S -v- S (Application to Prevent Solicitor Acting) *[2017] EWHC 2660 (Fam)*

IN THE HIGH COURT OF JUSTICE FAMILY DIVISION

Royal Courts of Justice, Strand, London, WC2A 2LL 24th October 2017

Before:

MR JUSTICE WILLIAMS

Between:

ZS Applicant - and - FS Respondent

Martin Pointer QC & Rebecca Carew Pole (instructed by Sears Tooth), for the Claimant
Philip Marshall QC & Charlotte Hartley, (instructed by Hughes Fowler Carruthers) for the Defendant Hearing dates: 23rd-24th October 2017

HTML VERSION OF JUDGMENT APPROVED

Ruling by Mr Justice Williams:

1. This is my judgment delivered at 2 o'clock at the conclusion of this two-day hearing. It is made in relation to an application made by the husband, Mr S, for an order that the wife's solicitor, Raymond Tooth, be debarred from acting for her in these proceedings. The wife is Mrs S. The husband is today represented by Mr Philip Marshall QC and Ms Charlotte Hartley. The respondent wife is represented by Mr Martin Pointer QC and Mrs Rebecca Carew Pole.

2. I was also due to be dealing with directions in respect of the divorce petition and an application for a declaration of marital status, see page B30, paragraph 5.1 of the order of Mrs Justice Roberts of 22 June, and in particular an application by the husband at 1371 A for the

instruction of an expert in Russian law, which was issued on 18 October 2017. As a result of exchanges earlier today the majority of those directions, in particular in relation to the instruction of experts, is to be adjourned to a further short hearing.

THE BACKGROUND TO THE APPLICATION

3. A divorce petition was issued by the wife in September 2016. This application arises out of the fact that following initial contact between the wife's and the husband's solicitors, the husband raised the point that Mr Tooth was one of six solicitors his representative had consulted in November 2015 with a view to, he says, choosing which firm would be a good fit for him were family litigation to occur in London. When that litigation was in prospect, in February 2017, and it transpired that the wife had instructed Sears Tooth, he objected on the basis that Mr Tooth was privy to confidential and privileged information which was such as to conflict him from acting for the wife.

4. Proceedings in relation to the suit and the declaration of validity of the Russian divorce are to be determined in a five day hearing between 12 to 16 February 2018. There may also be financial remedy proceedings here thereafter in the suit, or under Part III of the Matrimonial and Family Proceedings Act 1984.

THE APPLICATION

5. This was issued on 20 March 2017. It has taken an unfortunately long time to reach a final conclusion today. The basis of the application is set out at B3. The particular orders which the Court was being invited to make were (I ignore 1 because that has been superseded):

> "2. Raymond Clive Tooth and Sears Tooth solicitors be barred forthwith from further acting for the petitioner in these proceedings and/or any related or ancillary proceedings arising out of the dissolution of the marriage between the petitioner and the respondent. "
>
> "3. Sears Tooth solicitors do forthwith take steps to remove themselves from the record as acting for the petitioner.
>
> "4. Pending determination of the application Raymond Clive Tooth and Sears Tooth solicitors be barred from taking any further step on behalf of the petitioner in these proceedings.

"5. Raymond Clive Tooth and/or Sears Tooth solicitors do jointly and severally pay the costs of and incurred in making this application on an indemnity basis."

6. As I say, the essential elements in support of that application were set out at page 133.

7. On 20 March, the day of issue, an ex parte application was made to secure an urgent listing. Mr Justice Moor dismissed that. On 6 April 2017 the application came on before Mrs Justice Roberts who adjourned it to 22 May 2017. On 22 May Mrs Justice Roberts gave directions for this hearing and timetabled the filing of evidence and on 22 June she gave directions in respect of the suit and the declaration.

THE LAW

8. Supplementing the submissions on the law that I have received, both orally and in writing, I have been referred to the following texts and cases: (a) Pass more on Privilege (31(ed); (b), Minter v Priest [1929]] KB 655, (c) Minter v Priest. [1930] AC 558, (d) In a Little Spanish Town (Francis Day & Hunter v Bron) [1963] Ch 587; (e) Great Atlantic v Home Insurance [1981] 1 WLR 529; (f) HRJ-I Prince Jefri Bolkiah v KPMG (A Firm) (19987 UKHL 52.; (g) Davies v Davies [2000] 1 FLR 39; (h) Re T v A, (children, risk of disclosure)) [2000] 1 FLR 859; (i) B & Others v Auckland District Law Society [20037 UKPC 38; (j) fulham Leisure v Nicholson, Graham & Jones [20067 EWHC 158; (k) the West London Pipeline case [20087 EWHC 1729; (1) Re Z (restraining solicitors from acting) [20097 EWHC 3621; and (m) G v G (financial remedies, privilege, confidentiality) (20157 EWHC 1512.

9. The law ultimately was largely agreed, although there was a difference between the parties on three issues: firstly, whether the risk of disclosure of confidential or privileged information can come from subconscious or unconscious influence; secondly, whether there can be a partial waiver of privilege and how that might be dealt with; and thirdly, whether making an injunction is mandatory if the grounds are established, or whether the Court still retains a discretion whether to grant the order or not.

10. In summary, the principles I derive from all of those cases and which I apply are as follows.

(a) the duties arising in confidentiality and legal professional privilege arise whether the information is imparted to a solicitor directly by a principal, or by an agent on behalf of his

principal. It would therefore apply to any confidential information or legally privileged material which arose between Raymond Tooth and OE.

(b) the duty arises whether the parties formally entered into a legal relationship or not. The imparting of information in contemplation of such a relationship would suffice. Thus a preliminary meeting between solicitor and client in the course of a beauty parade could suffice, probably even if pro bono or not charged for.

(c) the rules apply in family cases just as much as in civil actions. There is no absolute rule though that a solicitor cannot act in litigation against a former client.

(d) in the first instance it is a matter for the solicitor involved to consider whether, consistent with his professional conduct rules and the proper administration of justice, he can continue to act. If he concludes he cannot, that will usually be the end of the matter. If he concludes he can continue to act then the Court retains the power to grant an injunction to prevent him from acting.

(e) where a former client has imparted information in confidence in the course of a fiduciary relationship, and /or where that information is privileged, there are strong public policy reasons rooted in the proper administration of justice which support the approach that a solicitor in possession of such information should not act in a way that might appear to put that information at risk of coming into the hands of someone with an adverse interest.

(f) it must be established that the confidential or privileged information is relevant or may be relevant to the matter on which the solicitor is now instructed by the person with an adverse interest to that of the former client.

(g) where it is established that a solicitor is in possession of such confidential and/or privileged information, the Court should intervene to prevent the information coming into the hands of anyone with an adverse interest, unless there is no real risk of disclosure. Once it is established that a person is in possession of such information the burden is on them to show that there is no such real risk. In this context “real” means it is not merely fanciful or theoretical, but it does not need to be substantial.

(h) the risk of disclosure may arise from deliberate act, inadvertent disclosure or unconscious

influence or subconscious influence. In the latter case in particular it might be quite fact specific whether that risk arises or not.

(i) in the context of family litigation it is hard to conceive of a situation where the risk of disclosure would not satisfy that test where the Court had concluded that detailed, confidential financial information and/or privileged information had been disclosed to a solicitor by one party to a marriage which was, or might be relevant to a potential dispute between them. In most cases that would create a real risk where that solicitor was subsequently instructed by the other party.

(j) a party advancing such an application may decline to waive privilege or confidentiality, or may elect to partially waive privilege. If he partially waives privilege the Court may order full disclosure in relation to that transaction in order to determine an issue such as an application for an injunction like this, and the Court may take steps to ensure that the privilege is not waived for all purposes, but to ensure that the cat can be put back into the bag. In cases such as this the question should be considered at the directions stage, in particular where, as here, partial disclosure in the form of the attendance note has been made.

(k) if the principles on which an order can be made are established an order should usually be made, unless it is established that there are other more significant public policy reasons for not granting it, including that the Court concludes that the injustice to the respondent in granting the order outweighs the injustice to the applicant in not granting it. Relevant considerations might include, firstly, whether the information had been imparted during an exercise designed either wholly or in part to conflict out other solicitors who the respondent might seek to instruct; whether there are other firms who might now be able to act for the respondent; whether the application was made promptly; the additional expense and delay that might be occasioned to the respondent if they were obliged to instruct new solicitors; whether any such expense could appropriately be off-set by the applicant.

THE ISSUES

II. In the main these are, as I set out now, mainly factual rather than legal. The issues are, firstly, can the husband prove that a meeting took place between Raymond Tooth and OB on 30 November 2015? Secondly, if it did can the husband prove that any confidential or privileged material was communicated to Raymond Tooth and his assistant during that meeting?

Thirdly, but a subset of the preceding item, can the husband prove that such material is or may be relevant to the current dispute or contemplated dispute? Fourthly if such information was provided, can the wife, or Raymond Tooth, establish that there is no real risk of disclosure? Lastly if there is such a risk is there any reason for not granting an injunction?

THIS HEARING

12. I have read the trial bundle. I note in passing that none of the usual practice direction documents, such as an agreed chronology, case summary, reading list, or list of issues was included as required by PD27A. I very much hope I shan't have to make this observation again to those involved in this case.

13. I have had a detailed position statement for the husband and a detailed note for the wife. I have been provided with the authorities set out above. I have heard oral evidence from Mr OE and Mr Raymond Tooth. I have read witness statements from Laura Broomhall and Kelly Edwards who both worked for Sears Tooth at the relevant time. The husband did not require them to give oral evidence. Finally, I have had a written note from Mr Marshall QC and a written note from Mr Pointer QC setting out their closing submissions and I have heard detailed submissions from both parties. The parties' positions on the issues and the evidence.

14. I do not intend to repeat them at length. I have both the contents of the written documents and the oral submissions well in mind.

15. On behalf of the husband Mr Marshall QC says in relation to the meeting itself that there is a plethora of evidence which supports the fact that an appointment was made and that a meeting took place. He points to the appointment in the diary, the telephone slip, the page of notes produced by OF, the Google search, the business card, the conversation about the skull painting, as all, when put together, demonstrating on balance that a meeting took place.

16. In relation to whether legally privileged or confidential material was exchanged he says that the burden really is not a heavy one. He points out that OF is privy to the husband's most confidential information. He accepts that although there is a spectrum on which information discussed will range from that obviously not covered, through to information which might or might not, through to obviously confidential material: he says that what OF describes being discussed was obviously within the confidential bracket.

17. He points out that OF has provided an extensive list of topics of material discussed and I think if they were discussed they plainly would fall in the parameters of confidentiality and privilege.

18. He says that Mr Tooth himself accepted that in the usual format of meetings the sort of material which OF describes would usually be discussed.

19. He points out that some of the other firms who were consulted by OE themselves have accepted that they were conflicted.

20. He maintains in relation to disclosure of the full contents of the meeting that privilege does remain his client's and that it has not been waived and that the evidence before the Court is as it is. I think he accepts that in retrospect it may have been better from the Court's perspective to have looked at it as a preliminary issue, but that is not where we are.

21. In relation to there being a risk he says that clearly there must be a risk and that it clearly can be a subconscious influence, as was in effect found by Mr Justice Robert Johnson in the Davies case.

22. Lastly on the question of whether there is any reason not to injunct he says that the public policy principle supporting the making of an injunction is heavy, but he accepts that it could in certain circumstances be overridden. In particular he urges me to be cautious about reaching a conclusion that OE seeing Raymond Tooth was entirely due to a strategy to conflict him out and he points out that some other obvious leading firms were not approached and conflicted. He also says that even when a firm is retained, it is known that clients may still be seeking another firm.

23. Mr Pointer QC, on behalf of the wife, in summary says as follows, that the evidence does not establish, on balance, that there was a meeting and in particular he relies heavily on the criticisms of OE'S credibility, in particular referring to his erroneous identification of Ms Slabas as being the assistant who was present and various other matters which I shall comment on later.

24. He challenges the reliability of the Google map and points out that the time differentials really do not add up to OE'S explanation. On OE'S explanation he says that he would have been searching at shortly before 2 o'clock, not 3 o'clock, which is inconsistent with OE'S explanation.

25. As a result of the disclosures made today in relation to the date that HFC were retained, he says that there has been a level of withholding of information, if not dishonesty, in relation to the background to the meeting with Mr Tooth that casts doubt over OE'S credibility.

26. In relation to the information that was disclosed he says that evidentially there is little to point to what was discussed. The note is very limited in extent. He says that it was open to the husband to disclose more about the contents of that meeting. He had partially waived privilege by the disclosure of the attendance note and he could have gone further. Mr Pointer QC ultimately accepted that the effect, for the purposes of this court, is simply that the evidence before the Court is more limited than it might have been. He also, I think, accepts that it would have assisted the Court more to have addressed it as a preliminary issue.

27. On the question of whether there is a risk he really relies largely on Mr Tooth's evidence that he can recall nothing about the case, that nothing has spurred any memories in the period since he was instructed by the wife and he submits that there are cases where even the risk of subconscious influence would not amount to a sufficient risk to cross the real risk threshold and he invites me to conclude that there would be no real risk of even subconscious influence.

28. In relation to the discretion, Mr Pointer QC submits that the Court does retain that discretion and that countervailing considerations could tip the scales in favour of not granting an injunction. In particular in this case he submits that the late-emerging evidence of when HFC were first consulted and retained shows that the meeting on 30 November was plainly a conflict exercise and he submits that other factors, such as the passage of time and the disruption it would cause to the wife, would justify the non-granting of an injunction.

CHRONOLOGY

29. I turn now to the chronology and the consideration of the meeting and the background to it. I take the information contained within this section from the Court bundle, including the judgment of Mr Justice Peter Jackson.

DOB H. Now lives in Switzerland

DOB W. Lives in England

1995 Parties many

Child 1 born Child 2 born Child 3 born

2006 H says parties were divorced in Russia. W alleges H obtained fraudulent divorce in Russia.

22 Feb 2013 H obtains copy of Certificate of Divorce

2014 W and two children move to England [B58J[B78]

21 Feb 2015 H has child with new partner and conceals arrival from W.

21 Oct 2015 H or OE first consults HFC

17 Nov 2015 OE and Hs Russian lawyer meets with HFC Charles Russell Farrer

23 Nov 2015 H signs letter of retainer with HFC

30 Nov OE attends appointment with

2015 Sandra Davis of Mishcon De Reya Lady Ward of Stewarts Law OE has appointment with RT OE's account is set out in his Statement and his Reply and his oral evidence. I shall not repeat it now but will return to it when I reach my conclusions below Raymond Tooths account is in his witness statement and oral evidence.

Beginning 2016 Stresses in childrens relationship with W [B78, #6]

Feb 2016 H's Russian lawyer contacts a well known childrens' lawyer at Dawson Cornwell

Mar 2016 Children meet lawyer unknown to W

Mar 2016 W meets RI and KE.

15 Aug 2016 Translation of Divorce obtained. Produced by H [B591

Sep 2016 Wand H meet [B79

26 Sep 2016 Wife issued a Divorce Petition (behaviour) in the central Family court. Her solicitors were ST

Dec 2016 W learns of Child 4's birth.

Feb 2017 H takes boys to Swiss school without telling W [Judgement #5]

20 Feb 2017 ST wrote to HfC asking whether they acted for H.

21 Feb HFC responded saying that H was shocked because his representative had met with RT on 30 November at which the name of the H was disclosed along with asset values. HfC asked for confirmation that RI would cease to act. [B8J

23 Feb ST reply stating that there was a meeting scheduled with OF but RT has not note of any such meeting, nor was any bill delivered, and he has no record of what was discussed at that meeting. RT notes that they always ask for identification documents and none exist. RI states having seen his client and taken instructions nothing emerged which led him to consider he had been consulted by or on behalf of H.

9 Mar HFC-ST: "I attached a copy of OE's contemporaneous note of the advice which you gave at a meeting which you concede was scheduled to take place on 30 November 2015. OE has a very clear recollection that meeting and in particular of the fact that your assistant Natasha Slabas attended that meeting. Seeks confirmation of withdrawal by 13 March failing which an application would be issued together with an application for costs against RT personally. ST-HfC: Can you let me have an attendance note redacted but only to show the date, the time who attended on both side and when the meeting ended.

15 March HfC-ST: There is no other attendance note.., the meeting lasted between 30-40 minutes. The meeting was attended by OE on his side and you and your assistant Natasha Slabas on your side. I repeat that OE has a very clear recollection of the meeting and of the fact that both you and your assistant Natasha Slabas took notes. OE has provided me with full details of what was discussed and it is apparent that it was much more than a perfunctory first meeting. H served with Petition [B44]

23 Mar HEC file Acknowledgment re Petition: Asserts already divorced and disputes Ws HR

30 Mar ST-HFC: Pointing out the Note does not state the date, the time and the people in attendance. Repeats there is no evidence the meeting took place and observes that it is clear that what OE says is untrue.

Mar 2017 H issues WON application for Easter contact. Children see DC.

3 Apr 2017 H issues application for LIR

12 Apr 2017 Notary Public certifies obtaining of translations of Russian language document. [B64]

13 Apr 2017 Answer to Petition filed: Asserts parties already divorced and seeks declaration of validity pursuant to s. 46FLA 1986

25 April 2017 DC meet child (W/o W's knowledge) 8 May Application for CMK

21 Jun 2017 DJ MacGregor. Transfer of suit and declaration to HC (leading to hearing before Roberts J on 2017 22 June)

Aug 2017 H does not abide by agreement reached before PJJ as to summer holiday division [B79, #9]

14 Sep Mr Justice Peter Jackson gives judgment on LIR application. H given permission to remove 2017 the children.

Critical of H's deception of M over his new child [#5] 'shabby' 'betrayed W's trust Order for costs (f150k out of 271k) made against H given his reprehensible behaviour which has fed into the way the proceedings arose, were pursued and conducted.

ANALYSIS AND FINDINGS.

30. Insofar as matters of fact are in dispute I determine them on the basis of the normal civil standard, namely whether it is more likely or not that a matter occurred or did not. I take account of all the evidence I have heard and place it in the context of other evidence. To the extent that lies have been told I give myself a Lucas direction and remind myself that people lie for many reasons and that just because they have demonstrably lied on one issue, does not mean they have lied on all others.

31. In evaluating the parties' credibility I have regard to the totality of their evidence and how it fits in with other pieces of evidence, how consistent it is internally and with other items of evidence and of whether they have a motive to lie and how they gave their evidence.

32. I will say immediately that this is a case where the benefits of seeing the parties give oral evidence was manifest. The oral evidence of both QE and Mr Tooth enabled me to assess their

reliability through the testing of their evidence, both in terms of the content of their answers but also their demeanour.

33. In the light of the disclosure overnight that in fact HFC had been retained by the husband prior to the meeting on 30 November, OE had not been asked questions which he might have been. I have not been asked by either party to recall him. Given the time constraints within this two-day hearing I doubt I would have allowed it. The absence of contemporary records or evidence of advice given.

34. The husband has chosen not to make any further waiver of privilege for this hearing. He is entitled to take that position (see the cases cited by Mr Marshall QC at page 12, note 3 of his position statement, and referred to by me earlier) but inevitably it makes it harder for the Court to weigh and consider the evidence because the Court can only acquire an incomplete narrative of what occurred.

35. Although Mr Pointer QC says it was for the husband to deal with the issue, it was also open to the wife to apply for full disclosure on the basis that privilege had been waived by the production of the attendance note. The fact is though that the husband chose to maintain privilege and the wife chose not to apply to disclose. Given that both are advised by very highly experienced legal teams, that was no doubt a decision taken for good reason, but it has had an impact on my ability to see the complete picture.

36. That does not mean that the Court is disabled from assessing the evidence it does have, nor does it mean that the Court can not determine matters on the balance of probabilities, but it is nonetheless a limitation on the Court's ability to see the whole picture. Complete pictures tend to provide a more reliable foundation for judges to base their findings on. In those rare cases where the solicitor retained no notes at all and could not recall the information allegedly provided or the advice given, I suppose it would be conceivable in such a case to adopt a special advocate type measure so that any privilege waived could be completely ringfenced from the solicitors, counsel and parties and so that confidentiality and/or privilege could be protected. Whether that would be proportionate is a question I shall not express any views on.

37. The fact is that OE did not identify with specificity any information that he provided to Raymond Tooth. There was some information he could have disclosed in his evidence to me and which is in the public domain, as referred to in the chronology, for instance the fact of the

Russian divorce in 2006 which would presumably have led Mr Tooth to advising specifically on issues under part 3 of the MFPA rather than financial remedies within divorce, but the fact is almost no specific information has been referred to me.

CORROBORATIVE WITNESSES.

38. Laura Broomhall and Kelly Edwards say the following, which is of some relevance. They were the only two solicitors working for Mr Tooth on 30 November. They have no recollection of any meeting. Laura Broomhall has no recall of OE'S face. Ms Broomhall undertook a conflict search and consulted her attendance notes and diary for 30 November and found no records. Kelly Edwards has no notes or record in her diary, or attendances for

30 November. Ms Edwards met the mother in March 2016 and was not prompted to recall the case by that meeting.

39. Both Ms Broomhall and Ms Edwards say Mr Tooth has never charged £700 an hour. Ms Broomhall says she has no Eastern European connection, Kelly Edwards likewise. Laura Broomhall says that she would take a full note and Raymond Tooth a short note. Kelly Edwards says Raymond Tooth's notes were far from structured; the assistant would take a detailed note, Raymond Tooth would write a few keywords no one could read. Ms Broomhall says Raymond Tooth has never behaved in the way OE suggests. Kelly Edwards agrees that he does not behave in that way.

ANALYSIS AND CONCLUSIONS.

40. Issue 1: can the husband prove a meeting took place between Raymond Tooth and OE on 30 November? On balance, yes, I believe there was a meeting of sorts between Raymond Tooth and another member of his staff and OE on that day. The following matters demonstrate this: the appointment in Raymond Tooth's diary that was put there by him following some contact by OE and not crossed out, a telephone message from some point in the afternoon by OE in which he gave his number, the Google search for the premises of Sears Tooth -- I do not consider the time differences to be of any particular significance to OE'S credibility, they may arise from the use of different time zones on his devices -- OE'S recollection of the interior of the premises

(the piece of artwork, the obtaining of a card and the layout of the conference room) and the combination of OE'S own evidence and Mr Tooth's evidence persuade me that an appointment was booked and that OE attended for it and some form of meeting took place.

41. The second and third issues: if a meeting did take place, can the husband prove any confidential or privileged material was communicated to Raymond Tooth and his assistant and can the husband prove that such material is or may be relevant to the current dispute or contemplated dispute.

42. Although Mr Marshall QC is right to say that the burden is not a heavy one, it must of course be context specific and be viewed in the light of all the evidence and all the circumstances. I consider the following factors to be significant in determining what is more likely to have occurred at this meeting. Inevitably I cannot refer to every matter that I have considered.

43. In order really to determine these issues as the husband seeks, I must be able to rely on OE'S evidence, together with any independent corroboration. Unfortunately overall I conclude that OE'S evidence is in many ways unreliable.

44. He produced no briefing note setting out the main facts or the principal issues he wanted to deal with, which is a little surprising and suggests someone not very committed to record keeping or someone not placing much importance on the meeting.

45. He said the meetings were arranged to see a lawyer who would be a good fit for the husband, although he was not sure that he had any exposure to litigation at that time. It seems from the chronology that the overall picture that emerges is this was all part of long term planning by the husband for possible future litigation in England. If there was something on the horizon though, at the particular time it seems to have been more related to the situation of the children than the divorce, which from the husband's point of view was done and dusted nine years before. Those circumstances do not suggest that in initial meetings there would be detailed disclosure of confidential information as opposed to some general discussions about the approach of the lawyer and general discussions of jurisdiction.

46. OE did not disclose, in either his statement or in his oral evidence, that in fact he or the husband had seen HFC on 21 October and, more importantly, that the husband had signed a

retainer letter with HFC on 23 November, a week before the meetings. As the husband's representative for these purposes in London, it is inconceivable that OE was not aware of this and indeed more likely than not that he had made the recommendation to the husband to instruct HFC following the meeting they had on 17 November. Although Mr Marshall QC says that OE could still have been looking for a better fitting lawyer than HFC, I have to say I consider that improbable. If he was, why not say so in his statement, that he retained them for the interim whilst he continued the search? Given it is now known that there were two meetings with HFC, including a second one with the husband's Russian lawyer, I am not prepared to accept this explanation. I am satisfied that the husband selected HFC because he thought they were the best fit. Indeed he remains with them now, over two years after his initial meeting.

47. That fact inevitably affects the analysis of the later meetings. Perhaps they were arranged in advance of 23 November, I have no evidence on when they were booked, and perhaps OE went through with them just to double check his selection of HFC. I consider it more likely than not though that by this stage there was also an element of ejecting those solicitors out of the pool of lawyers who the wife might consult.

48. Turning to some of the evidence about the meeting itself OE said in his statement at paragraph 5 that his earlier meetings overran, that is his earlier meetings with the firms Mischon de Reya and Stewarts Law. This was not his account in evidence, which put the Stewarts meeting finishing at 1.30 to 2 pm. He dealt with his arrival in both his statements and in neither did he say anything about a gap between the solicitors' meetings.

49. I thought his account of his movements that day seemed to be made up on the spur of the moment, in particular his trip to the hairdressers after his meeting with Stewarts in Fetter Lane and before his attendance at Sears Tooth. That seemed to me to arise from his realisation that in his evidence he had created a window of time that was inconsistent with his earlier account. Why he would call Sears Tooth to say that he was running late is hard to fathom when on his own account he was not. The haircut story seemed to mirror the new explanation he had given slightly earlier in his evidence of having a manicure to fill the gap between the end of his Sears Tooth meeting and the time on the attendance note.

50. I got the overall impression that despite saying on a number of occasions that he had a clear

recollection of the meeting, that actually his recollection was not clear at all. The most obvious example was that he clearly and firmly, but erroneously, asserted that Natasha Slabas was present at the meeting. I think he had simply looked at the Sears Tooth website and identified someone he thought had attended and then embellished his account by making reference to that person having an Eastern European connection.

51. The what I have termed an attendance note at B 19 could be capable of corroborating his account, in particular if I was satisfied it was both contemporaneous and accurate. The timing on it at C1O puts it at either 6.02 pm or 7.02 pm GMT. OE said this time may be when it was last amended, but it tells me nothing about when it was started, nor does it. or he, tell me what the amendments were to it. It could be as much some aide memoire, put together after all the meetings concluded with some points he wanted to relay to the husband, as anything else. Curiously the meeting with Raymond Tooth comes second in his note before the single entry for what he said arose from his prior meeting with Stewarts. If these were truly contemporaneous notes that seems odd. Given my general concerns about how reliable and accurate a historian OE is, I cannot even determine whether what he ascribes to Raymond Tooth is accurately ascribed. It could have come from any of the meetings, or indeed nowhere, as the presence of Ms Slabas did.

52. CE's notes of the meeting are so short as to suggest almost nothing about the content. They do not identify who the other meetings were with, for instance. He said his notes of the meetings on 17 November were much more extensive.

53. Perhaps HFC were indeed selected then whilst CE and the other lawyer, TB, were both present. It would make sense that the selection was made with the input of the husband's Russian lawyer present. That suggests that these later meetings were indeed subsidiary and what took place was, relatively speaking, unimportant.

54. Even if CE is right in what he ascribes to Mr Tooth, it gives no clear insight into what might have been discussed. Why would a bullet proof jurisdiction be of relevance to the husband? He had his divorce and was not contemplating further divorce jurisdiction. It might be of interest on the children, I suppose, in determining habitual residence and the ability to bring proceedings in England. What does the comment "no generous deed" tell me? It could relate to the wife and children living in England, it might relate to maintenance. But even if CE had

said the husband had paid the wife large sums, how could that be confidential?

55. CE gave no evidential context to the comments and what information they related to, it was really speculation as to what they might have related to rather than anything concrete. They could have been phrases conjured from nothing. Given that on balance I do not feel able to rely on the attribution of those comments, it may not matter too much what they actually mean, but it all adds into a very unclear and unreliable picture.

56. CE'S account of the length of the meeting and whether it commenced on time has varied quite significantly from the correspondence to his statements. Whilst this may be relatively minor, in itself it supports a poor not a good recollection. CE is clearly not a person who keeps accurate records, or indeed very many records at all perhaps.

57. His assertion about Raymond Tooth's strategic notes with a strategic map seems inconsistent with what is said about Raymond Tooth. It is also different to what he said in his statement where he described Raymond Tooth writing well-structured notes. In the letter of 9 March it was said that CE saw Ms Slabas taking notes in the meeting. In his statement he said, "I can't be sure she took any notes although my recollection is she did".

58. Neither Kelly Edwards nor Laura Broomhall recall the meeting and the evidence is it was usually one of those who was present.

59. The £700 per hour charging rate figure comes from nowhere. The other solicitors say he has never charged this or said he would. Mr Marshall QC said it might be the figure including VAT. I am not sure whether the husband would be eligible to pay VAT or not where he is resident.

60. Sears Tooth have retained no records at all. There is no copy identification, which CE did not mention providing in his first statement but referred to in evidence: "I may have given him a passport copy of the client". There is no dictated or handwritten file notes, no bill. Mr Tooth described the process of making up a file and how it would be retained.

61. Much of what OE said about Mr Tooth's attitude could derive simply from his public image. It is not consistent with what Mr Tooth or his assistants say about his attitude with clients, it is more caricature that a person who has not known him as a client might have.

62. OE says he has no notes or feedback or summary in written form about the firms which he provided to the husband. He said he had a telephone call with him. He said, "I did a verbal

report, I read them out to him", but he did not say why he had recommended HFC.

63. He also said at one point that he had the other appointments confirmed in his laptop, but he had not confirmed the one with Sears Tooth. I am not sure whether he was simply saying that he had not got email confirmation in that respect.

64. The evidence overall of Mr Tooth of the requirement for passport identification to be brought, of how files are made up with the handwritten and dictated notes and their storage is consistent with a brief and non-specific meeting at which little, probably not even the name of the principal, was disclosed. I very much doubt that the husband would want detailed disclosure of highly confidential information to a significant number of firms, in particular I doubt it would be authorised after he had retained his first choice firm. I very much doubt that OE was given free rein to disclose the husband's highly sensitive financial and other dealings. Anything he was authorised to disclose would have been carefully vetted, particularly at this stage. The absence of a briefing note suggests to me that not much would have been disclosed.

65. The clear impression of strategising and manoeuvring emerges from the judgment of Mr Justice Peter Jackson, all designed to further the husband's goals, often involving the deception of the wife and designed to strengthen the husband's position in any future litigation and weaken the wife's. The timing of the meetings with the six firms fits in with the later manoeuvring over the children being put in touch with lawyers early in 2016. The way the situation with the children was created suggests very careful planning and manoeuvring by the husband. The failure to be frank about the meetings with HFC mirrors the incomplete disclosure about the involvement with Dawson Cornwall in the children's case.

66. I am led to conclude that the meetings with at least some of the six firms, probably all of those seen on 30 November; given the first three seen on the 17th or earlier clearly involved more serious consideration by OE and the Russian lawyer, the later ones were at least in part motivated not by a genuine consultation but a conflicting exercise.

67. I cannot conclude the whole process was. Indeed if it had been there are some other obvious names that would have been seen. Indeed, even by 30 November there may still have been some lingering or vestigial genuine reason for completing the survey of firms, but by 3 o'clock on 30 November 2017 I am satisfied that OE was not seriously considering instructing Sears Tooth and this undoubtedly influenced the nature of the meeting and the information given.

68. It is probably self-evident by now that I thought that OE was rather blasé about the need for accuracy in matters evidential. He seemed very relaxed about the fact that he had got it wrong about Natasha Slabas. He later said in his evidence he did not think it mattered much about being accurate. He said he was unaware of the need to be 100 per cent careful. I think that attitude generally infects his evidence. He is rather casual about details and seemed quite prepared to elaborate to suit the point he is trying to sell. I do not believe I can rely on the accuracy of his account.

69. Of course there are aspects of it which are true. There are aspects which are patently false. The latter does not mean the rest is false. The former does not mean the rest is true. He has of course a potential motive to exaggerate or fabricate because part of the purpose in seeing Sears Tooth may have been to conflict them out. In any event, his boss certainly did not want Sears Tooth acting and so as his head of his family office he has an obvious motive to do his boss' bidding. The failure to disclose the earlier instruction of HFC and their retention simply adds to the picture of OE as being a witness who cannot be relied upon. To maintain he saw Sears Tooth with a genuine intent to consider instructions when he knew KFC had been retained and not to disclose that shows a lamentable attitude to the affirmation that he took to tell the truth, the whole truth and nothing but the truth. In saying what I have about OE I do not believe it was done with anything other than the Husband's approval — this was not an agent going rogue but an agent doing his master's bidding.

70. Overall Mr Tooth I conclude was the better witness. He conceded points which supported the meeting likely having taken place. He remains adamant he cannot recall anything about the meeting, which would be consistent with a short but uninformative meeting. I find it hard to ascertain why Mr Tooth would say he could not recall it if he could and why he would not have declined to act. As a solicitor with 50 years' practice and with the reputation he has, what is one client more or less, why risk your reputation, indeed potentially more, if he was found to have misled the Court over the matter?

71. On the balance of probabilities, I do not find that any confidential material was imparted to Raymond Tooth or that any privileged information or advice arises. On balance I do not accept that the meeting was anything like that described by OE. I conclude that it was a very brief meeting which perhaps OE was attending to complete the job of going around the firms he had been instructed to with the parallel intention to conflict them. Whilst I cannot determine

precisely, or even fairly closely, what was said and how the meeting developed, I conclude at most it may have been more in the nature of a brief and theoretical discussion, rather than the detailed, fact heavy, assets discussed, advice heavy meeting that OE seeks to portray. Mr Tooth described how some meetings were more general, about the law and how his position might depend on how the client put matters to him. It might of course have been far less than that, a perfunctory and very brief meeting which contained nothing of substance.

72. That being my conclusion on issues 2 and 3, I do not need to go on to consider issue 4, whether there is any risk of disclosure, nor do I need to consider my discretion in relation to whether an injunction should be granted or not. The application for an injunction is dismissed.