

IN THE COURT OF PROTECTION
IN THE MATTER OF THE MENTAL CAPACITY ACT 2005
IN THE MATTER OF ST

UNIVERSITY HOSPITALS BIRMINGHAM NHS FOUNDATION TRUST

Applicant

and

(1) SUDI KSHA THIRUMALESH (“ST”)

(a Protected Party by her litigation friend the Official Solicitor)

(2) THIRUMALESH CHELLAMAL HEMACHANDRAN

(3) REVATHI MALESH THIRUMALESH

Respondents

**ORDER MADE BY THE HONOURABLE MR JUSTICE PEEL ON 28 SEPTEMBER
2023 AT THE ROYAL COURTS OF JUSTICE, STRAND, WC2A 2LL**

IMPORTANT

If any person disobeys the order made by paragraphs (4) to (7) (the Injunction) 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 hearing counsel for the parties at a hearing on 22 September 2023

AND UPON the court having ordered on the 22 September 2023 that anonymity in respect of ST and her family could be removed, but having reserved judgment on the issue of continued anonymity for the Trust, the treating hospital, expert witnesses and hospital and medical staff

AND UPON the court having now determining that anonymity in respect of the Trust and

expert witnesses can be removed, but that anonymity for the treating hospital, and the hospital and medical staff should for the time being be retained

IT IS HEREBY ORDERED that:

- (1) All further hearings in this matter are to be held in public **PROVIDED ALWAYS THAT** the Court may exclude from an attended hearing 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)

- (2) 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.

The persons bound by the Injunction

- (3) The following persons (the Persons Bound by this Injunction) are bound by the order made in paragraphs (4) to (7) hereof (the Injunction)
 - (i) the parties and their representatives,
 - (ii) the witnesses,
 - (iii) all persons who attend all or any part of an attended hearing,
 - (iv) 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,
 - (v) all persons who are provided with or by any means obtain documents and information arising from this application, and
 - (vi) 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 Injunction

- (4) The material and information (the Information) covered by this Injunction is:
 - (i) any material or information that identifies or is likely to identify:
 - (a) that ST was treated at the Queen Elizabeth Hospital, Birmingham;

- (b) the names and private residential addresses of any of the clinical or nursing staff at the Queen Elizabeth Hospital, Birmingham who and inasmuch as they treated ST from her admission to the hospital in August 2022 until her death on 12th September 2023.

What the Injunction prevents people from doing

- (5) Subject to further order of the Court and save as provided by paragraph (7) the Persons Bound by this Injunction shall not publish or broadcast in any newspaper, magazine, public computer network, internet site, social network or media including Twitter (now renamed X) or Facebook, sound or television broadcast or cable or satellite programme service the identities of any of the persons mentioned in paragraph 4(i) in connection with ST or these proceedings.

Duration of the Injunction

- (6) This Injunction shall have effect until 17th November 2023.

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

- (7) Subject to further order of the Court this Injunction:

- (i) does not prevent the Persons Bound by this Injunction:
- (a) reporting or commenting upon these proceedings, save in so far as such reports or comments are prohibited pursuant to paragraph (5) above,
 - (b) reporting or commenting upon proceedings in the Court of Protection generally or in relation to applications similar to this one,
 - (c) 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,
 - (d) complying with an order of any court with competent jurisdiction.
- (ii) does not prevent the Persons Bound by this Injunction from communicating information relating to these proceedings to the persons and in the circumstances

set out in paragraphs 33 to 37 of 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).

- (iii) does not apply to a public hearing of, or to the listing for hearing of, any application for committal.

Variation of this order

- (8) The parties and any person affected by this order may apply to the Court for an order (and the Court may of its own motion make an order) that:
 - (i) varies or discharges this order or any part or parts of it, or which
 - (ii) 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

- (9) Subject to further order of the Court any transcript of a hearing of and any judgment or order given in these proceedings shall be anonymised so that it shall contain no reference by name or address to the persons or bodies referred to in paragraph (4) and shall refer to them by their descriptions therein but when the person served or provided with any transcript, judgment or order needs to know the identity of any anonymised person that document is to be served on or provided to that person with a copy of this order and a confidential schedule that provides the necessary identification.
- (10) At any time the Court may give such directions as it thinks fit (including directions relating to anonymisation, payment, use, copying, return and the means by which a copy of a document or information may be provided) concerning the provision of information or copies of documents put before the Court and the terms on which they are to be provided to any person who attends an attended hearing (and is not a person to whom the document can be provided under Part 3 of Practice Direction 4A to the Court of Protection Rules 2017).
- (11) Application may be made to the Court by any person who has not been present at an attended hearing (and so become aware of or been able to request the Information) 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.

Rights of audience

(12) 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.

Costs

(13) No order as to costs save that the Applicant shall pay half the reasonable costs of the Official Solicitor incurred on behalf of ST in connection with this application, such costs to be subject to detailed assessment if not agreed.

Dated: 28 September 2023