporting organisations.
>
> ….

24. Where a hearing is held in private, pursuant to rule 4.2 and PD4A paragraph 7, the court may nonetheless authorise publication of information about the proceedings:

> **4.2 Court's general power to authorise publication of information about proceedings**
>
> (1) For the purposes of the law relating to contempt of court, information relating to proceedings held in private (whether or not contained in a document filed with the court) may be communicated in accordance with paragraph (2) or (3).
>
> (2) The court may make an order authorising –
>
> a. The publication or communication of such information or material relating to the proceedings as it may specify; or
>
> b. The publication of the text or a summary of the whole or part of a judgment or order made by the court.
>
> ….
>
> (4) Where the court makes an order under paragraph (2) it may do so on such terms as it thinks fit, and in particular may –
>
> 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.
>
> …

V. The Parties' Positions

25. The Applicants contend that a statutory will application is necessary and in the best interests of P because of the significant change in his financial and personal circumstances since the 2009 will was executed. They point to the draft arrangements being considered by P shortly before his stroke as demonstrating his own wish to revisit the 2009 will.

26. The Applicants accepted at the outset of the hearing that X would be materially and adversely affected by the terms of the statutory will as proposed and so, in the normal application of the Rules, he should be a respondent to the proceedings.

27. However they inform the Court that X presently has no idea of the value of his father's estate; and if he were to learn of it because of these proceedings, his menacing behaviour – which has often been focused on obtaining money – would be aggravated, leading to very real risks to the safety of others and potentially jeopardising P's care home placement. Such is their fear of X's behaviour (to P, to themselves, and to members of the wider family) that, if X must be informed of the proceedings, they would withdraw the application.

28. By closing submissions, because of a change in the terms of the statutory will being proposed, the Applicants' position was that their application would not materially or adversely affect X.

29. The Applicants seek orders to ensure that documents relating to these proceedings are 'sealed' against disclosure to X and that any further hearings are conducted in private.

30. The Official Solicitor's position is that the Applicants' account of concerns is untested but credible, substantially backed up by documentary evidence. She regards their account as "stark and startling", raising the "realistic prospect that, if [X] is served or notified, he will behave in a violent and/or threatening manner."

31. Given the extreme nature of X's behaviour, even when the Applicants' proposal would have materially or adversely affected him, the Official Solicitor considers that limitation on his right to be involved in proceedings by dispensing with service requirements and conducting proceedings in private would be justified in order to give effect to the Article 6 and Article 8 rights of the Applicants. Without such dispensation, they would not

proceed with the application and P would be deprived of the opportunity of appropriate provision by the court. Partial participation (eg by redaction of addresses) would not assist because X already knows too many of the addresses and contact details of relevant people. On balance, the Official Solicitor concluded that any potential unfairness to P and the Applicants if X has to be served outweighs the unfairness to X of not being served.

32. When the Applicants' proposals were altered to preserve X's position under the 2009 will, Ms. Winston informed the court that this reflected the likely position of the Official Solicitor if the substantive application had come to be considered after dispensation of any requirement to serve X.

33. If X is served with or notified of the application, the Official Solicitor supports the Applicants' request that the papers in respect of this hearing are not disclosed to him, provided that neither the Applicants nor the OS seek to rely in the substantive application on any of the information contained in these papers unless fresh evidence is adduced (which can be disclosed to X) and the final hearing is before a different judge. If there is no requirement to serve or notify X, the OS contends that future hearings should be held in private: though the risk of X finding out about proceedings through a public (but anonymised) hearing may be small, it would undermine the whole purpose of the decision not to serve or notify. However the OS contends that there is no need in such circumstances to 'seal' any of the documents because, pursuant to rule 5.9, as a non-party, X would in any event have to apply to the court for permission to see such documents. It is not presently possible to predict all of the reasons why someone, including X, may make such an application and therefore better to leave the decision until the circumstances arise.

VI. Discussion

34. The regard which the court must and does give to matters of procedural fairness is indeed high. Even with 'credible' and partially corroborated accounts of quite extreme behaviour on the part of X, an application to exclude him completely from proceedings which are brought on a basis that will materially and adversely affect him challenges procedural instincts. If it comes down to balancing unfairness to X of being excluded from proceedings against unfairness to M, H and P of choosing not to pursue proceedings, in circumstances where a capacitous P has already made testamentary provision (albeit not recently), the element of choice is relevant. However, as a result of change to the terms of the application, the court is not required to determine that balancing exercise on this occasion.

35. The application is now brought expressly on the basis that X's position will not be materially or adversely affected[1]. X is therefore not within those categories of person

1. The Applicants' position does not of course bind the ultimate decision of the court but it is unlikely that the court would be satisfied that it is in P's best interests to reduce X's share by comparison to provision in P's existing will where neither the Applicants nor P's own representatives seek such reduction. If such circumstances did arise, the question of X's involvement in proceedings could be considered again.

identified at paragraph 9 of PD9E who must be joined as respondent (and therefore served with the application papers.) He is still however within those categories of persons identified at paragraph 5 of PD9B who should be presumed to have an interest in being notified of the application. If he is notified he could of course apply to be joined as party and in any event the Applicants' fears are engaged.

36. The presumption that X has an interest in being notified can be displaced but, in my view correctly, the Applicants have not sought to argue that X's position is as envisaged in paragraph 6 of PD9B. Even if X has not seen P recently, he is still P's child and the evidence is clearly that, even latterly and after the experience of incidents which form the basis of this application, P wished to make testamentary provision for him. The Applicants' contention that X should not be informed of the application is not because he is uninterested, but in order to prevent him from expressing his interest inappropriately.

37. The notification procedure does not itself involve service of application documents. If there is no requirement to serve X, then strictly speaking Rule 6.10 is not applicable and any dispensation of notification requirements is pursuant to Rule 3.3.

38. Where a person is <u>not</u> likely to be materially or adversely affected by an application, the balancing exercise of procedural fairness in excluding him from the proceedings is differently weighted:

    a. Against such exclusion there is still the disadvantage that the court may have to determine the substantive application without all relevant material – X's account will not be available. There is too the ultimate risk that, after P's death when the fact of the statutory will inevitably becomes known to X, his exclusion from proceedings will foster a sense of resentment which actually aggravates the risk of the Applicants' fears being realised.

    b. However in favour of such an approach, it is more likely that an application which those with responsibility for managing P's financial affairs consider to be appropriate will be heard at all; and P's own representatives in the substantive application support this approach. In so far as X may feel aggrieved at having been deprived of opportunity to contribute to proceedings, the opportunity will have been lost because of his own (unlawful) actions.

39. Taking all the circumstances of this matter into consideration, and firmly on the basis that X's interests will not be materially or adversely affected by the substantive application, I am satisfied that it is appropriate to dispense with any requirement to notify X of these proceedings (or serve him with the application papers.)

40. The implications of this decision for future conduct of the proceedings have to be considered. I am satisfied that there is good reason for not making the 'ordinary' order that future hearings be conducted in public. X's interests are not going to be affected by the application, so any evidence heard will relate only to potential provision for others. In those circumstances, even though the evidence of matters on which their fears are based is untested, I am satisfied that there is need for the court to take an approach which

protects P, the Applicants and members of the wider family from the kind of behaviour which has led to imprisonment for breach of a restraining order. The (very real) public interest in open justice can be met by an order permitting publication of this judgment, and future consideration of such an order in relation to any judgment on the substantive application.

41. On the basis that X will not be party to these proceedings and will therefore in any event have to make an application to the court for disclosure of documents to him, I agree with the OS that it is not appropriate at this point to make any decision about 'sealing' documents.

VII Conclusion

42. The application as now formulated does not materially or adversely affect X, so there is no requirement to serve him with the application. I am satisfied that it is appropriate to dispense with any requirement to notify him of the application. Any future hearings in this matter will be conducted in private (subject to further order).

43. In order to progress the substantive application, I will make a direction in standard terms that the Applicants and the Official Solicitor are required to notify the court within 28 days as to whether a hearing is required and any further directions they seek.

HHJ Hilder

1st October 2019