



Neutral Citation Number: [2008] EWCA Civ 56

Case No: B4/2007/1702/FAFMF

**IN THE SUPREME COURT OF JUDICATURE**  
**COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE HIGH COURT OF JUSTICE FAMILY DIVISION**  
**THE PRESIDENT OF THE FAMILY DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 08/02/2008

Before :

**THE LORD CHIEF JUSTICE OF ENGLAND AND WALES**  
**THE RIGHT HONOURABLE LORD JUSTICE THORPE**  
and  
**THE RIGHT HONOURABLE LORD JUSTICE DYSON**

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Between :

<b>Robert Andrew Brown</b>	<b><u>Appellant</u></b>
<b>- and -</b>	
<b>(1) The Executors of the Estate of HM Queen Elizabeth The Queen Mother</b>	<b><u>Respondents</u></b>
<b>(2) The Executors of the Estate of HRH The Princess Margaret, Countess of Snowdon</b>	
<b>(3) HM Attorney General</b>	

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**Mr G. Robertson QC and Mr A. Hudson** (instructed by **Messrs David Price & Co Solicitors & Advocates**) for the **Appellant**  
**Mr F. Hinks QC and Mr J. Adkin** (instructed by **Messrs Farrer & Co**) for the **1<sup>st</sup> and 2<sup>nd</sup> Respondents**  
**Mr J. Swift and Mr J. Lofthouse** (instructed by **The Treasury Solicitor**) for the **3<sup>rd</sup> Respondent**

Hearing dates : Monday 21st January 2008  
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**Approved Judgment**

## Lord Phillips of Worth Matravers CJ :

This is the judgment of the court.

### Introduction

1. The appellant believes that he is the illegitimate son of the late HRH Princess Margaret, Countess of Snowdon ('Princess Margaret'). This belief is without any foundation and is irrational. It is, however, held in good faith. It has led the appellant to wish to inspect the wills of both Princess Margaret and the late HM Queen Elizabeth the Queen Mother ('the Queen Mother'). Section 124 of the Supreme Court Act 1981 provides that wills that have been proved "shall, subject to the control of the High Court and to probate rules, be open to inspection." The wills that the appellant wishes to inspect are not, however, open to inspection. In 2002 the President of the Family Division ('the former President'), on the application of the executors of the estates, made an order in respect of each will that it "should not be opened without the consent of the President of the Family Division for the time being". These orders have been described as orders for the 'sealing' or the 'sealing up' of the wills.
2. Under Rule 3 of the Non-Contentious Probate Rules 1987 ('NCPR') the old Rules of the Supreme Court continue to apply to this area of the law. Thus it was that on 28 September 2006 the appellant issued a summons seeking an order from the President of the Family Division (the President) that the wills be unsealed. On 31 January 2007 the executors sought an order striking out the appellant's claim. On 5 July 2007 the President acceded to that application and made an order striking out the appellant's claim. The appellant appeals against the President's order.

### Procedural history

3. Princess Margaret died on 9 February 2002 and the Queen Mother on 30 March 2002. The executors of each estate took steps to prove each will without making it available for public inspection.
4. Section 124 of the *Supreme Court Act* 1981 as amended provides as follows:

"All original wills and other documents which are under the control of the High Court in the Principal Registry or in any District Probate Registry shall be deposited and preserved in such places as may be provided for and directions given and accordance with Part 1 of Schedule 2 to the Constitutional Reform Act 2005; and any wills or other documents so deposited shall, subject to the control of the High Court and to probate rules, be open to inspection"

5. Section 125 provides as follows:

"An office copy, or a sealed and certified copy, of any will or part of a will open to inspection under s.124 or of any grant may, on payment of the fee prescribed by an order under section 92 of *The Courts Act* 2003 (fees), be obtained –

(a) from the registry in which in accordance with section 124 the will or documents relating to the grant are preserved; or

(b) where in accordance with that section the will or such documents are preserved in some place other than a registry, from the Principal Registry; or

(c) subject to the approval of the Senior Registrar [Senior District Judge] of the Family Division, from the Principal Registry in any case where the will was proved in or the grant was issued from a district probate registry.”

6. Rule 58 of the NCPD provides:

“An original will or other document referred to in section 124 of the Act shall not be open to inspection if, in the opinion of a District Judge or Registrar, such inspection would be undesirable or otherwise inappropriate.”

7. The executors of each estate applied pursuant to Section 124 and Rule 58 of the NCPD for an order that the respective wills should not be open to inspection on the ground that this would be ‘undesirable or otherwise inappropriate’. The Attorney General was joined as defendant to each application. The application in relation to the will of the Queen Mother was granted on 10 April 2002 and probate thereafter granted without annexing a copy of the will on 15 April 2002. The application in relation to the will of Princess Margaret was granted on 17 June 2002 and probate on 24 June 2002. Each order provided that the will should not be opened ‘without the consent of the President of the Family Division for the time being’.
8. No public hearing took place of the two applications. It is not clear whether any hearing took place at all. Nor is it clear whether or not the former President provided reasons for making the orders. If she did they have not been made public.
9. The summons issued on 28 September 2006 by the appellant, who at this stage was acting in person, was supported by a lengthy affidavit. This stated at the outset that the purpose of his application was to identify whether the wills made any provision for or concerning an illegitimate child, a matter of interest to him because of his claim to be the illegitimate child of Princess Margaret. The affidavit set out the basis for his belief that he was not the son of Cynthia and Douglas Brown who were named in the certificate recording his birth in Kenya, but of Princess Margaret. This stated that he had been brought up by Cynthia and Douglas Brown, but explained that he had formed the conclusion that he was the son of Princess Margaret on the basis of ‘personal recollections, events, circumstantial evidence, conversations, reactions and extensive research’. As the President was to hold, none of the matters set out remotely constituted evidence supportive of the appellant’s belief.
10. The matter was listed for directions before the Senior District Judge. On 24 October 2006 he directed the appellant to file any further evidence on which he wished to rely and the respondents to file any evidence on which they wished to rely and that further directions should be given by the President at a hearing to be held in private.

11. By 5 December 2006 Amber Melville Brown, of David Price Solicitors & Advocates, had been instructed on behalf of the appellant. On that date she wrote to Farrer & Co ('Farrers'), the Executors' solicitors, requesting copies of the orders made sealing the wills and of the applications pursuant to which such orders were made. Farrers replied two days later, setting out what was then and still is the executors' position:

“As regards to the sealing of the Royal Wills in question, the public interest was represented by the Attorney-General. In order for Mr Brown to apply to unseal those wills, he must therefore establish some form of private interest in having the wills unsealed.

Your client has been provided with an opportunity to establish such a private interest in the evidence he has been ordered to produce. Unless and until evidence of such an interest is produced (and none has so far been produced by your client) it is our view that Mr Brown does not have standing to pursue the application, and hence is not entitled to the disclosure of the documents and information that he seeks.

The appropriate course, therefore, is for your client to produce his evidence first, at which point our clients will consider his request for the information and documents sought.”

Subsequently the Treasury Solicitor wrote to the Principal Registry of the Family Division stating that the position of the Attorney General was that disclosure was not appropriate. No disclosure was made, other than the provision by Farrers of the orders for the sealing of the wills.

12. On 31 January 2007 the executors issued a summons seeking an order that the appellant's claim be struck out pursuant to RSC Order 18 Rule (19)(1)(a) and (b) and under the inherent jurisdiction of the court. This summons was supported by an affidavit sworn by the Honourable Mark Bridges of Farrers. He stated:

“3. On applications to seal royal wills the public interest is represented by the Attorney-General. I am advised and believe that for Mr Brown to succeed in his claim he must show a private interest in the estates of HM the Queen Mother and HRH Princess Margaret sufficient to found his claim, and that he cannot prove such a private interest unless he can establish by probative evidence that he has at least an arguable claim to be the son of HRH Princess Margaret.”

13. Mr Bridges then set out in detail particulars of Princess Margaret's activities, evidenced by photographs of her appearance, in the period before and around the appellant's date of birth, which were manifestly incompatible with the appellant's claim to be her son. He concluded:

“In the premises I believe that Mr Brown is not the son of HRH Princess Margaret and has no legal standing to pursue the unsealing that he seeks. In consequence I am advised and believe that his claim is without legal foundation. I make this affidavit in support of the executor's summons to have the claim struck out as frivolous, vexatious and an abuse of procedure.”

### **The President's decision**

14. At the outset of the hearing of the strike-out application the President expressed concern that he had not been provided with any note or record of the judgment or reasons of the former President when making the orders for the sealing of the wills. He recorded that neither the executors nor the Attorney General were prepared to disclose the evidence to the appellant in the absence of an order of the court, and neither were they prepared to accept the judge's suggestion that he himself should look at the affidavits presented to the former President, without showing them to the appellant's representatives. He recorded that Mr Robertson QC, who appeared for the appellant, took the same stance.
15. The executors submitted that the appellant could not invoke a public interest in support of his application to have the wills unsealed because only the Attorney-General could do this – see *Gouriet v Union of Post Office Workers* [1978] AC 475. His allegation that he had a private interest in seeing the wills as the son of Princess Margaret was utterly without foundation. It followed that his claim should be struck out as scandalous and vexatious and an abuse of the process of the court.
16. The President dealt at the outset with the appellant's claim to be the son of Princess Margaret and concluded that, while the claim was made in good faith and the appellant had a genuine belief that he was or might be the son of Princess Margaret, there was no rational basis for such belief.
17. The President then turned to consider the nature and effect of the former President's decision. He started by making the following general observations:

“41. The right provided for in s.124 of *The Supreme Court Act* is not, as Mr Robertson at one stage submitted, a general and unfettered right of inspection in respect of all wills deposited in the Registry. The wording of s.124 anticipates control by the High Court of the right to inspect, subject to and in accordance with probate rules, currently contained in the NCPR, which by Rule 58 plainly permit curtailment of what would otherwise be a right available to members of the public generally if, in the opinion of a District Judge or a Registrar (or in this case the President) public inspection of a particular will would be undesirable or otherwise inappropriate. It has been no part of Mr Robertson's argument that Rule 58 is *ultra vires* s.124. The NCPR provides no guidance upon the question of what facts or circumstances may be apt to justify a decision to close or seal a will from public inspection, but it is to be presumed that the power to do so is concerned with considerations of privacy and the perceived necessity in particular cases to protect from harm, harassment, intrusion or publicity those who are beneficiaries, potential beneficiaries, or otherwise interested under the will or who, for other reasons, may be adversely affected if the provisions of the will are open to public inspection. Equally, it is to be presumed that, in relation to such a decision, those considerations of privacy fall to be weighed against the manifest general statutory presumption in favour of openness in respect of all wills subject to probate.”

We observe that no material was placed before the President in relation to either the reasons why, subject to the control of the court, wills are accessible to members of the public, nor as to the grounds on which it is appropriate to deny the public such access.

18. A little later in his judgment, the President observed:

“42...In applying for a will to be closed to public inspection, the executors of the will concerned engage the public interest in respect of openness and, if a decision to seal the will is taken, that decision stands as a ruling binding upon the public at large. For that reason, in any case where there is reason to suppose wider interest on the part of the public, (of which the will of a member of the Royal Family is plainly a good example), it is appropriate for the Attorney General to be served with notice of the application in order to ensure that the public interest is represented and protected, at what would otherwise be an *ex parte* hearing with no such representation.”

19. Mr Robertson suggested that the sealing of the wills had been effected without any individual consideration pursuant to a practice whereby the Royal Family were excepted from the openness that prevailed in the case of everyone else. He submitted that there was no justification for such an exception. On the contrary, the content of royal wills was of particular public interest.

20. The President did not accept this submission. He observed:

“43...In this case, by reason of the approach taken by the parties, I lack knowledge of the matters placed before the former President upon the basis of which the sealing applications were made and decided; but, given the presence of the executors on one side putting the case for privacy and the Attorney-General on the other as representative of the public interest, I have no reason to doubt that, in coming to her decision, the former President would have had placed before her and would have taken into account the considerations which I have mentioned in paragraph 41 above. However Mr Robertson submits otherwise.”

21. Subsequently, the President reverted to his assumption as to the matters that would have been considered by the former President, and by the Attorney General:

“Reverting to Mr Robertson’s earlier points, he is of course correct that neither s.124 nor Rule 58 make an exception for royalty. But there is no good reason to suppose that the President thought that they did, or that she considered that the ‘unique status’ of the royal family was a reason *in itself* to accord protection to its members. There would have been no reason, however, why that so-called status should not have carried considerable weight in assessing the particular need for protection from speculation, gossip and general intrusion into the privacy of those named under (or indeed omitted from) the provisions of the wills. There is of course a difference between ‘the public interest’ properly so called and the interest of the public in the sense simply of its seemingly insatiable curiosity about the private lives,

friendships, and affections of members of the royal family and their circle, as distinct from matters of genuine concern to historians or investigative journalists.

As to the matters enumerated by Mr Robertson, various of them are matters to which it would have been appropriate for the Attorney General to have regard when forming his view as to the public interest and making his submissions to the President. I am not prepared to assume that they were omitted rather than considered.”

22. The President stated that he proposed to proceed on the basis of an assumption that the former President’s decision was arrived at having taken into account the public interest in open inspection of the wills. In these circumstances the President then considered the proviso to the former President’s order that the wills should not be opened ‘without the consent of the President of the Family Division for the time being’. He concluded that this was for the protection of anyone with grounds to assert a claim or interest under the wills or able to demonstrate substantial prejudice from the sealing orders.
23. The President then turned to consider whether the appellant’s claim fell to be struck out. He dealt first with a submission made by Mr Robertson that the appellant did not need to rely on a special interest based on his assertion that he was the son of Princess Margaret. He argued that the appellant was entitled simply to invoke his right to inspect the wills as a member of the public. The President held that such a right, being a public right, could only be asserted by the Attorney General – see the decision of the House of Lords in *Gouriet*. He went on to consider whether, if it were correct to draw an analogy with the standing needed to bring a claim for judicial review, the appellant had such standing. He decided that he did not.

“In my view, the Plaintiff in this case fails at the first stage. He has in truth and reality no interest which has been adversely affected by the former President’s orders. His application is based on an asserted interest which lacks any basis or foundation save in his own mind. He is not himself an historian or investigative journalist, nor does he himself proffer any reason to suppose that the terms of the will are likely to refer to any illegitimate offspring let alone the Plaintiff.”

24. Finally the President dealt with arguments that the former President’s order infringed the appellant’s rights under Articles 8 and 10 of the European Convention on Human Rights (‘the Convention’). He held that the Convention had been concluded to protect real rights not imaginary claims. The President made an order striking out his claim.

### **The application for permission to appeal**

25. The appellant’s application for permission to appeal came before the full court. Lord Justice Dyson gave a judgment dated 17 October 2007 with which the other two members of the court agreed. He said that it was at least arguable that the President should have examined the reasons why his predecessor had ordered the sealing of the wills before concluding that they were unimpeachable. It was possible that the President had merely applied a convention that royal wills should be protected from inspection rather than undertaken the balancing exercise that the President had assumed. It was arguable that the

President had not been correct to conclude that the appellant lacked the *locus standi* to apply to see the wills. Accordingly permission to appeal was granted.

### **Interlocutory revelations**

26. The order giving permission to appeal directed that the parties should agree “the admission of further evidence to include the evidence before the President on 10/4/02 and 19/6/02 and the reasons given for her decisions with liberty to apply to the court in the absence of agreement”. There was no agreement. The respondents filed a lengthy skeleton argument in opposition to the appeal. Part of this was directed to the issue of disclosure. This argued that the sole issue before the President had been the appellant’s standing to apply to see the wills. Unless and until this was resolved in his favour it was premature and inappropriate to order any disclosure at all of the reasons given for sealing the wills.
27. The case was brought back before the full court on 17 December 2007 to resolve the issue of disclosure. At the hearing Mr Hinks QC for the executors submitted that as the only issue before the President had been that of the *locus standi* of the appellant, it was not appropriate that any disclosure should be made until that issue was resolved. In the course of argument, however, he informed the court of matters that were clearly unknown to the President when he made his order. These can be summarised as follows.
28. Before and after the death of Princess Margaret there were discussions between the Palace, Farrers, the Attorney General’s Secretariat, and the Attorney General and the court which reviewed what Mr Hinks described as the practice of sealing royal wills. The Senior District Judge was involved who sought the views of the former President. Ultimately ‘a quite lengthy document’ was agreed that was reviewed and approved by the former President. The process that this contained involved a system of ‘checks and balances’ that was highly confidential. The primary object of the process was to protect the privacy of the Sovereign. Thus when the two applications came before the former President she had an understanding of the background that she would not otherwise have had.
29. Mr Hinks stated that if the appellant’s appeal succeeded, then the executors would wish to ‘put in detailed evidence of the history and the justification’ but that to require this before determining the issue of *locus standi* would carry the risk that the case would be ‘seriously derailed’. Having considered these submissions, the court directed that the appeal should be limited to the issue of whether the appellant could show standing and that no disclosure should take place before the appeal on that issue.

### **Submissions on the appeal**

30. Both the executors and the Attorney General were party to the appeal. The principal argument advanced by Mr Robertson on the part of the appellant was very simple. Section 124 of the Supreme Court Act gave every member of the public the right to inspect a will “subject to the control of the High Court”. The former President had made an order that the wills should not be opened without the consent of the President of the Family Division. The appellant wished to see the wills. He was entitled to seek the consent of the President of the Family Division to his doing so. Insofar as it was contended that the former President had purported to impose a barrier that he had to cross before he could see the wills, he was entitled to challenge her jurisdiction to do so on the basis on which she had done so. Mr Robertson embellished these submissions with a

number of arguments that, on analysis, went to the merits of the challenge that the appellants sought to make rather than to his *locus standi* to make that challenge.

31. For the executors, Mr Hinks argued that the interest that the appellants was asserting in seeking to ‘unseal the wills’ was a public interest. The Attorney General was the guardian of the public interest. She was the only person with standing to assert that interest – see *Gouriet*. Furthermore, the Attorney General had been joined as defendant to the executors’ applications to seal the wills and was party to the appeal. The public interest had been properly protected. In these circumstances, if the appellants wished to unseal the wills he had to demonstrate that he had a private interest that justified this. The only interest that he asserted was founded on his assertion that he was the son of Princess Margaret. That assertion was absurd and vexatious. A claim based on such an assertion should be struck out. If it was appropriate to draw an analogy with judicial review, the appellants did not have an interest that would found a claim for judicial review.
32. Mr Jonathan Swift for the Attorney General made it plain that it was not his role to fight the executors’ battle on the strike out application but to deal with more general matters concerning applications under section 124 of the 1981 Act. It was, however, the Attorney General’s case that the decision to strike out the claim was correctly made.
33. Mr Swift submitted that there was no point in the case that engaged the principle in *Gouriet*. The appellants’ application was founded on section 124 of the 1981 Act. That did not confer a public right of the kind that could only be enforced by the Attorney General under the principle in *Gouriet*.
34. Mr Swift submitted that the right to inspect a will under section 124 did not exist in any absolute form. Wills were subject to the control of the court and to rule 58 of the 1987 Rules. When an application to inspect a will was made the court was always entitled to consider whether it would be “undesirable or otherwise inappropriate” to permit inspection to occur. Mr Swift suggested that the orders made by the former President did not significantly affect the situation. In his skeleton argument he stated:

“Those Orders preserved the position under section 124 and rule 58 in that the wills remained subject to the control of the Court. However, the 2002 Orders also underline a practical requirement that there is an onus on Mr Brown to put forward some proper basis for his application.”

He submitted that the appellants’ claim was properly struck out because, having regard to the reasons that he advanced for wishing to see the wills, this was a clear case where it was “undesirable or otherwise inappropriate” that he should do so.

### **Discussion**

35. It is important at the outset to identify the nature of these proceedings. In argument analogies have been drawn with an application by an individual to enforce a public right and an application for judicial review. Neither analogy is wholly apt. Sections 124 and 125 of the 1981 Act deal with access to documents, namely wills, that are under the control of the court. Those sections provide that wills are to be open to inspection “subject to the control of the High Court”. Rule 58 of the CPR makes provision for the court to determine that a will shall not be open to inspection if such inspection “would be

undesirable or otherwise inappropriate”. No procedure is laid down for seeking or resisting an order that a will is not to be open to inspection.

36. In this case the executors of the wills sought orders from the former President that the wills should not be open to inspection by summonses to which the Attorney General was made a defendant. The former President ordered that the wills should not be opened “without the consent of the President of the Family Division for the time being”. That order permitted an individual to apply to the President for such consent. The President has interpreted that order as making provision for anyone with a special interest to apply to inspect the wills. The appellant has made such an application, asserting that as the illegitimate son of Princess Margaret he has a special interest in seeing the wills. He has, however, also challenged the orders made by the former President on the ground that there was no proper basis for denying the public access to the wills. If that challenge is well founded it should logically lead to the President reversing the order made by the former President so that the wills become available for inspection by all members of the public. The President has summarily dismissed the appellant’s claim that he has a special interest that entitles him to inspect the wills. The issue is whether he should none the less be permitted to challenge the orders made by the former President on the ground that they should not have been made.
37. Had those orders been made by a transparent process according to identified criteria in which the Attorney General had been joined to represent the public interest, there might have been force in the argument that no challenge based simply on the public’s right to inspect the wills should be permitted. The principle in *Gouriet* might have been applicable and the analogy with judicial review apt. The problem is, however, that the process under which the late President made the orders was not transparent, nor the criteria applied by the former President plain.
38. In these circumstances, we accept the submission of Mr Swift that the *Gouriet* principle does not apply. On its facts, *Gouriet* concerned whether a private individual could seek injunctive relief in reliance on statutory provisions which rendered the wilful delay of postal packets or messages a criminal offence. The conclusion that, in the absence of the consent of the Attorney General, Mr Gouriet was barred from pursuing the proceedings was based on an analysis of the statutory provisions in issue. By contrast, there is nothing on the face of section 124 of the 1981 Act to suggest that the court may only exercise its powers under it on an application by the Attorney General. The general effect of section 124 may be relied on by any person.
39. The appellant’s application to the President raised the following issues:
  - i) What principle underlies the exposure of wills to public inspection on the terms of sections 124 and 125 of the 1981 Act?
  - ii) What considerations are relevant to the question of whether inspection would be ‘undesirable or otherwise inappropriate’ under Rule 58?
  - iii) Where a will is ‘sealed’ pursuant to Rule 58, what is the nature of the interest that an applicant must show in order to be permitted to inspect that will?
  - iv) Is it appropriate to have a special practice in relation to royal wills? If so:

- v) What, if any, information about that practice should be made public?
40. The first three issues are interrelated and are of general public importance. Mr Hinks submitted to us that the reason why wills were open to public inspection was to ensure that effect was given to the wishes of the testator. No material was placed before us in support of such a submission other than a decision, over a century old, that supports the proposition, on the face of it a surprising proposition, that an executor owes no duty to inform a legatee of the terms of his legacy – *Lewis v Lewis* [1904] Ch 656.
41. The President appears to have considered that section 124 reflected ‘the public interest in respect of openness’ – see paragraph 16 above. This raises the question of the extent to which there can be justification for sealing a will in order to give effect to the desire of beneficiaries for privacy. This question is of practical importance as we were told that there is an increasing number of applications for wills to be sealed. Both Article 8 and Article 10 of the European Convention on Human Rights may be engaged.
42. The answers to the first and second question bear on the answer to the third question. They bear, for instance, on the question debated before us of whether an historian or biographer could demonstrate a special interest that would justify granting him access to a sealed will. The fourth and fifth questions raise narrower issues, albeit issues of some general interest.
43. In his ruling giving permission to appeal in this case Dyson LJ remarked:
- “If Sir Mark Potter is right, it follows that the President’s application of Rule 58 to members of the Royal Family will never be capable of being considered by a higher court.”
- In a footnote to his skeleton argument, Mr Hinks sought to deal with this point:
- “It is respectfully submitted that this is not the case. As the President made clear at paragraph 62 of his judgment, a person or entity with a genuine private interest in the un-sealing of the wills would have standing to apply to have them un-sealed.”
44. The phrase ‘un-sealing the wills’ is ambiguous. It can describe (i) permitting one individual to inspect the wills or (ii) reversing the former President’s orders so that the wills are open to inspection by the general public. Mr Hinks’ submission does not distinguish between the two. A person with a ‘genuine private interest’ has no need to seek to reverse the former President’s orders. On the President’s analysis (see paragraph 21 above) those orders make provision for anyone with a private interest in inspecting the wills to apply to do so. A person asserting a ‘genuine private interest’ can simply apply for the wills to be un-sealed to himself. We can see no reason why he should have any more standing to challenge the former President’s order than a member of the public who has no private interest.
45. The reality is that, if the appellant is not permitted to challenge the orders made by the former President, we cannot envisage circumstances in which anyone else will be permitted to do so. The observation of Dyson LJ’s that we have quoted above was correct.

46. The former President's orders placed no express restriction upon the circumstances in which application could be made to the President to vary those orders. The issues raised by the appellant's application were, as we have demonstrated, of public importance. It is not for us to attempt to resolve those issues. The question for us is simply whether the President was right to strike out the appellant's claims, thereby preventing him from raising those issues. We have decided that he was not. Until those issues have been resolved it is impossible to say that the appellant's claim is doomed to failure.
47. There may well be good reason for the procedure apparently agreed between the Palace and the Attorney General, with the approval of the former President, in relation to the treatment to be given to royal wills. It appears that, before this procedure was agreed, a practice had long existed under which royal wills would be sealed up – see the extracts from *Tristram & Coote's Probate Practice* (30<sup>th</sup> Ed) and *Williams, Mortimer & Sunnucks* cited by the President in paragraph 9 of his judgment. We would not dissent from the President's reference in paragraph 50 of his judgment to the "seemingly insatiable curiosity about the private lives, friendships and affections of members of the royal family and their circle" and this may justify special treatment for royal wills. We consider, however, that these are questions that should properly be explored by the President with knowledge of the material facts.
48. It does not necessarily follow that all the details of the negotiations that led to the special procedure, or even all the details of that procedure, must be brought within the public domain. That will be a matter for the President to consider after he has, himself, had sight of the relevant material.
49. It is unfortunate that the important issues to which we have drawn attention should be raised by an application made by a person motivated by a belief that is both irrational and scandalous. We have, however, concluded that the appellant was and is entitled to have a substantive hearing of his claim to inspect the wills. For these reasons this appeal is allowed.