

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
BUSINESS LIST (CHANCERY DIVISION)

Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 16 March 2018

Before :

MR JUSTICE ARNOLD

Between :

JANAN GEORGE HARB

Claimant

- and -

**HRH PRINCE ABDUL AZIZ BIN FAHD BIN
ABDUL AZIZ**

Defendant

Romie Tager QC and Ian Clarke QC (instructed by Hughmans LLP) for the Claimant
Ian Mill QC and Shaheed Fatima QC (instructed by Howard Kennedy LLP) for the Defendant

Hearing dates: 21-23, 26-28 February, 5 March 2018

Judgment Approved

MR JUSTICE ARNOLD :

Contents

<i>Topic</i>	<i>Paragraphs</i>
Introduction	1-6
Witnesses	7-30
Mrs Harb's witnesses	7-21
Mrs Harb	7-16
Rania Harb	17
Hama Mustafa-Hasan	18
Philip Marshall QC	19
Sara Simon	20
Jihan Harb	21
The Prince's witnesses	22-30
Faez Martini	22-23
Anthony Garlick	24
The Prince	25-28
Paul Stocker	29
Omar Jayed	30
Factual background	31-166
Mrs Harb and her relationship with the King	33-46

Sale of the Flats to Elmsdale and Beechwood	47
The King's stroke	48-49
The Prince's role following the King's stroke	50-51
Mrs Harb in 1995-2000	52-53
The 2001 Agreement	54-64
September 2002 to mid-June 2003	65-79
19-23 June 2003	80-121
29 June – 7 August 2003	122-148
September 2003 – January 2004	149-156
Mrs Harb's claim against the King	157-162
Communications in 2008	163
Meeting on 1 May 2009	164
Mrs Harb's book	165
Ownership of the Flats	166
The issues	167
The capacity in which the Prince acted	168-169
Issue 1: Was there an agreement at all?	170-188
The law	170
Mrs Harb's pleaded case	171-176
Assessment	177-188
Issue 2: Was the agreement intended to create legal relations?	189-207
The law	190-192
Assessment	193-207
Issue 3: Was the agreement too uncertain?	208-213
The law	209
Assessment	210-213
Issue 4: Is the agreement unenforceable on the ground of illegality?	214-231
The relevant statutory provisions	216-218
The law as to illegality	219-221
Assessment	222-231
Conclusion	232

Introduction

1. In these proceedings the Claimant ("Mrs Harb") effectively seeks specific performance of an alleged oral agreement between herself and the Defendant ("the Prince") made at the Dorchester Hotel ("the Dorchester") in the early hours of Friday 20 June 2003 whereby the Prince agreed to pay Mrs Harb £12 million and to procure the transfer to her of Flat 108 and Flat 129, Pier House, Cheyne Walk, Chelsea, London ("Flat 108" and "Flat 129", "the Flats"). The Prince denies that he made any such agreement. In the alternative, the Prince contends that any agreement was not intended to create legal relations or was too uncertain to be enforceable or is unenforceable on the ground of illegality.
2. The claim has had an unfortunate procedural history. Mrs Harb was made bankrupt on 1 May 2008. The claim was initially brought by Mrs Harb's trustee in bankruptcy shortly before the expiry of the limitation period in June 2009, but in June 2010 the trustee obtained permission to discontinue. Following hearings before Kevin Prosser

QC sitting as a Deputy High Court Judge and the Court of Appeal in 2011 (see *Hunt v Aziz* [2011] EWCA Civ 1239, [2012] 1 WLR 317), the notice of discontinuance was set aside. In August 2012 the trustee assigned the cause of action to Mrs Harb for £1,000.

3. The Prince then pursued an application originally made in January 2010 to strike out the claim on the ground of state immunity, but that application was unsuccessful before both Rose J and the Court of Appeal: see *Harb v Aziz* [2015] EWCA Civ 481, [2016] Ch 308. The Prince sought permission to appeal from the Supreme Court, which decided in June 2015 to adjourn the application until after the trial.
4. The claim was tried by Peter Smith J over seven days in July 2015. On 3 November 2015 he handed down judgment finding in favour of Mrs Harb. On 16 July 2016 the Court of Appeal allowed an appeal by the Prince and directed a re-trial: see *Harb v Aziz (No 2)* [2016] EWCA Civ 556, [2016] 3 FCR 194. On 21 December 2016 the Supreme Court refused Mrs Harb permission to appeal.
5. The Prince then applied to strike out or stay the claim on the basis that Mrs Harb had not paid a sum which the Court of Appeal had ordered her to pay on account of the costs of the appeal. That application was unsuccessful before both me and the Court of Appeal: see *Harb v Aziz (No 3)* [2017] EWCA Civ 2215.
6. The evidence at the second trial before me was different to that at the first trial in certain respects. In particular, an important development which occurred while Mrs Harb was in the course of giving evidence before me was that, following a request by the Prince's legal team for further disclosure, Mrs Harb's legal team disclosed about 100 pages of attendance notes made by Mrs Harb's former solicitor Sara Simon (redacted so as to exclude material covered by legal professional privilege) mainly covering the period 2 June 2003 to 16 February 2004, although one is earlier in time. As explained in more detail below, the attendance notes record reports by Mrs Harb of a series of meetings and conversations with the Prince and others during the relevant period. For reasons that will appear, I regard these documents as representing the best available evidence on the central issues.

Witnesses

Mrs Harb's witnesses

7. *Mrs Harb.* Mrs Harb is now 70 years old and not in the best of health. English is not her mother tongue, but she gave evidence in English. Much of her evidence concerned events nearly 15 years ago. In those circumstances, it is important to appreciate that Mrs Harb has effectively recounted the central events with which this case is concerned at least five times.
8. First, it is now known that, particularly during the period from 2 June 2003 to 16 February 2004, Mrs Harb was in the habit of regularly telephoning or meeting Mrs Simon and recounting events which had just happened, and in particular meetings and conversations she had had with the Prince and others. Mrs Simon kept meticulous attendance notes recording what she had been told by Mrs Harb. Mrs Simon's practice was to make a manuscript note during the course of the telephone call or meeting, and then to dictate a fuller note as soon as possible afterwards which would be typed up

and filed by her secretary. The manuscript note would often be discarded unless it contained information which Mrs Simon considered it important to retain. Mrs Simon's attendance notes thus contain a near-contemporaneous record of events as recounted by Mrs Harb to Mrs Simon.

9. Secondly, Mrs Harb gave a brief account in the latter part of an affidavit she swore on 15 January 2004 ("the 2004 Affidavit") in support of proceedings she brought against the Prince's father, the late King Fahd ("the King"), under section 27 of the Matrimonial Causes Act 1973 (as to which, see further below). It is convenient to note here that the 2004 Affidavit was drafted by Mr Marshall (as to whom, see below). It is not clear to what extent he referred to the attendance notes when doing so.
10. Thirdly, Mrs Harb gave a full account in her witness statement made in these proceedings on 9 July 2015. It appears that the witness statement was drafted at least partly by reference to the attendance notes.
11. Fourthly, Mrs Harb was cross-examined at length at the first trial.
12. Fifthly, Mrs Harb was again cross-examined at length before me.
13. In assessing Mrs Harb's evidence, it also necessary to bear in mind that all of Mrs Harb's oral evidence at the first trial, and a large part of her oral evidence at this trial, was given without the benefit of the attendance notes.
14. It is obvious that the passage of time since June 2003 – February 2004 means that Mrs Harb's recollection now, or even in 2015, is likely to be less reliable than the near-contemporaneous account she gave Mrs Simon and which Mrs Simon recorded in the attendance notes. No reason has been suggested as to why Mrs Harb should have wished to mislead her own solicitor as to what had happened. Indeed, as counsel for Mrs Harb pointed out, one of the attendance notes records a denial by the Prince of an aspect of her case. It does not necessarily follow, of course, that the account given in the attendance notes is entirely correct. Mrs Harb could have misheard or misunderstood or misrecalled things, or been guilty of wishful thinking, even at the time. Nor does it follow that the account given in the attendance notes was complete. Indeed, as both counsel pointed out, there are instances of later attendance notes recording information not recorded in earlier ones although other aspects of the relevant event are recorded in the earlier ones.
15. Counsel for the Prince made a sustained attack on Mrs Harb's evidence in his closing submissions. In brief summary, he submitted that her evidence was inconsistent, inconsistent with other evidence, often evasive, frequently implausible and generally unreliable. He also submitted that it showed that she had no regard for her contractual or other legal obligations. Although he accepted that the attendance notes were likely to be more reliable than Mrs Harb's evidence, he submitted that they were not a reliable record of what had actually happened either. His core submission in this regard was that Mrs Harb was a fantasist.
16. It is easy to pick holes in Mrs Harb's oral evidence, and counsel for the Prince gave numerous examples in support of his submissions. I accept that Mrs Harb was not a reliable witness, and that her evidence must be treated with considerable caution. Nevertheless, the basic thrust of her evidence receives considerable support from the

attendance notes. Moreover, as discussed below, some of it is corroborated by the evidence of other witnesses or other documentary evidence. In those circumstances I do not consider that her evidence can safely be either accepted or rejected as a totality. Rather, it is necessary to consider its cogency topic by topic together with the other evidence relating to that topic. For the reasons explained below, the same goes for the evidence of the other key witnesses.

17. *Rania Harb*. Rania Harb is one of Mrs Harb's daughters. For brevity, and without intending any disrespect, I shall refer to her as "Rania". As Rania accepted, she has an interest in Mrs Harb's claim succeeding, since Mrs Harb intends give her one of the Flats; but she said this was "not enough to lie". Counsel for the Prince submitted that much of Rania's evidence was highly improbable. I do not accept this. Rania struck me as a straightforward witness, but she was faced with the difficulty of accurately recalling events from long ago as well as her natural loyalty to her mother. Accordingly, I consider that her recollection must be treated with caution.
18. *Hama Mustafa-Hasan*. Mrs Mustafa-Hasan is a long-standing friend of Mrs Harb, having known her since around 1959. Mrs Mustafa-Hasan had a long career in journalism and broadcasting, but is now retired. Mrs Mustafa-Hasan also struck me as a straightforward witness. Mrs Mustafa-Hasan told me that, although the version before the court is dated 1 June 2015, she had originally made a witness statement in 2008 (which is consistent with the statement in a letter from the solicitors acting for Mrs Harb's trustee in bankruptcy to the Prince dated 8 June 2009 that they had "received evidence from a witness" who could corroborate Mrs Harb's account of her conversation with the Prince). Even that was five years after the events, however. Moreover, as Mrs Mustafa-Hasan admitted, she and Mrs Harb have discussed the events in question many times since 2003. It is clear that this has influenced Mrs Mustafa-Hasan's evidence. For example, as counsel for the Prince pointed out, Mrs Mustafa-Hasan made the same two mistakes as Mrs Harb about the place where the alleged agreement was concluded (the Pavilion rather than the Promenade) and the address to which she delivered documents (5 rather than 12 Kensington Palace Gardens, "12 KPG"). Again, therefore, her recollection must be treated with caution.
19. *Philip Marshall QC*. Mr Marshall was in 2003-2004 a junior barrister who advised Mrs Harb on the instructions of Mrs Simon. Although he originally had a mixed civil practice, by that time the majority of his work was in the matrimonial field. He was unsure whether he had ever drafted a contract prior to the one he drafted in this case. Mr Marshall's witness statement is dated 29 November 2013. Moreover, he gave evidence that he had a relatively clear recollection of the events described in it due to the unusual nature of the case. No criticism was made of his evidence.
20. *Sara Simon*. Mrs Simon was in 2003-2004 the principal of, and remains a partner in, the firm of Burton Woolf and Turk ("BWT"). No criticism was made of her evidence.
21. *Jihan Harb*. Jihan Harb is Mrs Harb's mother. She is 94. Her witness statement was admitted under a hearsay notice on the ground that she was unable to give oral evidence due to ill health.

The Prince's witnesses

22. *Faez Martini*. Mr Martini is, and has since 1992 been, Head of Protocol at the Embassy of the Kingdom of Saudi Arabia in London. He started to work with the Embassy in 1966. From 1973 to 2005 he was the King's appointed representative in London. He has known the Prince since the latter was born. He first met Mrs Harb in either 1973 (his recollection) or 1975 (her recollection).
23. Counsel for Mrs Harb characterised Mr Martini as the archetypal courtier, deferential and loyal to a fault. Counsel for Mrs Harb also pointed out that Mr Martini was, even on his own evidence, not above taking advantage of his situation in his dealings with Mrs Harb. I consider that both points are fair comment. More importantly, counsel for Mrs Harb submitted that Mr Martini's evidence was unreliable. I accept that submission. It is sufficient to give three examples. First, as discussed below, Mr Martini's evidence about the completion of the 2001 Agreement was contradicted by Mrs Simon's attendance note, but he refused to accept the accuracy of the attendance note. Secondly, Mr Martini was forced by the disclosure of the attendance notes to change his position from his evidence in his second witness statement and at the first trial that he had not been in contact with Mrs Harb during the period from July 2003 to January 2004 to accepting that he had been in regular contact with her during this period. Thirdly, Mr Martini exhibited to his third witness statement copies of the attendance notes with passages highlighted in different colours: yellow to indicate events he accepted did take place; blue to indicate events which could have happened, but he did not recollect; and green to indicate events that he was unable to accept were accurately recorded in the attendance notes. In cross-examination, however, Mr Martini was both unable to give any convincing explanation as to why a number of significant passages were uncoloured when he was unwilling to accept their accuracy and inconsistent in his categorisation of passages coloured blue and green. As with Mrs Harb's evidence, it does not follow that Mr Martini's should be rejected in its entirety. On the other hand, in a number of respects Mrs Harb's evidence is more consistent with the attendance notes than Mr Martini's evidence.
24. *Anthony Garlick*. Mr Garlick is, and has since 1983 been, Head of Security at 12 KPG. Mr Garlick was a straightforward witness, and I accept his evidence so far as it goes.
25. *The Prince*. The Prince has made two witness statements dated 8 July 2015 and 21 July 2015 which were admitted under hearsay notices. Counsel for Mrs Harb accepted that the Prince was overseas, and that it was therefore open to him to rely upon his witness statements without attending either in person or via videolink for cross-examination. Nevertheless, the matter does not end there, because the hearsay notices stated:

“The reason why the Defendant will not be called to give oral evidence is that he does not believe that His Royal Highness King Salman of the Kingdom of Saudi Arabia, the Custodian of the Two Holy Mosques, would regard it as appropriate for the Defendant to give oral evidence which may expose him to questioning regarding the deeply personal matters which the claim relates to, i.e. the personal life and relationships of the late King Fahd, his brother.”

26. The second hearsay notice also referred to a letter from the Embassy to the Court dated 15 July 2015 which stated, so far as relevant:

“... the Government of the Kingdom of Saudi Arabia wishes to inform the Court that it is not permissible for a Member of the Royal Family of Saudi Arabia to provide oral evidence in foreign court proceedings concerning matters related to HM the late King Fahd. The Royal Court of Saudi Arabia forbids [the Prince] from doing so in this matter.

No discourtesy is intended to the Judge hearing this case.”

27. In addition, a letter from the Minister of Foreign Affairs of the Kingdom of Saudi Arabia to the court dated 21 July 2015 stated that the letter dated 15 July 2015 was prepared on the Minister’s instructions and in accordance with instructions he had received from the Royal Court, that is to say, the King. It went on to say that the Royal Court had forbidden the Prince from giving oral testimony in response to the claim.
28. Counsel for Mrs Harb accepted that the court should take what was stated in the hearsay notices at face value. He submitted, however, that the Prince could have given evidence in response to the claim without having to give evidence concerning matters related to the King. Accordingly, he submitted that the court should draw an adverse inference from his failure to do so. I do not accept this submission. It seems to me that I have to take the letter dated 21 July 2015 at face value. On the other hand, in deciding what weight to give the Prince’s evidence, I also have to take into account the fact that it has not been tested in cross-examination. Moreover, no written evidence from the Prince has been adduced in response to the disclosure of the attendance notes. This is of some significance given that, in 2015, he will have faced the same problems of recollection as the other witnesses. Furthermore, as discussed below, it is reasonably clear that certain parts of the Prince’s evidence are inaccurate. In most cases, this is explicable by faulty recollection, but in some cases it is not (e.g. his description of 12 KPG as “my mother’s home”, when it was Mr Martini’s evidence that it was “his [i.e. the Prince’s] own residence”, that the Prince had a 50% beneficial interest in it and that his mother had only ever stayed there two or three times). Overall, therefore, I consider that the Prince’s evidence must be treated with caution.
29. *Paul Stocker*. Mr Stocker was in July 2015, and had been since 1990, a concierge at the Dorchester. He was not required to attend for cross-examination.
30. *Omar Jrayed*. Mr Jrayed was in 2003 the Prince’s private secretary. Although he gave evidence at the first trial, the Prince did not rely upon his witness statement before me although Mr Martini gave evidence that Mr Jrayed was employed by the Royal Court of Saudi Arabia. Counsel for the Prince was frank that the reason that Mr Jrayed was not called this time was that counsel considered that his evidence would not assist the court.

Factual background

31. This is not a case in which fraud is alleged. Nevertheless, the nature of the case is such that it is prudent for me to adopt the approach to finding the facts articulated by Robert Goff LJ in a well-known passage in *The Ocean Frost* [1985] 1 Lloyd's Rep 1 at 57:

“Speaking from my own experience, I have found it essential in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the independent facts proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities. It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents, to the witnesses' motives, and to the overall probabilities, can be of very great assistance to a judge in ascertaining the truth.”

32. To this end, I shall set out a chronological narrative of the factual background to the matter. I have constructed this account primarily by reference to the disclosure documents in the case, and in particular Mrs Simon's attendance notes and the correspondence between the parties, and secondarily by reference to evidence which is either common ground or unchallenged. In the course of this narrative I will set out the witnesses' evidence and make findings of fact with respect to the sequence of events. I will defer my determination of the issue as to what was said on 20 June 2003 until later in this judgment.

Mrs Harb and her relationship with the King

33. Save where indicated to the contrary, the following account of Mrs Harb's life and her relationship with the King is based on Mrs Harb's evidence. Save that he admits that Mrs Harb had a relationship with the King, the Prince does not accept the accuracy of her evidence, but nor did counsel for the Prince challenge it in cross-examination. His position is that it is not necessary for the court to determine whether Mrs Harb's account is accurate or not. Counsel for Mrs Harb likewise accepted that it was not necessary for the court to make findings of fact on these points; but, as he submitted, Mrs Harb's allegations provide important background to her case as to what was agreed on 20 June 2003.
34. Mrs Harb was born in Ramallah in Palestine in 1947. Her family was Christian. In 1967 she went to work in Jeddah, where she was employed as a secretary by a businessman called Ali Abdul Bugshan.
35. In December 1967 she met Prince Fahd, as he then was, at a party in Jeddah. She was then 19. He was 47 (or 46 if the date of birth given for him by the Prince is correct) and was the Minister of the Interior. Their relationship developed quickly and they were secretly married in Jeddah in March 1968. Shortly before the ceremony, Mrs Harb converted to Islam. The marriage was not made public in Saudi Arabia for cultural and political reasons. After the marriage, the couple divided their time

between Jeddah and London. In London, the King introduced Mrs Harb to friends and acquaintances as his wife. During the course of their relationship, Mrs Harb had three abortions at the King's insistence.

36. When Mrs Harb and the King were visiting London in October 1968, he suffered from stomach pains and a doctor administered a methadone injection. This led to the King becoming addicted to methadone.
37. In January 1969 she introduced the King to Mr Bugshan. Subsequently Mr Bugshan was awarded a very profitable government contract. The King received a commission from this and subsequent contracts. In return, the King told Mrs Harb he would give her 50 million riyals (equivalent to at least £6 million) which he would look after for her.
38. In 1970 Mrs Harb was ordered to leave Saudi Arabia by the King's brother Prince Turki as a result of the King's family (wrongly) attributing to Mrs Harb responsibility for the King's addiction. She went first to Beirut and then to the USA. The King told her not to worry about money and that he would continue to support her financially.
39. Mrs Harb believed that the marriage was at an end and therefore she was free to re-marry, although the King never divorced her. In late 1970 she married an American man in a civil ceremony, but the marriage only lasted five months. In March 1973 she returned to the Lebanon, where she started a relationship with Sami Bouiez, a Lebanese lawyer. In September 1973 she met the King in Riyadh, and he gave her \$40,000 to purchase an apartment in Beirut ("the Beirut Flat") and \$30,000 to furnish it.
40. In March 1974 Mrs Harb and Mr Bouiez were married in a civil ceremony in Cyprus. In October 1974 their first daughter, Rania, was born. The King sent Mrs Harb \$20,000 to support her. In 1975 Mrs Harb and Mr Bouiez moved to London.
41. Shortly after their arrival, the King sent Mrs Harb £100,000 to purchase and furnish somewhere to live. According to Mrs Harb, it was at this time that Mrs Harb first met Mr Martini. The King said that Mr Martini would help her to find and purchase a property with the money. Mr Martini helped her find Flat 108. According to Mr Martini, he first met Mrs Harb in about 1973 when the King asked him to help her to purchase Flat 129 using money provided by the King. Although it does not matter who is right about this, I consider that Mrs Harb's account is more likely to be accurate.
42. In September 1978 Mrs Harb and Mr Bouiez's second daughter, Rawan, was born. In 1979 they were divorced. The King continued to support Mrs Harb financially. They talked regularly on the telephone and exchanged letters and gifts, using Mr Martini as an intermediary.
43. In the meantime, the King had married again. He had a number of children, including the Prince, who was born in 1973. The King succeeded to the throne in June 1982, having been appointed Crown Prince in 1975.
44. In December 1987 the King sent Mrs Harb a cheque for £1 million to enable Mrs Harb to purchase Flat 129 and a property in Cairo ("the Cairo Property") and to

refurbish them before selling them to the King. The intention was to provide her with a project to occupy her and to develop her interior design experience.

45. In December 1993 Mrs Harb sold the Cairo property to the King for \$3 million. Mr Martini arranged the sale and Mrs Harb paid him a commission of \$25,000. This is supported by a letter from Mr Martini to Midland Bank plc (“Midland”) dated 14 December 1993 giving instructions to transfer the sum of \$2,975,000 to Mrs Harb. The letter has been annotated in manuscript, it appears by Mr Martini, “Further £150K were given to her two daughters”, although Mrs Harb denied that her daughters received such an amount.
46. The Prince has also disclosed Midland documents evidencing two transfers of additional sums on the instructions of Mr Martini: a sum of \$50,000 to Mrs Harb on 25 November 1993 and a sum of \$5,000 to a Said Mazhar in Cairo on 26 January 2004.

Sale of the Flats to Elmsdale and Beechwood

47. In late 1994 Mrs Harb agreed to sell the Flats to the King for a total of £1.9 million. The agreement was put into effect with the assistance of Mr Martini. Contracts of sale dated 11 November 1994 (Flat 129) and 28 June 1995 (Flat 108) were entered with Elmsdale Holdings Ltd (“Elmsdale”) and Beechwood Holdings Ltd (“Beechwood”), two companies incorporated in St Kitts and Nevis (and later reincorporated in the British Virgin Islands), respectively. The stated consideration in the contracts was respectively £549,455 plus £50,545 for chattels and £300,000. There is documentary evidence, however, of Mr Martini instructing Midland to make transfers to Mrs Harb totalling £1.875 million in the period from 31 January 1995 to 8 July 1995.

The King’s stroke

48. According to Mrs Harb, during 1995 she raised with the King the question of the provision of a substantial lump sum (she suggested £20 million) to enable her to be wholly financially independent. He agreed in principle, but made no firm commitment to pay any specific sum. They were due to meet in Marbella to discuss the matter further, but the meeting did not take place because the King suffered a stroke.
49. It is common ground that the King did suffer a stroke, but there are two disputes about it. On Mrs Harb’s account, this happened in the summer of 1995, whereas the Prince gives the date as 29 November 1995. The date does not much matter, however. More importantly, Mrs Harb’s evidence, based on what she was subsequently told by Mr Martini, the Prince and others and on media reports she read, was that the King was mentally incapacitated and unable to deal with his affairs. The evidence of the Prince and Mr Martini, however, was that the King was not mentally incapacitated and remained able to deal with his affairs. I do not consider that the evidence enables me to make a finding as to the extent of the King’s capacity following his stroke, but nor do I consider it necessary to do so.

The Prince’s role following the King’s stroke

50. The Prince’s evidence is that, following his father’s stroke, his father came to rely upon him much more as a conduit for information and instructions. Moreover, in 1999

the Prince was appointed as a Minister of State without portfolio with a seat in the cabinet and in 2000 he was made Head of the Office of the Council of Ministers. Thus his connection to the King “took on an official status”. According to the Prince, he represented the King, but had no authority to bind the King in any way. Much of the work the Prince did for the King was governmental in nature.

51. Consistently with the Prince’s evidence, it is clear from the correspondence from BWT in the period from January 2003 to January 2004 discussed below that, during that period, Mrs Harb and her lawyers treated the Prince as the King’s representative. That does not necessarily mean that they regarded the Prince as the King’s agent.

Mrs Harb in 1995-2000

52. Mrs Harb spent the period from 1995 to 1998 living predominantly in Lebanon. She used the proceeds of sale of the Flats and the Cairo Property to set up an interior design business. The business was not a success, however. In 1998 she closed the company with debts of \$1.5 million. She moved back to London, where she resided at Flat 111 Pier House. By this time, she also had personal debts over £1 million.
53. By 2000 Mrs Harb was in discussions with publishers about publishing an autobiography as a way of making money.

The 2001 Agreement

54. It is common ground that there was a meeting between Mrs Harb and the Prince in Marbella either in September/October 1999 (the Prince’s evidence) or August 2000 (Mrs Harb’s evidence) at which they discussed her request for financial support. According to Mr Martini, he set up this meeting at the King’s request. It is also common ground that, at the meeting, the Prince asked about the rumour that Mrs Harb had been responsible for introducing the King to methadone. According to Mrs Harb, she denied this and said that she was contemplating publishing her memoirs. The Prince did not recall this, but it is probable given what happened subsequently. It is also common ground that Mr Martini was present in Marbella and liaised with Mrs Harb after the meeting. According to Mr Martini and the Prince, Mr Martini did so on instructions which were given to him by the Prince, but emanated from the King.
55. According to Mrs Harb, she remained a guest of the Prince at his hotel for a week, at the end of which Mr Martini gave her \$300,000 in cash, saying it was a gift from the Prince of \$100,000 each for herself and her daughters. Mr Martini accepted that he had indeed given Mrs Harb \$300,000, although he disputed (i) that the Prince was staying at the hotel, (ii) that some of the money was for Mrs Harb’s daughters and (iii) that the money was a gift from the Prince (his evidence was that it was gift from the King).
56. According to Mr Martini, in early December 2000 he instructed Martin Davies of Howard Kennedy (“HK”) to draft an agreement with Mrs Harb. It is common ground that there were negotiations between Mr Davies and Mrs Simon which culminated in the agreement contained in a deed dated 1 March 2001 expressed to be made between Mr Martini “as agent for an Undisclosed Principal” and Mrs Harb (“the 2001 Agreement”).

57. The 2001 Agreement is a professionally drafted agreement running to six pages. It includes the following key terms:

“WHEREAS

- A Mrs Harb alleges she has certain claims (‘the Alleged Claims’) against the Undisclosed Principal relating, inter alia, to an apartment on the Third Floor of Park Building Sami Solah Street Beirut Lebanon (‘the Property’) and services and materials provided to the Undisclosed Principal or for his benefit by Mrs Harb.
- B Mrs Harb has in her possession, custody or control certain information and documentation relating directly and/or indirectly to the Undisclosed Principal (‘the Material’).
- C The parties have agreed to compromise the Alleged Claims on the terms set out below.
- D The identity of the Undisclosed Principal and the amount of the bankers draft in Clause 3 below are contained in a document in the form set out in Annex A to this agreement signed by Mr Martini and Mrs Harb and deposited with Mr Martini’s solicitors.

NOW THIS DEED WITNESSETH AS FOLLOWS

- 1 For the consideration contained in clause 3 and other good and valuable consideration, Mrs Harb, with full title guarantee hereby assigns and grants to Mr Martini as agent for the Undisclosed Principal for the full period of copyright including all renewals, revivals, extensions and reversions thereof and thereafter, insofar as she is able, in perpetuity (and so far as the same is applicable, by way of present assignment of future copyright) all rights in:
- (a) any and all currently existing literary property, photographs (including all prints and negatives), sound recording (in all formats now known or hereafter known), films (in all formats now know or hereafter known), tables, compilations, computer programmes and databases contained in or relating to the materials and/or Mr Martini and/or the Undisclosed Principal (whether directly or indirectly); and
- (b) any and all literary property. Photographs (including all prints and negatives), sound recordings (in all formats now known or hereafter known), films (in all formats now known and hereafter known), tables, compilations, computer programmes and databases contained in or relating to the Materials and/or Mr Martini and/or the

Undisclosed Principal (whether directly or indirectly) which is after the date of this Deed created, authored, and/or contributed to in any way by Mrs Harb for either herself or for any third party howsoever arising;

TO HOLD in any and all media whether vested, contingent or future and whether now known or in the future invented throughout the universe.

- 2 Mrs Harb hereby agrees, undertakes and warrants that:
- (a) the consideration specified in clause 3 and paid to Mrs Harb hereunder is in full and final settlement of all and any claims which she has, or any person claiming through her has, considers they may have, or may have in the future, in respect of the Material, and/or the Property and/or against Mr Martini and/or against the Undisclosed Principal;
 - (b) she will keep confidential and not, directly or indirectly, divulge, disclose or otherwise disseminate or cause or allow to be divulged, disclosed or otherwise disseminated, via any means or media (now known or hereafter known) any information or knowledge or documentation that she has in her possession or control in the future may have in her possession or control in relation to the Property and/or the Material and/or Mr Martini and/or the Undisclosed Principal;
 - (c) she will not herself write, cause to be written, permit to be written or otherwise have recorded in any permanent or non-permanent format in any and all forms of media now known or hereafter discovered whatsoever before or after her death, her life story, autobiography, diaries, memories or any other form of information, document or account of events relating to the materials and/or her dealings with the property and/or Mr Martini the Undiscovered Principal;
- ...
- (i) in the event that Mrs Harb breaches any term of this Deed, she will forthwith repay to Mr Martini and/or the Undisclosed Principal or their respective assigns or personal; representatives the total amount of the bankers draft she has received pursuant to this Agreement and that such repayment will be recoverable by Mr Martini and/or the Undisclosed Principal or their respective assigns or successors as a debt;

...

3. As consideration for the grant and assignment by Mrs Harb and the warranties and undertakings given herein Mr Martini as agent for the Undisclosed Principal agrees to supply a banker's draft to Mrs Harb (receipt of which is hereby acknowledged by Mrs Harb)."

58. The 2001 Agreement was executed by Mr Martini and Mrs Harb, whose signatures were witnessed by Mr Davies and Mrs Simon respectively, at HK's offices on 21 February 2001. It was dated during a completion meeting between Mr Martini, Mrs Harb and Mrs Simon which took place at a branch of HSBC Bank in Grosvenor Place at 4 pm on 1 March 2001. Mrs Simon prepared a detailed attendance note of the completion meeting which includes the following passages:

"...

Mrs Harb gave Mr Martini the Power of Attorney ... and also the Title Deeds ...

Then Mr Martini asked me to place in an envelope the documents that Mrs Harb was handing over. I placed in the envelope the original photograph, the negative, and a photocopy of the photograph, the disc, and the copies of the two letters in Arabic. I noted the contents in these words on the front of the envelope which I then sealed.

Mr Martini asked Mrs Harb to write a letter in Arabic which was addressed to Prince Abdul Aziz confirming that she had handed over the Title Deeds sending her best wishes and confirming she had received the money.

... I gave [Mr Martini] the letter containing my undertaking which I dated with today's date.

Mr Martini then instructed Bernie [an HSBC bank manager] who had not been present during these transactions to prepare a Bankers Draft for £4.4 million to go to Mrs Harb's account in Monte Carlo, details of which she gave to me. Mr Martini said that his instructions were irrevocable and this was recorded on the instructions. It was too late to send the TT today but Bernie said that she would do it first thing tomorrow morning and would fax Mrs Harb to let her know and it would be at about 10:30am. As the Bank was completely without electricity, nothing could be photocopied and so Bernie wrote another copy of the TT instructions which Mr Martini also signed.

Mr Martini asked if I would write to Howard Kennedy tomorrow and inform them that the deal has been completed and that they can date their part of the Agreement and that he has the documents. He told me that he would give them the

brown envelope that he and Mrs Harb both signed at the meeting last week and also the undertaking that I had given. He intends that the other envelope should be placed in a safe forever unopened.”

59. Consistently with the penultimate paragraph of Mrs Simon’s attendance note, there is in evidence a copy of a manuscript instruction on HSBC notepaper dated 1 March 2001 and signed by Mr Martini for the transfer of £4.4 million to Mrs Harb.

60. Consistently with the last paragraph of her attendance note, Mrs Simon wrote to Mr Davies on 2 March 2001 as follows:

“At the request of Mr Martini, I am writing to inform you that the deal was completed yesterday and I have dated my part of the Agreement the 1st March 2001 and am enclosing a copy of the front two pages duly dated for your information and a copy of my letter to you dated the 1st March 2001 the original of which I gave to Mr Martini. I also gave him the Power of Attorney dated the 1st March 2001.

Mr Martini has also asked me to let you know that he has received all the documents that he was expecting, and no doubt he will be in touch with you in due course.”

61. Mr Martini disputed the accuracy of the account given by Mrs Simon in her attendance note and letter when they were put to him in cross-examination. In particular, he disputed that he had received more than one photograph and he disputed that he had asked Mrs Simon to write to Mr Davies. It is fanciful to suppose that Mrs Simon’s attendance note is inaccurate, however.

62. It is common ground that, on completion of the agreement, Mrs Harb received a total of £4.9 million (made up of the bank transfer of £4.4 million together with a cheque for £495,000 and £5,000 in cash which she may have received previously) and that Mr Martini received a sum of £100,000. Mrs Harb’s evidence was that what had been agreed was that she would receive £5 million, but Mr Martini unilaterally kept £100,000 as his fee. Mr Martini’s evidence was that Mrs Harb gave him this sum as a present. In my judgment it is clear that the money was paid by way of commission. The extent to which Mrs Harb did so voluntarily does not matter.

63. The document in the form set out in Annex A to the 2001 Agreement, which was contained in the brown envelope referred to in the last paragraph of the attendance note, is not in evidence. Counsel for the Prince submitted that, if it was still in existence and could be located, it would have been disclosed by the Prince, and thus invited me to infer that it had not been found. Counsel for Mrs Harb disputed this, and pointed out that it was Mr Martini’s evidence that the document had been held to his order. I consider it more likely that the document cannot be located than that it has not been disclosed because it is held to Mr Martini’s order. Either way, I decline to draw any inference from the fact that the document has not been disclosed.

64. Counsel for Mrs Harb accepted that, on the face of the 2001 Agreement, the Undisclosed Principal appeared to be the King, but contended that in reality the

person who had made the 2001 Agreement and the payment was the Prince. I do not accept that the evidence establishes this, but I do not consider that it matters. What is clear, particularly from Mr Martini's evidence, is that Mr Martini received his instructions from the Prince.

September 2002 to mid-June 2003

65. By late 2002 Mrs Harb was again in financial difficulties. It is more or less common ground that, in about September 2002, Mrs Harb sent the Prince a message via Mr Martini to the effect that she had lost £3 million in various ways, including on the stock market, and asking for a further £3 million. According to Mr Martini and the Prince, this request was declined on the King's instructions. According to Mrs Harb, she later asked for £5 million.

66. On 3 January 2003 BWT wrote to the Prince summarising the history and saying that they had advised Mrs Harb that she needed £12 million. The letter concluded:

“Mrs Harb is now in desperate circumstances and feels that she has no alternative but to make a public appeal to His Majesty. However she would much prefer not to do so. We are enclosing the Appeal and would ask you show it to your Father. Mrs Harb is prepared to sign an Agreement acknowledging that the sum of £12 million is in full and final settlement of all promises that your Father made to her. We are enclosing the draft Agreement that Mrs Harb is prepared to sign.

In view of Mrs Harb's sacred past with your Father, she needs to be taken care of and supported with sufficient money to survive adequately with her daughters. We are writing to you as your Father's representative to carry out his sacred promise as the Custodian of Islam to take care of and provide for his wife. There is now considerable urgency as Mrs Harb is facing financial problems in maintaining herself, and we look forward to hearing from you at your earliest opportunity.”

67. On 6 January 2003 Mrs Simon sent Mr Martini a copy of the letter dated 3 January 2003 and the enclosed appeal. Not having received a response to the 3 January 2003 letter, BWT sent a chasing letter on 15 January 2003. Still not having received a response, BWT wrote to Sheikh Mohammed Suleiman, the King's private secretary, on 27 January 2003 enclosing copies of the earlier letters. The letter expressed regret that BWT had received no response from the Prince “to whom we wrote as the representative of the King”. BWT sent copies of this letter to the Prince and his uncle Prince Salman (the King's brother, and the present King of Saudi Arabia).

68. Not having received a response, BWT wrote to Sheikh Suleiman again on 13 February 2003, 17 February 2003 and 20 February 2003. Not having received a response, BWT wrote to the Prince, with a copy to Prince Turki al Faisal (the then Saudi Ambassador in London), on 4 February 2003 saying:

“Mrs Harb cannot allow matters to remain as they are and we have been instructed that unless we hear from you within 14

days of the date of this letter, she will issue legal proceedings against you, acting as your father's representative, as we are instructed that he is not capable of dealing with the matter personally.

We would like to point out that Mrs Harb's Statement of Claim will set out the full history of her relationship with your father and will include reference to:-

1. their religious marriage.
2. his promise to secure her and her children financially for the rest of her life.
- ...
4. the false accusation of drug abuse made against Mrs Harb, which you mentioned to her at your meeting in Marbella.
5. Mrs Harb's three abortions which she suffered during her time with your father, at his request.
6. the commission payable by Mr Ali Bhugshan arranged by Mrs Harb which your father arranged to have paid to him and which now amounts to over \$100 million, and from which, we are instructed, you continue to receive benefits.
- ...
8. when your father last spoke to Mrs Harb some years ago he asked her to meet him with her daughters in Marbella in two weeks' time when he said he would secure her future. Unfortunately he had a stroke and the meeting never took place and ever since Mrs Harb has been assured by others that he was in good health but this does not appear to be the case as he has not contacted Mrs Harb for eight years, and this is totally uncharacteristic of him. For instance he seems to have ignored her written Appeal enclosed with our letter dated 3rd January 2003 and this convinces her that all is not well.
9. the possibility that Mrs Harb's elder daughter is the daughter of your father. This can be proved by medical tests.

You will be aware that in England once legal proceedings are issue, they are open to inspection by the public."

69. Not having received a response, BWT wrote to the Prince again on 19 March 2003 and 26 March 2003. The letter dated 26 March 2003 enclosed a letter from Mrs Harb to the Prince and copies of some photographs she had found at her mother's house, saying:

“Mrs Harb would like you to see the photographs and have the opportunity to deal with her claim before she issues Court proceedings.

We are instructed that upon receipt of the sum of £12 million, Mrs Harb will sign the Agreement enclosed with our letter to you dated the 3rd January 2003, and she will hand over the original photographs. She wishes to do everything possible to avoid any adverse publicity which would be the inevitable consequence of Court proceedings being issued.”

70. On 28 March 2003 BWT wrote to the Prince, with a copy to Prince Turki al Faisal, saying that Mrs Harb had been advised by counsel that she could bring a claim against the King for financial provision under section 27 of the Matrimonial Causes Act 1973 based on the marriage between herself and the King still being subsisting.
71. The Prince's evidence was that he received “very few” of the letters BWT sent to him in the period 3 January to 28 March 2003. He did not identify which he received and which he did not. The Prince also described the letters sent by BWT to “high government officials” during the same period as “excessive”.
72. Not having received a response to their earlier letters, on 7 May 2003 BWT wrote to the King, saying:

“Our client has been advised by counsel that she has no alternative other than to issue proceedings in the Family Division of the High Court of Justice in London pursuant to section 27 of the Matrimonial Causes Act 1973 in order that the Court might determine the appropriate level of financial provision you, as her husband, should be required to make. Enclosed with this letter is a copy of a sworn affidavit setting out the history of her life with you, which she proposes to file in support of her application. Our client very much hopes that this course will not be necessary, but wishes you to be aware that if no substantive response is received to her requests, she will have no option other than to issue proceedings forthwith without further recourse to you.

It will be apparent that our client's claim is brought on the basis that she was and still remains married to you. Lest there be any doubt in this respect, our client will, if required, issue an application in the High Court of Justice for a declaration to be made in open court under section 55 of the Family Law Act 1986 as her marital status and in support of that application she will seek disclosure of the documents evidencing the marriage

in front of witnesses in March 1968 which were retained by you.

As we have endeavoured to make clear, both in this letter and in our client's affidavit, our client very much hopes that it will not be necessary to issue proceedings in the manner which she has been advised would be appropriate, exposing as this will your private life to public scrutiny, and she wishes to maintain and to preserve the quiet dignity that both she and you have maintained over the last 30 years consistent with the special love and respect that you share for each other.

So that there is no doubt in your mind, we are instructed to make clear that if agreement can be reached for payment to our client of a lump sum of £12 million, this, of course, she will accept in full and final settlement of all claims she would have against you, and she will be happy to co-operate with whatever steps you may be advised are appropriate in relation to the subsistence of the marriage itself, or with a view to giving legal effect to the binding nature of the settlement she would propose.”

73. The affidavit referred to in the letter was an affidavit sworn by Mrs Harb on 7 May 2003 (“the 2003 Affidavit”). The 2003 Affidavit was drafted by Mr Marshall. It set out Mrs Harb's account of her relationship with the King in similar terms to her witness statement in these proceedings (summarised in paragraphs 34 to 48 above), and requested financial provision in the sum of £12 million. Slightly oddly, the Prince does not admit that a copy of the 2003 Affidavit was enclosed with the letter. I see no reason to doubt that it was, however.
74. The Prince's evidence was that, on receiving the 7 May 2003 letter, the King “became irritated and annoyed” and discussed the situation with the Prince. The King also asked the legal department of his private office to advise. I consider probable that the Prince either read, or was informed about the contents of, the 2003 Affidavit.
75. According to Mrs Harb, she was in contact with Mr Martini by telephone quite regularly during this period. He seemed sympathetic to her position and keen to help her. Indeed, he had suggested to her at various times that Rania bore a striking resemblance to the Prince. He now suggested that Mrs Harb travel to Geneva to see the Prince. She therefore flew to Geneva and stayed at the same hotel as the Prince, the Noga Hilton. At the end of May 2003 she spoke briefly to the Prince as he was boarding a coach with his entourage. He said he would contact her. She said they would only need 10 minutes, but he said they would need longer. Afterwards Mr Martini told her that the Prince had gone to Egypt for a few days and asked her to wait in Geneva for his return. After a few days, however, Mr Martini told Mrs Harb that the Prince was going to London and that she should be able to speak to him there.
76. According to Mr Martini and the Prince, in early June 2003 Mrs Harb attempted to board a coach in Geneva in order to speak to the Prince, but she was denied access and did not succeed in speaking to him. In cross-examination, however, he said that, if Mrs Harb spoke to the Prince, it was outside his vision. Mr Martini disclaimed

knowing that Mrs Harb was staying at the Noga Hilton, although he accepted that the Prince was staying there. Mr Martini denied saying suggesting that there was any resemblance between Rania and the Prince. He also denied telling Mrs Harb that the Prince had gone to Egypt and she should wait for him to return or that the Prince was going to London and she should be able to speak to him there.

77. Mrs Harb's evidence in her witness statement appears to be based upon, and is certainly supported by, two attendance notes made by Mrs Simon. The first is dated 2 June 2003, which records:

“Attending Mrs Harb on her telephoning when she said that she was in Geneva because Abdul Aziz was there. She saw him two days ago and he said would see her in the evening but he then did not turn up. He is now going to Egypt for two days but Mr Martini is now in Geneva and has spoken to him and has told Mrs Harb that Abdul Aziz wants to talk to her so she should wait for him in Geneva.

I asked how their meeting went and she said that he was very nice to her with all the crowd present. She is sure that he will come back because his tribe is waiting for [him] in Geneva so he must come back.”

78. The second is dated 19 June 2003, which records:

“Attending Mrs Harb on her telephoning when she asked if I was just back from my break and I confirmed I was. She said she has an appointment with the Prince today at 11.00am. She had only recently returned from Geneva and he is now in London. They did see each other in Geneva and Janan said that she would only need 10 minutes. He said that they would need longer. She will call when the meeting is finished but he may be late because he is late for everything. ... ”

79. I consider that the account which Mrs Harb gave Mrs Simon at the time is more likely to be accurate than the recollections of Mr Martini and the Prince 12 years later.

19-23 June 2003

80. The events of Thursday 19 to Monday 23 June 2003 are central to this case. It is common ground that the Prince was staying at the Dorchester during this period, and not at his residence at 12 KPG.

81. The attendance note dated 19 June 2003 refers to Mrs Harb having an appointment with the Prince that day at 11:00 am. Although it is not recorded in the attendance note, it was Mrs Harb's evidence that she had made the appointment with Mr Jrayed and that the appointment was to meet the Prince at the Dorchester. The Prince's evidence was that Mrs Harb did not have an appointment to meet him. As explained above, Mr Jrayed did not give evidence. I consider it more likely than not that Mrs Harb did have an appointment.

82. Mrs Harb telephoned Mrs Simon to relate what had happened at 8:45 am on 20 June 2003. Mrs Simon recorded Mrs Harb's account in an attendance note as follows:

“Attending Mrs Harb on her telephoning when she said that the Prince has been postponing all the time and is not going to make things easy. She arrived at 11.00am and he was sleeping. He is leaving on Sunday so she decided to wait but he sleeps all day so she came back in the evening at 6.00pm to 7.00pm. She was with her journalist friend. They waited and waited. He came in at 3.00am and she then insisted on speaking to him in the big pavilion in the Dorchester. He started to shout saying that she was hurting the King and the family and he was most upset that we had written to the Ambassador in London. He was concerned that she had indulged/involved British lawyers who he is convinced will talk.

Mrs Harb accused him and his family about the allegations about drugs against her. She said she had two daughters and wanted to increase her £3,000,000.00 and she had lost her flat. He wants her to say that the allegations that she made about drugs are not true and then he will get her what [s]he wants which is £12,000,000.00 plus the two flats in Pier House which she transferred to the King some years ago.

Mrs Harb said that we must catch the barrister today because the Prince also wants Mr Marshall and me to sign something to say that we will not divulge anything that we have been told to anybody. I said that that is part of our professional obligations anyway.

I then informed Mrs Harb that I was leaving the office at 10.30am as I had meetings down in Kent all day and all evening. She said that I could not go because these documents must be prepared today as the Prince is leaving on Sunday and I have to come to the Dorchester today.

... I said that I would have to contact Mr Marshall's clerk and find out what his movements are for the day.

I asked her to explain again exactly what the Prince required and she said that the allegations of the King taking drugs were not true and also statements from Mr Marshall and me. He would then give her a Bankers' draft and transfer 129 and 108 Pier House to her.”

The “journalist friend” referred to is Mrs Mustafa-Hasan.

83. It can be seen from this account that Mrs Harb described her conversation with the Prince as having taken place on 20 June 2003. In the 2004 Affidavit and in her Particulars of Claim, however, Mrs Harb gave the date as 19 June 2003. In her Reply, she corrected the date to 20 June 2003.

84. It can also be seen that Mrs Harb described the conversation as having taken place in “the big pavilion” at the Dorchester. In her Reply and witness statement, she described it as having taken place in “the Pavilion”. Mr Stocker’s evidence was that the only area in the Dorchester known as the Pavilion was on the eighth floor, but that there was an area on the ground floor known as the Promenade. In the light of this evidence, Mrs Harb accepted that her references to the Pavilion were erroneous and that the area she was referring to was the Promenade. As noted above, Mrs Mustafa-Hasan made the same mistake.
85. I do not regard either of these minor discrepancies in themselves as undermining the reliability of Mrs Harb’s account.
86. In her witness statement, Mrs Harb gave the following account of the conversation:
- “54. I contacted my friend, Hama Mustafa-Hasan (‘Hama’), who agreed come with me to provide moral support. Hama and I arrived at the appointed time but were told the Defendant was sleeping and to come back that evening. We therefore left and returned at around 6pm to 7pm.
55. Hama and I sat for hours on end in the downstairs area of The Dorchester called the Pavilion. It is a large area with lots of seating and tables where we sat together and drank several cups of tea while we waited. Finally, in the early hours of 20 June 2003 at about 2am to 3am the Defendant entered the hotel. I got up and attracted his attention and he came over to where Hama and I were sitting. Despite his relative youth (he was only about 30 years old at the time) he was using a walking stick. Hama got up and moved seats so that the Defendant could sit next to me but remained within earshot of our conversation. There was no-one else present. The conversation was conducted entirely in Arabic.
56. The Defendant spoke to me in an angry and aggressive tone at first. He was angry that I had mentioned his father’s drug addiction in my May 2003 affidavit and that my lawyers, and perhaps even English Judges, would have seen it. He said I was hurting Fahd and that the family was particularly upset that I had contacted the Ambassador in London, who came from a different clan.
57. For my part my patience had worn rather thin, the letters from my solicitors having been ignored and my having been left waiting for so long to see him. The Defendant was my stepson and knew full well how much his father loved and respected me. Fahd would have been outraged by the way I had been treated. I therefore firmly told the Defendant not to shout at me and to show some respect. I very much doubt he is used to being spoken to like that, but, to give him his due, he immediately calmed down, apologised for having raised his voice and agreed to hear me out.

58. I wanted to appeal to the Defendant's head as well as his heart, not simply relying on the close bond I had with Fahd, and Fahd's promise to look after me as his wife but also demonstrating that I had brought substantial benefits to Fahd and the Defendant, for which I deserved recognition. I therefore explained that both the Defendant and his father had significantly benefitted from my introduction of Mr Bugshan, which Fahd had always promised to reward me for. I told the Defendant that I was due at least £6 million all those years ago for the introduction which, with interest, amounted to at least the £12 million I had been asking for in my unanswered letters.
59. I told the Defendant that, on top of that, I wanted to be able to give my daughters the two flats in Pier House, Flat 108 and Flat 129, which had remained empty ever since I sold them to Fahd and were therefore going to waste. I said my daughters would really appreciate such a gesture as they had grown up in Pier House and it meant a lot to them.
60. The Defendant listened sympathetically to what I said and, by the end, he seemed genuinely persuaded by what I had said, especially when I mentioned my daughters. He told me he wanted me to retract what I had said about his father's drug addiction in my May 2003 affidavit. He raised his hand and said words to the effect '*I swear by Almighty God that if you do this I will give you your right*' (meaning he would give me the £12m and arrange the transfer of the two flats as I had requested).
61. This form of solemn oath is extremely rare amongst the deeply religious Saudi people. To make such an oath and not keep it would be so dishonourable as to be out of the question. It therefore gave me great comfort that the Defendant would do as he had promised. He also wanted to ensure that the lawyers who had helped me write the affidavit would keep its contents completely secret. I told him that lawyers had to keep everything confidential anyway, but he was insistent that they should also sign something to that effect. I agreed to retract what I had said and to instruct my lawyers to provide signed confirmation that they would keep the contents of my affidavit confidential. Our conversation lasted approximately 15 minutes. At the end of it, we had reached an agreement.
62. The Defendant did not at any stage during our conversation say that he was acting on behalf of Fahd when making the agreement and there was absolutely no reason for either of us to think that he was. It was a personal undertaking on his part, which he swore by Allah to fulfil. He obviously wanted to prevent his father's drug addiction becoming public knowledge; I just wanted to receive the money and flats, which I felt I was entitled to. If the Defendant had fulfilled his

promise I would have had no need to pursue the matrimonial proceedings I had planned against his father and would not have issued them.

63. After the agreement was concluded, the Prince asked me to accompany him to the lift and show him where his father and I used to stay when we came to London. We had a friendly conversation for about another 15 to 20 minutes, during which I pointed out to him the door to the suite on the Seventh Floor where Fahd and I used to stay. I also showed the Defendant the exit Fahd and I used to use when Fahd wanted to go to the Clermont without anyone seeing him, which the Defendant found amusing. During the course of the conversation I asked how Fahd's health was; he responded '*my father has mentally gone*'.
64. At that point we said goodbye to each other, by the lifts on the ground floor. The Defendant said he was happy that we had reached an agreement and asked me to return to The Dorchester at 3.00pm later that day (20 June 2003) with the necessary documents and everything would be concluded. He also asked me to bring my daughters as he wanted to meet them. I agreed to do this. He then went back up in the lift and I made my way back to the Pavilion where I met with Hama and told her all about the discussion I had had with Defendant. By this time it was about 4am. Hama called her husband, who came and collected us in his car and took us home. Hama agreed to come with me to my solicitor's office that morning once we had had a few hours' sleep, to have the necessary documents drawn up."
87. It can be seen that there are a number of differences between the account Mrs Harb gave Mrs Simon on 20 June 2003 and the account she gave in her witness statement. First, the account in the witness statement is more elaborate. In itself, this is not particularly significant. It is entirely plausible that the account Mrs Harb gave Mrs Simon on the telephone was an abbreviated one. But the elaboration raises the question of how reliable Mrs Harb's recollection of the additional details was at the time she made the witness statement. It is possible that Mrs Harb gave a more detailed account during the conference later that day (as to which, see below), but any further details recorded in the attendance note have been redacted. Moreover, the account which Mrs Harb gave in the 2004 Affidavit (as to which, see below) is quite brief.
88. Secondly, there is a small difference in timing. On 20 June 2003 Mrs Harb said that the conversation had started at 3 am and did not say when it finished. In her witness statement she said that it started between 2 and 3 am and went on until nearly 4 am. Again, this is a minor point.
89. Thirdly, on 20 June 2003 Mrs Harb said that she had told the Prince that she "wanted to increase her £3 [million]", whereas in her statement she said that she was due at least £6 million which with interest amounted to at least the £12 million she had been asking for".

90. Fourthly, there is no reference in the attendance note to the Prince having sworn a solemn oath. On the other hand, there is reference to this in (i) BWT's letter dated 15 July 2003 (see paragraph 133 below), (ii) Mrs Harb's letter sent on 25 July 2003 (see paragraph 135 below), (iii) Mrs Simon's attendance note dated 11 August 2003 (see paragraph 142 below), (iv) BWT's letter dated 5 January 2004 (see paragraph 155 below) and (v) the 2004 Affidavit (see paragraph 157 below).
91. Fifthly, the attendance note does not in terms refer to Mrs Harb and the Prince having reached an agreement. On the other hand, there is reference to this in (i) BWT's letter dated 15 July 2003, (ii) BWT's letter dated 5 January 2004, (iii) the 2004 Affidavit and (iv) Mrs Simon's attendance note dated 19 January 2004 (see paragraph 158 below).
92. Sixthly, in the attendance note Mrs Simon recorded herself as having told Mrs Harb that Mr Marshall and herself were professionally obliged to keep things confidential, whereas Mrs Harb's statement recorded Mrs Harb as having told the Prince this. Counsel for the Prince suggested to Mrs Harb in cross-examination that the attendance note was accurate and that the drafter of her statement had misread it. Mrs Harb disputed this. In my view it is probable that what counsel suggested is correct. Not only is the attendance note more likely to be accurate than Mrs Harb's recollection, but it is inherently more probable that it was Mrs Simon who told Mrs Harb this.
93. Seventhly, there is no mention in the attendance note of Mrs Harb having shown the Prince the seventh floor and exit at the Dorchester. It would be understandable if Mrs Harb had not mentioned that to Mrs Simon at that time, however.
94. The two most significant differences are the third, fourth and fifth ones. Of these, the most important are the fourth and fifth, in particular because they go to the question of what was actually said.
95. Mrs Mustafa-Hasan's account of the conversation in her witness statement was as follows:
 - "14. After we had been sitting in the Pavilion for many hours – it was approximately 2:30am to 3.00am - the Defendant finally walked in. Although he was only in his 30s he was using a walking stick. Janan called out to him and he approached us. Janan and I had been sitting next to each other and when he arrived I got up and moved to a seat directly behind, so that they could sit together. I was sitting close enough to be able to hear what they were saying. They spoke in Arabic. No-one else was present at the time or within hearing distance of the conversation.
 25. To begin with the Defendant shouted at Janan and seemed angry with her. He asked her how she could let people know about the details about his father's life (I assume he was referring to the affidavit that Janan had sent to him). Janan stood up to the Defendant and told him not to shout at her, which I thought was very brave considering who she was

speaking to. Janan reminded the Defendant that she had sent a number of letters to him, which had gone unanswered.

26. Janan went on further to explain that Fahd had been looking after the commission money for certain business introductions she had made and that had always promised to look after Janan and her daughters. Janan explained to the Defendant that he continued to get commission of 50% from the deals she initiated through Ali Bugshan.
 27. Janan went on further to discuss her dire financial position and suggested that the two flats in Pier House which she had transferred to Fahd some years earlier be given to her daughters, one for each of them, and that she be given £12 million being the £6 million which Fahd was looking after for her plus interest. Janan explained that 'this was her right' and that she was entitled to that money.
 28. The Defendant listened attentively then said in Arabic words to the effect of: *'I swear by Almighty God that you will have your right, and what you have asked for, provided that you state that what you have said is untrue... We will sort this out'*. I took this to mean that he would ensure Janan received £12 million and the two flats if she retracted what she had said in her affidavit.
 29. The Defendant was also concerned that Janan's lawyers, who helped her prepare the affidavit, could reveal its contents. Janan tried to explain to the Defendant that her lawyers were already bound by a duty of confidentiality. However, Janan did not want to argue and agreed to provide letters from her lawyers attesting that they would never reveal anything contained in Janan's affidavit or otherwise regarding her case.
 30. The entire conversation lasted approximately 15 minutes. The Defendant then asked Janan to show him where she and his father stayed when they visited the Dorchester. Janan left with him and returned approximately 15 – 20 minutes later on her own. She told me that the Defendant had asked her to show him which suite she used to stay in with Fahd and Janan also explained to him how she and Fahd used to come and go through the back door of the hotel when they visited casinos. According to Janan, it was an amicable conversation.
 31. Janan told me that the Defendant had asked her to come back at 3pm with the relevant documents and to bring her daughters too. In the car on the way home Janan explained that she would contact Sara (her solicitor) in the morning. She asked if I would accompany her, to which I agreed."
96. It can be seen that Mrs Mustafa-Hasan's account is mostly consistent with that given by Mrs Harb in her witness statement. There is, however, one difference which is not

unimportant. According to Mrs Mustafa-Hasan, Mrs Harb said to the Prince that the £12 million and the Flats were “her right”, whereas Mrs Harb did not herself express it precisely that way. Moreover, in cross-examination Mrs Mustafa-Hasan expressed the Prince’s response differently: namely, that the Prince said “Okay, we will settle this matter. We will settle this matter. You will get your money, the 12 million, and the two flats, but bring me the retraction” and “I swear by almighty God you will get what you want” (i.e. without referring to Mrs Harb’s “right”).

97. The Prince’s account of what happened in his first witness statement was as follows:

“22. My recollection of the ‘meeting’ is as follows. I was leaving the hotel one evening for an engagement and on passing through the lobby of The Dorchester on the way to my waiting vehicle, Mrs Harb suddenly accosted me. I continued walking across the lobby whilst she attempted to talk to me. The whole discussion was very brief and it lasted for no longer than around a minute.

23. My recollection is that Mrs Harb tried to explain her situation and her financial difficulties to me. I stopped just short of the front door of the hotel and looked her in the face and told her that the King took a very dim view of her actions such as the Affidavit and speaking to the press, spreading lies and insinuations. I asked her why she was even talking to me given the lies she had spread about the King. I told her that before I would consider putting her case to my father again, she should repent and show respect and withdraw all those lies. Then I walked away, through the door and into my car.

24. Mrs Harb asserts in paragraph 35 of her [2004] Affidavit ... that at this ‘meeting’ in June, I agreed to pay to her the sum of £12 million in consideration of the King’s promises and to arrange to transfer the two properties. Mrs Harb asserts that I vowed to do this ‘*as a matter of honour in the presence of a witness*’. These assertions are completely untrue. I should note that I did not know in 2003 of apartments 108 and 129, Pier House, Cheyne Walk, Chelsea, London. I found out about them much later.

25. I do not recollect any other individual being present when this very brief conversation took place. I speak with a quiet voice so I doubt that we would have been overheard by any third party. It is also untrue, as alleged in the Reply, that I met Mrs Harb in the ‘Pavilion’ and that we spent a total of 30-35 minutes in each other’s company. She did not show me the accommodation which my father used to occupy in the Hotel. None of this is true.

26. On my return to the hotel that evening, my Private Secretary, Mr Omar Jayed (‘Mr Jayed’), informed me that after I left, she stopped and spoke to him explaining her situation and told him what I had said to her. He told me that he advised her to follow my suggestions and somehow get back to a more friendly posture. Mr Jayed had been in the lobby of the hotel, accompanying me on my exit from the hotel, at

the time of my brief conversation with Mrs Harb. He was too far away to hear our brief conversation but he saw me speak to her.

27. I have had my attention drawn to paragraph 16 of my Defence and Amended Defence in this action, in which it is stated that I instructed Mr Jrayed to meet with Mrs Harb to repeat my requirement that she withdraw all allegations against King Fahd, and that he did so. This was based upon my recollection at the time. However, I have since been informed as to Mr Jrayed's recollection of the circumstances of his discussion with Mrs Harb, and this has now reminded me of what in fact occurred. My present recollection is set out in paragraph 26 above. I apologise to the Court for my earlier error."
98. In his second witness statement the Prince mainly confirmed his earlier account, but added that he would not have shouted at Mrs Harb, that he would remember if Mrs Harb had spoken to him in the way she alleged, that he was not either in 2003 or in 2015 in a position to procure the transfer of the Flats to Mrs Harb and that he would never have described his father as "mentally gone".
99. Mrs Harb accepted that the Prince had not known about the Flats prior to the conversation on 20 June 2003, but said that she had explained about them then. Counsel for Mrs Harb submitted, and I agree, that the Prince's statement that he did not know about the Flats in 2003, and only found out about them much later, must be incorrect. For example, they were referred to in the documents enclosed with BWT's letter dated 26 June 2003 (see paragraph 119 below).
100. I shall return to the question of what was said during the conversation on 20 June 2003 after considering subsequent events.
101. Following Mrs Harb's telephone call at 8:45 on 20 June 2003, Mrs Simon telephoned Mr Marshall's clerk to ask if he was available for an urgent conference. She was told that Mr Marshall had been keeping the day free to do paperwork, but could have a conference at 10:00. She telephoned Mrs Harb, who said that she thought the earliest she could manage would be 10:30. She then telephoned Mr Marshall's clerk to fix the conference for 10:30. While this was going on, she cancelled all her own appointments for the day.
102. Mrs Simon and Mrs Harb arrived at Mr Marshall's chambers just before 10:30. The conference started at 10:35. Apart from this information, Mrs Simon's attendance note of the conference has been redacted. Mr Marshall referred in his witness statement to having notes of the conference, but gave evidence that he could not now find any notes. Mr Marshall's fee note shows that he was engaged in advising in conference and drafting documents until 3 pm.
103. Mr Marshall gave the following account of the conference in his witness statement, which Mrs Simon confirmed in her witness statement:
- "6. ... It was explained to me that Mrs Harb had entered into an oral agreement with HRH Prince Abdul Aziz Bin Fahd Abdul Aziz ('the Defendant') the night before.

7. I understood that the agreement with the Defendant to be as follows:
 - a) Mrs Harb would retract her comments in her affidavit about the King taking drugs;
 - b) Mrs Simon and I would confirm we would not divulge any information we had come to know concerning her relationship with the King whilst acting for Mrs Harb.

In return Mrs Harb would receive £12 million plus two properties in Cheyne Walk.

8. I understand that Mrs Harb's concern was that if she retracted her comments as the Defendant suggested that there should be no reprisals against her. It was explained to me that the purpose of the retraction was merely to clear the name of the King.
 9. I was asked to prepare the necessary documentation to give effect to the agreement. It was discussed whether the documents should be translated into Arabic. Mrs Harb's friend (Hama) indicated she was ready to do this, however I explained that our job as lawyers were to construct words carefully and I was concerned that there may be some misinterpretation through translation. I did not want to be party to the fact that a document might be translated in the wrong way. Hama also felt that she was not sufficiently experienced to translate the documents accurately, and so it was agreed that they would not be translated before handing them to the Defendant.
 10. I left the conference room so I could prepare my letter, which I signed and gave to Mrs Simon who said she would prepare a similar one for herself. ...
 11. I explained that I would also draft a statement for Mrs Harb to sign retracting her comments about the King and a contract setting out the terms of the agreement. It was suggested to me that a Statutory Declaration would be more appropriate than a statement. I was not entirely sure of the precise wording to be used but Mrs Simon confirmed she knew what was required and would make it declarations and add the appropriate wording. It was agreed I would draft the documents and email them to Mrs Simon later that morning.
 12. I sent an email to Mrs Simon on 20th June 2003 at 14:51 attaching a draft contract and two statutory declarations (one marked 'without prejudice'). ..."
104. In cross-examination Mr Marshall confirmed that he was told that an oral agreement had been reached. He also explained that, in drafting the statutory declaration, he had tried to use anodyne wording; that the reason why he suggested a written contract was

to give effect to what had been agreed; and that his understanding was that the Prince was agreeing to honour any obligations the King might have had.

105. The draft contract prepared by Mr Marshall was in the following terms:

“This AGREEMENT is entered between Mrs Janan George Harb (hereafter referred to as Mrs Harb) and His Royal Highness Prince Abdul Azizbin Fahd (hereafter referred to as Prince Abdul Aziz) and is intended to be a binding contractual agreement governed by the laws of England and Wales:

IN CONSIDERATION OF:

- (A) the searing by Mrs Harb of a statutory declaration touching upon the content and veracity of certain allegations made in relation to the conduct and behaviour of His Majesty King Fahd bin Abdul Aziz (hereafter referred to as the King);
- (B) the signature by Mrs Sara Simon (Solicitor) and by Mr Philip Marshall (Barrister) (hereafter referred to together as Mrs Harb’s Legal Advisers) of documents confirming the confidentiality of all information communicated to them by Mrs Harb concerning her relationship with the King);
- (C) the payment of £12 million (twelve million pounds) which has already been made by Prince Abdul Aziz to Mrs Harb;
- (D) the transfer of all legal and beneficial title to the two properties known as Apartment 108 and Apartment 129 Pier House, Cheyne Walk, Chelsea, London into the sole name of Mrs Harb free from all encumbrances (completion of which Prince Abdul Aziz has expressly warranted to Mrs Harb his is able and willing to effect)

IT IS HEREBY AGREED BETWEEN THE PARTIES AND ACKNOWLEDGED AS FOLLOWS:

- (1) Mrs Harb accepts payment of the sum of £12 million (twelve million pounds) from Prince Abdul Aziz and completion of the transfer of all legal and beneficial title to the two properties known as Apartment 108 and Apartment 129 Pier House, Cheyne Walk, Chelsea, London into her sole name in full and final settlement of all promises made to her by the King and in full and final settlement of all legal or moral claims she may have against the King wherever and howsoever arising.

- (2) Subject to paragraph 3 (below) and to completion of the transfer of the two properties referred to in clause (D) above into the sole name of Mrs Harb, the terms of this Agreement shall remain confidential to Prince Abdul Aziz, his legal advisers, to Mrs Harb and to Mrs Harb's Legal Advisers.
- (3) Prince Abdul Aziz will take no step nor will not co-operate with any attempt by any third party to impose Mrs Harb any legal, social, moral or other financial penalty or sanction arising out of any allegation made by Mrs Harb or on her behalf in relation to the circumstances and nature of her relationship with the King."

106. An attendance note made by Mrs Simon on 20 June 2003 records that she telephoned Mrs Harb at 2:55 pm to let Mrs Harb know that she had received the draft documents. Mrs Harb said she would be at Mrs Simon's office in 5 or 10 minutes. Although this is not recorded in any part of an attendance note which is in evidence, Mrs Simon gave evidence that Mrs Harb wanted a couple of changes made to the draft contract. As amended by Mrs Simon, paragraph (D) of the draft contract read:

"a letter from Prince Abdul Aziz to Mr Martini instructing him to hand the keys of the two properties known as 108 and 129 Pier House, Cheyne Walk, Chelsea, London to Mrs Harb, and thereafter the transfer of all legal and beneficial title to the two properties into the joint names of Mrs Harb and her two daughters RANIA SAMI BOUIEZ and RAWAN SAMI BOUIEZ free from all encumbrances (completion of which Prince Abdul Aziz has expressly warranted to Mrs Harb he is able and willing to effect)".

Mrs Simon also made a parallel amendment to clause 1 of the draft contract.

107. In addition, Mrs Simon slightly amended the version of the draft statutory declaration prepared by Mr Marshall which was not marked "without prejudice", mainly by adding paragraph 4. As amended by Mrs Simon, the statutory declaration stated:

- "1. I wish to confirm that I have had the opportunity to reflect upon certain allegations that I have made in relation to events that occurred over thirty years ago, and in particular upon the suggestion of His Majesty King Fahd bin Abdul Aziz's alleged addiction to and misuse of illegal drugs.
2. I now realise and accept that I was wrong to make such allegations against the King and that as a result of the passage of time I may have become confused and have misinterpreted events, and I wish to apologise unreservedly for the fact that I have falsely accused His Majesty of misconduct and misbehaviour that I now accept to be untrue.

3. I wish to make clear for the avoidance of all possible doubt that I have always and will continue to hold His Majesty King Fahd bin Abdul Aziz, Custodian of the Holy Places in the highest possible regard and that I cherish and honour the personal and spiritual relationship that I have been permitted to share with the bastion of justice and the defender of the right.
 4. And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act 1835.”
108. Mrs Harb’s evidence was that she attended Mrs Simon’s office with Mrs Mustafa-Hasan. Mrs Harb then made the statutory declaration before Feisal Sheikh of GSC Solicitors, whose office was near to BWT’s office. Afterwards, Mrs Harb took away two envelopes, one containing the originals of the statutory declaration, the letters from Mr Marshall and Mrs Simon and the draft contract and the other containing copies of these documents. Mrs Harb and Mrs Mustafa-Hasan then went to the Dorchester. Mrs Harb was conscious that she was at least an hour late, having agreed to meet the Prince at 3 pm. On arrival at the Dorchester, they met Mr Martini, who told them to wait. Mrs Harb gave him the envelope with the copy documents. Mr Martini opened the envelope and briefly read the documents. He asked Mrs Harb why the Flats had been included, and she said that that was what had been agreed. About one or two hours later, they were joined by Rania, who Mrs Harb had asked to come earlier in the day. Rawan was not available. Shortly afterwards, Mr Martini said that the Prince wanted to meet them at the Sheraton Park Tower Hotel (“the Sheraton”). They all went to the Sheraton. After a short time, the Prince met them. He was particularly interested in Rania, who he stared at for an uncomfortable length of time. After a few minutes, he said something had come up, but he would be back shortly. They waited hours for him to return, but he did not. Eventually, Mrs Harb sent Rania home and, later, she and Mrs Mustafa-Hasan also went home.
109. Mrs Mustafa-Hasan and Rania gave evidence broadly to the same effect as Mrs Harb, except that Mrs Mustafa-Hasan did not say that Mr Martini had opened the envelope and asked about the Flats or that the Prince had stared at Rania and on Rania’s account she arrived after (she was told) her mother had given Mr Martini the envelope. The Prince denied that he had met them at the Sheraton on 20 June 2003, but said that he had asked Mr Martini to arrange a meeting at the Sheraton before the meeting at the Dorchester, but the meeting at the Sheraton had not gone ahead for reasons he could not recall. Mr Martini’s evidence in his first witness statement was that, prior to the meeting at the Dorchester, he had arranged a meeting at the Sheraton at the Prince’s request, and had met Mrs Harb and one or both of her daughters there, but the Prince had cancelled the meeting due to an unscheduled meeting elsewhere. In cross-examination, however, he accepted that this had taken place on 20 June 2003. Moreover, he could not say whether or not the Prince had come and was prepared to take Mrs Harb’s word on it.
110. An attendance note made by Mrs Simon timed at 10:40 am on Saturday 21 June 2003 records the following:
- “I telephoned Mrs Harb as I had not heard from her last night. She said that they had such a horrible time. She took the girls

with her and he asked them to go to another hotel and wait for him. He came and saw the girls briefly and then something came up and said he must deal with it but he would be back. They waiting until 12.30 am but he did not return but sent a message via Mr Martini to say that he was sorry that he could not see them but he would see them this evening although no time was given.

Hama and her husband are now translating the documents into Arabic to be able to give him an idea of what they say. They are running out of time for the Prince to approve the documents unless he knows what they say and of course he does not speak any English although he does have lawyers with him who do speak English. Mrs Harb told Mr Martini that she had the documents that the Prince wanted to see. She will go back this evening and wait.”

111. An attendance note made by Mrs Simon timed at 10:10 am on Sunday 22 June 2003 also contains a paragraph which, despite the reference to “last night”, evidently refers to 20 June 2003:

“She explained to me more fully what happened last night and how they waited at the end of the pavilion in the Sheraton Park Tower Hotel. When he did not come back, Mrs Harb sent her daughters home at 11.30pm as she did not see why they should wait any longer.”

It is convenient to note at this point that, in the 2004 Affidavit (quoted in paragraph 157 below), Mrs Harb said that the meeting with the Prince on 20 June 2003 took place at the Dorchester, but this attendance note shows that this is incorrect and that Mrs Harb’s witness statement is correct on this point.

112. The account recorded in the attendance notes is broadly supportive of the evidence of Mrs Harb, Mrs Mustafa-Hasan and Rania, although the attendance notes do not mention Mrs Mustafa-Hasan as having been present and do say that Mrs Harb took both her daughters with her. (It would not be surprising if the Prince misremembered the proposed meeting at the Sheraton as having been before, rather than after the meeting at the Dorchester. Nor, given that nothing much transpired, would it be surprising if the Prince did not remember that there had been a brief meeting at the Sheraton. Moreover, as noted above, Mr Martini accepted that the meeting had been arranged and that the Prince may have been present for a short period. Accordingly, I conclude that the meeting did take place. Given what is stated in the attendance notes, I consider it probable that both Rania and Rawan were present. It is not necessary to decide whether the Prince stared at Rania.
113. The attendance note dated 21 June 2003 records Mrs Harb as having said that Mrs Mustafa-Hasan and her husband were translating the documents, but Mrs Harb did not recall that and Mrs Mustafa-Hasan denied having done so. Most importantly, the attendance notes do not mention Mrs Harb having given the documents to Mr Martini. Moreover, the penultimate sentence of the 21 June 2003 attendance note is

inconsistent with her having done so. I think it probable that, in this respect, Mrs Harb and Mrs Mustafa-Hasan's recollection was in error.

114. According to Mrs Harb, she returned to the Dorchester with Mrs Mustafa-Hasan and Rania in the early evening on 21 June 2003. She wanted to speak to the Prince "to confirm that he was happy with the Documents and arrange for the immediate transfer of the money and the flats". Mr Martini told them that the Prince was having dinner with friends. At one stage, Mrs Harb and Rania were asked to wait for the Prince in an unoccupied bedroom. The Prince did not appear, however, and in the early hours of the morning they gave up and went home. Mrs Mustafa-Hasan and Rania gave evidence to the same effect as Mrs Harb, except that Rania was not sure which day it was that she and her mother were asked to wait for the Prince in an upstairs room. Although Mr Martini did not accept this account, he did say that he had arranged for Mrs Harb to wait in a hotel room, although he attributed this to the Sheraton.

115. Mrs Simon's attendance note of 22 June 2003 records:

"I telephoned Mrs Harb to find out what happened last night. She said that they did not get to see the Prince. All the people who wanted to see him were in a queue. It seems that most of the Embassy was there and other people. ...

Last night she and Hama waited at the Dorchester until 4.30am. The Prince was still up having dinner with his friends."

116. According to Mrs Harb, on Sunday 22 June 2003 she and Ms Mustafa-Hasan returned to the Dorchester at about 3 pm. Again she took an envelope containing copies of the documents. After about three hours, the Prince came down to see them and she was able to hand him the envelope. He said that he would consider the documents and give her an answer in 3 to 4 days. She understood him to mean that, unless he had queries regarding their contents, he would pay the money and transfer the Flats within that timescale. Mrs Mustafa-Hasan gave evidence to the same effect, except that she had not heard what the Prince said but Mrs Harb had reported it to her.

117. Mr Martini said in his first witness statement that, late in the evening of 22 June 2003, he had collected an envelope from Mrs Harb in the lobby of the Dorchester. A few hours later, he handed the envelope to the Prince. At the Prince's request, he orally translated the documents into Arabic. The Prince said that the withdrawal was not what he was seeking. The Prince's evidence in his second witness statement was to the same effect, except that he only referred to Mr Martini reading the statutory declaration to him. In oral evidence at the first trial, Mr Martini said that he had orally translated two documents for the Prince, namely the letters from Mr Marshall and Mrs Simon. He denied translating the statutory declaration even when he was shown the Prince's evidence. Before me, however, Mr Martini said that he reconsidered the matter and that it was possible that he had also translated the statutory declaration, although he was not sure.

118. An attendance note by Mrs Simon timed at 10:04 am on 23 June 2003 records:

"Attending Mrs Harb on her telephoning when she apologised for not ringing me earlier but she was just so tired. She said

‘what a night’ and she was so late back but at last very late at night she was able to hand the Prince the draft documents. She had also written a personal letter to go with the draft documents and she really had wanted to hand them to him personally to explain what she wanted.

The Prince said that he would give her an answer in 3 or 4 days.

She said that the Prince and his Advisor read everything but did nothing but the Prince thanked her and said that he would let her know in a couple of days so we must wait and see.”

It is unclear who the Advisor referred to is. Mr Martini is usually referred to by name in the attendance notes. It is nevertheless possible that the Advisor was Mr Martini.

119. On 26 June 2003 BWT wrote to the Prince saying:

“We understand that Mrs Harb met with you last Sunday evening, the 22nd June 2003, at the Dorchester Hotel in London and she handed to you a draft of a Statutory Declaration being a statement that you had requested from her, together with copies of Statements to be signed by Mr Philip Marshall, the Barrister who has been advising Mrs Harb, and also by Mrs Simon of this firm which you also requested together with a draft Contract for your approval.

We are enclosing copies of all four documents as drafted and confirm that we are holding the signed Statutory Declaration made by Mrs Harb and we are also holding the Statements signed by Mr Marshall and Mrs Simon. We are ready to proceed to complete the transaction, and according we await to hear from your English lawyers regarding the enclosed four documents as soon as possible.”

120. The Prince does not deny receipt of this letter, but he did not reply to it.

121. Subject to one point, I consider that it is probable that the account set out in the BWT letter is accurate. The letter does not mention Mrs Harb having included a personal letter, but the attendance note dated 23 June 2003 indicates she did. (This is also mentioned in the 2004 Affidavit quoted in paragraph 157 below, although not in Mrs Harb’s witness statement). I also consider it probable that the Prince asked Mr Martini to translate the documents and Mr Martini did so, and that the Prince said he would give Mrs Harb an answer in three or four days.

29 June – 7 August 2003

122. According to Mrs Harb, about a week later, Mr Martini telephoned her to say that the Prince wanted the original versions of the documents and not just copies. She was reluctant to provide the originals without receiving the money and the Flats. She tried to telephone the Prince but could not get through. On 30 June 2003 she received a

message from Mr Martini that the Prince would telephone her that afternoon, but the call never came. Mr Martini later told her that the Prince had been admitted to hospital for a minor dental operation. Mr Martini disputed this. The Prince's evidence in his first witness statement was that, while he was indeed admitted to hospital for a dental operation at that time, he did not ask Mr Martini to contact Mrs Harb. In his second witness statement, he added that he was expecting a personal apology and a total withdrawal of all her allegations against the King.

123. In an attendance note timed at 11:12 am on 29 June 2003 Mrs Simon recorded:

“Attending Mrs Harb on her telephoning me at home when she said that she had just spoken to Mr Martini to let him know that we were expecting to hear from the Prince within the next couple of days. Mr Martini has told her that he wanted the papers signed and authenticated, he did not want copies. She asked Mr Martini why he had not told her this earlier and he said that he had not been able to get hold of her which was ridiculous.”

124. In an attendance note timed at 9:55 am on 30 June 2003 Mrs Simon recorded:

“Attending Mrs Harb on her telephoning when she sounded quite different and said that Mr Martini had been on the line when I telephoned her. Apparently the Prince rang him and said that he wanted to speak to Mrs Harb between 1.00pm and 3.00pm today and he wanted Mr Martini to be present when he does speak to her. She was very pleased that the Prince had actually responded.

She said that she had ‘handled’ Martini. It seems that he has all the papers that she gave the Prince last week. She asked him why he was attacking her and he said ‘you play very clever but not against my boy’. She could not believe that he was now calling the Prince his boy. She told me that she had had to bribe him now because he is the best chance of getting a resolution to this matter. I asked how much she had agreed to pay him and she said she paid him £100,000.00 last time but he will want more this time.”

125. An attendance note timed at 2:40 pm on 30 June 2003 records that Mrs Harb told Mrs Simon that Mr Martini was going to wait for the Prince to call him and then Mr Martini would go to Mrs Harb's flat.

126. Mr Marshall's fee note records that he advised on the telephone for 27 minutes on 30 June 2003. No record of the advice has been disclosed. The timing of the call is consistent, however, with Mrs Simon discussing with Mr Marshall the advisability of Mrs Harb giving the Prince the signed versions of the Statutory Declaration and the two letters.

127. In an attendance note timed at 8:45 am on 1 July 2003 Mrs Simon recorded:

“Attending Mrs Harb on her telephoning when she said that Mr Martini stayed in the Knightsbridge area to wait the ok from the Prince. He called Mrs Harb every one and a half hours to let her know the position but the Prince did not call.”

128. In an attendance note timed at 8:48 am on 2 July 2003 Mrs Simon recorded:

“Attending Mrs Harb on her telephoning when she said that Martini called her last night and told her that the Prince had a small dental operation but that he was rushed into hospital for it.”

129. On 7 July 2003 BWT wrote to the Prince noting that they had had no reply to their letter dated 26 June 2003 and continuing:

“However we are instructed that you subsequently requested to speak to Mrs Harb direct on Monday the 30th June 2003 in the presence of Mr Martini but the conversation did not take place. We understand that circumstances made this impossible and Mrs Harb has now learnt you needed urgent medical attention. She wishes you a very speedy and full recovery.

We confirm that we are still holding the signed Statutory Declaration made by Mrs Harb and the two Statements signed by Mr Marshall and Mrs Simon, and are ready to finalise the transaction. We await to hear from your English Lawyers accordingly.”

130. Again, the Prince does not deny receiving this letter, but he did not reply.

131. I consider it probable that the attendance notes and the letter accurately record what happened during the period 29 June to 2 July 2003.

132. There are two attendance notes dated 11 and 15 July 2003 in which Mrs Simon records Mrs Harb as saying that Mr Martini has told her that the Prince was working on the matter. The 11 July 2003 attendance note also records Mrs Harb as saying that the Prince had received BWT’s letter (which must be the letter dated 7 July 2003).

133. On 15 July 2003 BWT wrote to the Prince noting that they had had no reply to their letters dated 26 June 2003 and 7 July 2003 and continuing:

“When Mrs Harb met you in London on Thursday the 19th June 2003, you requested a Statement from her and in return promised her £12,000,000.00 and the two apartments in Pier House for her daughters. On Sunday the 22nd June 2003 Mrs Harb gave you a copy of the Statutory Declaration that she had made and copies of the two Statements made by Mrs Simon of this firm and Mr Philip Marshall of Counsel that you had also requested, and a draft Contract to record the Agreement between you.

Mrs Harb was not informed until a week later by Mr Martini that you wanted the original Statutory Declaration that she had made. She is happy to hand over the original Statutory Declaration in return for the Contract signed by you which she will also sign. We have advised Mrs Harb that she must consider the potential consequences to her and her two daughters of the effect of her Statutory Declaration under English Law. We would like to point out that the only reason Mrs Harb made her Statutory Declaration was at your specific request and on your promise to then honour your Father's wishes and pay her £12,000,000.00 and transfer the two apartments in Pier House for her daughters.

We understand that Mr Martini has informed you that Mrs Harb has no right to make a further claim in view of the contents of the Agreement dated 1st March 2001. However the claim that she is now making has no connection whatsoever with the previous Agreement and is not covered by the terms of that Agreement. This claim is based on her rights under Matrimonial Law. We do not believe that Mr Martini or his lawyers are fully aware of the basis of Mrs Harb's claim and that they may therefore be under a misapprehension if they have not seen a copy of her Affidavit.

We have been asked to say how disappointed Mrs Harb's daughters were not able to have a proper meeting with you. They had wanted to explain to you how they were raised in the apartments in Pier House, and how important those apartments are to them, and as the apartments are not being used; they wanted to ask you to give them back. They were disappointed having waited until midnight on Friday the 20th June 2003 not to see you again after the brief one minute meeting earlier in the evening.

Mrs Harb has never tried to smear your Father's name or harm him in any way. However Mrs Harb was unable to see you in Geneva last year when she personally visited you. She received no replies to the letters that she wrote, nor answers to her telephone calls or telegrams and we received no replies to our letters. Mrs Harb only wrote to the Ambassador as she had received no response whatsoever from you. She apologises for any embarrassment this may have caused you but her actions were that of a desperate person.

You have shown care towards Mrs Harb and vowed by God to help her and assist her as your father would have wished and she greatly appreciates this. She would be very grateful to you as a representative of your father to grant her the life that she deserves and to enable her to continue a respectful life.

In the circumstances, we await to hear from your English Lawyers as soon as possible as Mrs Harb's financial position is becoming very serious indeed."

134. Again, the Prince does not deny receiving this letter, but he did not reply.
135. There are two attendance notes dated 25 July 2003. In the first, timed at 9:18 am, Mrs Simon recorded Mrs Harb as saying that she had spoken to Mr Martini a couple of times and believed the Prince had his attention on her case. The second, timed at 12:05 pm, records the delivery by Mrs Mustafa-Hasan to BWT of a letter from Mrs Harb. It appears that the letter in question was an undated letter to the Prince which is in evidence and that BWT arranged for the letter to be sent to the Prince. In the letter Mrs Harb stated (in translation):

"I waited several times for you to call me as you promised. The letter you asked me to prepare is ready and signed officially. I am prepared to give it to Fayez Martini, but I want to receive the money and the keys to the flats at the same time. This action shows you that I do trust you as you swore an oath before God to give me my entitlements. I believe you.

...

... You represent your father. ... I have now been begging you for a year not to leave us – you are responsible for us. Now, I'll do what you ask, even against my solicitor's wishes and give the letter you asked for. You promised to speak to me on the phone and I'll try to call you; please answer so that we can finish this. ..."

136. According to Mrs Harb, in late July or early August 2003 Mr Martini telephoned her and said that the Prince wanted the originals of the documents. She reluctantly arranged for Mrs Mustafa-Hasan to deliver the originals to Mr Martini at the Prince's residence, which she erroneously identified as being at 5 Kensington Palace Gardens before correcting it to 12 KPG. Mrs Mustafa-Hasan's evidence was that Mrs Harb asked her to deliver an envelope to Mr Martini at that address on 7 August 2003, and she did so after 3 pm. Mrs Harb had told her that the envelope contained original versions of documents which she had previously only given copies of. This evidence may be contrasted with Mrs Harb's evidence in the 2004 Affidavit (see paragraph 157 below) that she gave Mr Martini the documents (as opposed to Mrs Mustafa-Hasan).
137. In an attendance note dated 4 August 2003 Mrs Simon recorded Mrs Harb as having spoken to Mr Martini. In an attendance note dated 6 August 2003 Mrs Simon recorded:

"Mrs Harb said that she had spoken to the Prince's assistant today and he said that the Prince wants her Statement. Mrs Harb said that he should read her last letter to him again. The assistant that she gave her Statement to Mr Martini but Mrs Harb said that he would need instructions to accept the

Statement from the Prince. The assistant said that he would speak to the Prince and would ring her back.”

Mrs Harb’s evidence was that the assistant and Mr Martini were one and the same person, but I consider that to be highly improbable. There is at least one word missing from the third sentence. Looking at the manuscript version, it appears to me that it should read “The assistant said that she should give her Statement ...”.

138. In an attendance note timed at 11:46 am on 7 August 2003 Mrs Simon recorded:

“I returned Mrs Harb’s call. She informed that the letter has gone. She had contacted Mr Martini this morning which was very lucky because he is leaving at 5.00pm today to go to Marbella so he will take to Statutory Declaration and two letters with him. ... She also included another covering letter to the Prince from herself.

Mr Martini was happy to take the documents because it will enhance his position with the Prince. ... ”

139. When asked about the timing of this attendance note, compared to their evidence that Mrs Mustafa-Hasan had delivered the envelope after 3 pm, both Mrs Harb and Mrs Mustafa-Hasan suggested that it was explained by the fact that Mrs Harb took a nap in the afternoon. This is implausible, but on the other hand, it is possible that Mrs Mustafa-Hasan’s delivery of the envelope was delayed for some other reason. What matters more is that the attendance note supports the proposition that Mrs Harb sent Mr Martini a set of the documents and a covering letter on 7 August 2003.

140. Mr Martini denied either asking for the originals or receiving anything from Mrs Mustafa-Hasan. Moreover, Mr Garlick gave evidence, based on a log of visitors to 12 KPG, that Mr Martini was not recorded as having been present at 12 KPG on 7 August 2003. As counsel for Mrs Harb pointed out, however, the log book records fewer visits by Mr Martini in 2003-2004 than would be expected based on Mr Martini’s evidence. Moreover, Mr Garlick’s evidence was that Mr Martini’s presence would not be recorded if the Prince was resident. Although it is common ground that the Prince was not in residence on 7 August, this suggests that it may not have been regarded as essential to record all of Mr Martini’s visits.

141. On balance, therefore, I consider it probable that Mrs Mustafa-Hasan did deliver an envelope containing the originals of the three signed documents and a draft contract together with a covering letter from Mrs Harb to Mr Martini at 12 KPG on 7 August 2003.

142. According to Mrs Harb, she spoke to Mr Martini on the telephone a few days later. He was in Marbella with the Prince’s entourage. Mr Martini said that he had given the Prince the original documents and had translated them for him. He thought the Prince would pay the money very soon. This account is supported by an attendance note dated 11 August 2003 which records:

“Attending Mrs Harb on her telephoning when she said that Mr Martini called her on Saturday and said that he had seen the

Prince who was now on his way to Syria for an official visit. The Prince asked Mr Martini to translate to him the documents in Arabic although Mrs Harb had sent translations of the documents right at the beginning.

However Mr Martini did translate the documents and the Prince said that Mrs Harb alleged that he vowed by God that he would pay the money and he said that he did not. She asked Mr Martini what he thought the Prince would do and Mr Martini said that the indication was that the Prince wants to pay the money. He told Mr Martini that he was coming to London in one week and he would see Mrs Harb then. Mr Martini's view is the he wants to pay and said to her 'Janan, he is going to do it'. The Prince is coming to London probably at the end of this week and will be staying for about 10 days.

[redacted]

Mr Martini is very pleased to be involved and he called from Marbella to tell her what had happened.”

143. According to Mrs Harb, Mr Martini continued to keep her updated. He told her that the Prince had booked 50 rooms at the Dorchester, but went to the South of France instead before coming to London at the end of August 2003 and staying at the Landmark Hotel (“the Landmark”). This account appears to be based on, and is supported by, an attendance note dated 26 August 2003 and two attendance notes dated 29 August 2003. The first attendance note dated 29 August 2003 also records Mrs Harb as saying that the Prince stayed at 12 KPG before going to the Landmark and she had sent the Prince another letter “saying that she has complied with his wishes and handed over the Statutory Declaration that he wanted her to make and now would like her money”.
144. Mrs Harb's evidence was that, at the end of August 2003, she went to the Landmark and waited for the Prince. After a long wait, she saw the Prince with a large group of people. She approached him and asked him whether he was happy with the signed documents. He said she had done a good thing, he was pleased with them and there was nothing more he needed from her. He could not speak to her for more than a few seconds because he had ministers with him. Mrs Harb returned to the Landmark on a Sunday. After a wait, she was able to speak to the Prince briefly again. She asked him about transferring the money and the Flats and he said that he would look at the papers and arrange matters for her.
145. Jihan Harb's evidence was that in late August 2003 she accompanied her daughter to the Landmark. It was the only time she had ever been to the Landmark. They sat on a balcony area overlooking the main concourse and had a cup to tea. After a while, Mrs Harb spotted the Prince on the concourse and rushed down to speak to him. They spoke for a few seconds, and then Mrs Harb came back and told her mother that the Prince had assured Mrs Harb that everything was alright and he would handle the matter.

146. The Prince's evidence was that he was in London from 27 August to 1 September 2003, but that he stayed at 12 KPG and not at the Landmark. In his first witness statement, he said that he "certainly did not" speak to Mrs Harb or either 29 or 31 August 2003. In his second witness statement, however, he said that he remembered visiting the café in the lobby of the Landmark once or twice where he met a number of people, but he did not recall meeting Mrs Harb on either occasion. Mr Martini's evidence was that the Prince had stayed at 12 KPG, but that it was possible that the Prince had gone to the Landmark for coffee during his stay.
147. Mrs Harb's account receives some support from an attendance note timed at 8:32 am on 1 September 2013, which was a Monday, in which Mrs Simon recorded:

"Attending Mrs Harb on her telephoning when she said that I 'will not believe what I have been through this weekend'. There was nothing concrete so she did not call me.

Mr Martini took all her papers to him and the Prince said take it easy and come to the Landmark Hotel where he was staying but Mr Martini was unable to talk to him.

Mrs Harb decided to visit the Prince at the Landmark Hotel and she went Friday night and she did see him there. There were lots of people with him. He was very nice and very surprised to see her. She said that she needed to speak to him for 5 minutes. He said that he had Ministers with him and asked if he could call her and she said no because he never calls her back. He promised that he would do so and said say hello to the girls for him.

She waited all Saturday for his call. Mr Martini said that he was very ill. He was walking on a stick. Mrs Harb thinks he has a slipped disk and is avoiding having an operation. She did not hear from him so on Sunday she went to the Landmark Hotel again and was waiting there with her mother and sister and she did see him and said that she needed to speak to him and he said that it was not ok and that she needed to allow him to look at the papers and arrange everything for her. She told him that she did not have time to wait. He said that she must allow him to look at his papers so Mrs Harb felt that she must do so.

She came back home and she has been thinking about what papers he could be talking about. She now thinks that he must have asked Mr Martini to draw up papers for her to sign. She is going to ask Mr Martini what papers the Prince has to look at.

At their first meeting on Friday evening the Prince had said it was a very good thing that she had done and he was very pleased with it and yesterday he had confirmed that there was nothing more that he wanted from her."

148. I consider it probable that the account set out in the attendance note is accurate. Although clearly based on the attendance note, Mrs Harb's evidence in her witness statement both goes beyond it and differs from it. According to her witness statement, on the first occasion she went to the Landmark, Mrs Harb asked the Prince "whether he was happy with the signed documents and he said that I had done a good thing, he was pleased with them and there was nothing more he needed from me". On the second occasion, she "asked him about transferring the money and the flats and he said he would look at the papers and arrange matters for me". This account goes beyond the attendance note in stating that Mrs Harb asked the Prince whether he was happy with the signed documents. It differs from the attendance note in that the attendance note records the comment about wanting nothing more as having been made on the second occasion, not the first; and in that the attendance note records the Prince as saying on the second occasion that "it was not ok and she needed to allow him to look at the papers ...". I do not accept the accuracy of this evidence insofar as goes beyond or differs from what is recorded in the attendance note.

September 2003 – January 2004

149. Mrs Harb's evidence was that, after this, she spoke to Mr Martini once or twice a week on the telephone, and he encouraged her to believe that the Prince would complete the transfers soon, but as time went on her hopes started to fade. This evidence is supported by a series of attendance notes dated 1, 2, 5, 8, 15, 22, 23, 24, 29 September, 6, 9, 10, 13, 16, 24 and 27 October, 3, 10, 13, 17 and 18 November, 1, 8, 15 and 29 December 2003, although some of the attendance notes record Mrs Harb as having spoken to "the Prince's assistant" rather than Mr Martini.
150. Four of these attendance notes require further attention. First, in an attendance note timed at 10:35 on 1 September 2003, Mrs Simon recorded:
- "Attending Mrs Harb on her telephoning when she that she had spoken to Mr Martini and he is at the Palace waiting to see the Prince. He told her that if the Prince wants to see any papers, he has them all with him so he is going to wait. Mrs Harb is sure that the Prince will not give her the money without her signing something. ..."
151. Secondly, in an attendance note dated 6 October 2003, Mrs Simon recorded:
- "Attending Mrs Harb on her telephoning when she said that the Prince's assistant had called her and said that he has not talked to the Prince yet but is going to do so when they go to the dessert and he will call her on Saturday. She said to him that she did not think that it was any big deal for the wife of the Custodian of Islam to receive her money. The assistant said that he believes that the Prince is making arrangements to pay her. He wondered again if the Prince needed anything else such as any more papers and Mrs Harb no but the assistant is going to check this. ..."
152. Thirdly, in an attendance note dated 9 October 2003, Mrs Simon recorded:

“Attending Mrs Harb on her telephoning when she said that she had called the Prince's assistant and had had a long talk with him and said that she had fulfilled her part of the Agreement and that she was in severe financial difficulties but she did not want a scandal. He asked her if she had given in all the papers that the Prince had requested and she confirmed that she had. He also asked her what Faez Martini had said and she said nothing which was not quite correct but she did not want the assistant to think that Mr Martini had been telling her anything.”

153. Fourthly, in an attendance note dated 10 November 2003, Mrs Simon recorded:

“Attending Mrs Harb on her telephoning just to update me. ...

...

She also believes that having given the Prince her Statutory Declaration, she now has the chance to take the Prince to Court rather than the King. The Prince would not want this because he knows that the question of drugs would come out. ...”

154. It appears from the attendance notes that, during this period, Mrs Harb and her mother sent a number of letters and a telegram to the Prince. No reference was made to any such letters during the trial. I therefore presume that, if they have been disclosed, they contain nothing of significance.
155. On 5 January 2004 BWT wrote to the Prince, with copies to Prince Salman and Prince Nayef, in the following terms:

“Mrs Harb has asked us to write to you because she has still not received the sum of £12,000,000.00 and the two apartments in Pier House which you promised to her in return for her Statutory Declaration dated 20th June 2003 which she gave to you. Considerable time has passed. Mrs Harb has tried to resolve the matter herself without involving lawyers but she has not had any response to the letters that she has sent to you or the telegrams that she has sent or her telephone calls, and her mother has also not had any response to the letter that she wrote to you, and neither have her daughters received any response to their letters.

We are instructed that when you met Mrs Harb in the Dorchester Hotel in London on Thursday the 19th June 2003, you vowed that she would receive £12,000,000.00 and the two apartments in Pier House in return for her Statutory Declaration and also Statements made by Mrs Simon of this firm and Mr Philip Marshall of Counsel that you also requested. There was a witness to the vow that you made to our client on behalf of your father.

In view of the fact that you have not fulfilled your part of the agreement, we are now instructed to issue legal proceedings in this country under Section 27 of the Matrimonial Causes Act 1973 in order that the Court can determine the appropriate level of financial provision to be made based on the parties' respective financial positions. The financial arrangements are in place to enable Mrs Harb to issue the proceedings. We have no doubt that the full truth regarding Mrs Harb's marriage will emerge in the Court proceedings.

Unless we hear from you by Thursday the 15th January 2004, we are instructed to issue the matrimonial Court proceedings the following day and thereafter we will serve a copy of the sealed Court proceedings on the King and also send a sealed copy to the Saudi Embassy in London."

156. Again, the Prince does not deny receiving this letter, but he did not reply.

Mrs Harb's claim against the King

157. On 16 January 2004 Mrs Harb commenced proceedings against the King for financial provision under section 27. In support of the claim, she filed the 2004 Affidavit. The early part of the 2004 Affidavit repeated the 2003 Affidavit. The latter part gave a brief account of her dealings with the Prince in the following terms:

"35. ... We met at the Dorchester Hotel on 19 June 2003. Prince Abdul Aziz made plain that he took exception to certain of the matters to which I had made reference in my draft statement (the content of which he was clearly aware) but that nevertheless he was prepared to honour the terms of his father's promise to provide financially for me for the rest of my life. He agreed that he would pay me the sum of £12 million in consideration of his father's promise to me, and in addition would arrange to transfer to me the two properties in Pier House, Cheyne Walk to which reference has already been made earlier in this statement. This Prince Abdul Aziz vowed to do as a matter of honour in the presence of a witness. However it was made plain that I would be required to withdraw certain of the factual assertions I had made (most particularly it was made clear in respect of my husband's addiction to methadone), and at very short notice I arranged to make a Statutory Declaration, dated 20 June 2003 In addition a draft contract (drawn in very simple terms) was prepared with the intention it should be signed by Prince Abdul Aziz and myself, together with two letters signed by my solicitor and counsel dealing with their duty of confidentiality, upon which Prince Abdul Aziz wished to be assured. ...

36. I met again with Prince Abdul Aziz at the Dorchester Hotel on the evening of 20 June 2003, together with my two daughters, but only very briefly. However, we met again on 22 June, at

which time I gave Prince Abdul Aziz copies (but not the originals) of my Statutory Declaration, the two letters and the draft contract, together with a letter in Arabic setting out precisely what I wanted.

37. My solicitors wrote again to Prince Abdul Aziz on 26 June 2003 containing further copies of the documents to which I have referred, making plain that the originals were being held pending completion of the formalities through the Prince's English representatives. Subsequently I was contacted by Mr Martini who informed me that Prince Abdul Aziz wished to speak to me on 30 June 2003 sometime between 1.00pm and 3.00pm. That conversation did not in fact take place as I am informed that the Prince had a minor dental operation for which he was admitted to hospital. It was made plain to me that Prince Abdul Aziz was unhappy only to have received draft copies of the documents I had handed to him on 22 June 2003, but at no time was it suggested that he intended to renege upon the vow he had made to honour the King's promises to me.
38. Although no formal response was received to two chasing letters sent by my solicitors on 7 and 15 July 2003, on 6 August 2003 I was contact by Prince Abdul Aziz's Assistant, who informed me that the Prince wished to receive the original Statutory Declaration and the two letters signed by my solicitor and Counsel. I felt that by handling them over I would be showing that I trusted the Prince to honour the vow he had made at the Dorchester Hotel, and accordingly I gave the original Statutory Declaration and the two letters to Mr Martini, who took them to Marbella on 7 August 2003. It is the nature of any dealings with Prince Abdul Aziz that progress is often slow, and its speed entirely at his discretion, and mindful of that fact I knew that I would have to be patient, I was prepared to await Prince Abdul Aziz's decision. However, notwithstanding personal letters from my mother, my daughters and myself, matters were not concluded."
158. An attendance note dated 19 January 2004 records the account given by Mrs Harb of a telephone conversation with Mr Martini in which Mrs Harb informed Mr Martini that she had issued proceedings against the King. Mrs Harb explained to Mr Martini that she had obtained expert advice that she was still legally married to the King. The attendance note goes on:
- "They then discussed whether she should postpone the delivery of the proceedings. Mr Martini said that if there was a Court case, he would be on the other side from Mrs Harb. She said that she would not mind mediating but she wants them to pay and if necessary she will claim her human rights and proceed on the basis of the verbal contract."

159. Mr Martini accepted that, by around this time, he had understood that Mrs Harb had two claims: a claim against the King based on Mrs Harb's marriage to the King and a claim against the Prince based on an oral agreement with the Prince.
160. Attendance notes dated 27, 28 and 29 January, 2, 5, 9 and 16 February 2004 record Mrs Harb's accounts of further conversations between herself and Mr Martini. The only point which is necessary to note is that the attendance notes dated 28 and 29 January 2004 record Mr Martini as having told Mrs Harb that the Prince had said to Mr Martini that he had agreed to pay Mrs Harb.
161. As is referred to in a letter from BWT to the Prince dated 19 April 2004, at the beginning of March 2004 a Mr Abdul Al-Roweishid was appointed by the Saudi Royal Family to negotiate a settlement with Mrs Harb. Mr Martini gave evidence that Mr Al-Roweishid attempted to settle both Mrs Harb's claim against the King and her claim against the Prince. No agreement was reached, however. The letter states that "you vowed last June that you would honour your father's promise to her in return for her Statutory Declaration dated the 20th June 2003 which she gave to you".
162. The King asserted sovereign immunity in relation to Mrs Harb's claim. This was upheld by Dame Elizabeth Butler-Sloss P on 15 December 2004. Mrs Harb appealed, but in 1 August 2005 the King died. On 9 November 2005 the Court of Appeal held that the section 27 claim had abated with the King's death: see *Harb v Aziz* [2005] EWCA Civ 1324, [2006] 1 WLR 578.

Communications in 2008

163. There were further communications between Mrs Harb and Mr Martini in February 2008, the details of which do not matter. In addition, Mrs Harb wrote to the Prince on 12 February 2008. Although reiterating her request for £12 million, the letter did not mention any agreement in June 2003.

Meeting on 1 May 2009

164. On 1 May 2009 there was a meeting between Mrs Harb and Mr Martini at the Holiday Inn in Belgravia. Mr Martini gave an account of the meeting in a letter to Steven Morris of HK dated 2 May 2009 which has been disclosed by the Prince. In this letter Mr Martini said, among other things:

"She said that she has until the end of May to take class Action in the Court of England against Prince Abdulaziz!! The basis of this latest novel claim lies in a meeting she forced onto Prince Abdulaziz while he was staying at The Dorchester Hotel, London in 2004! During their meeting in the Lobby of the hotel, he expressed anger at her action in the Courts and elsewhere and he demanded an apology and a retraction in writing, signed by her in front of her Legal representative withdrawing all her claims and negative stories (as per her affidavit presented to the matrimonial court). She recalled, that if she did as he asked, he 'promised' her to give what she was asking (at the time £12M and the two flats).

She said that a document was prepared and signed adding that she could not sign anything that showed her as committing perjury. I remember receiving a brown envelope from her, which I gave to Prince Abdulaziz (it probably contained a single sheet of paper). Nothing came of it.”

Mrs Harb’s book

165. Mrs Harb has written, and privately printed and published, two editions of an autobiography: the first entitled *Royal Flush: The Saudi King and I* (2011) and the second edition entitled *The Saudi King and I* (2013). Neither mentions her alleged agreement with the Prince. On 19 February 2015 Mrs Harb entered into an agreement with one Damien McCrystal assigning the rights in these works to Mr McCrystal with a view to a film being made. No such film has yet been released, although I was told that a trailer has been.

Ownership of the Flats

166. By transfers dated 23 July 2013, the Flats were transferred by Elmsdale and Beechwood to Mr Martini for no consideration, although the stated value of each property recorded in the Land Registry was £1.8 million. Mr Martini’s evidence was that he held the Flats on trust for the King’s estate (of which the Prince is a beneficiary). Following the judgment of Peter Smith J, Master Bowles made an order by consent on 4 April 2016 which recited the Prince’s confirmation that he was able to procure the transfer of the Flats to Mrs Harb. Mr Martini gave evidence that nothing had changed since that date with respect to the Prince’s ability to procure the transfer of the Flats. Counsel for the Prince told me that this was because the Prince had obtained confirmation from the estate that he could do this, although I am not aware that there is any evidence of this.

The issues

167. The basic requirements for the formation of a contract are that (i) the parties have reached an agreement which (ii) is intended to be legally binding, (iii) is supported by consideration and (iv) is sufficiently certain and complete to be enforceable. In the present case, the Prince disputes that each of (i), (ii) and (iv) are satisfied. In addition, the Prince contends that any contract is unenforceable on the ground of illegality.

The capacity in which the Prince acted

168. Another point upon the Prince relies is that in 2003 he was the King’s representative, in the sense explained in paragraph 50 above. As counsel for the Prince explained in his closing submissions, the Prince does not rely upon this point as an independent basis for resisting liability. In particular, the Prince does not contend that, if the Prince made an agreement with Mrs Harb, he did so as agent for the King and without incurring personal liability. Rather, the Prince relies upon this point as part of the evidential matrix and as going to the likelihood that he said what he is alleged to have said. In particular, it is argued, it is unlikely that the Prince would committed himself to paying Mrs Harb £12 million and procuring the transfer of the Flats to her without consulting with the King and confirming that he (the Prince) was able to do those things.

169. I find that the Prince was regarded by Mrs Harb as the King's representative at the time. So much is clear from BWT's correspondence. On Mrs Harb's case, the Prince was more than the King's representative, because the King was incapable. As explained above, I do not feel able to make any finding as to the King's capacity. In my view this does not matter. Even if it is assumed that the King had the capacity that the Prince said he had, I consider that it is probable that both parties proceeded on the basis that, given his position, the Prince would be able to arrange for any agreement he made to be complied with. Thus I am not persuaded that this factor lends much support to the Prince's case that he did not make any agreement with Mrs Harb. On the other hand, for the reasons explained below, I consider that it lends more support to the Prince's case that any agreement he made was not intended to be immediately binding.

Issue 1: Was there an agreement at all?

The law

170. Both counsel accepted as correct the following recent statement of the law by Leggatt J (as he then was) in *Blue v Ashley* [2017] EWHC 1928 (Comm):

“63. In determining whether an agreement has been made, what its terms are and whether it is intended to be legally binding, English law applies an objective test. As stated by Lord Clarke in *RTS Flexible Systems Ltd v Molkerei Alois Muller GmbH and Co KG* [2010] UKSC 14; [2010] 1 WLR 753:

‘The general principles are not in doubt. Whether there is a binding contract between the parties and, if so, upon what terms depends upon what they have agreed. It depends not upon their subjective state of mind, but upon a consideration of what was communicated between them by words or conduct, and whether that leads objectively to a conclusion that they intended to create legal relations and had agreed upon all the terms which they regarded or the law requires as essential for the formation of legally binding relations.’

As with all questions of meaning in the law of contract, the touchstone is how the words used, in their context, would be understood by a reasonable person. For this purpose the context includes all relevant matters of background fact known to both parties.

64. ... where, as here, the court is concerned with an oral agreement, the test remains objective but evidence of the subjective understanding of the parties is admissible in so far as it tends to show whether, objectively, an agreement was reached and, if so, what its terms were and whether it was intended to be legally binding. Evidence of subsequent conduct is admissible on the same basis. In the case of an oral agreement, unless a recording was made, the court cannot

know the exact words spoken nor the tone in which they were spoken, nor the facial expressions and body language of those involved. In these circumstances, the parties' subjective understanding may be a good guide to how, in their context, the words used would reasonably have been understood. It is for that reason that the House of Lords in *Carmichael v National Power Plc* [1999] 1 WLR 2042 held that evidence of the subjective understanding of the parties is admissible in deciding what obligations were established by an oral agreement.”

Mrs Harb's pleaded case

171. Mrs Harb's pleaded case in her Amended Particulars of Claim is as follows:

“7. On 19 June 2003, Mrs Harb (accompanied by a friend) attended a meeting at the Dorchester Hotel with the Defendant. During this meeting:

7.1 The Defendant informed Mrs Harb that he took exception to certain matters contained within the Draft Statement (which it appeared he had received from King Fahd) but that he was willing to honour the terms of King Fahd's promise to provide financially for Mrs Harb for the rest of her life.

7.2 The Defendant offered to pay to Mrs Harb the sum of £12 million and to procure the transfer to her of two properties in Pier House This offer was made:

- (1) In order to satisfy the promise and assurances given by King Fahd to Mrs Harb to provide for her financially for the rest of her life; and
- (2) In return for Mrs Harb agreeing to withdraw and then withdrawing certain factual assertions she had made about King Fahd.

7.3 Mrs Harb accepted this offer on the part of the Defendant.

The Claimant will refer to this offer and acceptance as ‘the Agreement’.

...

9. If (contrary to the Claimant's primary case) no binding and enforceable agreement was concluded on 19 June 2003, in the light of the discussions that took place on 19 June 2003, by requesting and thereafter receiving copies of the original versions of the Documents as pleaded in paragraph 8.5 above,

the Defendant (through his agent Mr Martini) became contractually bound to pay the sum of £12 million to Mrs Harb and to procure the transfer of the Properties to her. The Claimant will refer to this agreement as ‘the Alternative Agreement’.”

172. The Draft Statement referred to is the 2003 Affidavit. Paragraph 8.5 pleads that Mrs Harb handed originals of the documents to Mr Martini on 7 August 2003.
173. It can be seen from this that Mrs Harb’s primary case is that a binding agreement came into being on 19 June 2003 (subsequently corrected to 20 June 2003 as discussed above), and her alternative case is that a binding agreement came into being when the Prince received the originals of the statutory declaration and the letters from Mr Marshall and Mrs Simon on or shortly after 7 August 2003.
174. Two points may be noted about these cases. First, so far as primary case is concerned, there is no reference in paragraph 7 to the letters from Mr Marshall and Mrs Simon, yet it has always been Mrs Harb’s evidence that these letters were part of what the Prince required. The letters are referred to in paragraph 8, however, as having been prepared “pursuant to the Agreement”. I regard the omission to refer to them in paragraph 7 as an oversight on the part of the original pleader of the Particulars of Claim (who was not any of the counsel now representing Mrs Harb), although (like the error as to the date) it has not subsequently been corrected by amendment.
175. Secondly, so far as the alternative case is concerned, this is not the case which counsel for Mrs Harb argued. The case which counsel for Mrs Harb argued was that the agreement became binding when the Prince communicated his approval of the documents on 29 and 31 August 2003. Counsel for the Prince did not object that this case was not open to Mrs Harb.
176. It seems to me that Mrs Harb’s alternative case, particularly as argued by counsel for Mrs Harb, comes close to alleging a unilateral contract: a promise by the Prince to pay Mrs Harb £12 million and to procure the transfer of the Flats to her if Mrs Harb supplied documents which met with the Prince’s approval. Since neither counsel made submissions on this footing, however, I will proceed on the basis that Mrs Harb is alleging two forms of bilateral contract which differ only as to the time at which the contract became binding. On the other hand, for reasons that will appear, it would not affect my analysis if Mrs Harb were to be regarded as alleging a unilateral contract.

Assessment

177. Mrs Harb’s case that she reached an agreement with the Prince on 20 June 2003 is supported by her own evidence, the evidence of Mrs Mustafa-Hasan, the evidence of Mr Marshall and the evidence of Mrs Simon. It also receives some support from the attendance note dated 20 June 2003 and from the subsequent documentary evidence. The only evidence to the contrary is the Prince’s own evidence.
178. In my judgment it is probable that some kind of agreement was reached between Mrs Harb and the Prince in the early hours of 20 June 2003. If there had not been, it is unlikely that all the activity which took place later that day, and subsequently, would have taken place.

179. What is more difficult is to determine is what was agreed. This, of course, depends on what was said on the one hand by Mrs Harb and on the other hand by the Prince. Understandably, Mrs Harb has never purported to give a word for word account of the conversation. Rather, she has given the gist of what was said. The same goes for Mrs Mustafa-Hasan. In those circumstances, I propose to consider the conversation aspect by aspect rather than word for word.
180. It is common ground between Mrs Harb and Mrs Mustafa-Hasan on the one hand and the Prince on the other hand that Mrs Harb initiated the conversation by explaining her situation and her financial difficulties.
181. In my judgment it is probable that the Prince initially responded by expressing anger about Mrs Harb's behaviour. Although he denies shouting at Mrs Harb, on his own account he said that the King took "took a very dim view of her actions".
182. The Prince accepts that he demanded a retraction by Mrs Harb of allegations she had made in the 2003 Affidavit. In his words, he said that "she should repent and show respect and withdraw all of those lies". A key question is the extent of the retraction the Prince required: was it just of the allegations about the King taking methadone or was more required, and if so what? For reasons that I will explain below, I have come to the conclusion that the Prince was not specific about what he wanted retracted, although Mrs Harb understood that the main point was the methadone allegations.
183. In my judgment it is probable that the Prince also demanded statements from Mrs Harb's lawyers that they would keep the allegations confidential. Otherwise, it is unlikely that Mrs Harb would have obtained the letters from Mr Marshall and Mrs Simon later the same day.
184. Was there any discussion about the £12 million and the Flats? On the Prince's account, there was not. In my judgment, however, it is probable that Mrs Harb did ask for £12 million and the Flats. She had requested £12 million in BWT's letters dated 3 January 2003 and 7 May 2003 and in the 2003 Affidavit, and it is inherently probable that she would have repeated that request. Although she did not ask for the Flats in the letters or the 2003 Affidavit, her explanation of why she asked the Prince for them on 20 June 2003 is convincing. Moreover, if they had not been mentioned, it is unlikely that Mrs Harb would have told Mrs Simon that they were or that the Flats would have been included in the draft contract prepared by Mr Marshall.
185. In my judgment it is also probable that Mrs Harb understood the Prince to promise her that, if she did what he was asking, he would get her the £12 million and the Flats. That is what she told Mrs Simon at 8:45 on 20 June 2003 and it is what she (or Mrs Simon on her behalf and in her presence) told Mr Marshall later that morning. She had no reason to lie to them. Moreover, her account is supported by Mrs Mustafa-Hasan. The only alternative explanation is that Mrs Harb was deluding herself, and continues to do so, and that Mrs Mustafa-Hasan has become equally deluded; but I do not consider that that is likely.
186. That brings me to the question of what the Prince said. An important question in this regard is whether the Prince swore an oath, and if so in what terms. Considering the evidence as a whole, I conclude that it probable that he did. I do not think it is possible to make any finding about the precise words he used, but nor do I consider it

necessary to do so. The most I can conclude is that he may have referred to Mrs Harb's claimed "right". Whatever the precise words were, however, I consider it probable that the words he used were reasonably to be understood as meaning that, if Mrs Harb did what he was asking to his satisfaction, then he would arrange for her to receive the £12 million and the Flats.

187. Finally, I consider it probable that Mrs Harb said she would do as the Prince asked and return later that day with the documents he had requested.
188. For reasons that I will explain below, I consider that the agreement which was reached between Mrs Harb and the Prince was not as alleged by Mrs Harb in paragraph 7 of her Amended Particulars of Claim ("the Agreement") because it was not intended to be binding at that stage. Rather, it was intended to be binding if and when Mrs Harb provided a retraction and statements from her lawyers which met the Prince's requirements and the Prince communicated his acceptance of the documents to her. This is closer to the agreement alleged by Mrs Harb in paragraph 9 of her Amended Particulars of Agreement ("the Alternative Agreement") and closer still to the alternative agreement for which counsel for Mrs Harb argued.

Issue 2: Was the agreement intended to create legal relations?

189. The Prince contends that, even if there was an agreement, it was not intended to create legal relations.

The law

190. Again, both counsel accepted as correct Leggatt J's statement of the law in *Blue v Ashley*:

"55. Even when a person makes a real offer which is accepted, it does not necessarily follow that a legally enforceable contract is created. It is a further requirement of such a contract that the offer, and the agreement resulting from its acceptance, must be intended to create legal rights and obligations which are enforceable in the courts, and not merely moral obligations. Not every agreement that people make with each other, even if there is consideration for it and the terms are certain, is reasonably intended to be enforceable in the courts. ...

56. Factors which may tend to show that an agreement was not intended to be legally binding include the fact that it was made in a social context, the fact that it was expressed in vague language and the fact that the promissory statement was made in anger or jest: see *Chitty on Contracts* (32nd Edn, 2015), vol 1, paras 2-177, 2-194 and 2-195."

As Leggatt J makes clear by his use of the word "reasonably", the question of whether an agreement is intended to create legal relations must be objectively assessed.

191. Another situation where an agreement is not intended to create legal situations is where it is intended that it will only become binding once a formal written agreement

has been executed. A common example of this is where an agreement is concluded that is expressed to be “subject to contract”. It is not necessary, however, for an agreement to be expressed to be “subject to contract” for this principle to apply: see *Chitty on Contracts* (32nd edition) at §§2-123 and 2-125.

192. Similarly, an agreement may not be intended to be binding until some other point is agreed or some other step has been taken: see *Chitty* at §2-119.

Assessment

193. Counsel for the Prince submitted that, even if there had been an agreement on 20 June 2003, it was not intended to create legal relations because (i) it was made in anger and/or (ii) it was made in vague language and/or (iii) it was not intended to be binding at that stage.
194. I do not accept that the agreement was made in anger. On the Prince’s account, he was not angry at all. On the evidence of Mrs Harb and Mrs Mustafa-Hasan, which I have concluded is probably accurate, he was initially angry, but calmed down.
195. As for vagueness, I think it is more convenient to address this in the context of issue 3.
196. Turning to point (iii), the principal submission made by counsel for Prince was that the evidence demonstrated that, as at 20 June 2003, Mrs Harb understood that she had no entitlement to be paid or to receive the Flats unless and until the Prince was satisfied that a satisfactory form of withdrawal had been provided. Accordingly, he argued, the parties did not intend that their agreement (if any) should be immediately binding. Rather, it would only become binding if and when the Prince communicated to Mrs Harb his acceptance of the documents she had provided. But, so counsel argued, the Prince never did communicate any acceptance of the documents.
197. Counsel for Mrs Harb submitted that the agreement was intended to be immediately binding, and delivery of the documents by Mrs Harb amounted to performance of the agreement by her. In the alternative, he submitted that it was intended to be binding when Mrs Harb provided documents which were satisfactory to the Prince and the Prince communicated his satisfaction to her, and that the Prince did communicate his satisfaction to her on 29 and 31 August 2003.
198. In my judgment counsel for the Prince is correct for the following reasons.
199. First, considering the evidence as a whole, I think it is probable that, as at 20 June 2003, the Prince intended and Mrs Harb understood that she would have no entitlement to be paid or to receive the Flats unless and until the Prince was satisfied that a satisfactory form of withdrawal had been provided.
200. As can be seen from, for example, BWT’s letters dated 4 February 2003 and 7 May 2003 (paragraphs 68 and 72 above), Mrs Harb was well aware that there was more in 2003 Affidavit that the Prince might regard as sensitive than the methadone allegations. An obvious example is the evidence about Mrs Harb’s abortions.

201. Although Mrs Harb's evidence in her witness statement was that the Prince only asked for the drug allegation to be withdrawn, her evidence in the 2004 Affidavit suggests his requirements extended beyond that: see her statement in paragraph 35 that "I would be required to withdraw some of the factual assertions I had made (most particularly it was made clear in respect of my husband's addiction to methadone)" (see paragraph 157 above). Paragraph 28 of Mrs Mustafa-Hasan's statement also suggests this (see paragraph 95 above). The same is true of the statutory declaration, which referred to "certain allegations ... and in particular the suggestion of [the King's] alleged addiction to and misuse of illegal drugs" (see paragraph 107 above). Indeed, both in the first trial and before me, Mrs Harb said at one point during cross-examination that the Prince wanted her to retract everything she had put in her affidavit, although at other times she said it was only the drug allegation.
202. Furthermore, on 26 June 2003 BWT sent the Prince an unsigned copy of the statutory declaration "for your approval" and awaited hearing from his English lawyers regarding the documents (paragraph 119 above). It was clearly anticipated that the Prince might not be happy with the wording of the statutory declaration. The same message is conveyed by BWT's letters dated 7 July 2003 (paragraph 129 above) and 15 July 2003 (paragraph 133 above). More generally, the same message is conveyed by the evidence as to the communications between Mrs Harb and Mr Martini during the period between 20 June 2003 and 31 August 2003.
203. Moreover, given the contents of the 2003 Affidavit, it is inherently probable that the Prince would have wanted to consult, if not the King personally, then at least the King's legal advisors, as to whether what Mrs Harb provided was satisfactory.
204. Secondly, I am not satisfied that the Prince unequivocally communicated his acceptance of the statutory declaration to Mrs Harb on 29 and 31 August 2003. Mrs Harb relies upon the statements by the Prince recorded in the attendance note dated 1 September 2003 (paragraph 147 above) that "it was a very good thing that she had done and he was very pleased with it" (29 August 2003) and "there was nothing more he wanted from her" (31 August 2003). As counsel for the Prince submitted, however, other parts of the attendance note point the other way. It begins with Mrs Harb's statement that she had not called Mrs Simon over the weekend because "there was nothing concrete". More importantly, perhaps, the account of the meeting on 31 August 2003 records the Prince as saying "that it was not ok and that she needed him to allow him to look at the papers and arrange everything for her". Later on 1 September 2003, Mrs Harb told Mrs Simon that she was sure that the Prince would not give her the money without her signing something (see paragraph 150 above).
205. Although counsel for Mrs Harb also placed reliance upon various subsequent statements by Mr Martini, such as a statement recorded in an attendance note dated 5 September 2003 that "The Prince has made the decision to do it and it is just a question of time as to when", I consider that the evidence shows that, as counsel for Mrs Harb himself submitted, Mr Martini was stringing Mrs Harb along during this period. The same goes for the Prince's assistant in the attendance notes dated 6 and 9 October 2003 (paragraphs 151 and 152 above).
206. This would also explain why Mrs Harb chose to bring her matrimonial claim against the King before bringing a claim against the Prince despite the fact that she was aware that the King was likely to claim sovereign immunity, and did not raise the claim

against the Prince until several years after her claim against the King had failed, although I do not place great weight on this point.

207. Prompted by a question from me, counsel for the Prince also advanced a secondary argument that the agreement was not intended to be binding because it was contemplated that a written agreement would be required. On reflection, however, I do not consider that this is correct. There is no evidence from any participant that there was any mention of a written agreement during the conversation on 20 June 2003. Mr Marshall's evidence was clear that he was instructed that an oral agreement had been concluded, and that it was his suggestion that this should be given effect to by a written agreement. Moreover, it can be seen that, for understandable reasons, he included more in the draft contract than he had been instructed had been agreed. It is not surprising that BWT proceeded on the basis that the written contract would require input from the Prince's English lawyers and signature by both parties; but that does not disprove the existence of a prior binding oral agreement.

Issue 3: Was the agreement too uncertain?

208. The Prince contends that, even if there was an agreement, it was too uncertain to be enforceable.

The law

209. Again, both counsel accepted as correct Leggatt J's statement of the law in *Blue v Ashley* at [61]:

“Vagueness in what is said or omission of important terms may be a ground for concluding that no agreement has been reached at all or for concluding that, although an agreement has been reached, it is not intended to be legally binding. But certainty and completeness of terms is also an independent requirement of a contract. Thus, even where it is apparent that the parties have made an agreement which is intended to be legally binding, the court may conclude that the agreement is too uncertain or incomplete to be enforceable – for example, because it lacks an essential term which the court cannot supply for the parties. The courts are, however, reluctant to conclude that what the parties intended to be a legally binding agreement is too uncertain to be of contractual effect and such a conclusion is very much a last resort. As Toulson LJ observed in *Durham Tees Valley Airport v bmibaby* [2010] EWCA Civ 485, [2011] 1 Lloyd's Rep 68, at para 88:

‘Where parties intend to create a contractual obligation, the court will try to give it legal effect. The court will only hold that the contract, or some part of it, is void for uncertainty if it is legally or practically impossible to give to the agreement (or that part of it) any sensible content.’ (citing *Scammell v Dicker* [2005] EWCA Civ 405, para 30, Rix LJ).”

Assessment

210. Counsel for the Prince submitted that the agreement (if any) was too uncertain to be enforceable for two main reasons; first, because it was unclear precisely what allegations the Prince required Mrs Harb to retract; and secondly, because it was unclear what the Prince promised she would receive in return.
211. It will be appreciated that the first objection overlaps to a considerable extent with the objection that the agreement was not intended to create legal relations. I agree with counsel for the Prince that, if (contrary to the conclusion reached above) the agreement reached on 20 June 2003 was intended to be immediately binding, it was too uncertain to be enforceable. Thus, if the Prince had tried to enforce the agreement against Mrs Harb, she would have been able to say that she did not know precisely what she was required to retract.
212. Turning to the second point, I have concluded that it is probable that the Prince said words which were reasonably to be understood as meaning that Mrs Harb would receive £12 million and the two Flats. Thus I do not accept that it was unclear what Mrs Harb would receive in return. Although I have found that Mrs Harb included a letter in the envelope on 22 June 2003 explaining what she wanted (see paragraphs 118 and 121 above), I consider it probable that the reason for this was that the Prince had not known about the Flats before the conversation on 20 June 2003. Accordingly, Mrs Harb wanted to make sure that the Prince clearly understood what she had requested.
213. A further point which was made by counsel for the Prince in this regard was that Mrs Mustafa-Hasan's evidence (see paragraph 95 above) and the change which Mrs Harb requested to the draft contract (see paragraph 106 above) showed that it was unclear to whom the Flats should be transferred. I do not accept this. I consider it probable that Mrs Harb requested that the Flats be transferred to her, and the King promised that they would be; but that she explained that she intended her daughters to benefit from this. Thus, in this respect, the contract as drafted by Mr Marshall accurately reflected what had been agreed. I consider it probable that the change which Mrs Harb requested later that day represented an afterthought by her prompted by considerations of convenience.

Issue 4: Is the agreement unenforceable on the ground of illegality?

214. The Prince contends that, even if there was an agreement, it is unenforceable on the ground of illegality. In short, the Prince contends that, although the agreement was prima facie legal, it was performed by Mrs Harb in an illegal manner, because she made the statutory declaration when she did not believe its contents to be true, and therefore Mrs Harb should not be permitted to enforce the agreement.
215. Although I have concluded that the agreement was not intended to create legal relations or (if it was) was too uncertain to be enforceable, in case I am wrong on both those points, I shall consider this contention for completeness. I shall do so upon the assumption that the agreement was intended to create legal relations and was sufficiently certain.

The relevant statutory provisions

216. The Prince's pleaded case in his Re-re-amended Defence places reliance upon section 15 of the Statutory Declarations Act 1835 and section 2 of the Perjury Act 1911. Both counsel accepted in closing submissions, however, that the relevant provisions are section 18 of the 1835 Act and section 5 of the 1911 Act.

217. Section 18 of the 1835 Act (as amended) provides:

“It shall and may be lawful for any justice of the peace, notary public, or other officer now by law authorized to administer an oath, to take and receive the declaration of any person voluntarily making the same before him in the form in the schedule to this Act annexed.”

218. Section 5 of the 1911 Act provides, so far as relevant:

“If any person knowingly and wilfully makes (otherwise than on oath) a statement false in a material particular, and that statement is made –

(a) in a statutory declaration

...

he shall be guilty of a misdemeanour and shall be liable on conviction thereof on indictment to imprisonment, for any term not exceeding two years, or to a fine or to both such imprisonment and fine.”

The law as to illegality

219. Traditionally, the law distinguished between illegality as to formation and illegality as to performance of a contract: see *Chitty* at §16-011. A contract which was illegal when formed was unenforceable: see *Chitty* at §16-106. A contract which was legal when formed, but which both of the parties knew was to be performed in an illegal manner, was also unenforceable: see *Chitty* at §16-019. Likewise if the party attempting to enforce the agreement knew it was to be performed in an illegal manner or subsequently elected to perform it in an illegal manner: see *Chitty* at §16-020.

220. In *Patel v Mirza* [2016] UKSC 42, [2017] AC 467, however, a majority of the Supreme Court fundamentally recast the doctrine of illegality. Instead of the rules-based approach applied hitherto, the majority adopted a factors-based approach which was summarised in the judgment of Lord Toulson at [120] as follows:

“The essential rationale of the illegality doctrine is that it would be contrary to the public interest to enforce a claim if to do so would be harmful to the integrity of the legal system (or, possibly, certain aspects of public morality, the boundaries of which have never been made entirely clear and which do not arise for consideration in this case). In assessing whether the public interest would be harmed in that way, it is necessary (a)

to consider the underlying purpose of the prohibition which has been transgressed and whether that purpose will be enhanced by denial of the claim, (b) to consider any other relevant public policy on which the denial of the claim may have an impact and (c) to consider whether denial of the claim would be a proportionate response to the illegality, bearing in mind that punishment is a matter for the criminal courts. Within that framework, various factors may be relevant, but it would be a mistake to suggest that the court is free to decide a case in an undisciplined way. The public interest is best served by a principled and transparent assessment of the considerations identified, rather than the application of a formal approach capable of producing results which may appear arbitrary, unjust or disproportionate.”

221. Lord Toulson had previously said this about factor (c) at [107]:

“107. In considering whether it would be disproportionate to refuse relief to which the claimant would otherwise be entitled, as a matter of public policy, various factors may be relevant. Professor Burrows' list is helpful but I would not attempt to lay down a prescriptive or definitive list because of the infinite possible variety of cases. Potentially relevant factors include the seriousness of the conduct, its centrality to the contract, whether it was intentional and whether there was marked disparity in the parties' respective culpability.”

Assessment

222. It is common ground that the agreement between Mrs Harb and the Prince, assuming there was one, did not require Mrs Harb to make a statutory declaration. This was suggested by Mrs Simon during the conference with Mr Marshall. Accordingly, it is not contended by the Prince that Mrs Harb intended to perform the agreement in an illegal manner when she made it, but rather than she subsequently elected to perform it in an illegal manner.
223. This contention gives rise to two questions. First, did Mrs Harb perform the agreement in an illegal manner? Secondly, if so, should she be prevented from enforcing it?
224. On Mrs Harb's own evidence, paragraph 2 of the statutory declaration was false, and Mrs Harb knew it to be false, in particular because the King had taken methadone. Thus, on any view, Mrs Harb did not believe paragraph 2 to be true. It is plain that this is a “material particular”. Counsel for Mrs Harb nevertheless submitted that she had not committed the offence under section 5 of the 1911 because there was no evidence that she appreciated the consequences of making a false statutory declaration. Thus there is no evidence that either Mrs Simon or Mr Sheikh explained to her that making a false statutory declaration amounted to perjury; nor, so far as Mr Sheikh's role is concerned, is there any evidence as to what would normally be expected of a solicitor taking a statutory declaration in 2003. (There is evidence that Mrs Simon and Mr Marshall advised her about other possible repercussions if she

made the statutory declaration and delivered the original to the Prince, but that is beside the point.) Nor was it even put to Mrs Harb that she appreciated that she was committing perjury (or any offence at all).

225. I do not accept this submission. In my judgment section 5 of the 1911 Act does not require the maker of the statutory declaration to appreciate that making a false statutory declaration amounts to perjury in order for the offence to be committed. All it requires is that the maker knowingly and wilfully makes a statement which is false. That is what Mrs Harb did.
226. I turn therefore to consider whether the law should prevent Mrs Harb from enforcing the agreement. So far as factor (a) is concerned, the purpose of section 5(a) of the 1911 Act is to ensure that statutory declarations, which are a form of formal written evidence, are truthful. That is an important purpose.
227. As for factor (b), there are two relevant public policies which would be rendered less effective by denying Mrs Harb's claim. The first is the general policy that contracts should be enforced: *pacta sunt servanda*. But it is well established that, where appropriate, this policy must give way to the doctrine of illegality. The second is the policy that favours the settlement of disputes out of court. As counsel for Mrs Harb pointed out, it is commonplace for settlements of disputes to include formal withdrawals of allegations even though the party withdrawing the allegation still believes that they are true. It would be very unfortunate if the enforcement of settlements could be prevented merely because one party had withdrawn an allegation it believed to be true. On the other hand, there are ways in which an allegation can be withdrawn without the party withdrawing it falsely swearing to its falsity.
228. Turning to factor (c), the conduct is serious, but I do not regard it as of great seriousness. The methadone allegations were historic allegations of no particular consequence other than for the King's reputation. Thus they would not have been important for the success of Mrs Harb's claim against the King (although their retraction would have affected Mrs Harb's credibility). Although it was central to the agreement that Mrs Harb retract at least the methadone allegations, the agreement did not require her to do so by means of a statutory declaration. That was gold-plating suggested by Mrs Simon. The conduct was, however, intentional.
229. What is most important, in my view, is that the Prince was nearly as culpable as Mrs Harb, because, although he had not demanded any particular form of retraction, he had demanded that Mrs Harb retract allegations which he knew she had sworn (in the 2003 Affidavit) to be true. Moreover, what he had demanded was not merely a formal withdrawal, but an acknowledgement that the allegations were false. Even if she had made the retraction in a statement which was not in the form of a statutory declaration (or sworn or accompanied by a statement of truth), it would still have been a false statement. Moreover, it would still have (wrongly) implied that what she had said in the 2003 Affidavit was false, and thus that she had committed perjury when swearing the 2003 Affidavit.
230. Accordingly, my conclusion with regard to factor (c) is that it would be disproportionate to prevent Mrs Harb from enforcing the agreement. To rule that the agreement was unenforceable would penalise Mrs Harb for an offence of perjury which I do not regard as being of great seriousness, and give the Prince a substantial

windfall for conduct which was nearly as culpable as Mrs Harb's. More generally, it would undermine the policy of the law of favouring settlement agreements to prevent enforcement merely because the party seeking to enforce the agreement had withdrawn an allegation by means of a statutory declaration when the party resisting enforcement had required the allegation to be withdrawn, but had not asked for that to be done by way of statutory declaration.

231. Accordingly, I conclude that, if the agreement was intended to create legal relations and sufficiently certain, Mrs Harb should not be prevented from enforcing it by the doctrine of illegality.

Conclusion

232. For the reasons given above, I conclude that Mrs Harb did reach an agreement with the Prince on 20 June 2003, but that the agreement is not enforceable either because it was not intended to be immediately binding (and did not become binding thereafter) or because it was too uncertain to be enforceable, although not on the ground of illegality. Accordingly, Mrs Harb's claim must be dismissed.