

OPUS2

Petr Aven, Mikhail Fridman and German Khan v Orbis Business Intelligence
Limited

Day 1

March 16, 2020

Opus 2 - Official Court Reporters

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1 Monday, 16 March 2020
 2 (10.30 am)
 3 Housekeeping
 4 MR TOMLINSON: My Lord, in this matter I appear for the
 5 claimant along with Ms Sjøvoll. Mr Millar and
 6 Mr Hopkins appear for the defendant.
 7 MR JUSTICE WARBY: Yes.
 8 MR TOMLINSON: My Lord, this is the trial, as your Lordship
 9 knows, of the claim under the Data Protection Act in
 10 respect of the processing of inaccurate personal data of
 11 the claimants in a memorandum in which the defendant is
 12 the data controller .
 13 My Lord, a matter has arisen in relation to one of
 14 the witnesses and it may be that before we proceed any
 15 further, Mr Millar should explain the position to
 16 your Lordship because it may be that some decision or
 17 direction is required .
 18 MR JUSTICE WARBY: Yes.
 19 MR MILLAR: My Lord, we hope not, but this is very much
 20 a fact of the day, I'm afraid .
 21 One of Mr Steele's co- directors in Orbis is
 22 displaying all the symptoms of Covid-19 and has done
 23 since Friday. He has been self- isolating, has not been
 24 tested. He's tried to get a test through a private
 25 clinic but it's not an easy thing to achieve at the

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1 moment.
 2 The two of them -- the two directors had a meeting
 3 with a third person on Wednesday of last week and the
 4 third person is also as of yesterday displaying classic
 5 symptoms of Covid-19 and self- isolating .
 6 That is the bad news.
 7 The good news is that Mr Steele feels fine and
 8 doesn't understand that he has to self- isolate because
 9 his contact with the co- director preceded that person
 10 becoming symptomatic by two days.
 11 As a precaution, he's not here this morning, just so
 12 that I could raise this with the other side and with
 13 your Lordship and with the court, and he is trying to
 14 check out the medical advice as to whether he needs to
 15 self- isolate . At the moment he doesn't understand that
 16 he does. He's keen to come and be here as soon as
 17 possible and participate in the trial, but the
 18 government's website is not terribly helpful on the
 19 point of close contact shortly before the person becomes
 20 symptomatic and what your obligations are in that
 21 situation .
 22 MR JUSTICE WARBY: No. My own understanding is that you
 23 don't have to self- isolate unless you have symptoms.
 24 That's the latest advice. That obviously may change,
 25 but he's voluntarily absent at the moment so there's not

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1 a problem at the moment.
 2 MR MILLAR: No.
 3 MR JUSTICE WARBY: Wednesday, four days ago, was his last
 4 contact with a person who is now showing symptoms?
 5 MR MILLAR: Yes.
 6 MR JUSTICE WARBY: Yes.
 7 MR JUSTICE WARBY: Well, at the moment it seems to me that
 8 we can go ahead and obviously we'll have to get updates
 9 on what advice he receives .
 10 MR MILLAR: Yes. I just wanted anybody who wanted to
 11 express any concern about it to have the opportunity to
 12 do so.
 13 MR JUSTICE WARBY: Yes. Mr Tomlinson?
 14 MR TOMLINSON: My Lord, there's two issues that may arise.
 15 The first is, if it turns out that Mr Steele does start
 16 manifesting symptoms tomorrow, for example, then we're
 17 in a situation where we will have started on the
 18 evidence and we may be in the unsatisfactory situation
 19 of not having the defendant's only witness available and
 20 having to decide how to proceed.
 21 One assumes that unless his symptoms were very
 22 serious, he would still be in a position to give
 23 evidence by video link .
 24 MR JUSTICE WARBY: Well, that's what I was thinking.
 25 MR TOMLINSON: Yes. I was wondering whether it may, just as

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1 a precaution, be sensible to make enquiries as to
 2 whether that could be put in place. I see we have
 3 a screen in this court. Whether this court is -- one
 4 would have thought this court, of all places, would be
 5 set up for it, but perhaps not, but it would be most
 6 unfortunate if we went part-heard, as it were, with the
 7 defendant's key witness not able to give evidence and my
 8 witnesses having started their evidence and perhaps not
 9 finished .
 10 MR JUSTICE WARBY: Yes. Well, I'll make enquiries about the
 11 availability of video link. Obviously there will be
 12 a place where we can do that. It may be a case of
 13 moving some things around. I don't know whether this is
 14 set up, but all the Court of Appeal courts along -- the
 15 Criminal Court of Appeal are set up for that.
 16 MR TOMLINSON: Yes, they are now set up.
 17 MR JUSTICE WARBY: And it probably would be possible to work
 18 around the other work in those courts .
 19 MR TOMLINSON: My Lord, we have made the enquiries like
 20 Mr Millar and it is our understanding that the guidance
 21 doesn't require self- isolation due to the mere fact of
 22 exposure. So that's the position that we are apparently
 23 in at the moment, but obviously that may change.
 24 MR JUSTICE WARBY: Yes. Have you discussed and agreed,
 25 subject to all of this, a trial timetable and other

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1 things that may develop? One realises that there could
 2 be other problems of the same nature with other people,
 3 but --
 4 MR TOMLINSON: My Lord, there is an agreed trial timetable
 5 of a rather rudimentary nature in the bundle. It's in
 6 {A/4/1}.
 7 MR JUSTICE WARBY: Ah.
 8 MR TOMLINSON: I will wait for it to come up. (Pause)
 9 MR JUSTICE WARBY: I have it now.
 10 MR TOMLINSON: I have it, but it doesn't come up on the big
 11 screen at the moment.
 12 MR JUSTICE WARBY: Yes.
 13 MR TOMLINSON: My Lord, as I say, that's a rather
 14 rudimentary trial timetable.
 15 MR JUSTICE WARBY: Yes. So if that's adhered to, then we
 16 have Mr Steele on Wednesday.
 17 MR TOMLINSON: Yes. My Lord, what I was going to say was
 18 your Lordship may remember we discussed at the PTR and
 19 your Lordship expressed the view, and I'm sure that's
 20 entirely right, that we didn't need a full day for
 21 opening. I discussed this with Mr Millar and the
 22 intention is that Mr Fridman will begin his evidence
 23 this afternoon, so the openings will be relatively
 24 short.
 25 MR JUSTICE WARBY: Yes.

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1 MR TOMLINSON: Confined to this morning. There's another
 2 issue which your Lordship may wish to deal with at the
 3 end of the openings, which I'll come to in due course,
 4 but the intention is that we get to Mr Fridman at
 5 lunchtime today and then there's effectively a day and
 6 a half for my witnesses and then Mr Steele to begin and
 7 occupy the whole of Wednesday.
 8 MR JUSTICE WARBY: Good. Right.
 9 MR TOMLINSON: My Lord, there's another matter which perhaps
 10 my friend would like to deal with now, concerning --
 11 just so your Lordship has the picture -- a supplemental
 12 witness statement.
 13 MR MILLAR: My Lord, in preparing to give his evidence over
 14 the weekend, Mr Steele realised that the chronology that
 15 one derives from his current witness statement, relating
 16 to the instructions he received to do the research for
 17 Memo 112 was incorrect. We served a short supplemental
 18 witness statement yesterday, correcting the error. It's
 19 not in the bundle, obviously it is late and we would
 20 need permission to put it in the bundle, but it is very
 21 short. It corrects some dates --
 22 MR JUSTICE WARBY: Right. Well --
 23 MR MILLAR: -- in relation to the two --
 24 MR JUSTICE WARBY: Unless there's opposition, I will always
 25 allow that kind of witness statement because it is

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1 exactly the sort of thing that if you put him in the
 2 witness box and ask him to confirm his witness
 3 statement, he's going to have to say, "No, I can't,
 4 because there are some inaccuracies", and it's much
 5 better to have notice of that in advance.
 6 MR TOMLINSON: My Lord, absolutely, and we don't oppose it.
 7 MR JUSTICE WARBY: Right. Well, I am going to get a bit of
 8 paper. It will be uploaded at some stage, I imagine?
 9 MR TOMLINSON: My Lord, I'm told it is in the bundle but not
 10 as a witness statement. It's at {E/177/1}; in other
 11 words, it's attached to a letter.
 12 MR MILLAR: So Mr Steele's witness statement is at {C/5/1},
 13 so if one was inserting what I've just handed up in the
 14 hard copy bundles, I suppose it would go at the back of
 15 C/5.
 16 MR JUSTICE WARBY: Yes. It would be convenient if it can be
 17 put there, even at the cost of duplication.
 18 MR MILLAR: Yes.
 19 MR JUSTICE WARBY: Because --
 20 MR TOMLINSON: My Lord, I'm sure it will be sensible to have
 21 it in the right and proper place.
 22 MR JUSTICE WARBY: Right. Well, I won't read that just now,
 23 but, thank you.
 24 MR TOMLINSON: My Lord, I'm going to mention the reason
 25 I thought it was appropriate, so I'll say something

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1 about it in opening.
 2 MR JUSTICE WARBY: Yes.
 3 Just in terms of numbers, this is the third?
 4 MR TOMLINSON: My Lord, he --
 5 MR JUSTICE WARBY: Because there was the one that followed
 6 the pre-trial review.
 7 MR TOMLINSON: Yes.
 8 MR JUSTICE WARBY: Then the revised one, which is still the
 9 first, I think.
 10 MR TOMLINSON: Yes, exactly. It is sort of one and a half.
 11 MR JUSTICE WARBY: Yes.
 12 MR TOMLINSON: So this is, perhaps, two.
 13 MR JUSTICE WARBY: Yes.
 14 Opening submissions by MR TOMLINSON
 15 MR TOMLINSON: So, my Lord, as I indicated, the case
 16 concerns the processing of personal data relating to the
 17 claimants in a memorandum prepared by the defendant.
 18 This memorandum, as the court knows, forms part of what
 19 came to be called in the media the Steele dossier, or
 20 the Trump dossier, a document which I think can properly
 21 be described as notorious and received worldwide
 22 publicity because -- or a set of documents that received
 23 worldwide publicity because it made sensational
 24 allegations against the individual who, by that time,
 25 was the President of the United States. It was probably

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1 the most high profile political story in the
 2 United States since Watergate and, because of this
 3 memorandum, these claimants were implicated in
 4 allegations concerning Russian-related misconduct in
 5 the 2016 presidential election .
 6 The true position is that the claimants had nothing
 7 whatever to do with any of this , nothing whatever to do
 8 with any form of interference in the US presidential
 9 election , but because of this memorandum, they have been
 10 drawn into the whole story with what the court will
 11 appreciate are serious negative consequences.
 12 The purpose of this action is to clear their names
 13 and correct the public record , so as to establish that
 14 this personal data is inaccurate and that the defendants
 15 should not have been processing it .
 16 My Lord, I know your Lordship has had a very lengthy
 17 skeleton from me and a briefer one from Mr Millar . I am
 18 not going to go into the full detail of the background,
 19 but it is perhaps important, for the sake of public
 20 understanding of the case and so your Lordship knows how
 21 I stand on some of the issues that have been outlined ,
 22 for me to give some brief description of the position .
 23 There's also , as I mentioned a few moments ago, a case
 24 management issue which has arisen over the weekend which
 25 I'll address at the end, if that's convenient .

1 My Lord, the defendant describes itself as
 2 a corporate intelligence agency and its selling point is
 3 that the people who run it, the two founders, were, more
 4 than ten years ago, British intelligence officers ; but
 5 when it comes down to it, it is simply a private
 6 business . They are private investigators . They are
 7 consultants whose business is to provide advice to other
 8 businesses , agencies , perhaps sometimes to governments.
 9 They certainly have no official role of any kind. They
 10 simply, like many other courts, are very familiar with
 11 this kind of private investigation agency. They carry
 12 out due diligence . They carry out investigations . They
 13 provide advice . They earn their money in that way.
 14 My Lord, it is obviously a perfectly lawful
 15 occupation, but it's not one -- sometimes there's
 16 something of an attempt by Mr Steele to dress himself up
 17 as some kind of -- he describes himself in his witness
 18 statement, surprisingly , as a national security
 19 professional . My Lord, he's nothing of the kind. What
 20 he is is a businessman and a private investigator .
 21 The claimants are very well-known international
 22 businessmen from Russia. Their company, Alfa Group, is
 23 closely associated with them personally . They're always
 24 named in connection with it .
 25 My Lord, it is the largest private business in

1 Russia . Like any businessman in any country, they have
 2 to have a good relationship with the government of their
 3 country and indeed of other countries , but they're
 4 not creatures of the Kremlin. They maintain their
 5 independence from the government in much the same way as
 6 a large business in this country or the United States
 7 would do.

8 One of the claimants, Mr Aven, is an internationally
 9 renowned economist, who for a time, was a government
 10 minister under President Yeltsin in the 1990s and indeed
 11 was very closely involved in the liberalisation of the
 12 Russian economy, of the change from communism to
 13 capitalism , as it turned out. And President Putin
 14 values his views on economics because of his standing as
 15 an economist, and he meets with President Putin from
 16 time to time and they discuss banking and economics, but
 17 he's not a close confidante of the president .

18 The two other claimants have no personal
 19 relationship with President Putin at all . Their
 20 relationship really extends to this: that they attend
 21 meetings of the Russian equivalent of the CBI with --
 22 formal meetings where the president and leading
 23 industrialists and bankers and so on are present , but
 24 they're not confidantes or advisors of the government in
 25 any way.

1 My Lord, that's important because what this
 2 memorandum is about is somehow suggesting that they have
 3 a much closer and very corrupt relationship with
 4 President Putin.

5 So, my Lord, the history of the memorandum is that
 6 in May 2016 the defendant -- that's Orbis -- was
 7 subcontracted to do some research by another company
 8 which describes itself as being in the business of
 9 strategic intelligence , called Fusion GPS. This is
 10 a company run by two former journalists . They in turn
 11 had been instructed by a Washington DC law firm, called
 12 Perkins Coie -- I think that's how you pronounce it --
 13 on behalf of Hillary Clinton's presidential campaign.
 14 That campaign wanted information about Russian efforts
 15 to influence the 2016 presidential campaign and any
 16 links that might exist between Russia and the then
 17 Republican candidate Donald Trump.

18 My Lord, we don't say for a moment that that's an
 19 improper unlawful purpose. Permissible campaigns
 20 obviously want to find information about their
 21 opponents, but that's not a purpose -- as the defendant
 22 now surprisingly claims, it doesn't have anything to do
 23 with national security or the giving of legal advice.

24 There's actually no evidence at all before the court
 25 as to what purposes Perkins Coie or the Hillary Clinton

1 campaign were going to put the -- what use they were
2 going to make of the information that was obtained from
3 the defendant. My Lord, I'll come back to that point in
4 a moment, but it is important when it comes to looking
5 at the application of the Data Protection Act.

6 Mr Steele, on behalf of the defendant, says he
7 didn't know who the ultimate client was and didn't ask,
8 but, my Lord, whether he asked or not, it is perfectly
9 clear that he knew what the position was, at the latest,
10 by the beginning of July.

11 My Lord, perhaps it is just useful to look at the
12 document which makes that absolutely clear, {D/55.1/1}.
13 This is a note, made public by the FBI -- so this is
14 a public document deriving from the FBI -- of a meeting
15 that two agents had with Mr Steele in London on 5 July.
16 Part of it is redacted, doubtless for perfectly proper
17 FBI-related reasons, but what the memorandum -- what the
18 note indicates, and we see this most clearly from
19 paragraph 3, it explains that:

20 "... Glenn Simpson, GPSFusion was our commissioner
21 but the ultimate client were the leadership of the
22 Clinton presidential campaign ... we understood the
23 candidate herself was aware of the reporting at least,
24 if not us (Orbis BI)."

25 Sorry, my mistake, this is Mr -- it's not an FBI

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1 note. This is Mr Steele's own note of that meeting with
2 the FBI. So he's confirming -- he's recording in his
3 own note that, as of 5 July, he was aware that the
4 ultimate client was the leadership of the Clinton
5 presidential campaign.

6 So he knew that the -- what this was -- who
7 ultimately was interested in this information from the
8 very earliest stage.

9 No one has ever made clear how many memoranda
10 Mr Steele and the defendant produced. Ultimately
11 a group of them were made public, but it's not clear --
12 the numbers are not consecutive so it's not clear what
13 other memoranda exist. But what we do know is that from
14 time to time Mr Steele briefed the media as to their
15 contents and he provided a number of them to various
16 individuals. In particular, a set of copies was
17 provided to a man called David Kramer, who was a private
18 individual, who worked for a Washington DC think tank.
19 The purpose of this provision was so that they would be
20 passed to Senator John McCain and that does indeed
21 appear to have been the case. Mr Kramer then passed the
22 memoranda to Senator McCain, who then discussed them
23 with the FBI.

24 Mr Kramer also provided copies of the memoranda to
25 various journalists. There's some dispute as to exactly

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1 what authority he had to do that. He certainly has --
2 he's given evidence to the effect that Mr Steele didn't
3 forbid him to do it and didn't authorise him to do it.
4 He met various journalists at Mr Steele's request and
5 provided them with copies.

6 Anyway, the position is that on 10 January those
7 memoranda were published -- the ones that Mr Kramer had
8 were published by the website BuzzFeed and then achieved
9 worldwide notoriety. Your Lordship may recollect at the
10 time it was a sensational story which echoed all the way
11 around the world.

12 This court is concerned with only one of those
13 memoranda, which is number 112, which was commissioned
14 on a date which is now not entirely clear. According to
15 Mr Steele's first version of his witness statement, his
16 first revised version, it was commissioned on
17 11 September. He now says, in the new statement that
18 was served yesterday evening, that it was commissioned
19 on 29 July. Certain questions arise in relation to
20 that, which will be dealt with in due course in
21 evidence, but the background to this memorandum seems to
22 be that Perkins Coie had told Mr Steele that there was
23 some kind of suspicious link between an Alfa Bank
24 computer and a Trump organisation computer, and that
25 this had been reported to the FBI.

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1 This so-called suspicious link was in fact a false
2 allegation. The claim that there was such link was
3 investigated by the FBI, found out to be false, and that
4 was demonstrated by independent forensic reports, which
5 your Lordship may have seen are in the bundle. But what
6 is clear is that Perkins Coie obviously thought -- or
7 their clients obviously thought this would be something
8 that would be useful for the purposes of the
9 Hillary Clinton campaign, and Mr Steele was asked to
10 look into the links between Alfa Bank and
11 President Putin.

12 Now, Mr Steele says, and so far there's nothing to
13 suggest that this isn't right, that he spoke to someone,
14 a source, which he describes in the memorandum itself as
15 a trusted compatriot, that is to say a Russian.

16 Interestingly enough, when we asked about where this
17 individual was, they said that they couldn't -- in
18 the request for further information, they said they
19 couldn't tell us because that would be jigsaw
20 identification. But it is clear on the face of the
21 memorandum that he's a Russian, who then spoke to
22 someone who is describe as a top level
23 Russian Government official. We know nothing more about
24 this person and obviously that could cover a very wide
25 range of possibilities.

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1 There are no notes or records of this meeting -- of
2 these dealings and at present we know nothing more about
3 them. My Lord, that's a point I'll return to in due
4 course.

5 Mr Steele, following this interaction with his
6 source, produced Memorandum 112. As the court knows,
7 this is entitled, "Company Intelligence Report 2016/112
8 Russia/US Presidential Election Kremlin-Alpha Group
9 Co-operation".

10 The title is misleading because the memorandum says
11 nothing at all about the US presidential election and
12 the name of Alfa is spelled wrongly, which perhaps gives
13 you some insight into how much care was taken with the
14 preparation of the memorandum.

15 The same day that that memorandum was given to
16 Fusion, there were two other memoranda produced, 111 and
17 113. It's interesting to note that for 111, the source
18 is said to be a senior member of the Russian
19 presidential administration. One assumes that a senior
20 member of the Russian presidential administration is
21 perhaps more senior than a top level government
22 official, but it seems two different sources are being
23 referred to.

24 My Lord, the memorandum itself, your Lordship will
25 obviously have seen it on a number of occasions, is at

1 {A/1/1}.
2 MR JUSTICE WARBY: Yes.
3 MR TOMLINSON: It's a short document. It's only two pages.
4 It has a summary and then three numbered paragraphs.
5 What it is about is clear from the title, "Co-operation
6 between the Kremlin and Alfa Group and the claimants".
7 My Lord, it is obvious, we say, from that memorandum
8 that what is being said is that the relationship is
9 a close and a corrupt one, that the claimants do
10 significant -- and President Putin does significant
11 favours for each other, that they have paid him illicit
12 cash, they give him advice and do his political bidding.
13 It's also said that Alfa holds or held kompromat on
14 President Putin, that is to say compromising material.

15 It contains nothing at all about the US presidential
16 election or anything that could possibly be related to
17 national security of either the US or the UK. It's
18 about Alfa, the claimants and President Putin.

19 Mr Fridman is mentioned by name in the two pages six
20 times, Mr Aven by name five times, and Mr Khan once.
21 My Lord, it is common ground, as your Lordship knows,
22 that the memorandum contains personal data about
23 Mr Fridman and Mr Aven in four categories, set out in
24 paragraph 6 of the particulars of claim. They all
25 concern close relationships between those individuals

1 and President Putin, but perhaps the most striking is
2 the statement that Mr Fridman and Mr Aven used
3 a Mr Oleg Govorun as a "driver" and "bag carrier" to
4 deliver large amounts of illicit cash to President Putin
5 when he was Deputy Mayor of St Petersburg.

6 There are two disputes about the personal data, as
7 your Lordship knows. The first concerns paragraph 1 and
8 paragraph 2. Going back to paragraph 1 {A/1/1},
9 my Lord, there's a dispute as to who is doing the
10 significant favours for President Putin in the first
11 paragraph. We say that clearly what that means is the
12 leading figures in Alfa, who are named in the previous
13 sentence, are the ones doing the significant favours.
14 Companies have to act through their agents or employees
15 and these are the named individuals and these are the
16 ones doing significant favours.

17 My Lord, that's, as it were, a pure matter of
18 construction.

19 The second point is the suggestion in the second
20 paragraph concerning illicit cash, is that an allegation
21 of criminal wrongdoing? Again, that's a matter for
22 construction of that paragraph. The defendants make the
23 remarkable submission that illicit means furtive or
24 secret, and so their case is what the memorandum is
25 simply saying is that in the 1990s this was just an

1 ordinary patronage transaction. They were just paying
2 cash because everybody dealt in cash in those days and
3 there was nothing wrong about it at all.

4 My Lord, we say that's an absurd construction and we
5 ask rhetorically: if this is just recording something
6 which was standard and obvious, why does it feature so
7 prominently in the memorandum? It features in the first
8 paragraph and of course it also features as the second
9 point of the summary.

10 Clearly what's being said here about the claimants
11 is that they engaged in the paying of a bribe to
12 a public official. Any reasonable person, we say, would
13 understand that.

14 My Lord, there's a bit of side issue arisen in this
15 case, as your Lordship knows, because when we made
16 this -- when we said this alleged criminal offence, the
17 defendant said, "Well, tell us what the criminal offence
18 is". Now, my Lord, we don't actually accept that we
19 have to do that because if it alleges a criminal offence
20 you don't have to know what the criminal offence is.
21 Many people in England wouldn't know -- probably most
22 people in England wouldn't know what the offence was if
23 you were accused of paying money to a public official,
24 what precise statute it was, but they would know it was
25 an offence. But in response to that request we produced

1 an expert report pointing out that this was an offence
2 under Article 174 of the Criminal Code of the Russian
3 Soviet Federated Socialist Republic. My Lord, if that's
4 relevant, that's our evidence and the defendant has no
5 expert evidence to the contrary.

6 So, my Lord --
7 MR JUSTICE WARBY: It is a bit like slander, I suppose, is
8 it? You know, that category of slander which is
9 actionable without proof of damage because it imputes
10 the commission of a criminal offence.

11 MR TOMLINSON: Yes.

12 MR JUSTICE WARBY: In that context you would have to -- you
13 might have to, depending on the precise words -- spell
14 out what the offence was, but if the words were, "He was
15 guilty of a crime", then you probably wouldn't
16 because --

17 MR TOMLINSON: My Lord, so, for example, paying money to
18 a public official is a very good example because my
19 faint recollection is that until the Bribery Act came
20 along, this used to be an offence under the Prevention
21 of Corruption Act 1911, but I suspect that 99.9% of the
22 British population have never heard of that statute, but
23 everybody would know that if you said, "He paid a bung,
24 or illicit cash to a public official", everybody would
25 know you were saying a crime had been committed, even

1 though they couldn't actually identify what it was.
2 MR JUSTICE WARBY: Yes, but if it wasn't a public official
3 under that Act then --

4 MR TOMLINSON: If it wasn't a public official, it wasn't
5 a crime, yes, quite.

6 MR JUSTICE WARBY: Wasn't a crime. So under the old law you
7 might have had a bit of a problem with a slander, where
8 you would have to prove that the person being bribed was
9 a public official, otherwise --

10 MR TOMLINSON: Yes, but if you say they are a public
11 official, you take the notorious case of T. Dan Smith
12 that your Lordship may recollect from many years ago,
13 who was being bribed by the architect John Poulson over
14 public contracts, I mean, if someone said
15 a councillor -- I think he was the leader of Wandsworth
16 Council -- is being paid money by an architect, illicit
17 money by an architect, everybody would know that you
18 were saying he had committed a crime, even though you
19 didn't know precisely what it was called.

20 My Lord, that's the primary position.

21 MR JUSTICE WARBY: Yes.

22 MR TOMLINSON: It is interesting that the way it is put, all
23 that points in the same direction, because we have:
24 "... Govorun had been Head of Government Relations
25 at Alpha ..."

1 Actually that was untrue, but never mind:
2 "... in reality, the 'driver' and 'bag carrier'
3 [both in inverted commas -- sorry, over the page,
4 {A/1/2}] used by Fridman and Aven to deliver large
5 amounts of illicit cash ..."

6 So the "driver" and "bag carrier", in inverted
7 commas, is all telling us -- sending us the message that
8 this man, although his official title is head of
9 government relations, is really there to pay off public
10 officials.

11 MR JUSTICE WARBY: Yes.

12 MR TOMLINSON: My Lord, it is perhaps useful to say
13 something at this stage about processing. Of course,
14 this is a data protection claim, it relates to the
15 processing of personal data. That processing took place
16 in a number of ways: the compilation of the memorandum,
17 its disclosure to Fusion, and its disclosure to third
18 parties.

19 Obviously we are not -- we still don't know what
20 third parties it was delivered to. Mr Steele admits
21 a number of individuals. The position is somewhat
22 unclear. We accept that the defendant is not
23 responsible for the processing by other data
24 controllers. Obviously, what other data controllers do
25 with it is a matter for them and not for the defendant.

1 On the other hand, the defendant, we say, is
2 responsible for the damage caused by its own processing,
3 which includes the damage -- the foreseeable damage
4 caused when other people use or publish this memoranda.

5 We say, as we say in our reply, it was foreseeable
6 and likely that Memorandum 112 would be disclosed to the
7 media, given its high profile subject matter.

8 The defendant admits the disclosure to Fusion and
9 obviously, if it is disclosed to Fusion, it obviously
10 goes down the chain to the ultimate client.

11 It also admits disclosure to a number of other
12 individuals. My Lord, those are listed -- if
13 your Lordship looks at our skeleton argument at {A/2/9},
14 those are the recipients: Mr Strobe Talbott, who had
15 been a public official at one time but at that stage was
16 retired; an unidentified senior US national security
17 official; an unidentified senior UK Government national
18 security official, some former colleague; and then
19 David Kramer, who was a private individual, although he
20 was provided with the memorandum for the purposes of
21 passing it on to Senator John McCain, who at that stage
22 certainly did have an official function.

23 The defendant seeks to divide the processing into
24 two categories: Fusion disclosure and what they call
25 national security disclosure.

1 My Lord, we don't accept that there are national
 2 security disclosures in this case. Your Lordship will
 3 know that there's an exemption from certain principles
 4 in the Data Protection Act under section 28 of the Data
 5 Protection Act. We deal with that at paragraphs 80 to
 6 82 of our skeleton, and the defendant at paragraphs 41
 7 to 46.

8 My Lord, our short answer to that is whatever the
 9 position in relation to the Trump -- the whole Trump
 10 dossier, as it has been called, we can see something of
 11 an argument which says: well, look, this is about the
 12 potential US President being subject to blackmail by the
 13 Kremlin or having improper connections with the Kremlin
 14 and so on. One can see that in those circumstances it
 15 might well be arguable that there were national security
 16 reasons for disclosure, but Memorandum 112 has nothing
 17 to do with any of that. It has nothing to do with --
 18 the only mention of candidate Trump is in the title. It
 19 has nothing to do with the election. It is about -- and
 20 it doesn't have anything to do with links between
 21 servers. It is simply about the claimants, Alfa and
 22 President Putin. We say that that has no national
 23 security implications at all. It's certainly not -- its
 24 disclosure is certainly not required for the purposes --
 25 for national security purposes.

1 My Lord, we say, and there's a dispute of fact about
 2 this, that the memorandum was never actually provided to
 3 the FBI. Mr Steele decided, because he thought that the
 4 results of his investigations were explosive, or what
 5 his sources had told him, he decided to tell the FBI
 6 about it. I showed your Lordship a note of a meeting
 7 from July. He provided -- there's no doubt he provided
 8 certain memoranda to the FBI, but the FBI say that, "He
 9 didn't provide this memorandum to us". Mr Steele says
 10 he did. Well, my Lord, with respect to Mr Steele, the
 11 FBI's evidence in relation to this is to be preferred,
 12 particularly as Mr Steele, as your Lordship will have
 13 seen from the supplemental statement that he served,
 14 can't even recollect when he was instructed to produce
 15 the memorandum. So, the idea that he can accurately
 16 recollect when he handed it to some third party is --

17 MR JUSTICE WARBY: Where do I get what the FBI say about
 18 this?

19 MR TOMLINSON: My Lord, it's in our skeleton. My Lord, if
 20 I can just -- if your Lordship will give me a moment.

21 This in the report of the inspector general.

22 MR JUSTICE WARBY: Yes.

23 MR TOMLINSON: And the report of the inspector general,
 24 which is -- I don't know if your Lordship -- it is a
 25 very long document and your Lordship may --

1 MR JUSTICE WARBY: No, I have just read -- so far I have
 2 just read what you asked me to read.

3 MR TOMLINSON: Yes.

4 MR JUSTICE WARBY: Because I thought I could get directed to
 5 the bits that matter.

6 MR TOMLINSON: Well, yes. The report of the Inspector
 7 General is an extremely interesting document about the
 8 background to this. It is all about the warrants that
 9 were obtained. At paragraph 24 of our skeleton we deal
 10 with this {A/2/9}. The reference is to {D/131/155}.
 11 D/131 is the Horowitz report and your Lordship will see
 12 the footnote is about Report 112:

"The Crossfire Hurricane team [which is the FBI
 investigators who are looking into the links between the
 Trump team and Russia] received Report 112 on or about
 November 6, 2016, from a Mother Jones journalist through
 then FBI General Counsel James Baker."

In other parts of the report it makes clear that
 they didn't receive this from Mr Steele.

It is entirely unclear how the Mother Jones
 journalist got it.

MR JUSTICE WARBY: Yes.

MR TOMLINSON: Although we do know that Mr Steele admits to
 having spoken to the Mother Jones journalist --

MR JUSTICE WARBY: Is there any controversy about the status

1 of this report evidentially?

2 MR TOMLINSON: I don't think so. Not that I'm aware of.
 3 It's ...

4 MR JUSTICE WARBY: I mean, it's a source of multiple hearsay
 5 evidence of some kind.

6 MR TOMLINSON: It certainly is hearsay evidence, my Lord, of
 7 course it is, but on the other hand the FBI interviewed
 8 something like 100 witnesses, including Mr Steele, and
 9 of course crucially what they had access to was their
 10 documentary records.

11 MR JUSTICE WARBY: Yes, I only ask because sometimes, as you
 12 know, there can be some debate about the status of
 13 findings in reports of this kind.

14 MR TOMLINSON: Yes, my Lord.

15 MR JUSTICE WARBY: What you're showing me is a statement of
 16 fact.

17 MR TOMLINSON: Yes. I'm not saying it's -- their assessment
 18 of the witnesses and so on obviously has a very
 19 different status, but this is a matter of fact.

20 Of course it is possible it is wrong and
 21 your Lordship could of course believe Mr Steele, rather
 22 than the FBI, but we say that really the position is
 23 clear that Mr Steele didn't -- he obviously doesn't
 24 actually remember when he gave this memorandum and who
 25 he gave it to, if one looks at his witness statement

1 carefully , but we'll come to that when he gives
 2 evidence.
 3 So, my Lord, we say that the -- there's no --
 4 whatever the position in relation to national security
 5 and the other documents, Memorandum 112 has nothing
 6 whatever to do with national security . What's more,
 7 nobody ever thought it did , until my friend's defence
 8 was served.

9 There's then the legal purposes exemption that's
 10 relied on, as your Lordship knows. They say: well , this
 11 was for the purposes of anticipated legal proceedings .

12 It is interesting to look at the defendant's case on
 13 this at {A/12/2}. So the question is :

14 "Is it Orbis' case that Fusion's client needed the
 15 information contained in Memorandum 112:

16 "(a) For the purposes of prospective legal
 17 proceedings?

18 "(b) For the purposes of obtaining legal advice?

19 "(c) For the purposes of establishing , exercising or
 20 defending legal rights ."

21 As your Lordship knows, that's the terms of the
 22 exemption in section 35(2).

23 MR JUSTICE WARBY: Mm hmm.

24 MR TOMLINSON: The response is:

25 "(b) and (c). Fusion's immediate client was law

1 firm Perkins Coie LLP. It engaged Fusion to obtain
 2 information necessary for Perkins Coie LLP to provide
 3 legal advice on the potential impact of Russian
 4 involvement on the legal validity of the outcome of the
 5 ... [Russian(sic)] presidential election . Based on that
 6 advice, parties such as the Democratic National
 7 Committee and ... ' Hillary for America' ... could
 8 consider steps they would legally be entitled to take to
 9 challenge the validity of ... that election . In turn,
 10 that may have resulted in legal proceedings ..."

11 My Lord, that has all the benefits of meeting the
 12 requirements of the section but is supported by no
 13 evidence at all . There's absolutely no evidence that
 14 Perkins Coie engaged Fusion for that purpose. There's
 15 none at all . The only evidence on this point is
 16 Mr Steele's speculation that that might have been the
 17 case.

18 MR JUSTICE WARBY: I suppose what I'll be asked to do is to
 19 draw the same inference that he drew: accept his
 20 evidence about what happened but take the same approach?

21 MR TOMLINSON: My Lord, the position is, as your Lordship
 22 knows, investigators are often instructed by law firms
 23 for purposes which have nothing to do with litigation .
 24 The obvious reason why Hillary for America wanted this
 25 information was to use in the presidential campaign.

1 There's no evidence that anybody ever mentioned that
 2 they wanted it for legal proceedings . The burden is on
 3 the -- and there's a series of alternative explanations .
 4 They might have wanted it to use for public
 5 relations /campaigning purposes.

6 In the absence of evidence to distinguish between
 7 different purposes, the court can't possibly conclude,
 8 we say, that the purpose was prospective legal
 9 proceedings . But, my Lord, again, the same point in
 10 relation to national security applies . Even if it were
 11 the case that the other memoranda were required for
 12 legal proceedings, there's no possible basis on which
 13 Memorandum 112 could have been used for legal
 14 proceedings . It bears no relationship at all to the
 15 issues which are mentioned in this pleading .

16 The potential impact of Russian involvement on the
 17 legal validity of the outcome of the 2016 presidential
 18 election . There's nothing whatever in Memorandum 112
 19 that has any possible relationship to that point . It's
 20 simply -- this is an assertion in a pleading but it has
 21 no basis in fact .

22 MR JUSTICE WARBY: I suppose it might be said, on the face
 23 of it , it looks as though the reason it was created had
 24 to do with the suspicions about the servers that existed
 25 at the time . One could envisage that it could be

1 a building block in a much larger whole if there were
 2 something to tie it in to Russian involvement.

3 MR TOMLINSON: Well, my Lord, that's right, but, on the
 4 other hand, of course it doesn't mention the servers .

5 MR JUSTICE WARBY: No.

6 MR TOMLINSON: And at this time there was actually no
 7 evidence at all that there was a link between the
 8 servers . In fact, there never was. But at this time
 9 the so-called server link was only -- was made -- the
 10 New York Times was investigating it , so it appears, from
 11 about August into September. They never published
 12 anything because the New York Times I think need more
 13 than one source before they can publish an article . It
 14 was published on a website called Slate at the beginning
 15 of October 2016, as an allegation . It may be that, as
 16 it were, the reason for production of this memorandum
 17 was the server allegation , but it contains nothing to
 18 link the two. There's no mention of it in the
 19 memorandum.

20 So, my Lord, I just want to say something now about
 21 accuracy, because the claimants' central complaint, as
 22 your Lordship knows, is that the personal data is
 23 inaccurate; that is to say, it's incorrect and
 24 misleading as to matters of fact .

25 This is not a case, as your Lordship knows from the

1 PTR, where the defendant is advancing any positive case
2 that this data is accurate. All it says is: the
3 claimants have to prove inaccuracy.

4 My Lord, there's a point taken about what in a libel
5 context would be called a fact opinion point. It is
6 said that some of this data is really of an opinion
7 nature, rather than a factual nature. But there are two
8 aspects -- two parts of the data which are absolutely
9 incontestably fact and which we say are incontestably
10 inaccurate.

11 The first concerns the suggestion that Mr Fridman
12 recently had met directly with Putin in Russia.
13 My Lord, why that is important is, to Mr Fridman,
14 because it is all part of this suggestion that there's
15 a very close relationship.

16 The defendant seeks to debate what "recently" and
17 "met directly" means. It seems to suggest that
18 "recently" in this context can mean many years ago, and
19 that "met directly" can mean not met directly at all.
20 We say that it means that there's some -- there has to
21 be some kind of personal direct one-to-one or small
22 group meeting shortly before September 2016. That's
23 what the memorandum says: recently met directly.

24 The defendant's skeleton introduces the novel
25 concept of the indirect meeting. Apparently you can

1 meet someone through intermediaries, presumably without
2 actually meeting them at all. My Lord, we say that's
3 not a meeting at all. If people don't meet, they don't
4 meet.

5 The true position is that Mr Fridman, from time to
6 time, as he says in his witness statement, attends
7 meetings of a group which is the Russian equivalent of
8 the CBI, where the leaders of industry and banking and
9 so on get together and President Putin addresses them
10 and it is all very formal. They have to sit in
11 alphabetical order so that nobody has precedence over
12 anybody else.

13 He attended one of those meetings in December 2016,
14 in other words after the memo, and in March 2016 he went
15 to the plenary session of the Congress of that body,
16 which was a large gathering which was addressed by
17 President Putin. Neither of those can be remotely
18 regarded as a direct meeting.

19 But, my Lord, the most important of the allegations,
20 of the pieces of personal data, concerns the arranging
21 for the delivery of large amounts of illicit cash to
22 Mr Putin when he was Deputy Mayor of St Petersburg by
23 the "driver" or "bag carrier", Mr Govorun.

24 My Lord, that is a demonstrably false allegation and
25 Mr Steele would have known that, had he done some

1 absolutely elementary research. Mr Putin stopped being
2 the Deputy Mayor of St Petersburg in 1996. We have put
3 his biography from the Kremlin in the bundle but I don't
4 think there can be any sensible dispute. He was
5 Deputy Mayor, and when the Mayor lost the election, he
6 stopped being deputy and moved to Moscow. That was
7 in June 1996.

8 Mr Govorun didn't start working for Alfa Bank until
9 1997; in the words, the following year. Again, there
10 can be no doubt about that. Your Lordship has his
11 personnel file. It is actually also available -- the
12 relevant facts are available online through a simple
13 Google search. So he can't possibly have been -- and he
14 was living in Moscow, which is a long way from
15 St Petersburg. The idea that he was working for Alfa
16 and handing out illicit cash at a time when he was
17 employed by someone else in Moscow is absurd.

18 Incidentally, the memorandum is wrong in two other
19 respects. He wasn't working for Alfa throughout the
20 1990s, as it says, and he wasn't the head of government
21 relations. So, my Lord, that allegation is -- what it
22 is is simply a piece of tittle-tattle that has been
23 relayed to Mr Steele and has been then placed by him in
24 the memorandum. And, remarkably, even though the facts
25 are crystal clear, he even now won't acknowledge it's

1 false.
2 In relation to the other items of personal data,
3 well, my Lord, the defendants say that they "cannot be
4 evaluated according to factual accuracy". I'm not
5 entirely sure what that means but I think it means they
6 are matters of opinion.

7 Well, my Lord, that's a matter your Lordship will
8 have to determine, but we say that to say someone does
9 significant favours for someone else, does their
10 political bidding and gives them -- does their political
11 bidding, are clearly matters of fact. They are either
12 true or false.

13 MR JUSTICE WARBY: Well, I suppose "significant" is an
14 evaluative term.

15 MR TOMLINSON: Significant is --

16 MR JUSTICE WARBY: You can sometimes have mixed statements,
17 can't you.

18 MR TOMLINSON: Yes, but whether someone does favours for
19 someone else, one can determine "yes" or "no", and
20 "significant" is -- there can be different views as to
21 what it means, there's a range of possibilities, but
22 nevertheless such a statement can, we say, be true or
23 false.

24 My Lord, the final point is the giving of informal
25 advice on foreign policy. The defendant appears to

1 accept that that is a question of fact and its meaning,
 2 according to the defendant, is that they drew on --
 3 President Putin drew on their expertise in relation to
 4 business, which is an interesting argument. There's no
 5 doubt that Mr Aven met -- meets with Mr Putin several
 6 times a year and talks to him about business and
 7 economics. He says he doesn't talk to him about foreign
 8 policy. Mr Fridman doesn't have such a relationship
 9 with President Putin. President Putin doesn't draw on
 10 his expertise in relation to business or anything else
 11 at any stage.

12 What the claimants say, and your Lordship will
 13 obviously have to evaluate this, is that in Russia the
 14 relationship between businessmen and politicians is
 15 slightly different from that in the West. It's
 16 a more -- I think they use the phrase "Oriental" system,
 17 that the Mandarin class regards itself as being rather
 18 above the business class, and the idea that government
 19 officials will take advice from mere businessmen is
 20 something which just doesn't make sense in the Russian
 21 context. Your Lordship will have to evaluate that.

22 Finally, the defendant says that it took reasonable
 23 care to ensure accuracy. Well, my Lord, that's a matter
 24 that will have to be considered in cross-examination,
 25 but the reasonable care relied on appears to be simply

1 that Mr Steele trusted his sources and relied on his
 2 body of knowledge.

3 He didn't do anything which one might regard in the
 4 ordinary way as constituting an attempt to verify
 5 information. He doesn't say he spoke to anybody else
 6 about it. He doesn't say he consulted with other
 7 sources. He doesn't say he carried out any independent
 8 research. He doesn't actually say he did any internet
 9 research and, on the face of it, he doesn't seem to have
 10 done any. In other words, what he did was simply repeat
 11 unverified claims by a source in Russia that he doesn't
 12 seem to have had a personal relationship with, that his
 13 so-called sub-source is someone in Russia, and he hasn't
 14 been to Russia for many years.

15 My Lord, it is also important -- I don't know if
 16 your Lordship has picked this point up, but it is
 17 important to note that Mr Steele, quite properly, makes
 18 it clear that he doesn't use the sources that he used
 19 when he was an intelligence officer. He doesn't, as it
 20 were, carry on with his old chums from Moscow which he
 21 dealt with for MI6. That would be entirely improper and
 22 he says he doesn't do it; I'm sure he doesn't. So the
 23 sources he's relying on are people he's cultivated from
 24 the UK over the past ten years. They're not people he
 25 was using for the purposes of British intelligence.

1 So, my Lord, we say that the case on reasonable care
 2 is really hopeless. No care to verify was taken at all.

3 So, my Lord, we say that the personal data is
 4 clearly inaccurate and that there's a clear breach of
 5 the Fourth Data Protection Principle.

6 My Lord, a less important part of the case, and
 7 I deal with it quite briefly, concerns the First Data
 8 Protection Principle. As your Lordship is aware, what
 9 this crucially means is you have to show that one of the
 10 conditions from schedule 2 has been fulfilled and, if it
 11 is sensitive personal data, one of the conditions from
 12 schedule 3 as well.

13 The defendant relies in relation to the Fusion
 14 processing, in other words, the delivery to Fusion, on
 15 the legitimate interest condition in schedule 2,
 16 paragraph 6. Your Lordship may be familiar with that.
 17 It's the one that's very often relied on for general
 18 processing of personal data. We accept that there's
 19 some legitimate interest in play here.

20 On the other hand, there's also interests of the
 21 claimants, and the overall nature of this personal data,
 22 the statements that have been made about them, are very
 23 serious interferences with their Article 8 rights.

24 We say that in those circumstances, their rights
 25 outweigh the legitimate interests of the defendant.

1 It's a proportionality exercise and it's not wholly
 2 different from the exercise that's carried under
 3 section 4 of the Defamation Act; but we say that here,
 4 to put the matters in the clear and direct terms that
 5 Mr Steele did in this memorandum, which is intended
 6 for -- it's not just a casual document passing between
 7 two friends. I mean, this is passing in to the
 8 Hillary Clinton presidential campaign. This is
 9 potentially something which can have wide consequences.
 10 That condition is not met.

11 The other conditions relied on, I don't apprehend
 12 from my friend's skeleton that he relies any longer on
 13 the schedule 3 -- the condition about information being
 14 deliberately placed in the public domain by the data
 15 subject, but he relies on effectively the same points
 16 that he relies on for the exemptions; in other words,
 17 legal advice and national security, the national
 18 security exemption in this case being linked in to the
 19 public functions of those to whom the data is disclosed.

20 We say that that's not -- for the same reasons we
 21 make in relation to the exemptions, that's not
 22 maintainable.

23 But, my Lord, if we're right about the inaccuracy
 24 points, then, in a sense, the First Data Protection
 25 Principle, really, it's unlawful processing in any

1 event, whatever the position is in relation to the First
2 Data Processing Principle .

3 So, my Lord, the question then -- the other matter
4 to mention concerns remedies. As I indicated at the
5 outset, the claimants' primary focus is on correcting
6 the record, establishing in this court that what is said
7 about them is untrue. So they therefore seek -- as
8 your Lordship knows, in this area the remedies available
9 are wider than they are traditionally in defamation
10 cases, the remedies under section 14 of the Data
11 Protection Act. There's an order for rectification and
12 an order that the defendant communicates the
13 inaccuracies to those to whom it has disclosed
14 Memorandum 112.

15 The question of damages is very much a secondary
16 question, but the claimants -- and your Lordship will
17 hear evidence from them, but the claimants will say that
18 from the publication of -- the making public of this
19 material has caused them very considerable distress
20 because of its links to the greatest political scandal
21 or potential scandal in America of recent years, and
22 because it puts them in a position where people think
23 they have this corrupt relationship with President Putin
24 and one that's really clear on the face of the
25 memorandum.

1 We say that that's all completely foreseeable . If
2 a memorandum like this is produced, it is going to go
3 into the -- whatever the defendant did in terms of
4 disclosing it, it is likely to come out, and Mr Steele
5 was briefing the media about various of these memoranda.
6 As your Lordship will have seen, Memorandum 112 appears
7 to have been in the hands of journalists at a very early
8 stage. Where it came from is not clear, but they
9 certainly had it. We say they certainly had it.

10 So, my Lord, we say this is an appropriate case for
11 a suitable award of compensation. There is no
12 reasonable care defence for the reasons I've already
13 mentioned.

14 MR JUSTICE WARBY: Can I just ask this, and this is an
15 abstract point about the way that the Act
16 works: paragraph 7 of part II of schedule 1 contains
17 a provision that:

18 "The fourth principle is not to be regarded as being
19 contravened by reason of any inaccuracy in personal
20 data ..."

21 Provided they accurately record what has been --
22 that the information has been passed and reasonable care
23 has been taken.

24 Suppose, in a case where that paragraph can be
25 relied on, assume such a case would be, would it still

1 be open to the claimant to claim the remedy under
2 paragraph -- under section 14? Because the question
3 really is whether it is an all-or-nothing under the Act
4 or whether the claimant, having established an
5 inaccuracy, can still get the remedy under section 14,
6 even if the defendant establishes that the Fourth
7 Principle has not been contravened?

8 MR TOMLINSON: My Lord, I think the answer to that question
9 is "yes", because if your Lordship looks at the first
10 words of section 14.

11 MR JUSTICE WARBY: Yes.

12 MR TOMLINSON: If a court is satisfied on the application of
13 a data subject the personal data of which the applicant
14 is the subject are inaccurate, he may order the data
15 controller to rectify, block, etc.

16 It doesn't say the applicant satisfies the court
17 that there's a breach of the Fourth Data Protection
18 Principle .

19 MR JUSTICE WARBY: No, quite, and paragraph 7 doesn't deem
20 the data to be accurate.

21 MR TOMLINSON: My Lord, no.

22 MR JUSTICE WARBY: It deems there to be no breach.

23 MR TOMLINSON: Yes. So if the position was that
24 a paragraph 7 defence was made out, so there was no
25 breach of the fourth principle, nevertheless an order

1 for rectification could be made under section 14.

2 My Lord, that's entirely consistent with the policy
3 of the Act. I mean, the Act in general wants personal
4 data to be processed, if it is accurate. The fact that
5 someone has a defence doesn't change that position .

6 MR JUSTICE WARBY: Yes. Thank you.

7 MR TOMLINSON: My Lord, the defendant makes various
8 submissions as to why relief shouldn't be granted as
9 a matter of discretion . We say that those all really
10 depend on whether the defendant has been careful and so
11 on, but in the end, if the court finds the personal data
12 is inaccurate, then it is perfectly proper and
13 appropriate for a remedy of some kind to be granted.

14 Your Lordship understands the claimants' concern
15 about this data and the fact that it remains in
16 circulation and that the defendant -- effectively the
17 defendant has never -- well, not effectively . The
18 defendant has never made any public statements saying,
19 "Well, on reflection, it turns out that this data is
20 inaccurate but I believed it to be accurate at the
21 time", or whatever it is . The defendant has -- even
22 now, in his witness statement, Mr Steele says, in
23 relation to the illicit cash allegation: well, it hasn't
24 been proved to be incorrect .

25 So the claimants need and are entitled to a remedy.

1 My Lord, that, entirely by coincidence and not by
 2 design at all, is just the time when the shorthand
 3 writers would like a break.
 4 MR JUSTICE WARBY: Well, good. Well timed. Ten minutes.
 5 We'll take ten minutes and start just around midday.
 6 (11.50 am)
 7 (Short Break)
 8 (12.00 pm)
 9 MR TOMLINSON: My Lord, before Mr Millar starts, I mentioned
 10 at the outset that there was a case management issue.
 11 It may be -- I am entirely in your Lordship's hands as
 12 to whether -- would your Lordship prefer to deal with it
 13 when Mr Millar has finished?
 14 MR JUSTICE WARBY: Yes, let me hear Mr Millar's opening,
 15 unless in fairness to him you need to raise it now?
 16 MR TOMLINSON: Well, I think he knows what it is.
 17 MR JUSTICE WARBY: Right.
 18 MR TOMLINSON: It concerns the identification of sources by
 19 Mr Steele, but --
 20 MR JUSTICE WARBY: Well, let's deal with that after I have
 21 heard Mr Millar's opening.
 22 MR MILLAR: Yes, or maybe at some other point. Maybe
 23 between the claimants' case and the defendant's case
 24 might be a logical place to do it, but it's a matter for
 25 your Lordship.

1 MR JUSTICE WARBY: Well, yes, at the moment I don't know
 2 exactly what the issue is. I know there has been a bit
 3 of tail -tweaking --
 4 MR MILLAR: No, you don't. I'm tempted to say --
 5 MR JUSTICE WARBY: -- in the skeleton about it and I made
 6 a note to myself to find out at some stage whether there
 7 was going to be an application for disclosure of
 8 sources, and we'll find out.
 9 MR MILLAR: There you are. I was tempted to say
 10 your Lordship can probably guess, but your Lordship
 11 clearly has.
 12 Opening submissions by MR MILLAR
 13 MR MILLAR: Your Lordship will have seen that our skeleton,
 14 which I will take as read, is divided into six headings:
 15 Issue 1, the issues on personal data; issue 2, the
 16 section 35(2) exemption; issue 3, the section 28(1)
 17 exemption; issue 4, no contravention of DPP1; issue 5,
 18 no contravention of DPP4; and issue 6, remedy.
 19 I will, because it is logical, and the Act works
 20 like a sort of flowchart, if you follow it through, take
 21 them in that order, which I hope will assist.
 22 So it is logical to mention, first, therefore, our
 23 arguments about personal data. Of course, the claims
 24 are all and only under the DPA 1998. There is no libel
 25 claim here. Whilst it is helpful in this area of law to

1 look laterally to the law of libel, the primary focus of
 2 the court must be on the wording of the legislation and
 3 the application of the wording of the legislation to the
 4 facts.
 5 So the first issue is: was there personal data as
 6 alleged at paragraph 6(a) of the particulars of claim?
 7 That's the "significant favours in both directions"
 8 sentence. Secondly, what I'll call the Govorun
 9 passage: did it contain sensitive personal data, rather
 10 than ordinary personal data?
 11 Your Lordship knows that the memo is at {A/1/1}.
 12 The definition of personal data is in section 1.1 of the
 13 DPA. I won't take your Lordship to it. We're all
 14 familiar with it. It was discussed in the Ittihadieh
 15 case, which is in the bundle of authorities at tab 11,
 16 and, again, I won't take you to it because we can look
 17 at it later and it is well known.
 18 MR JUSTICE WARBY: Yes.
 19 MR MILLAR: But the point is the analysis that one finds at
 20 paragraph 61 in the Ittihadieh case {AUTH/11/1}.
 21 The first step is to identify the data in
 22 question: what is the data? Two questions then arise.
 23 First, does it relate to a living individual? If so,
 24 secondly, is the individual identifiable from those
 25 data?

1 Now the claimants' case, as we understand it, is
 2 that the data in question is the doing of significant
 3 favours in each direction. That is the personal data.
 4 The doing of significant favours in each direction. But
 5 the claimants cannot get over the fact, we say, that the
 6 two directions concerned are Alfa Group, a consortium of
 7 companies, for Mr Putin, and Mr Putin, for the
 8 consortium of companies.
 9 The first problem here for the claimants is the
 10 analysis in the well-known passage in
 11 Lord Justice Auld's judgment in the Durant case, which
 12 I will take you to. It's at tab 2 in the bundle,
 13 {AUTH/2/1}, paragraph 28.
 14 At the top of page 587 he postulates that there are
 15 two notions that may be of assistance {AUTH/2/15}. The
 16 first question is how proximate is the data to the
 17 claimants, taking into account the extent to which the
 18 information is data which is biographical in
 19 a significant sense. Secondly, whether the data has the
 20 individual as its focus. That's the first six lines at
 21 the top of that page. As opposed to, for example, some
 22 transaction of other parties in which the data subject
 23 may or may not have an interest.
 24 We say that this data is not biographical at all and
 25 the focus of the data in that sentence, "significant

1 favours in each direction ", is the corporate group, not
2 any particular individuals .

3 The claimants may have an interest in the mutual
4 favours that comprise the data, the doing of the mutual
5 favours between the two parties mentioned, but that is
6 not, we say, enough.

7 The second problem for the claimants is that the
8 claimants are not identifiable from the data. Again,
9 one has to focus very closely on the data, not the
10 entirety of the document. This is not a libel action .

11 The fact that their names appear in an earlier
12 sentence in paragraph 1 as individuals who lead
13 Alfa Group does not mean that they are identifiable from
14 the data as required by the Act.

15 We note Lord Justice Auld's observation on the
16 left -hand page, page 586 {AUTH/2/14}, at the beginning
17 of paragraph 28: that mere mention of the data subject
18 in a document held by a data controller does not
19 necessarily amount to his personal data. You have to
20 identify , having isolated the data, the individual ,
21 living individual , from the data.

22 There really is no answer to that analysis . There
23 might be for a libel lawyer construing the document as
24 a whole, but there isn't under the Act. So we say this
25 part of the claim falls away and the third claimant,

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1 Mr Khan, who does not figure anywhere else in the claim
2 or claims, has no claim.

3 MR JUSTICE WARBY: I was just looking at the other part of
4 the direction -- sorry , the definition of data:

5 "... identifiability from those data and other
6 information which is in the possession of or likely to
7 come into the possession of the data controller ."

8 That, you say, doesn't take us anywhere?

9 MR MILLAR: So far as we are aware, that's not relied on
10 here.

11 MR JUSTICE WARBY: Right. It has always been a bit puzzling
12 to me because as a libel lawyer certainly you would
13 think that the relevant information was that which was
14 likely to come into the possession of the person to whom
15 the data was disclosed , who may or may not be a data
16 controller .

17 MR MILLAR: Yes.

18 MR JUSTICE WARBY: There we are.

19 MR MILLAR: That's because we obsess with publication in the
20 libel sense.

21 MR JUSTICE WARBY: Right, well, that's very clear.

22 MR MILLAR: Then the second personal data issue, particulars
23 of claim, paragraph 6(d), the Govorun sentence.

24 I should say on both of these that we do disagree
25 with my learned friend in his opening, it will follow

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1 from the discussion my Lord and I have just had, no
2 doubt, when he said that these issues , the 6(a) issue
3 and the 6(d) issue about the data, are, and I quote him,
4 "a pure matter of construction ". We disagree with that.
5 It's not a pure matter of construction . It is an issue
6 of fact and law in a case that is regulated by statute
7 and so you have to apply the facts to the statutory
8 words. {A/10/2}

9 So turning to the Govorun sentence, the statutory
10 question is the one posed by section 2(g) of the DPA,
11 the specific definition of sensitive personal data.
12 Does the data consist of:

13 "Information as to ...

14 "(g) the commission or alleged commission by the
15 data subject of any offence?"

16 This is for claimant 1 and claimant 2 to establish ,
17 that this special definition is met.

18 It is common ground on the skeleton arguments that
19 the data must -- and I'm quoting here Judge Wikeley's
20 judgment in the Colenso-Dunne case, which is at tab 10,
21 and both parties cite in their skeleton arguments,
22 paragraph 45: {AUTH/10/1} the data must, he says, speak
23 for itself , at paragraph 45, in its immediate context
24 when you are trying to decide whether the 2(g) test is
25 made.

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1 Here, the personal data on the claimant's case, as
2 we understand it, is that in the 1990s the first and
3 second claimants delivered large amounts of illicit cash
4 to the Deputy Mayor of St Petersburg, then Mr Putin.
5 The case is under what I would call the second limb of
6 2(g); in other words, that it consists of information as
7 to the alleged commission of any offence , not the actual
8 commission of an offence .

9 We accept that the word "any" here, "any offence",
10 was clearly being used by Parliament in the sense of
11 one, no matter which, of several . That dictionary
12 sense. So the information does not have to include
13 a particular offence , but, equally, if it does not, the
14 task of a claimant in making out the test is going to be
15 more difficult . That is obvious.

16 The immediate context of this data is not the UK in
17 2016, but, rather, Russia in the 1990s. This, we say,
18 makes it yet more difficult for the claimants -- the
19 first two claimants to make out the 2(g) test . Again,
20 we say this is obvious. The data would have to "consist
21 of" information about an alleged criminal offence in
22 Russia in the 1990s.

23 It's not like , with respect to my learned friend ,
24 saying: X stabbed Y in a London street last week. That
25 is obvious. This data does not consist of -- and those

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1 are the key words -- any such information . It
 2 identifies something that was done by the first and
 3 second claimants, allegedly , but there is no reference
 4 in the data to a criminal offence or even a colloquial
 5 description of or reference to an offence or a type of
 6 offence . It is a factual description of them doing
 7 something . That, we say, means the attempt to squeeze
 8 this into section 2(g) must fail .

9 I should say, finally , that we do not accept that
 10 their expert's evidence, interesting though it is to
 11 read, gets them anywhere . That evidence is , as
 12 I understand it , that there was an offence of what the
 13 expert calls "giver bribery" -- in other words, the
 14 payer, rather than the recipient -- giver bribery under
 15 the Criminal Code at that time .

16 The data says nothing about this or whether a person
 17 doing what is attributed to the first and second
 18 claimants in this sentence might have been committing
 19 such a giver offence of bribery . The fact that they
 20 have had to resort to such evidence is , we say, the
 21 surest possible indicator that the test in 2(g) is not
 22 met .

23 MR JUSTICE WARBY: What does "illicit" mean?

24 MR MILLAR: Concealed, secretive, furtive . They take
 25 exception with our understanding of that word . We take

1 exception with theirs in their skeleton . It translates
 2 to " illegal ", which is a huge leap to make . No doubt
 3 they make it because they want to try and drag in the
 4 concept of illegality and criminal illegality , but the
 5 word " illicit " on its own cannot bear that
 6 understanding .

7 Before turning to issue 2, again, logically and
 8 sandwiched between issue 1 and 2, is the issue of
 9 responsibility or liability as the controller , which my
 10 learned friend touched upon . This is an important step
 11 under the Act, which is to recognise that the case is
 12 about the acts of processing the relevant personal data
 13 for which the defendant was a data controller , as
 14 defined in section 1.1 .

15 Obviously, these include Orbis' compiling of M112
 16 and holding a copy after the admitted disclosures of the
 17 memo . These also include the admitted disclosures in
 18 autumn 2016, which you have been told about and I' ll
 19 come to in a moment, which we have set out in our
 20 skeleton at paragraphs 9 and 10 {A/3/4}, namely, one
 21 disclosure to Fusion of M112, though technically under
 22 the legislation it can be said that compiling M112 and
 23 disclosing it to Fusion were separate acts of
 24 processing , and they were in the technical sense under
 25 the legislation , but in reality , we say on the facts of

1 this case, they were a single act, because M112 was
 2 compiled to disclose it to Fusion . It was all one and
 3 the same thing . The compilation was for delivery of the
 4 memo to Fusion .

5 So that's one single disclosure to Fusion in the
 6 circumstances that I'm going to come to in a moment .

7 Secondly, the four disclosures of the memo to US or
 8 UK recipients , being persons in or who had been in
 9 government . In the latter case, the had been in
 10 government case of Mr Talbott and Mr Kramer, disclosure
 11 to them for consideration by people currently in
 12 government: Senator McCain in the case of David Kramer,
 13 and State Department officials in the case of
 14 Strobe Talbott, and very senior people in government
 15 with interests , as I' ll come to say, in national
 16 security .

17 It is probably not necessary to look at it now, but
 18 regarding liability for processing , there is a very
 19 helpful discussion of the principles by
 20 Mr Justice Langstaff in the Morrison's case, which
 21 I know your Lordship will recall . The member of the
 22 audit staff of Morrison who improperly disclosed large
 23 quantities of employee data . That's in {AUTH/18/1},
 24 paragraphs 44 to 48 .

25 But on the basis of that analysis and the statutory

1 definition of a controller , we probably just should look
 2 at, in tab 18 --

3 MR JUSTICE WARBY: That's not one of the issues that has
 4 been before the Supreme Court in that case, is it , this
 5 aspect?

6 MR MILLAR: No . No, that was resolved at first instance .

7 MR JUSTICE WARBY: That was -- vicarious liability I think
 8 was the issue .

9 MR MILLAR: Yes, exactly . That's what it ended up as .

10 It does just sometimes help to remind oneself --

11 MR JUSTICE WARBY: Just give me the tab again?

12 MR MILLAR: It is tab 18, section 11, the general definition
 13 section .

14 MR JUSTICE WARBY: Oh, I see .

15 MR MILLAR: So it is: {AUTH/18/2}

16 "... a person who (either alone or jointly or in
 17 common with other persons) [and these are the key words]
 18 determines the purposes for which and the manner in
 19 which any personal data are, or are to be, processed ."

20 Determines the purposes for which the data are to be
 21 processed . So, it focuses on that concept of
 22 determination, that you take the decision as to what is
 23 going to happen with the data .

24 You can see where this is going . Again, if you
 25 focus properly, which the claimants do not do, on the

1 authorities , such as Mr Justice Langstaff in Morrison
2 and the statutory wording, there is no evidence
3 whatsoever before the court to suggest that Orbis is
4 responsible for or liable for the decision of the editor
5 of BuzzFeed to put the dossier online , including
6 Memorandum 112.

7 It was an editorial decision , probably a bad
8 editorial decision -- we say it was a bad editorial
9 decision -- but there is no evidence that can bring that
10 determination in the BuzzFeed newsroom within the range
11 of liability of Orbis as data controller . It is utterly
12 hopeless .

13 So I turn to issue 2, the section 35(2) exemption.
14 We have dealt with this in our --

15 MR JUSTICE WARBY: Sorry to interrupt. There's no dispute
16 that Orbis was a data controller ?

17 MR MILLAR: No.

18 MR JUSTICE WARBY: The point you have made is about the
19 extent to which Orbis was determining the purposes for
20 which and the manner in which disclosure was made?

21 MR MILLAR: Yes.

22 MR JUSTICE WARBY: Probably jointly a data controller with
23 Fusion, possibly other people, so far as purposes are
24 concerned?

25 MR MILLAR: Probably, yes.

1 MR JUSTICE WARBY: If you are carrying out someone else's --

2 MR MILLAR: At the point the particular instruction is
3 given .

4 MR JUSTICE WARBY: Yes.

5 MR MILLAR: Although you will see in Mr Steele's witness
6 statement he does say that his understanding was it was
7 a matter -- once a memo was delivered to Fusion, exactly
8 how they relayed it or its contents or discussed its
9 contents with Perkins Coie was a matter for them. That
10 wasn't for him to determine. He was further down the
11 food chain, as it were.

12 MR JUSTICE WARBY: Yes.

13 MR MILLAR: So issue 2, the section 35(2) exemption. We
14 rely on this in relation to the disclosure of M112 to
15 Fusion in September 2016, as I have said , for discussion
16 with or provision to their client , Perkins Coie.

17 I am grateful it has been brought up. If we could
18 just scroll down or go on to the next page, the wording
19 is at paragraph 34 {A/3/12}, followed by the wording of
20 section 27(3)-(4) regarding the ambit of the exemption,
21 i.e. its exemption from the identified non-disclosure
22 provisions in 27(3)-(4) to the extent that those
23 non-disclosure provisions are inconsistent with the
24 disclosure in question.

25 The wording of 35(2) is above that. It is familiar .

1 MR JUSTICE WARBY: Yes.

2 MR MILLAR: There are the various possibilities . The legal
3 proceedings subsection is (a), which has two limbs,
4 legal proceedings or prospective legal proceedings .
5 Then there's (b) for the purpose of obtaining legal
6 advice . And the catch- all at the bottom is:

7 "... otherwise necessary for the purposes of
8 establishing , exercising or defending legal rights ."

9 The points I want to make in opening are these:
10 first of all , on the facts , my Lord will of course need
11 to hear Mr Steele's evidence about exactly how the
12 instruction to compile M112 and provide it to Fusion
13 came about, but, in essence, Mr Steele was at the
14 relevant time in the process of doing ongoing research
15 for Fusion, who had been instructed by the Washington
16 law firm Perkins Coie, into possible direct or indirect
17 links between the Trump campaign and Russia, and
18 specifically President Putin and other Russian
19 officials .

20 He attended a meeting in Washington with
21 Perkins Coie, which he originally dated in his statement
22 as being around 11 September 2016, but by his
23 supplementary statement is now able to identify it as
24 having occurred on 29 July 2016.

25 That meeting, he says, was attended by the partner ,

1 Mark Elias, who was in the next room -- on the current
2 statement -- from where he was with Mr Sussman. He
3 attended a Perkins Coie meeting with Mr Sussman.
4 Mr Elias was in the vicinity .

5 At the meeting, another partner , Mr Sussman, briefed
6 him about allegations which Perkins Coie were aware of
7 concerning server activity linking Alfa Bank and the
8 Trump organisation. At around that time Perkins Coie
9 informed him that this server activity , of which they
10 were aware, had been reported to the FBI.

11 The context is obviously going to be important, as
12 well as the detail . As you have been told , by 29 July
13 Mr Steele had already had a meeting with the FBI, with
14 an FBI representative , in London, regarding Orbis'
15 ongoing research about these perceived links between the
16 Trump campaign and Russian officials .

17 There had also of course been the Wikileaks
18 disclosures of hacked Democratic Party emails
19 in July 2016.

20 Mr Steele was then asked by Fusion, after the
21 meeting on 29 July, what intelligence Orbis could
22 produce about Alfa Group and its principals and any
23 possible links to President Putin. So, by the time he
24 did the research and produced the memo, which, as
25 your Lordship knows, is dated 14 September 2016,

1 Mr Steele was aware, as I have said, that Fusion were
 2 instructing him to do the ongoing research on behalf of
 3 a law firm, Perkins Coie, and although he was not told
 4 who Perkins Coie's clients were, he says that by that
 5 stage he was aware that Mark Elias was the general
 6 counsel to the Hillary Clinton campaign, that Mark Elias
 7 was an election law specialist, and that he had
 8 litigated a number of election law challenges in the US.

9 It is of course an intriguing feature of this case
 10 that the claimants are here pursuing Orbis, who did this
 11 work that resulted in the memo, to the instructions of
 12 Perkins Coie, in these circumstances. If I may permit
 13 myself a comment: one might have thought that their
 14 grievance was that Perkins Coie and its client had set
 15 him on to do this work on their behalf in the first
 16 place.

17 So under the heading of the law, rather than the
 18 facts, I make these points. Under section 35(2) the
 19 court has to make findings as to whether the Orbis to
 20 Fusion for Perkins Coie disclosure of M112 was for one
 21 or more of the legal purposes identified in
 22 section 35(2), namely, legal proceedings, current or
 23 prospective; obtaining legal advice;
 24 establishing / exercising / defending legal rights.

25 The ones relied on here, as my learned friend has

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1 pointed out, are obtaining legal advice -- in the
 2 immediate context, obtaining legal advice,
 3 establishing / exercising / defending legal rights.

4 In the Cooper v National Crime Agency case, which is
 5 in the authorities at {AUTH/16/1}, Lord Justice Sales,
 6 as he then was, with whom the Chancellor and
 7 Lord Justice Baker agreed, considered the familiar
 8 formulation necessary for the purposes of
 9 establishing / exercising / defending legal rights, which
 10 appears in the same form, both in section 35(2), the
 11 exemption provision, and under condition 6(c) in
 12 schedule 3; the words mirror each other in the condition
 13 in schedule 3 and the exemption.

14 If you turn to paragraph 121 {AUTH/16/32}, it is
 15 clear that he interpreted the provision very broadly
 16 indeed.

17 I don't know if your Lordship recalls this case. It
 18 is a colourful case.

19 MR JUSTICE WARBY: No, I don't. I don't think I have read
 20 this case before.

21 MR MILLAR: Well, your Lordship is very lucky in one sense,
 22 because it is rather long and complicated, but the data
 23 in issue went from a home police force in the south-east
 24 to the NCA, which became SOCA. There were two guises
 25 and it changed its statutory identity, but it is the

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1 same organisation.

2 The claimant, Cooper was a SOCA officer at the time
 3 of the judgment. The information that went from the
 4 home police force -- which I think was Sussex or Surrey,
 5 I can't remember which -- was about him being drunk and
 6 disorderly outside a public house and assaulting
 7 a constable. So it was prima facie about misconduct by
 8 the police officer in disciplinary terms, as well as
 9 criminal offences, and he had been arrested for that.

10 What the court concluded, at paragraph 121, is that
 11 it was necessary for SOCA, the entity employing the
 12 officer, the data subject, to have and consider the data
 13 that was received from the home police force, the
 14 arresting police force, for a whole range of purposes
 15 relating to his employment -- I'm not going to read it,
 16 your Lordship can read it, but essentially relating to
 17 his employment and what steps they could take against
 18 him as an employee, the possible statutory -- engagement
 19 of the statutory regime for police misconduct, and the
 20 possible rights, even of third parties affected by
 21 Cooper's supposedly criminal ill-disciplined conduct in
 22 the street.

23 The circumstances are rather complicated --

24 MR JUSTICE WARBY: No, I have been reading that.

25 MR MILLAR: SOCA is not regulated by the IPCC, like a home

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1 police force.

2 MR JUSTICE WARBY: No, the IPCC can -- yes.

3 MR MILLAR: It had a collateral agreement with the IPCC, but
 4 the consequences were the same under its founding
 5 statute. It had duties to record recordable conduct by
 6 police officers and bring them to the attention of the
 7 IPCC.

8 So there were public law consequences; there were
 9 disciplinary consequences; there were employment law
 10 consequences. All of those embraced in the words of the
 11 section. We would invite similarly wide interpretation
 12 in this case.

13 The issue, therefore, is evidential. It's not
 14 legal, it's evidential, as I think you touched on in
 15 your exchanges with my learned friend. We say the
 16 evidence is more than sufficient for the court to
 17 conclude that the purpose behind the disclosure of M112
 18 to Fusion for Perkins Coie was for the latter to
 19 consider the Clinton campaign's legal position and, in
 20 particular, whether Hillary Clinton's rights as the
 21 opposing candidate to Mr Trump, as he then was, to
 22 a free and fair election contest were being undermined
 23 as a result of possible direct or indirect links between
 24 the Trump campaign and Russia, and, specifically,
 25 President Putin and other Russian officials, and that

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1 the disclosure was reasonably necessary in all the
 2 circumstances for those purposes.
 3 Now, the claimants attempt to answer this evidence
 4 and this case based on the evidence by saying, first, as
 5 we understand it, well, Perkins Coie may have been
 6 wanting this material to give political or public
 7 affairs advice to Mrs Clinton. It's in their skeleton
 8 and it was repeated by my learned friend this morning.
 9 It's not clear of course exactly why they say an
 10 expensive and specialist Washington law firm would be
 11 used for this purpose, but, in any event, this is to put
 12 speculation in the place of evidence.

13 Secondly, they say, ironically, that Mr Steele is
 14 speculating because he didn't ask Perkins Coie and they
 15 did not tell him in terms what the purpose was, but this
 16 doesn't make his case on this point speculation, unlike
 17 the claimants' speculation that this was all to do with
 18 political or public affairs advice.

19 It is a conclusion and a case founded on the
 20 detailed evidence, which I've summarised briefly, about
 21 what was going on at the time, who the entities
 22 Mr Steele was involved with were and what he understood
 23 from his dealings with them. That's evidence. That's
 24 not speculation. The question is: what conclusions do
 25 you draw from it when you come to apply the facts to

1 those words in the legislation?
 2 Then they say, thirdly, that the content of M112 did
 3 not deal with any questions concerning the legal
 4 validity of the 2016 presidential election or even the
 5 election itself, a point made repeatedly by my learned
 6 friend in his submissions, that the content of M112
 7 doesn't seem to relate to the heading, but the statutory
 8 test is not concerned with the content of the data in
 9 issue and/or how it might relate to the section 35(2)
 10 purposes, like establishing, exercising or defending
 11 legal rights. It would be absurd if that was the way
 12 the legislation worked.

13 What it is concerned with is a much wider factual
 14 question, which is what's the purpose of the disclosure
 15 that is in issue? The disclosure was part of an ongoing
 16 disclosure of information by Mr Steele as a researcher
 17 to Perkins Coie through the whole sequence of memoranda,
 18 the purpose of which was exactly the same and it was the
 19 purpose that fell squarely within the exemption.

20 So the upshot is that, except for the requirement of
 21 the need for a condition in schedules 2 or 3, the data
 22 protection principles 1 and 4 relied upon fall away in
 23 their entirety in relation to the Fusion disclosure on
 24 the basis that obviously they are inconsistent with the
 25 disclosure to Perkins Coie. You don't give legal advice

1 like that, you don't give information like that in those
 2 circumstances and then notify.

3 If the exemption applies, the same facts surely make
 4 out, in any event, the schedule 2 or 3 conditions which
 5 we rely on, which I'll come to in a moment.

6 So I turn to issue 4, section 28(1). We have dealt
 7 with this in our skeleton argument at paragraphs 41 to
 8 46 {A/3/14}. We rely on it, as I have said, regarding
 9 the disclosure of M112 to UK-wise, if I can put it that
 10 way, a national security official of the UK Government.

11 MR JUSTICE WARBY: Yes.

12 MR MILLAR: And US-wise, the FBI, David Kramer, for
 13 John McCain, Strobe Talbott for the State Department.
 14 The wording of the exemption is in our skeleton at
 15 paragraph 41, which again is up on screen. The issue is
 16 whether exemption from DPP1 and 4 is required for the
 17 purpose of safeguarding national security. We have made
 18 the point in our skeleton that the word "safeguarding"
 19 is very broad.

20 Again, the court will need to hear and carefully
 21 consider the evidence of Mr Steele in relation to each
 22 of these disclosures. The points I want to make in
 23 opening are these: having started his research, that is
 24 his collection of this human intelligence, in June and
 25 through July 2016, Mr Steele became concerned that there

1 was an emerging intelligence picture regarding
 2 interference by Russian state actors in the US
 3 presidential election. He says he felt duty bound to
 4 report the intelligence he was gathering to the relevant
 5 US agency, the FBI.

6 Following that Orbis-FBI meeting in July, which you
 7 have been told about, he was asked by the FBI to provide
 8 them with the intelligence Orbis had gathered thus far,
 9 and would gather in the future, on national security
 10 grounds. That was the request and he did that,
 11 providing it, the FBI, with the memoranda, including
 12 M112, in September through the FBI personnel that he was
 13 in contact with.

14 He obviously cannot give evidence about how those
 15 conclusions ended up in the official report of the
 16 Inspector General. The FBI is a very big organisation.
 17 It may depend on who the Inspector General was dealing
 18 with. All he can give evidence about is his handlers,
 19 the people he was immediately dealing with when he
 20 disclosed the memoranda, and his evidence will be that
 21 he disclosed M112 and the others at that level to those
 22 people.

23 He did not question the FBI's wish to have the
 24 intelligence and was himself concerned about a US
 25 presidential candidate or his representatives possibly

1 colluding with a foreign power, whose agenda and
2 interests would conflict with those of the UK and its
3 ally, the US. The implications, if and when that
4 candidate is elected, are obvious. The risk is it
5 becomes beholden to the foreign power concerned.

6 He believed thereafter that it was important that
7 the human intelligence he was gathering was brought to
8 the attention of government here and in the US so that
9 it could be considered and the issues investigated by
10 the appropriate authorities with that intelligence that
11 he had gathered in their possession.

12 So, in November 2016 there were three disclosures.
13 He briefed a senior UK Government national official
14 about his research, step 1, and on the basis of that
15 briefing they too asked for and were provided with,
16 step 2, the intelligence accumulated in the memoranda.
17 Again, including M112.

18 Secondly, there was the disclosure to Mr Kramer and
19 an associate of Orbis, the defendant, Sir Andrew Wood,
20 who is a former UK ambassador to Russia, discussed
21 Orbis' intelligence gathering with an aid to
22 Senator John McCain, that is David Kramer, at an
23 international security conference in Canada. This
24 contact led John McCain to ask Sir Andrew for the
25 material to be provided to him via Mr Kramer.

1 Again, this request for sight of the material from
2 the US side was explicitly on the basis of its potential
3 national security importance. Again, the intelligence
4 in the memoranda was provided in the way requested, via
5 Mr Kramer for John McCain, and Mr Steele believed
6 Mr McCain would discuss the material with senior
7 congressional colleagues on oversight committees and/or
8 with the FBI.

9 Thirdly, there was a disclosure to Strobe Talbott.
10 He is a former deputy US Secretary of State, at that
11 time active in foreign relations at the
12 Brookings Institute in Washington. He was due to meet
13 State Department officials, including the Deputy
14 Secretary of State, and asked Mr Steele for the
15 memoranda, again with a view to discussing the national
16 security issues they raised in that group of
17 State Department officials. Again, Mr Steele provided
18 them as requested.

19 So far as the law is concerned, obviously the first
20 issue is: what does the concept of national security
21 embrace? There is no definition in the 1998 Act. In
22 particular, can the interests of UK national security be
23 engaged by action against another state?

24 The generally accepted legal authority on this
25 difficult issue of national security and what it means

1 is the Rehman case, which is in the authorities bundle
2 at tab 1 {AUTH/1/1}, which concerned -- it's a House of
3 Lords case. It concerned a deportation of a cleric said
4 to have links to a terrorist organisation abroad. If
5 your Lordship turns to paragraph 15 in the speech of
6 Lord Slynn {AUTH/1/7}, you will see, which is on page --

7 MR JUSTICE WARBY: Yes.

8 MR MILLAR: We have to get past the Court of Appeal.

9 MR JUSTICE WARBY: 181.

10 MR MILLAR: 181. I won't read the whole thing at this stage
11 for time reasons, but you will see that the interests of
12 the UK in terms of national security are engaged where
13 there is some possibility of risk -- this is the fourth
14 line down:

15 "... of risk or danger to the security or well-being
16 of the nation."

17 I should say Lords Steyn, Clyde and Hutton agreed in
18 terms with Lord Slynn.

19 So:

20 "... some possibility of risk or danger to the
21 security or well-being of the nation."

22 Which is extremely broad -- quite rightly -- and
23 this is emphasised over the page at paragraph 16
24 {AUTH/1/30}, between E and F, where he says:

25 "Under this broad heading, amongst other things,

1 democracy and the legal and constitutional systems of
2 the state need to be protected."

3 Again, extremely broad, but note the emphasis on the
4 democratic process and the constitutional systems of the
5 state, which would undoubtedly include free and fair
6 elections.

7 On the second point that I have mentioned, look just
8 a little bit above, at C to D in Lord Slynn's speech.

9 MR JUSTICE WARBY: Yes.

10 MR MILLAR: "Action against a foreign state may be capable
11 of indirectly affecting the security of the
12 United Kingdom."

13 Obviously, with a special relationship of the sort
14 that the UK and the US have, as western democracies,
15 that is a real risk in circumstances where there is
16 foreign action against the US presidential election.

17 So we say the issue for the court here is
18 straightforward. In light of the intelligence that he
19 was gathering and the requests he was receiving to see
20 the intelligence, which I've described, was Orbis'
21 freedom to disclose the material in response to those
22 requests constrained by DPP1 and DPP4? Or was he, in
23 those circumstances, exempted by the legislation, by
24 section 35(2), from the constraints of DPP1 and DPP4?
25 We say that on the basis of the broad understanding of

1 the interests of national security in Rehman, the only
2 possible conclusion is that he was exempted. Any other
3 conclusion would be, we say, wrong in principle .

4 Indeed, we're tempted to say it would be absurd.
5 Absurd that somebody in Mr Steele's position should
6 either have to, possibility 1, stop, ensure the data
7 passed over meets the accuracy requirements of Data
8 Protection Principle Number 4 and/or notify the data
9 subjects in the dossier and so on and so forth before
10 acting in response to the requests from those people;
11 or, just because he's so worried about DPP1, DPP4 and
12 the Data Protection Act, not hand the material over at
13 all to those people. That would be, on any common sense
14 analysis, an absurd result under the DPP.

15 The only two parts of the response of the claimants
16 to this case, in their skeleton, at 81 and 82, that
17 really merit any sort of response at this stage, and
18 then only for the record, is, first of all, the
19 bad faith argument, which is at 81(4) {A/2/28} and the
20 "Our data had nothing to do with the alleged links
21 between Trump and Russia" argument, which is 82(2),
22 which is my learned friend 's mantra. {A/2/29}

23 We have addressed the first point under the
24 section 35 -- the second point under the section 35(2)
25 exemption, that is the "Our data had nothing to do with

1 alleged links between Trump and Russia".

2 But perhaps here, under national security, even more
3 than with the Fusion disclosure, the disclosure of the
4 data in these five sentences clearly cannot just be
5 salami-sliced and considered in isolation from
6 everything else that was going on and the rest of the
7 dossier. It has to be considered as part of the much
8 bigger picture offered by the totality of the
9 intelligence in the suite of memos.

10 So far as the bad faith argument is concerned, this
11 is, as we understand it, that Mr Steele did not disclose
12 in response to the above requests but, rather, that he
13 chose to disclose to these recipients, the FBI,
14 Mr McCain, State Department and the UK Government
15 official, to advance his own agenda of publicising his
16 work.

17 That's not really expanded upon in the skeleton and
18 it wasn't in the opening, so we'll wait to see how this
19 rather truncated suggestion is developed, if at all, in
20 cross-examination; but our position is it is wholly
21 factually incorrect.

22 I turn to issue 5, DPP1.

23 MR JUSTICE WARBY: Can I just ask: it has always struck me
24 as slightly difficult in the abstract to argue that it
25 is necessary to dispense with the requirement of

1 accuracy. Usually this question comes up in the context
2 of journalism, but we have been looking at it in another
3 context, rather more fully here.

4 The straightforward requirement of getting your
5 facts right, leave aside paragraph 7, reasonable care --
6 MR MILLAR: Yes.

7 MR JUSTICE WARBY: -- is not incompatible with disclosure
8 for the purposes of safeguarding national security. One
9 would have thought rather the opposite. It is
10 important -- overwhelmingly important, isn't it, that
11 information that presents evidence of a risk to national
12 security should be as accurate as it can be? So it is
13 instinctively odd to hear it said: because it is
14 national security, you cannot worry about the
15 requirement of accuracy.

16 Is that wrong or is the answer --

17 MR MILLAR: Well, it is wrong on the face of the
18 legislation, because that's what the legislation says.

19 MR JUSTICE WARBY: No, no, the legislation says you're
20 exempt to the extent it is incompatible.

21 MR MILLAR: Oh, I see.

22 MR JUSTICE WARBY: It doesn't say: when it is national
23 security you don't have to be accurate.

24 MR MILLAR: Absolutely. It is a contextual -- it's
25 a factual issue, but --

1 MR JUSTICE WARBY: Yes, it is, but --

2 MR MILLAR: -- I don't --

3 MR JUSTICE WARBY: -- what is the test? I mean, the test
4 can't simply be: well, it is about national security so
5 accuracy goes out of the window, anymore than that could
6 be justified as an argument in the context of legal
7 proceedings or legal advice.

8 MR MILLAR: No, of course, but with intelligence and
9 gathering of intelligence for the purposes of national
10 security, or the passing over of intelligence, raw
11 intelligence, the value of it is immediate and as
12 a pointer to the agency that receives it in a certain
13 possible direction, and then it is further investigated,
14 verified /not verified, put into a collection of other
15 pieces of information to form a wider intelligence
16 position and maybe ultimately to take some action, like
17 arresting somebody or something like that.

18 Obviously it is important that you balance the need
19 for the information to pass quickly in that situation to
20 the right agency that can process it and use it properly
21 and responsibly with the need to ensure accuracy at the
22 first stage, but, with respect, raw intelligence of this
23 sort in any circumstances, public or private, is what it
24 says it is. It is raw intelligence. It is the basis
25 for further investigation by the recipients. That was

1 the basis on which Mr Steele approached it.
 2 So to put the bar too high in terms of establishing
 3 accuracy at that stage would be quite wrong in
 4 principle, we say. And without putting too fine a point
 5 on it, if you had to -- I mean, let's take the example
 6 of a security operative or undercover police officer.
 7 If you had to, in that situation, before handing it up
 8 the line, verify it to a high factual accuracy standard,
 9 the bomb may have gone off, to put it bluntly.

10 I mean, context is everything and that's what is
 11 important here, that those requests were made, they were
 12 made to see it at that point in time, that the election
 13 was coming to a conclusion; there were concerns, there
 14 was an FBI investigation going on, and it's not for him
 15 to act as the state. It is for him to respond to the
 16 request for the material as part of a national security
 17 investigation.

18 I have another five or ten minutes which will give
 19 me roughly the amount of time that my learned friend
 20 had.

21 MR JUSTICE WARBY: Yes.

22 MR MILLAR: Do you want to break now?

23 MR JUSTICE WARBY: No, let's allow you to conclude and then
 24 we'll take an hour from 1.10.

25 MR MILLAR: The Fusion disclosure first, under issue 5,

1 DPP1. The "process fairly" requirement requires the
 2 controller to meet the notification requirements,
 3 schedule 1, part II, paragraph 2, and, as you know, we
 4 say we were exempted from them by reason of the 35(2)
 5 exemption.

6 The DPP1 requirement for a schedule 2 or 3 condition
 7 to be met is not affected by the legal rights exemption,
 8 but we say it was met because condition 6.1 in
 9 schedule 2 applies to any data that was personal data,
 10 reasonably necessary for legitimate interests being
 11 pursued by Perkins Coie for its client and therefore by
 12 Fusion/Orbis who they instructed to provide the
 13 intelligence.

14 It is clear from the Cooper case, where
 15 Lord Justice Sales again considered this and other
 16 scheduled conditions, paragraphs 89 to 92, that the
 17 words "processing necessary for the legitimate interest"
 18 do not have a literal meaning here. As we all know, it
 19 means reasonably necessary; it has the Convention
 20 meaning.

21 The legitimacy of the interest in play has to be
 22 assessed in the factual context of the processing at the
 23 time it occurred. That's paragraphs 96 and 114 in
 24 Cooper. You can see that from those paragraphs
 25 {AUTH/16/26}. That's how Lord Justice Sales analysed

1 the interests in play, what were they at the time the
 2 processing was happening, and we have dealt with the
 3 facts already.

4 In the middle of September 2016 there was that
 5 suspicious server activity between Alfa and the Trump
 6 organisation, and it was being considered by
 7 Perkins Coie and the FBI in the context of a wider
 8 concern about possible collusion between Russian actors
 9 and the Trump campaign. Plainly at that time there was
 10 a reasonable need for Perkins Coie to know more about
 11 possible Alfa-Putin links in this context as part of
 12 their consideration of possible Russian interference in
 13 the election.

14 Which forces the claimants to fall back on the
 15 balancing exercise, what I would call the "processing
 16 was unwarranted" route out of the condition; in other
 17 words, by saying that the processing went too far by way
 18 of interference with the Article 8 rights of the
 19 claimants, but we say they can't conceivably get home on
 20 the unwarranted route out of the condition on these
 21 facts.

22 The data in issue, whatever else one might think of
 23 it, is a very long way removed from the data subject's
 24 private and family lives. It is about their links as
 25 high profile, wealthy businessmen to the President of

1 Russia.

2 If a schedule 3 condition is required in relation to
 3 the Govorun sentence, as I have said, we say
 4 condition 6, which mirrors 35(2), was met; see skeleton
 5 55 and 56. {A/3/17}

6 The national security disclosures, still under
 7 issue 4, if engaged and it is appropriate on the facts,
 8 as we have just discussed, section 21 ensures that the
 9 whole of DPP1 is disapplied regarding the processing in
 10 issue. That is the national security disclosures. But
 11 if we need a schedule 2 condition, we rely on 5(b), the
 12 disclosures were reasonably necessary to enable the
 13 recipients to carry out their statutory functions; or
 14 5(d), to enable them to carry out their functions in the
 15 public interest. If we need a condition for the Govorun
 16 sentence in schedule 3 we rely on 7(b), which mirrors
 17 5(b) in schedule 2.

18 Accuracy, issue 5. DPP4, read with section 70(2) of
 19 the Act, which is the supplementary definition section,
 20 explaining that inaccuracy means data incorrect or
 21 misleading as to any matter of fact. That's what the
 22 court needs to focus on: is the data incorrect or
 23 misleading as to any matter of fact? Section 70(2).

24 If we get here, that is to the accuracy issue, in
 25 other words the exemptions do not exclude the accuracy

1 requirement, the claimants have simply pleaded, at
 2 paragraph 11 of the particulars of claim, in each case
 3 a negative version of the sentence in issue. It is
 4 going to be for the court to decide whether, having
 5 heard their evidence, the data is incorrect or
 6 misleading in the section 70(2) sense.

7 It is right to say, as my learned friend did, that
 8 in our skeleton, at 64, we suggest there are aspects, at
 9 any rate of the first and last sentences, the
 10 "significant favours" and "political bidding" sentences,
 11 which don't really lend themselves to a straightforward
 12 evaluation of factual accuracy/inaccuracy in the way
 13 that this normally comes up in data protection law.

14 It's right to say our positive case is not
 15 inaccuracy, but is rather based on schedule 1, part II,
 16 paragraph 7, which potentially disapplies DPP4.

17 The wording is in our skeleton at paragraph 67.
 18 {A/3/22} A premise for the application of this
 19 qualification, the qualification in schedule 1, part II,
 20 paragraph 7, is that the data accurately record
 21 information obtained by the data controller from a third
 22 party. So that's the first stage: did Mr Steele
 23 accurately record what he was being told or what was
 24 being said by the third party? We say that condition is
 25 met here, so the qualification is engaged.

1 Then, if you look at subsection (a), the first stage
 2 is for the court to assess what might be the reasonable
 3 steps to verify, "having regard to the purpose or
 4 purposes for which the data were obtained."

5 It is very important to emphasise that. It's not
 6 reasonable steps in the abstract; it is not reasonable
 7 steps arguing it out here in court 70-whatever-it-is in
 8 the High Court; it's reasonable steps in the context of
 9 the exercise that Mr Steele was engaged upon.

10 You will need to hear his evidence about this, but
 11 he will explain why the way he approached it amounted to
 12 reasonable steps, but we can say the critical
 13 consideration is that his confidential human
 14 intelligence was not factual evidence to be used in
 15 a personal or public report or in court or anything like
 16 that. We have just discussed what it was. It was raw
 17 intelligence to be passed on as part of a much bigger
 18 intelligence picture.

19 We say it is in the nature of this sort of
 20 intelligence gathering and reporting that the reasonable
 21 steps are much more limited. You have to satisfy
 22 yourself that the source, the intelligence source from
 23 which you have obtained the information or the data, was
 24 reliable, make an evaluation against what is already
 25 known to the controller about the data subject.

1 My Lord, issue 6. I think we'll address remedy in
 2 closing, in particular in light of the time. The court
 3 is aware that we say any damage or distress to the
 4 claimants was caused by BuzzFeed's publication of the
 5 data online, not any processing by the defendant. It is
 6 a critical difference between us and them and you are
 7 going to have to grapple with it.

8 That's how they found out about it, because of that
 9 bad editorial decision. They would have been completely
 10 ignorant of it if that hadn't happened.

11 In any event, we rely under section 13 on the
 12 reasonable care provision.

13 My Lord, that's all I wanted to say in opening.

14 MR JUSTICE WARBY: Thank you very much. We'll resume at
 15 2.10 or as soon after that as we are able.
 16 (2.10 pm)

(The luncheon adjournment)

17 (2.10 pm)

18 MR JUSTICE WARBY: Well, Mr Tomlinson, Mr Millar, apparently
 19 court 38 is the place that we would need to go to get
 20 a large enough courtroom for all of these people and all
 21 this kit and to have the video link, if that is the way
 22 we end up going.

23 It obviously would mean -- removing from here is
 24 going to be quite a performance so far as the Opus 2
 25

1 team are concerned, but that's the ...

2 MR TOMLINSON: Having recent experience of it, I can tell
 3 your Lordship that they do a very efficient overnight
 4 move between courts. So, my Lord, that is possible.

5 MR JUSTICE WARBY: Yes.

6 MR TOMLINSON: But obviously --

7 MR JUSTICE WARBY: We'll see how we get on.

8 MR TOMLINSON: -- it depends obviously on Mr Steele's state
 9 of health and the advice he has had. I don't know
 10 whether there have been any developments over ...?

11 MR MILLAR: No symptoms.

12 MR JUSTICE WARBY: Yes.

13 MR MILLAR: Subject to anything your Lordship says at the
 14 end of the day, he'll attend tomorrow and thereafter.

15 MR JUSTICE WARBY: Right.

16 MR TOMLINSON: My Lord, I mentioned earlier the question of
 17 the case management issue, which concerns the question
 18 of sources. Your Lordship may have noted that in the
 19 amended defence, which was served earlier this month,
 20 the defendant relied on section 10 of the Contempt of
 21 Court Act to justify its refusal to disclose the sources
 22 of information.

23 MR JUSTICE WARBY: Yes.

24 MR TOMLINSON: Obviously, that only applies if the
 25 information is obtained with a view to publication. So

1 we made enquiries as to what publication they had in
 2 mind and, on Friday evening, we were told by my friend's
 3 instructing solicitors that they no longer relied on
 4 section 10, but that they -- perhaps, your Lordship, it
 5 might be convenient to look at the letter. It is to be
 6 found in {E/174/1}. The defendant -- the second
 7 paragraph:

8 "The defendant accepts now that section 10 of the
 9 Contempt of Court Act is not an appropriate basis for
 10 his source protection arguments."

11 My Lord, although that remains his pleaded case,
 12 apparently the position has changed. It is said that
 13 Mr Steele cannot disclose information tending to
 14 identify sources on the basis that doing so will put the
 15 lives of his sources in danger and/or engage their
 16 Article 3/Article 8 rights and cause national security
 17 issues for both the US and the UK.

18 My Lord, prima facie the position is that if
 19 a witness gives evidence, they have to answer relevant
 20 questions, and a relevant question in this case is clear
 21 indeed from Mr Millar's opening: one relevant question
 22 is the reliability of the source.

23 If the defendant wishes to have an extraordinary
 24 order made or extraordinary facility to refer to sources
 25 but not to name them and not to give information about

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1 them, the onus is obviously on the defendant to
 2 establish that, because if section 10 doesn't apply,
 3 then, on the face of it, the questions must be answered.

4 Now, my Lord, at the moment there is no evidence
 5 whatever before the court to establish the proposition
 6 which is found in the second paragraph of that letter.
 7 My Lord, I wanted to flag it up at this stage because
 8 the defendant may wish to seek to adduce evidence, or
 9 may wish to seek reporting restrictions, or something
 10 else to protect confidential information. One of the
 11 matters that's mentioned by the defendant, not in this
 12 letter but in the witness statement of Ciara Cullen
 13 that's referred to, is it is in the business interests
 14 of the defendant to ensure that its confidential sources
 15 of information are not made public.

16 My Lord, in relation to that, we take a completely
 17 neutral view. If your Lordship thinks that in order to
 18 protect confidential information some reporting
 19 restriction should be made, then, subject to the court
 20 being satisfied, we don't have any submissions to make
 21 on it.

22 But on the face of it we would like to be able to
 23 say to Mr Steele: well, who is this individual you refer
 24 to as a top level government official? Is he -- what's
 25 his or her level of seniority? What do they do? What's

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1 their access to information? How reliable are they?

2 My Lord, the reason I mention it now is because if
 3 the defendant wishes to adduce evidence to satisfy the
 4 court that an unusual course should be taken, the onus
 5 is obviously on the defendant to do it. And I didn't
 6 want to raise it at the beginning of Mr Steele's
 7 evidence to be told by Mr Millar that there was some
 8 ticking bomb that had to be defused and therefore it was
 9 a matter of urgency, I couldn't ask those questions, and
 10 if I wanted to ask the questions, he would have to have
 11 an adjournment to put in the evidence to justify his
 12 position.

13 MR JUSTICE WARBY: Right. Have you raised this with
 14 Mr Millar before?

15 MR TOMLINSON: Yes, my Lord, we raised it in correspondence
 16 yesterday and indicated that the matter would be raised
 17 before the court today.

18 MR JUSTICE WARBY: Yes. So that was Friday afternoon?

19 MR TOMLINSON: Well, Friday afternoon was --

20 MR JUSTICE WARBY: That correspondence took place on Friday
 21 afternoon?

22 MR TOMLINSON: Yes, the correspondence was Friday afternoon
 23 but of course the onus is on the defendant, not on us.
 24 If the defendant wants to withhold relevant evidence
 25 from the court, it is a matter for the defendant, not

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1 for me. The defendant must justify it. They have
 2 a pleaded case on it, which is a case which they have
 3 abandoned over the weekend. So at the moment they have
 4 no case at all on the topic.

5 MR JUSTICE WARBY: Yes.

6 Mr Millar, do you want to say anything at this
 7 stage?

8 MR MILLAR: Only in the hope that I can assist. There is
 9 a supplementary bundle of authorities --

10 MR JUSTICE WARBY: Yes.

11 MR MILLAR: -- which I don't think has been handed in yet.

12 MR JUSTICE WARBY: Oh, it's another one, is it?

13 MR MILLAR: My learned friend had it yesterday. (Handed)

14 I'm not going to take you to these at the moment.

15 I just think the court ought to have it.

16 MR JUSTICE WARBY: Yes.

17 MR MILLAR: I accept, of course, that the abandonment of the
 18 section 10 case changes the shape of the argument about
 19 protection of sources, because section 10 is
 20 a presumptive privilege, as your Lordship knows, so the
 21 court needs to override it if it applies. And it
 22 doesn't, for the reasons that my learned friend has
 23 explained.

24 However, there is a certain amount of learning in
 25 the authorities, going back some way, about the

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1 discretion the court has to tackle this issue that has
 2 arisen , which is absent the protection of a statutory
 3 privilege like that. If a witness in order to
 4 protect --
 5 MR JUSTICE WARBY: Yes, (inaudible) that's a disclosure
 6 point case, isn't it?
 7 MR MILLAR: Yes. Some of them are documents points. One or
 8 two of them are questions in the witness box points
 9 cases.
 10 MR JUSTICE WARBY: Yes.
 11 MR MILLAR: They all essentially come to the same thing,
 12 which is there is a residual discretion to refuse
 13 particular questions being asked or particular documents
 14 being disclosed , and the court needs to balance the
 15 importance and relevance of the information that the
 16 question or the document seeks to elicit against
 17 whatever the grounds are that are put forward by the
 18 other party for wanting to stop having to disclose that
 19 document or give that answer.
 20 You can see -- and we will want to address some
 21 argument to you at some point on this .
 22 There's no value in going back over the history of
 23 the pleadings and what has happened. We are where we
 24 are. But my learned friend is right to say -- and it's
 25 obvious and logical -- that before you can tackle the

1 question that those authorities suggest you ought to
 2 tackle , you need to hear, on the claimants' side , what
 3 it is they want to ask and what's the information they
 4 want and why do they say it is important and
 5 sufficiently important, and on our side , what are the
 6 reasons for not wanting to answer those questions? You
 7 can't really do the balancing exercise until you have
 8 that argument/evidence and we don't have the evidence
 9 from Mr Steele at the moment, but we will have, in the
 10 form of a supplementary witness statement, before he
 11 goes in the witness box.
 12 MR JUSTICE WARBY: It had better be numbered, this one,
 13 because I'm getting confused about how many there are.
 14 There was a second witness statement which was very
 15 short and said: these are the paragraphs of my original
 16 witness statement which contain information that I knew
 17 at the time that I compiled and disclosed the dossier .
 18 MR MILLAR: Yes.
 19 MR JUSTICE WARBY: And then the first witness statement has
 20 been revised , so that's effectively gone, I think. So
 21 the supplementary witness statement, which I now have
 22 but still haven't read, is number 3, I think.
 23 MR MILLAR: Yes. Well.
 24 MR JUSTICE WARBY: Just to avoid confusion.
 25 MR MILLAR: I think the second one --

1 MR JUSTICE WARBY: So there's going to be a further witness
 2 statement, that's what you envisage, which explains
 3 the extent --
 4 MR MILLAR: He has to give an account as the witness who
 5 wants to be excused from answering particular
 6 questions --
 7 MR JUSTICE WARBY: Yes.
 8 MR MILLAR: -- of why he wants to be excused from answering
 9 those questions .
 10 MR JUSTICE WARBY: Yes.
 11 MR MILLAR: You have to balance that out against the
 12 importance of the question , the reason for it being
 13 asked.
 14 MR JUSTICE WARBY: But what you're telling me is that he's
 15 not going to give that account spontaneously from the
 16 witness box; it is going to be contained in a further
 17 witness statement.
 18 MR MILLAR: Well, our assumption was that that's the way the
 19 claimants want to do it , it seems to us the right way to
 20 do it .
 21 I mean, one has had witnesses in the box --
 22 MR JUSTICE WARBY: Yes.
 23 MR MILLAR: -- facing a question, both in relation to
 24 privilege against self - incrimination and source
 25 protection .

1 MR JUSTICE WARBY: And public interest immunity.
 2 MR MILLAR: And saying, "I won't answer", but it is
 3 preferable to get the ruling first and get the shape of
 4 it first and then everybody knows where they stand
 5 before the cross-examination begins.
 6 MR JUSTICE WARBY: Yes. But you're not asking Mr Tomlinson
 7 to write down his questions, or me to direct that he
 8 should write down his questions before you formulate
 9 your evidence, are you? Or are you?
 10 MR MILLAR: Oh, no, no, no. Absolutely not. But I will be
 11 saying --
 12 MR JUSTICE WARBY: It should be possible for Mr Steele to
 13 identify the limits to which he wishes the questioning
 14 to adhere.
 15 MR MILLAR: Well, I think when we come to look at the
 16 argument and look at the pleadings , you will see that
 17 there is material in his witness statement and there is
 18 material in the memo, descriptive material in both of
 19 those documents.
 20 MR JUSTICE WARBY: Yes.
 21 MR MILLAR: He is then asked a series of questions -- we
 22 were asked a series of questions in the request for
 23 further information in the last week, and there is
 24 a response to that, and his position therefore in the
 25 pleadings and the witness statement is: beyond what you

1 already have I will not go.
 2 MR JUSTICE WARBY: Yes.
 3 MR MILLAR: So the line is drawn in that sense.
 4 MR JUSTICE WARBY: Yes.
 5 MR MILLAR: There are always in these situations , journalist
 6 or non-journalist , a series of concentric circles around
 7 the source of possible pieces of information , and the
 8 further away you are, the less risk there is of some
 9 sort of jigsaw identification ; the closer you get, the
 10 greater the risk is . At the bull 's eye, at the heart of
 11 it is the name, is the identity . That's why source
 12 identity disclosure applications are about the name and
 13 the identity of the person.
 14 So the outer circles are normally to do with status ,
 15 job, location , that sort of thing, other ancillary
 16 facts . So, it 's generally helpful to know exactly where
 17 the questioner wants to pitch it , but the big
 18 distinction is between I want the name and I want some
 19 other information --
 20 MR JUSTICE WARBY: Yes, name or something that will lead to
 21 the name.
 22 MR MILLAR: Something from the concentric circles around it ,
 23 however far out it is , and that I think will need to be
 24 addressed in the argument, but it seems to us the
 25 correct point to do it would be between the two cases .

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1 MR JUSTICE WARBY: Yes.
 2 MR MILLAR: Before Mr Steele goes in the witness box.
 3 MR JUSTICE WARBY: Yes.
 4 MR MILLAR: Thank you.
 5 MR JUSTICE WARBY: Does that --
 6 MR TOMLINSON: My Lord, I don't disagree with anything that
 7 Mr Millar says about the legal position . Your Lordship
 8 clearly has a discretion of a somewhat limited nature to
 9 exclude relevant evidence .
 10 There can be no doubt that the identity of the
 11 sources is relevant evidence because they are relied on
 12 in support of part of the defence and their reliability
 13 is put in issue by Mr Millar 's own pleadings . So
 14 I don't think there 's any difficulty about that .
 15 In relation to --
 16 MR JUSTICE WARBY: I think it was a case of
 17 Mr Justice Gray 's , way back, when he said something
 18 along the lines of, "Well, if a party chooses not to
 19 disclose the identity of their sources, they may find it
 20 more difficult to establish a case which is reliant on
 21 information that comes from the source ".
 22 MR TOMLINSON: I seem to remember that was Luchansky
 23 Number 9, or something, which I think I was in .
 24 MR JUSTICE WARBY: Yes, I think it would have been
 25 Luchansky, yes .

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1 MR TOMLINSON: Well, my Lord, there's that course.
 2 I mean --
 3 MR JUSTICE WARBY: That was a case where I think
 4 ex hypothesi the party was entitled to withhold . It was
 5 a question of whether they were waiving their right --
 6 MR TOMLINSON: Yes, it was a Reynolds journalism case and
 7 four sources were relied on, and Mr Brown had managed by
 8 detective work to identify two of them, but two remained
 9 and the journalist wasn't willing to identify them .
 10 My Lord, I mean, the obvious question we have here
 11 is: if this top level government official is someone who
 12 is known to be an unreliable character or known to be
 13 someone with an axe to grind , that puts them in
 14 a completely different position from someone who is
 15 known to be neutral or reliable . At one end of the
 16 spectrum, if Mr Steele is obtaining his information from
 17 someone who is known as a questionable individual , if
 18 I can put it that way, then that puts him in
 19 a completely different position than obtaining it from
 20 someone who is apparently trustworthy .
 21 My Lord, I don't in any way dissent from Mr Millar 's
 22 proposal for dealing with it , save for this: that
 23 Mr Steele must put in a witness statement, explaining
 24 why he wants this privilege of not naming his source ,
 25 within a fairly tight timetable . My Lord, we don't want

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1 to be in a position where we have to deal with this so
 2 that then I have no time to cross-examine Mr Steele . If
 3 this argument takes up half a day on Wednesday, then
 4 plainly that is going to put me at a considerable
 5 disadvantage .
 6 So, my Lord, we need to have a timetable whereby (a)
 7 the witness statement is put in and (b) a time is set
 8 aside for argument about the legal issues and the
 9 factual issues arising from the statement .
 10 MR JUSTICE WARBY: Yes. Well, Mr Millar, can we have the
 11 statement tomorrow morning?
 12 MR MILLAR: I believe so. Yes.
 13 MR JUSTICE WARBY: Yes. We can sit early probably on
 14 Wednesday, after you have had time to absorb the
 15 statement .
 16 MR MILLAR: If it helps, and I 'm sticking my neck out here,
 17 there is a lot of time allocated for cross-examination
 18 of the claimants --
 19 MR JUSTICE WARBY: Yes, I know.
 20 MR MILLAR: -- and I may not need that much time.
 21 MR JUSTICE WARBY: Yes. Well, I think it is best that you
 22 see the statement and have time to absorb it and then we
 23 can --
 24 MR TOMLINSON: Well, my Lord, we can revisit it tomorrow
 25 lunchtime --

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1 MR JUSTICE WARBY: -- revisit it tomorrow lunchtime.
 2 MR TOMLINSON: -- to see how far we have got, because by
 3 that time it will be -- I think Mr Millar at the moment
 4 has just over a day and a half for the claimants so he
 5 may not -- if he doesn't need that time, we could
 6 possibly have the argument tomorrow afternoon.
 7 MR JUSTICE WARBY: Yes.
 8 MR MILLAR: Yes.
 9 MR JUSTICE WARBY: Right, then let's see how we get on.
 10 MR TOMLINSON: My Lord, I am most grateful for those
 11 indications .
 12 My Lord, in those circumstances I 'll call my first
 13 witness, Mr Fridman.
 14 MR JUSTICE WARBY: Mr Fridman, yes.
 15 MR TOMLINSON: My Lord, I should have said, Mr Millar and
 16 I agreed the order of the claimants' witnesses .
 17 I apologise .
 18 MR JUSTICE WARBY: No, fine.
 19 MR TOMLINSON: My Lord, I say at the outset, I think
 20 your Lordship knows this, but just to make it clear ,
 21 Mr Fridman speaks very good English and will endeavour
 22 to give his evidence in English , but an interpreter is
 23 available in case any issues arise as to linguistic
 24 subtlety .
 25 MR JUSTICE WARBY: Do we have the same interpreter for all

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1 the claimants?
 2 MR TOMLINSON: Yes.
 3 MR JUSTICE WARBY: So we'll swear the interpreter. Thank
 4 you.
 5 (Interpreter sworn)
 6 MR MIKHAIL FRIDMAN (affirmed)
 7 MR JUSTICE WARBY: If you want to sit down, you will
 8 probably be more comfortable that way, as long as you
 9 can see over the screen .
 10 MR TOMLINSON: I don't know, maybe it is a good idea to move
 11 the screen so that -- can you see the judge from there?
 12 I can't tell .
 13 MR JUSTICE WARBY: I can see Mr Fridman fine. It is the
 14 laptop screen that I was wondering about. So long as
 15 you can see each other over that?
 16 MR TOMLINSON: No, I can see.
 17 MR JUSTICE WARBY: Good.
 18 Examination-in-chief by MR TOMLINSON
 19 MR TOMLINSON: Could you give the court your full name and
 20 business address, please .
 21 A. My name is Mikhail Fridman. I'm living in London, in
 22 St John's Wood, Cavendish Close, 25.
 23 Q. Could you -- there should be a bundle of papers there in
 24 the --
 25 A. Yes.

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1 Q. If you could open that and -- open that and I think at
 2 number 1 --
 3 A. Yeah.
 4 Q. -- there should be a document which is entitled ,
 5 "Witness statement of Mikhail Fridman". Is that right?
 6 {C/1/1}
 7 A. Yes, correct .
 8 Q. And if you then turn to page 65, the last page of that
 9 document.
 10 A. Mm hmm.
 11 Q. It 's internal -- because it has two page numbers on
 12 mine -- 11. {C/1/11}
 13 A. Yes, exactly .
 14 Q. Is that your signature?
 15 A. Correct, that is my signature.
 16 Q. Is there anything in that witness statement that you
 17 would like to correct or clarify , Mr Fridman?
 18 A. As far as I know, no.
 19 Q. Are the contents of that witness statement true?
 20 A. Yes.
 21 Q. So that's your evidence in this court?
 22 A. Correct.
 23 MR TOMLINSON: Thank you. If you could wait there, there
 24 will be some questions from Mr Millar .
 25 A. Thank you very much.

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1 Cross-examination by MR MILLAR
 2 MR MILLAR: Mr Fridman, in your witness statement, at
 3 paragraphs 4 and 5 {C/1/2}, you deal with the
 4 establishment of Alfa Group?
 5 A. Okay. Yes.
 6 Q. In 1989, and Alfa Bank in 1990?
 7 A. Correct.
 8 Q. At paragraph 14, so a little further on {C/1/4} --
 9 A. Mm hmm.
 10 Q. -- you deal with the acquisition of Alfa's interest in
 11 TNK in 1997?
 12 A. Yes.
 13 Q. You don't say much more in the witness statement about
 14 Alfa in the 1990s and I just wanted to ask you a little
 15 more about this. Do you understand?
 16 A. Yes.
 17 Q. Yes. The group was focused on investment and
 18 commodities trading and distribution in Russia, the CIS
 19 and South-East Asia, is that correct , when it was set
 20 up?
 21 A. No. We haven't been active in South-East Asia.
 22 Q. Okay. I'm putting that to you -- I don't want to take
 23 time going to documents -- because on the Alfa website,
 24 which we have at {D/147/1}, that's what it says:
 25 trading and distribution , Russia and CIS and South-East

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1 Asia.
 2 A. Means we probably bought the goods from Southern Eastern
 3 Asia, but we didn't have any other activity except
 4 buying goods from there.
 5 Q. At any rate, at that stage it was the east rather than
 6 the west -- Eastern Europe, rather than Western Europe?
 7 A. No, I disagree with this .
 8 Q. One of the companies in the group established in 1989
 9 was Alfa Eco; correct?
 10 A. Yes.
 11 Q. That was a commodities trading company?
 12 A. Correct.
 13 Q. Trading, amongst other things, oil and foodstuffs; is
 14 that right?
 15 A. That's all right; that's right .
 16 Q. In 1994 we know Alfa Bank recruited Mr Aven, who had
 17 been an economist and a minister in the Yeltsin
 18 government?
 19 A. That's correct .
 20 Q. Recruited as president of the bank?
 21 A. Yes.
 22 Q. Was that your decision ?
 23 A. That was decision of me and my partner.
 24 Q. You and?
 25 A. My partner.

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1 Q. Being then?
 2 A. Mr Khan, Mr Kuzmichev, the partner of who own the Alfa
 3 group.
 4 Q. Oh, partners, plural ?
 5 A. Yes.
 6 Q. Those two gentlemen?
 7 A. Yes.
 8 Q. He, that is Mr Aven, had resigned with others in a group
 9 of young economists in the Gaidar government during
 10 Yeltsin 's presidency in around December 1993; is that
 11 correct ?
 12 A. No. He resigned from the government in December 1992,
 13 as far as I could recall .
 14 Q. In his witness statement in this case -- I'll ask him
 15 about that; it 's something he deals with in his witness
 16 statement -- he tells us that he was minister for
 17 foreign economic relations in the Yeltsin government, in
 18 fact from November 1991 to the end of 1993?
 19 A. You will ask him.
 20 Q. Yes. But the status, you knew the status: minister for
 21 foreign economic relations, yes, in the government, when
 22 you appointed him as president? You knew that's what he
 23 had been?
 24 A. He was ex-minister. He was not anymore the minister
 25 when we met first time.

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1 Q. But that was the ministry?
 2 A. Yes.
 3 Q. And would you agree that those were the early formative
 4 years of the new economy in Russia?
 5 A. Yes.
 6 Q. Characterised by market freedom and privatisation of
 7 state assets?
 8 A. That's correct .
 9 Q. And that title meant he was effectively the trade
 10 minister ?
 11 A. He was foreign trade minister .
 12 Q. And he must therefore have had close ties with the
 13 Yeltsin government when you appointed him?
 14 A. Yeah, he had definitely some connection with the people
 15 who used to work in the government.
 16 Q. And with people who still did work in the government?
 17 A. Yes.
 18 Q. In his witness statement Mr Aven accepts that he met and
 19 knew Vladimir Putin in 1991, in that capacity, in his
 20 capacity as the trade minister. Did you know that when
 21 you recruited him?
 22 A. No, I don't.
 23 Q. Did you know that in the early 1990s Vladimir Putin
 24 chaired the committee for external relations in the
 25 administration of the St Petersburg Mayor?

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1 A. No, I didn't know the name of Mr Putin at that time.
 2 Q. You didn't even know his name?
 3 A. Mr Putin was not very well-known in Russia in that time,
 4 in 1993.
 5 Q. Did you know that the Mayor -- I think his name was
 6 Anatoly Sobchak, first elected Mayor of St Petersburg?
 7 A. I don't know -- I didn't know him personally. I just
 8 know that's his name and I've seen him by TV.
 9 Q. -- oversaw foreign trading in and out of St Petersburg,
 10 his office; did you know that?
 11 A. Sorry, say it again?
 12 Q. Oversaw foreign trading in and out of St Petersburg --
 13 A. I didn't know about that.
 14 Q. -- from the Mayor's office ?
 15 A. I didn't know about that.
 16 Q. Could we look at {D/52/1}, please.
 17 A. 52?
 18 Q. Yes.
 19 A. Yes.
 20 Q. You were interviewed -- and page 13, please, in D/52.
 21 {D/52/13} You were interviewed for the FT over lunch --
 22 A. Yes.
 23 Q. -- in the spring of 2016?
 24 A. Mm hmm. What is the page?
 25 Q. 13. Sorry, I may have got that number wrong. It may be

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1 3 {D/52/3}. (Pause)
 2 Why don't we come back to that.
 3 A. Okay.
 4 Q. Could you go to {D/5/3}, please. This is an article in
 5 the New York Times in October 2000 for which you were
 6 interviewed. Do you remember this?
 7 A. Yes.
 8 Q. You said, about two-thirds of the way down, that
 9 Alfa Group took off after the recruitment of Mr Aven.
 10 Do you remember that?
 11 A. Yeah.
 12 Q. "Fridman, a Ukrainian Jew and very much an outsider, saw
 13 his Alfa Group take off when he recruited Aven ..."
 14 A. Yeah.
 15 Q. Is that something you said to the journalist?
 16 A. I think so. I don't remember because it's too -- a lot
 17 of time since then, but I think that's right
 18 description.
 19 Q. So if we could go back to {D/52/1}, please, page 3
 20 {D/52/3}.
 21 A. Okay.
 22 Q. This time about a third of the way down the page.
 23 A. Mm hmm.
 24 Q. You spoke over lunch with the FT of Mr Aven and your
 25 partnership with him; do you remember that?

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1 A. Yes.
 2 Q. You said:
 3 "We needed a channel for communication with the
 4 government."
 5 That's why you appointed him.
 6 A. Mm hmm. That's correct.
 7 MR JUSTICE WARBY: Sorry, which page are we on here?
 8 MR MILLAR: {D/52/3}, the third page.
 9 MR JUSTICE WARBY: Yes.
 10 MR MILLAR: Beginning:
 11 "That said ..."
 12 A. Yeah. Okay, yes.
 13 MR JUSTICE WARBY: Thank you.
 14 MR MILLAR: Just read that paragraph.
 15 A. Yeah.
 16 Q. Have you read that?
 17 A. Correct.
 18 Q. Did he become that, a channel of communication with the
 19 government?
 20 A. Yeah, that was one of his, let's say, duty.
 21 Q. One of his?
 22 A. One of his duty.
 23 Q. Duties?
 24 A. Yes.
 25 Q. What sort of channel of communication was he?

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1 A. You know what, to work, to try to build a big business,
 2 you need to have kind of normal relationship with the
 3 government. That's crucially important in a country
 4 like Russia. You know, it's a bit different from, let's
 5 say, practice here in the UK. Here, if you wish just to
 6 have just a normal functioning business, effectively you
 7 should not have too much, you know, co-operation with
 8 the government. In Russia, with control of the
 9 government over day-to-day business activity, it's much
 10 tighter. So to have a just normal co-operation, to just
 11 to have a normal regime of doing business, you should
 12 have certain channel for providing your view. That was
 13 one of the duties of Mr Aven.
 14 Q. Right. In that last answer, are you talking about now
 15 or the period that I'm asking you about in the
 16 mid-1990s?
 17 A. I would say it's more or less the same, still.
 18 Q. If you just go on to page 4 in that article {D/52/4},
 19 have a look at the end of the article.
 20 A. Mm hmm. Yes.
 21 Q. Leave that. Forget that last question. I'll move on.
 22 A. Okay.
 23 Q. In 1996 Mr Yeltsin was facing re-election; correct?
 24 A. Yes.
 25 Q. In difficult times. The polls had the Communists ahead?

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1 A. Yes.
 2 Q. He had been in power for, what, by then, about
 3 six years?
 4 A. No. Probably four years.
 5 Q. Four years? It has been widely reported, has it not,
 6 that you and Mr Aven were amongst a group of seven
 7 oligarchs who agreed to support him in his re-election
 8 bid. Do you agree with that?
 9 A. Yeah.
 10 Q. They became known -- you became known as the seven
 11 bankers, colloquially; correct?
 12 A. That's correct.
 13 Q. And was there such a group?
 14 A. It was not a formal group. It was just a kind of, you
 15 know, certain group of businessmen who really believed
 16 it would be not a good future for Russia if the
 17 Communists will win election.
 18 Q. And you were in that group?
 19 A. That was, like -- yes, I was in this group, yes.
 20 Q. It has also been widely reported that the support of
 21 that group of oligarchs was given to Mr Yeltsin at that
 22 time, the election, on terms, hasn't it?
 23 A. No, that's not.
 24 Q. It's been reported that that's the case?
 25 A. But it's kind of -- a lot of fantasy around Russian

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1 politics generally, but I haven't met Mr Yeltsin at that
 2 time.
 3 Q. But you accept it has been widely reported that there
 4 was a deal?
 5 A. Probably, yes, but that's not the fact.
 6 Q. So if we can go back to the New York Times article,
 7 which is {D/5/1}.
 8 A. Okay.
 9 Q. {D/5/3}. That reported that there was such a deal and
 10 that you were a party to it. Do you recall that?
 11 A. So where is that?
 12 MR TOMLINSON: Could you refer him to the relevant
 13 paragraph?
 14 MR MILLAR: Page 3.
 15 A. Okay.
 16 Q. Just after the paragraph I put to you a moment ago about
 17 Mr Aven.
 18 A. Yeah.
 19 Q. Read that paragraph beginning, "The apogee of oligarchic
 20 influence ..."
 21 A. Correct. I read this paragraph.
 22 Q. The New York Times is reporting that there was a:
 23 "... collective decision to underwrite Yeltsin's
 24 re-election campaign in return for huge slices of state
 25 property at extraordinary low prices -- the so-called

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1 'loans for shares' deal."
 2 A. Yeah, but we did not participate in loan-for-shares
 3 deal.
 4 Q. I don't think it is being suggested that it was a formal
 5 deal, like a written contract. I think it is being
 6 suggested that there was an understanding that in return
 7 for the support for him, he would favour you, his
 8 government would favour you?
 9 A. That's not right. That was a very formal deal known as
 10 a loan-for-shares auctions.
 11 Q. But there was or wasn't such deal?
 12 A. It was, a loan-for-shares auctions which took place in
 13 1995, and we were not part of that deal at all.
 14 Q. Could you go to {D/22/1}, please. {D/22/8}. You
 15 brought a libel action in the early 2000s in
 16 Washington DC --
 17 A. Mm hmm.
 18 Q. -- concerning an article that had been written in 2000
 19 and published by the Center for Public Integrity in
 20 Washington, didn't you?
 21 A. That's correct.
 22 Q. You and Mr Aven?
 23 A. Correct.
 24 Q. Judgment was given in September 2005 by Judge Bates and
 25 this is the memorandum of opinion, which is the

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1 judgment. Are you familiar with this document?
 2 A. Yes.
 3 Q. If you go to page 8 {D/22/8} --
 4 A. Okay.
 5 Q. -- there is a passage beginning, "Several years
 6 later ..." which runs over on to page 9 and ends up four
 7 lines down on page 9 {D/22/9}. I wonder if you could
 8 read that:
 9 "Several years later, with privatisation deeply
 10 unpopular ..."
 11 Just read that down to the bottom of the page.
 12 (Pause)
 13 A. Sorry, it is page 8?
 14 Q. Yes, three lines down.
 15 A. Three lines down:
 16 "Several years later, with privatisation deeply
 17 unpopular and Yeltsin --"
 18 Q. You don't need to read it out.
 19 A. Okay.
 20 Q. Just read to yourself. We can all read it.
 21 A. Okay.
 22 Q. Read over to the top of page 9 {D/22/9}, the next
 23 paragraph:
 24 "In short, Aven and Fridman have assumed an
 25 unforeseen level of prominence and influence ..."

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1 A. Okay.
 2 Q. Over the page {D/22/10}:
 3 "The Financial Times in 1996 named Aven and Fridman
 4 as among the 'group of seven businessmen and bankers
 5 that, according to one of their number, is now running
 6 Russia'. "
 7 So, did you and Mr Aven become a sort of economic
 8 advisory council after the re-election of the president
 9 in 1996?
 10 A. Not at all. I haven't met Mr Yeltsin on one-on-one
 11 occasion in my life. I just met him once or twice, was
 12 in the group of people. So I definitely was not an
 13 economical advisor to Mr Yeltsin.
 14 Q. Do you agree that thereafter you and Mr Aven assumed, as
 15 the judge suggested, prominence and influence in the
 16 economic and political affairs of Russia?
 17 A. No, I don't agree with this assessment. I think we've
 18 been pretty sizeable business person but --
 19 Q. I'm sorry?
 20 A. We've been visible business person, but nothing more
 21 than that.
 22 Q. In 2003, as we'll see in a moment, TNK, which you
 23 started to acquire in 1997, an oil company, went into
 24 a joint venture with BP, didn't it?
 25 A. Correct.

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1 Q. Which lasted for ten years?
 2 A. True.
 3 Q. Could you have a look, please -- we can get it up -- at
 4 {D/32.1} -- I am sorry, {D/32.1/1}. Thank you.
 5 A. Yeah.
 6 Q. Did you read Lord Browne's memoir, "Beyond Business"?
 7 A. You know, part of that memoir I've read.
 8 Q. Did you read the bits in it about you?
 9 A. It seems to me, yes.
 10 Q. That's what I always do with a book if I'm in it, I read
 11 the bits that have me in it -- though there aren't many
 12 of them.
 13 In his book he looked back at his dealings with you
 14 in that period, if you go on to page 17 {D/32.1/17}.
 15 17? It's slightly difficult because the way it is
 16 reproduced on screen is both the left-hand page and the
 17 right-hand page {D/32.1/11}.
 18 A. It is very small, could you increase it, please?
 19 Q. I'm so sorry, could you go back to {D/32.1/7} and then
 20 if you can enlarge it. Can you enlarge it? Thank you
 21 very much.
 22 You see on the left-hand page?
 23 A. Uh-huh.
 24 Q. The bottom paragraph, the penultimate paragraph is about
 25 Yukos?

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1 A. Correct.
 2 Q. Which was then Mikhail Khodorkovsky's oil company,
 3 wasn't it?
 4 A. Yes.
 5 Q. Just read the last paragraph, down to the bottom of the
 6 page.
 7 A. Okay.
 8 Q. He says that, like Khodorkovsky and Potanin, you
 9 "acquired major assets from the state through the
 10 loans-for-shares scheme"?
 11 A. No, that's a mistake.
 12 Q. Lord Browne made a mistake there, did he?
 13 A. Yes.
 14 Q. Because what he's suggesting there is that the state
 15 favoured you, isn't he; that's what he's suggesting?
 16 A. No. No, we didn't buy oil assets from loan-for-shares
 17 scheme.
 18 Q. What he's suggesting is that the state favoured you
 19 because of the support that you had given Mr Yeltsin in
 20 his presidential campaign.
 21 A. That's probably a wrong assumption of Mr Browne because
 22 that's the fact. We didn't buy it in loan-for-shares
 23 auction.
 24 Q. So you're saying you didn't acquire any major assets
 25 from the state --

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1 A. No, that's not what I'm saying. I'm saying that we
 2 didn't buy in the loan-for-shares auction. We bought it
 3 on investment tender just for cash. That was a separate
 4 privatisation process which was -- which took place
 5 later, rather than loan-for-shares auction.
 6 Q. Look at paragraph 13 in your witness statement, please.
 7 I think you still have the witness statement open in
 8 front of you? {C/1/4}
 9 A. Yeah.
 10 Q. Here you mention a different formal arrangement between
 11 senior business figures and the Yeltsin government
 12 during the period of his presidency, don't you?
 13 A. No, during the -- no, I exactly am the same as before.
 14 Mr Yeltsin met with a representative of RSPP on
 15 a regular basis. I was not a member of RSPP during
 16 Mr Yeltsin's time.
 17 Q. But this is a different, formal outward-looking
 18 arrangement, isn't it, from the Yeltsin era, with
 19 representatives of the Russian Union of Industrialists
 20 and Entrepreneurs meeting with Yeltsin and his
 21 government. That's what you're talking about at 13,
 22 isn't it?
 23 A. Correct.
 24 Q. But that's not where the power and the influence of the
 25 oligarchs was in the last years of the Yeltsin

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1 government, was it?
 2 A. No, that was not a kind of, it seems to me, source of
 3 influence for the people, these meetings.
 4 Q. Power and influence was exercised by the oligarchs
 5 behind the scenes, wasn't it?
 6 A. Probably, yes. Probably, yes.
 7 Q. Including by you?
 8 A. No. No.
 9 Q. By all the others, except for you?
 10 A. Not all the others. It was always different type of
 11 business people in Russia. Certain people who actually
 12 tried to make their fortune due to their relationship
 13 with the state, and certain people who, as myself and my
 14 partners, tried to build a business based on market
 15 economy in a competitive environment.
 16 Q. But I thought you said you had close connections with
 17 the government and that was the point of recruiting
 18 Mr Aven in the latter half of the 1990s?
 19 A. No, the point was I didn't have any connection with the
 20 government and just to avoid any obstacle to doing
 21 normal business, just to have a chance to build
 22 a market-orientated company, it was important to have
 23 a so prominent person as Mr Aven as economist and the
 24 person who personally knew a lot of people in the
 25 government and was respectful by the government to just

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1 do what we have done, to build an independent business
 2 in the country.
 3 Q. I want to ask you next about your initial acquisition of
 4 an interest stake in the company TNK.
 5 A. Okay.
 6 Q. If we look on to that -- in your statement,
 7 Mr Fridman --
 8 A. Yes.
 9 Q. -- the next paragraph, that paragraph I mentioned
 10 before, paragraph 14.
 11 A. Yes.
 12 Q. You state that in 1997 Alfa acquired Tyumen Oil Company,
 13 TNK for short; correct?
 14 Yes?
 15 A. Yes.
 16 Q. And regarding the three entities that you refer to
 17 there, we know Alfa. This was a joint venture with
 18 Access Industries and Renova Group; yes?
 19 A. That's correct.
 20 Q. Known together -- I think they became known together as
 21 Novy Holdings?
 22 A. Yes, that's probably name of the holding company.
 23 Q. The holding company. Or sometimes 2 and 3,
 24 Access Industries and Renova Group, second and third
 25 entities, were known as Access-Renova, is how they

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1 appear in the newspaper articles?
 2 A. I don't remember this name, but anyway ...
 3 Q. What actually happened in 1997 was that that group of
 4 three entities acquired a 40% share of this Siberian oil
 5 company in a government tender; correct?
 6 A. That's correct.
 7 Just, may I make a clarification? We bought in
 8 1997. The loan-for-shares auction took place in 1995.
 9 So we did it two years later. And we bought it for
 10 cash, not for any scheme.
 11 Q. You don't mention here in your statement, at
 12 paragraph 14 {C/1/4}, that it was a privatisation
 13 exercise, that it was the government selling a 40%
 14 share.
 15 A. Yep.
 16 Q. But perhaps you'll confirm that was the case? It was
 17 a government sale, wasn't it?
 18 A. Yes, that's correct.
 19 Q. Why didn't you mention that at paragraph 14?
 20 A. Because all oil company belong to the government at that
 21 time. There was no other chance except to buy from the
 22 government.
 23 Q. If we go back to {D/22/1}, please, in the judgment of
 24 Judge Bates in the Federal Court in Washington in the
 25 libel action at page 5 {D/22/5}, the judgment deals with

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1 this part of the Alfa story.
 2 Before I come to that --
 3 A. Okay.
 4 Q. -- can I just ask you about the bit in the middle of the
 5 page, because it is so colourful. Is it true that you
 6 bought the Bolshevik Biscuit Factory?
 7 A. Yep. One of our entity bought the -- sorry, you are
 8 talking about ...?
 9 Q. It says:
 10 "Fridman was involved in the privatisation of the
 11 Russian economy from the very beginning, when Alfa Bank
 12 won the first auction for a state-owned company --"
 13 A. Yes, correct.
 14 Q. "-- acquiring the Bolshevik Biscuit Company."
 15 A. Yes.
 16 Q. Is that sentence correct?
 17 A. Correct.
 18 Q. Then read the next bit:
 19 "On the heels of Yeltsin's re-election in 1996 ..."
 20 Read down to the end of the page.
 21 A. Yes.
 22 Q. That's correct, isn't it --
 23 A. No, that's not --
 24 Q. -- you got the 40% at a fraction of the company's value,
 25 relying on your allies at the highest levels of

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1 Russian Government?
 2 A. No, that's completely incorrect.
 3 Q. Have a look at footnote 10.
 4 A. Yeah.
 5 Q. The judge refers to an article in the Moscow Times
 6 in July 1997. In the second half of that footnote --
 7 A. Yep.
 8 Q. "The terms of this process have been encumbered with
 9 ridiculous conditions which virtually guarantee that
 10 Alpha Bank, a group with close ties to the Cabinet, will
 11 win."
 12 That was what was being reported at the time in
 13 Russia, wasn't it?
 14 A. I don't recollect this, but that's not true. We won on
 15 a very fair auction. That was known as a most
 16 transparent auction at that time. We paid huge amount
 17 of money. As far as I could recall, it was like
 18 \$800 million at that time, together with our partner,
 19 which was, you know, unbelievable price for
 20 privatisation.
 21 Q. According to your own website, the Alfa website, which
 22 we can look at if you disagree with this, but let me
 23 just put it to you, Novy then went on to acquire another
 24 10.1% in TNK from private shareholders in 1998, the
 25 following year, correct, giving it 50.1%?

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1 A. Probably, yes, as far as I can recall . Yes.
 2 Q. Do you want to look at the website?
 3 A. No, no, I rely on your information .
 4 Q. {D/9/1}, please. This is a 2002 report on a business
 5 information database, the IPR database, Info Prod
 6 Research. Have you ever seen this before? It's about
 7 you.
 8 A. No, I haven't seen it .
 9 Q. About two-thirds of the way down --
 10 A. Okay.
 11 Q. -- there's a sentence beginning, "In 1999 ..." Maybe
 12 just below halfway:
 13 "In 1999, the government decided to get rid of its
 14 50 percent stake in TNK. And while it had paid
 15 \$810 million for 40 percent of TNK, Alfa was able to
 16 acquire the state's 50 percent stake for a mere
 17 \$270 million ."
 18 A. Yeah.
 19 Q. Sorry?
 20 A. Correct. I read it .
 21 Q. "The Russian ... treasury , however, did not receive
 22 \$1.08 billion for the combined 90 percent stake it had
 23 sold in the oil company. Fridman's Alfa paid
 24 \$170 million of the \$810 million price tag on the
 25 initial 40 percent stake, and \$90 million of the

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1 \$270 million sale price on the 50 percent stake."
 2 Did you know that had been reported, that was the
 3 way the deals were done?
 4 A. No, that's completely untrue.
 5 Q. Did you know it was the way it had been reported?
 6 A. No.
 7 Q. Novy got this slice -- you, Novy, got this further
 8 slice , completing your ownership of the company, again,
 9 in a government tender?
 10 A. Yes.
 11 Q. You managed to win the tender twice, for the 40% and the
 12 50%?
 13 A. Correct.
 14 Q. So these documents, these two public documents, the
 15 Judge Bates judgment in Washington and the business
 16 report , I'm going to put to you, make this look like
 17 a gigantic sweetheart deal put into your lap by the
 18 Kremlin, don't they?
 19 A. No.
 20 Q. It's the acquisition of TNK.
 21 A. No, that's not the case.
 22 Q. That's what they make it appear, do you agree? That's
 23 what's been written?
 24 A. That's what's been written in this article but it's not
 25 true.

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1 Q. I'm going to put to you that's what it was.
 2 A. So --
 3 Q. That your acquisition of TNK was a pay-back for
 4 supporting Yeltsin .
 5 A. No, that's not absolutely the truth at all . We never,
 6 ever paid any pay-back.
 7 Q. {D/17/1}, please. So this is the Financial Times
 8 article in 2003, partly about you. Do you remember this
 9 article ?
 10 A. No, I don't remember, but it doesn't matter.
 11 Q. There's a quote from you in it , which I wanted to put to
 12 you. It's five paragraphs down.
 13 A. Mm hmm.
 14 Q. Beginning:
 15 "Mr Fridman makes no bones about the way he and his
 16 counterparts made their money ..."
 17 Just read that paragraph, please .
 18 A. Yes.
 19 Q. It's referring to events in Russia over the last
 20 ten years. Did you say that?
 21 A. Probably, yes, if it was quoted as mine.
 22 Q. I think you're quite careful about your quotes in the
 23 mainstream media, aren't you? Don't you like to see
 24 them before they go in?
 25 A. Yeah, actually it seems to me probably it was my quote.

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1 Q. And you have PR people who help you with this sort of
 2 thing?
 3 A. No, I primarily rely on myself.
 4 Q. And dealing with that previous ten years, you said :
 5 "Of course we understand the distribution of state
 6 property was not very objective ."
 7 What did you mean by "not very objective ",
 8 Mr Fridman?
 9 A. First of all , I mean this loan-for-shares auction you
 10 mention, because that was actually a very widely
 11 spreaded belief that it was not transparent and fair
 12 distribution of property , of huge amount of property.
 13 And, generally , it was a lot of -- example: when their
 14 ordinary people, they have got so-called vouchers for
 15 privatisation and they didn't know how to use it .
 16 Effectively they sold it for nothing, almost. And
 17 because of lack of knowledge and because of lack of
 18 experience for many of ordinary Russian, that was of
 19 course a quite unfair distribution of property .
 20 Q. What did you mean by "we benefited from events in the
 21 country"? What were you referring to there?
 22 A. Just because we been, let's say, more well educated,
 23 more well prepared, rather than many other ex-Soviet
 24 people, for the whole -- this new era of capitalism . We
 25 been just young and it was much easy for us to

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1 accommodate to privatisation as a process, and the new
2 rule of the game. From that standpoint, of course, we
3 been in much more favourable situation rather than
4 millions of ordinary Russians.

5 Q. All right. So what you were saying was that you were
6 sufficiently clever, sufficiently able, skilful, to
7 benefit from the privatisations?

8 A. I think so.

9 Q. That's what you were saying?

10 A. Correct.

11 Q. What about "not very objective"; what did that mean?

12 A. No, because effectively the property of Russian state
13 were dealt by millions of people. I'm objectively
14 saying is probably require more proportional
15 distribution of that property. So the fact that certain
16 relatively small group of people who have benefit
17 heavily from that privatisation probably was not an
18 objective.

19 Q. Why would the government do that? Why would the Yeltsin
20 government do that?

21 A. First thought, you probably should ask from them. But
22 I think that was lack of experience of people, those who
23 were in government, have to do that. It may just have
24 been also very inexperienced people and actually,
25 historical, it was probably unique situation when the

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1 property of the huge country, huge country, effectively
2 the way it distributed was in very short period of time.

3 So without having knowledge and experience and
4 probably because of certain mistake, you know,
5 consciously or unconsciously, that was really quite bad
6 managed, the whole this process of privatisation.

7 Q. So they gave major state assets to a handful of people,
8 and that was a mistake that they made?

9 A. Yeah, and actually I think the mistake was that not just
10 they only made a rich -- certain group of rich people,
11 but they did not convince ordinary Russian that
12 privatisation was transparent and created equal chances
13 for everybody. That was mistake as well.

14 MR MILLAR: Perhaps we can agree --

15 Shall we have a break? We are making good progress.

16 MR JUSTICE WARBY: Yes, I think there was a suggestion there
17 should be a break at some stage for the shorthand
18 writers. Is this a convenient moment?

19 MR MILLAR: Yes, absolutely.

20 MR JUSTICE WARBY: Right. We'll take a break.

21 (3.20 pm)

(Short Break)

22 (3.30 pm)

24 MR JUSTICE WARBY: Before we start, I had better just warn:

25 Mr Fridman, it is possible that some people in fancy

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1 dress -- even fancier dress than these two have on at
2 the moment -- will come in during the course of the next
3 session because the new QCs have been appointed today
4 and there's a strange custom where they come into court
5 and there's a bit of bowing. So if that happens to
6 interrupt your evidence, please don't be put off. It's
7 just one of our traditions.

8 A. No problem.

9 MR JUSTICE WARBY: Yes.

10 MR MILLAR: Mr Fridman, can we agree that TNK became a very
11 profitable company?

12 A. Yes.

13 Q. In particular, as crude oil prices increased in the late
14 1990s and early 2000s and thereafter, it became the
15 biggest cash earner in the group, didn't it?

16 A. Probably, yes.

17 Q. Bigger than Alfa Bank?

18 A. Yeah, at that time, yes.

19 Q. That led to BP buying a 50% stake in the company
20 in 2003, didn't it?

21 A. Yes.

22 Q. In your witness statement, at paragraph 16, you say that
23 that remains -- or you think that remains the largest
24 example of major foreign investment in Russia? {C/1/4}

25 A. Yes.

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1 Q. I have read figures of around \$7 billion or \$8 billion
2 being paid for the 50% stake they bought in 2003. What
3 was the figure?

4 A. Something around. I don't remember exactly, but
5 probably -- it was not one deal but there was a few
6 deal. Altogether it probably was like \$7-8 billion.

7 Q. Total value, \$7-8 billion?

8 A. Yeah.

9 Q. So if we go back to paragraph 7 in your witness
10 statement {C/1/2}, you say:

11 "... I have never sought political favours or
12 developed close ties with the Russian government or
13 sought to involve myself in political
14 decision-making..."

15 Is that supposed to cover your entire business
16 career in Russia since the 1980s and through the 1990s?

17 A. That's correct.

18 Q. Are you sure that that's correct in relation to the
19 1990s?

20 A. Yeah, I did not participate -- yes, that's correct.

21 Q. At paragraph 29 in your statement {C/1/7} you give some
22 evidence about krysha. Do you want to have a look at
23 that?

24 A. Yes.

25 Q. I think it means literally a roof, but colloquially it

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1 is "protection", isn't it?
 2 A. Right.
 3 Q. Is that right?
 4 A. Yes -- krysha?
 5 Q. The word krysha?
 6 A. Krysha, yeah, it means protection, yes, roof.
 7 Q. As colloquially understood, it could be physical krysha,
 8 couldn't it, security and protection by organised crime
 9 groups?
 10 A. That's correct.
 11 Q. That's what you seem to be dealing with, is this right,
 12 at paragraph 29 in your witness statement? {C/1/7}. You
 13 say you're aware other businessmen in Russia obtained
 14 krysha, but deny that you ever engaged in that?
 15 A. Yes.
 16 Q. You're referring there to physical krysha, that form of
 17 protection?
 18 A. Correct.
 19 Q. But this can also be political krysha, can't it, this
 20 phenomenon, having someone who can use connections in
 21 government to help you in business?
 22 A. Normally for that purpose Russian don't use word krysha.
 23 We normally using word krysha primarily for criminal
 24 protection.
 25 Q. I'm going to suggest to you that political krysha takes

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1 three forms, see if you agree or disagree -- or did in
 2 the 1990s at any rate. First of all, to procure
 3 favourable treatment in the formulation of government
 4 policy or legislation. Do you agree or disagree that's
 5 a form of krysha?
 6 A. No, that's a form of just protection, from government,
 7 let's say.
 8 Q. So that sort of thing did go on, did it?
 9 A. For certain business people, yes.
 10 Q. Secondly, to procure the provision of discretionary
 11 favours from government. Do you agree or disagree?
 12 A. Yeah, agree.
 13 Q. And, thirdly, to protect yourself against arbitrary
 14 action by state authorities, for example, in Russia, the
 15 huge and unanticipated tax bill being served on you,
 16 that sort of thing; agree or disagree?
 17 A. Probably, yes.
 18 Q. As I understand your public position in interviews with
 19 journalists, speeches and your evidence to this court,
 20 you have never had either form of krysha in the 1990s?
 21 A. You're right.
 22 Q. That's your public position?
 23 A. Correct.
 24 Q. But I also have to put it to you that it simply wasn't
 25 possible in Russia in the 1990s to build up

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1 a substantial business of the size that you built up,
 2 which was huge, without both political and physical
 3 krysha. It just wasn't possible.
 4 A. That was completely possible and that's completely not
 5 true, that it's impossible without having krysha to
 6 build a big business in Russia.
 7 Q. Paragraph 34 in your witness statement, please {C/1/8}.
 8 Do read paragraph 34. We can all read it. In the
 9 middle of the paragraph you deal with allegations made
 10 in what you call Russia's gutter press, on and off since
 11 around the mid-1990s.
 12 A. Yeah.
 13 Q. Could we have {D/22/14}. This is Judge Bates'
 14 memorandum of opinion in the libel case in
 15 Washington DC. There are, it is true to say, references
 16 in this judgment to articles in Russian media outlets
 17 that I suppose you would say were gutter press. Can we
 18 have a look at a couple of them, please.
 19 A. Yeah.
 20 Q. First of all, at the bottom of the page --
 21 A. Yep.
 22 Q. -- I'll probably pronounce it badly: Versiya?
 23 A. Versiya, yes.
 24 Q. That I think was a small circulation newspaper known for
 25 reporting about -- purporting to report on organised

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1 crime; correct?
 2 A. Yes.
 3 Q. And it alleged, in the article that's referred to there,
 4 association with drug dealing and crime syndicates. It
 5 says, three lines up from the bottom, it is quoted from
 6 the article that:
 7 "Fridman had a hand in organising 'drug trafficking
 8 from South East Asia to Europe via Russia', and that
 9 [you] maintained 'numerous contacts' with the 'most
 10 aggressive' criminal syndicate in Moscow."
 11 Is that an example of the Russian gutter press?
 12 A. Exactly. That's a very good example of, you know,
 13 gutter press.
 14 Q. And then over the page at 15 {D/22/15}, about five lines
 15 down, another article in the same publication,
 16 suggesting an association with the crime syndicate?
 17 A. Yeah.
 18 Q. Again, "the most ... organised crime group in Moscow's
 19 criminal world"?
 20 A. Correct.
 21 Q. But there have also been western mainstream media
 22 articles about you and TNK Alfa suggesting impropriety,
 23 haven't there?
 24 A. Yeah.
 25 Q. Yes?

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1 A. Okay, probably, yes.
 2 Q. You don't mention those?
 3 A. You mean --
 4 Q. In this paragraph?
 5 A. No, not mentioned there, it seems to me.
 6 Q. So, go back to pages 13 and 14. {D/22/13} {D/22/14}
 7 A. Mm hmm.
 8 Q. The judge referred to, pages 13 to 14, a report
 9 in January 2000 in the Washington Post called,
 10 "The Strange Case of Russia, Big Oil and the CIA".
 11 You'll see in the second paragraph down he says:
 12 "The report described how the [export/import] bank
 13 had been nearing a decision for some time on
 14 a \$500 million loan guarantee to the
 15 Tyumen Oil Company."
 16 You can read down the page.
 17 A. Yeah.
 18 Q. You will have read this judgment in the past, I'm sure,
 19 but do read down the page to refresh your memory.
 20 A. Yes.
 21 Q. Then at the bottom, he says:
 22 "As the bank neared a decision on the loan, the
 23 article said the National Security Council asked the
 24 [CIA] to examine Tyumen and make information on the
 25 company available to the Ex-Im bank's directors. The

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1 CIA provided 'several analytical reports and some raw
 2 intelligence ', including a 29-page investigative report
 3 on Tyumen labelled 'Secret'. The article quoted a CIA
 4 spokesman as stating that a CIA cover letter
 5 accompanying the report explained that it had been
 6 'commissioned by an international oil company ...'.
 7 Then, at the beginning of the next paragraph:
 8 "The ... article advised that two and a half pages
 9 of the CIA report were labelled 'criminal situation ',
 10 and included 'some detailed allegations about Tyumen
 11 management'."
 12 A. Mm hmm.
 13 Q. So there's been a lot of damaging -- there has been
 14 damaging publicity about you in the mainstream American
 15 press, hasn't there?
 16 A. Not actually. That was just kind of reference to what
 17 happened with this Ex-Im bank loan.
 18 Q. If you could get up {D/4/1}, please. The actual article
 19 that you sued on --
 20 A. Sorry, was not mentioned that Ex-Im bank finally
 21 approved the loan. They got the loan from Ex-Im bank.
 22 Q. Yes, I know.
 23 {D/4/1}, please. This is the article that you sued
 24 on:
 25 "Cheney [that's Dick Cheney] led Halliburton to

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1 feast at federal trough."
 2 It's about the approval of that \$500 million loan,
 3 isn't it?
 4 A. Yes. Probably, yes.
 5 Q. In this article, if you turn on to page 3 {D/4/3},
 6 bottom half of the page:
 7 "Some allegations of organised crime and drug
 8 activities involving Tyumen's parent company, the
 9 Alfa Group, had been made public in Russia last year.
 10 "The allegations were contained in a report
 11 delivered in 1997 by anonymous officials from the FSB
 12 (the Russian equivalent of the FBI) to the national
 13 security committee of the Duma, or lower house of
 14 parliament."
 15 Then just read down there, over to the top of the
 16 next page, please, to the first paragraph of the next
 17 page {D/4/4}. (Pause)
 18 A. Okay.
 19 Q. So this article reported on allegations that Alfa Bank
 20 and Alfa Eco had been deeply involved in the early 1990s
 21 in laundering of Russian and Colombian drug money and
 22 trafficking drugs from the Far East to Europe.
 23 A. Okay.
 24 Q. You didn't mention this sort of publicity in your
 25 witness statement, just the Russian gutter press?

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1 A. As far as I understand, actually they reprinted from the
 2 Russian gutter press the whole of these things.
 3 Q. {D/5/1}, please. This is the New York Times Magazine,
 4 an article called, "The Autumn of the Oligarchs",
 5 in 2000. If you look at the bottom of page 2, {D/5/2},
 6 the author, Mr Lloyd --
 7 MR JUSTICE WARBY: If you just complete this question.
 8 MR MILLAR: The author Mr Lloyd says he saw a dossier last
 9 year in Moscow:
 10 "It purported to be the product of the Duma's
 11 security committee under the chairmanship of the
 12 Communist deputy, Viktor Ilyukhin."
 13 The next paragraph:
 14 "It said that Fridman had used criminals to further
 15 his business activities, that Aven had dealt in drugs,
 16 that Fridman corrupted senior police officials in
 17 Kazakhstan and that Aven was fired from his job ..."
 18 And so on.
 19 Are you familiar with this article, "The Autumn of
 20 the Oligarchs"?
 21 A. No. Not really.
 22 Q. In the New York Times Magazine?
 23 A. Yeah.
 24 Q. Did you read it at the time?
 25 A. Yeah, but -- in that time, I don't remember frankly

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1 speaking.

2 Q. And that paragraph concludes:

3 "The accusation - that the Alfa Group's leaders had

4 organized drug shipments from Central Asia to Europe -

5 was based on a United States intelligence source, based

6 in turn on an interview with an unnamed former KGB

7 agent."

8 You were asked about this by the journalist and you

9 shrugged and said:

10 "That stuff's always around."

11 Do you remember that?

12 A. Frankly I don't remember that, but probably that's

13 a fair point.

14 Q. Anyway, what I'm putting to you is it's not just the

15 Russian gutter press that has made these sort of

16 allegations, is it, and reproduced them?

17 A. No, unfortunately, you know, western press, reprinting.

18 (Pause for new Queen's Counsel ceremony)

19 MR MILLAR: I bet you don't have anything like that in

20 Russia, do you?

21 A. I don't know. I haven't participated in a court hearing

22 in Russia so far.

23 Q. No, exactly.

24 So I want to ask you about Vladimir Putin. We

25 touched on this earlier. You refer in paragraph 9 of

1 your witness statement to --

2 A. 9?

3 Q. 9.

4 A. Mm hmm {C/1/3}.

5 Q. -- to Mr Putin being Deputy Mayor of St Petersburg. In

6 Mr Aven's witness statement, at 13, {C/2/3} -- I think

7 we touched on this earlier -- Mr Aven describes him as

8 the head of the committee for external relations in the

9 Mayor's office in 1991. You didn't know about that at

10 the time, you said?

11 A. No.

12 Q. Have you discussed that since with Mr Aven?

13 A. No.

14 Q. His early connections with Mr Putin?

15 A. As I said to you, I didn't know the name of Mr Putin

16 until probably '97 or '98.

17 Q. No, I understand, but you have been a partner,

18 a business partner of Mr Aven since the mid-1990s. Did

19 you ever discuss with him his relationship with Mr Putin

20 dating back to 1991?

21 A. No, because I didn't know that he had any contact

22 before.

23 Q. You didn't know that?

24 A. No.

25 Q. And he's never mentioned that to you?

1 A. No.

2 Q. So this case -- when I'm putting it to you now, that's

3 the first you have heard of it in this case, is it?

4 A. No, the first -- the first time I heard about name of

5 Mr Putin was probably '97, when Mr Putin already been in

6 Moscow.

7 Q. No, I understand that, but the first -- are you saying

8 the first time you heard --

9 A. His name.

10 Q. -- Mr Aven had this relationship with Mr Putin --

11 A. Okay.

12 Q. -- going back to 1991, when Mr Aven was a minister --

13 A. Yes.

14 Q. -- and he was in the Mayor's office --

15 A. Correct.

16 Q. -- the first time you heard about that was in this case,

17 was it?

18 A. In 1997, probably. When we met Mr Putin first time,

19 Mr Aven mentioned to me that he previously was familiar

20 with Mr Putin.

21 Q. Right. So tell me about that first meeting with

22 Mr Putin in 1997 that you just mentioned.

23 A. I don't remember exactly the kind of circumstances of

24 that because he used to work for the president

25 administration in that time and my -- I met with him on

1 some occasion, you know, in president administration

2 office probably.

3 Q. Who introduced you to him?

4 A. It was not introduction, it was kind of meeting where he

5 participated as a member of president administration.

6 Q. As an official in the Yeltsin administration?

7 A. Correct. That was a few business people so far as

8 I could recall it and, you know, a few representatives

9 for president administration, including Mr Putin.

10 Q. Was Mr Aven there when you first met him?

11 A. No.

12 Q. The public -- or the general understanding in published

13 material is that Mr Putin had retired from the KGB in

14 1990 and gone to work in the Mayor's administration in

15 St Petersburg. Is that your understanding?

16 A. That's what I read in newspapers.

17 Q. In newspapers. Because he had known Mr Sobchak of old.

18 He had known him for some years?

19 A. Mr Putin even?

20 Q. Yes, he had known the Mayor?

21 A. Of course, he was his deputy.

22 Q. No, but he knew him -- he knew him before that when they

23 were younger men?

24 A. Sorry, say that again, who knew whom?

25 Q. Putin knew Sobchak --

1 A. Of course, oh, yes.
 2 Q. -- in St Petersburg --
 3 A. As far as --
 4 Q. -- when they were younger men.
 5 A. Okay.
 6 Q. He went into the KGB and came out and worked for him?
 7 A. Yeah, yeah. As far as I understand, you know, they knew
 8 each other since he was a student.
 9 Q. Yes, exactly. In 2014 the US political scientist,
 10 Professor Karen Dawisha, then at the university of
 11 Miami, I think, wrote a book "Putin's Kleptocracy: Who
 12 Owns Russia?" Do you know of that book?
 13 A. No.
 14 Q. You have never heard of it?
 15 A. Never.
 16 Q. Are you sure about that?
 17 A. 100%.
 18 Q. So it follows you have never read it, or any part of it?
 19 A. No, I haven't read it.
 20 Q. You have never heard it discussed?
 21 A. No. As far as I could recall it, not.
 22 Q. You have never heard it said that an America academic
 23 alleged that Putin had created a massive kleptocracy in
 24 Russia?
 25 A. No, I have heard a lot of accusation against Mr Putin,

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1 kleptocracy, not necessarily from that book. There was
 2 a lot of publicising -- publishing about that.
 3 Q. So, chapter 3 is at {D/40/1} in the bundle and deals
 4 with Putin's time in government in St Petersburg in
 5 1990. One of the things it alleges against Putin is
 6 that he was involved in something that was notorious as
 7 the food scandal in St Petersburg in the early 1990s.
 8 Have you ever heard of the food scandal?
 9 A. I've read about that in the newspapers.
 10 Q. Right. Not in Dawisha's book, but you have read about
 11 it in other publications?
 12 A. Yes, that was probably a reprinting of that -- of
 13 certain of that information in other newspapers.
 14 Q. Right. What's your understanding of the food scandal?
 15 A. I don't really know. I don't have any --
 16 Q. Did you know --
 17 A. I don't have any judgment about it.
 18 Q. Did you know anything about it at the time?
 19 A. No, at all. I haven't lived in St Petersburg at that
 20 time, so I could not know.
 21 Q. Have you ever discussed the food scandal with Mr Aven?
 22 A. Never.
 23 Q. Have you ever discussed any aspect of Mr Aven's
 24 relationship with Mr Putin when he was in St Petersburg
 25 with him, with Mr Aven?

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1 A. No, of course he told me the story of how he became
 2 familiar with Mr Putin when he was Deputy Mayor, and
 3 they used to work together because Mr Aven at that time
 4 was the minister and Mr Putin was in charge for foreign
 5 economic trade in Mayor office of St Petersburg. So
 6 therefore they had a working relationship in that time.
 7 Q. Did he ever tell you that Mr Putin in that capacity had
 8 taken to signing off in his own name export licences for
 9 goods that were supposed to be signed off in Moscow by
 10 his ministry, Mr Aven's ministry?
 11 A. I never --
 12 Q. Did he ever tell you that?
 13 A. We never discuss it.
 14 Q. And on page 2, which is in {D/40/2} -- sorry, could you
 15 go back to 1, please {D/40/1} because, to be fair to
 16 you, you need to see the full list.
 17 She lists six scandals that Mr Putin was involved in
 18 in St Petersburg in the 1990s.
 19 MR TOMLINSON: Is this page 105?
 20 MR MILLAR: 105 on the right-hand side at the bottom.
 21 Number 1 --
 22 A. Yeah.
 23 Q. -- is the food scandal that I've just put to you. So
 24 I don't want to go through that.
 25 A. Uh-huh.

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1 Q. Go to the next page {D/40/2}. She lists 2, 3, 4, 5 and
 2 6.
 3 A. Yeah.
 4 Q. Six other illicit activities of Mr Putin when he was
 5 a public official in St Petersburg that she deals with
 6 in the chapters. Just have a look at 2 to 6 and tell me
 7 if you know anything about any of those.
 8 A. I don't know anything about that.
 9 Q. You didn't know anything about any of those at the time?
 10 A. At all.
 11 Q. And you have never heard anything about them since?
 12 A. I've heard about a lot of allegation against Mr Putin
 13 during his position as a Deputy Mayor of St Petersburg,
 14 but --
 15 Q. Do they include those five, any of those five, the ones
 16 you have heard about?
 17 A. I don't remember exactly. I never was really interested
 18 in what kind of allegation was made.
 19 Q. So, just so we can get clear about this, paragraph 9 in
 20 your witness statement. {C/1/3}
 21 A. Okay.
 22 Q. You did not know Mr Putin when he was Deputy Mayor of
 23 St Petersburg. And that means you had never met him.
 24 Is that what you mean there?
 25 A. Absolutely.

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1 Q. And you didn't know of him at the time?
 2 A. I didn't know this name.
 3 Q. You didn't even know the name?
 4 A. No.
 5 Q. So in your witness statement you don't deal with
 6 the period from 1996 to 2000 in relation to Mr Putin.
 7 You do say some things about Mr Putin in that section of
 8 your witness statement, but at paragraph 10, just have
 9 a look at 9 and 10, you jump from that period we have
 10 been looking at in St Petersburg --
 11 A. Yeah.
 12 Q. -- up to 1996. You jump from there to his election as
 13 president in 2000.
 14 A. Correct.
 15 Q. You don't say anything about the four years in between?
 16 A. No, because I probably met him once or twice during this
 17 whole period when he used to work in the president
 18 administration .
 19 Q. Yes, you mentioned that.
 20 A. Then that's it .
 21 Q. The published accounts of his rise to the top indicate
 22 that, as you say, in 1996 he moved to Moscow to join
 23 Yeltsin 's administration .
 24 A. That's correct .
 25 Q. He also served for a period as director of the FSB,

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1 until 1998, for about a year, did you know that?
 2 A. Yes, I know about that.
 3 Q. Did you know at the time he was the director of the FSB?
 4 A. I don't remember exactly the date, but I remember he
 5 used to work as the director of FSB.
 6 Q. Yes. He had a period in the administration after 1996,
 7 had a period at the FSB and then went back to the
 8 administration . That's what the published accounts
 9 suggest. Was that your understanding?
 10 A. It seems to me you're right .
 11 Q. Then in August 1999 he was appointed Prime Minister?
 12 A. That's correct .
 13 Q. So your knowledge of him during that period, you have
 14 mentioned meeting him in about 1997. Did you have other
 15 meetings with him?
 16 A. I don't remember -- it probably was two meetings within
 17 the whole of this four-year period of time and both in
 18 his capacity as a member of president administration
 19 staff . Again, that was in a group of people. That was
 20 a kind of big meetings with a certain member of the
 21 president administration staff , including Mr Putin.
 22 It 's a group of business people, including myself.
 23 Q. Why do you remember him out of that group?
 24 A. That was just a few kind of, you know, top level
 25 representative of president administration and he was

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1 already -- at that time he was known as a member of
 2 president administration .
 3 Q. Right. But by 1999 he had been appointed as
 4 Prime Minister by Yeltsin ?
 5 A. Correct .
 6 Q. So, to put it mildly , he was on a fast route to the top
 7 at that time, wasn't he? Would that be fair ?
 8 A. Probably, yes .
 9 Q. Was that your understanding?
 10 A. I think so .
 11 Q. Was that the basis on which you dealt with him at that
 12 time, that he was a rising star ?
 13 A. No, I didn't have any deal with him.
 14 Q. In your witness statement you describe in some detail
 15 the period after 2000.
 16 A. Okay .
 17 Q. When he became, first of all , acting president at the
 18 end of 1999 and then was elected to succeed Mr Yeltsin
 19 in the spring of 2000.
 20 A. Mm hmm .
 21 Q. So at paragraphs 10 to 12 {C/1/3-4} you deal with what
 22 you say are regular , formal , choreographed meetings with
 23 businessmen and entrepreneurs that you have attended
 24 where Putin was present?
 25 A. True .

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1 Q. And at 15 to 16 {C/1/4-5} you deal with your meetings
 2 with him during and in connection with the TNK-BP joint
 3 venture, which I'm going to ask you about in a moment,
 4 between 2003 and 2013.
 5 A. Yes .
 6 Q. Presumably you know, and knew at the time, that your
 7 colleague , Mr Aven, has had regular meetings with
 8 Mr Putin over the years on a one-to-one basis?
 9 A. Yes .
 10 Q. Three to four times a year?
 11 A. Maybe, but maybe less .
 12 Q. Okay. I'm not going to put to you what he says. Just
 13 tell me what your understanding is?
 14 A. A few times per year , couple of times per year , yeah .
 15 Q. Does that go back through the whole of the period of
 16 Yeltsin 's presidency? I know there was a period where
 17 he was Prime Minister for constitutional reasons, but
 18 does it go all the way back to 2000? Was he meeting
 19 with him regularly as a business colleague of yours
 20 through that whole time?
 21 A. I don't remember what happened during his position as
 22 Prime Minister during Yeltsin 's time, but since he
 23 became a president, to my best recollection , yes, that's
 24 true .
 25 Q. Well, it was 2008 to 2012, he couldn't stand for a third

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1 consecutive term under the constitution , could he?
 2 A. Oh, yeah, correct . He was Prime Minister, right .
 3 Q. In name?
 4 A. No, he was the Prime Minister of Russian Federation .
 5 Q. Mr Medvedev became president?
 6 A. That's correct .
 7 Q. So they switched round, but it is commonly understood
 8 that Mr Putin retained the power?
 9 A. I would not like to comment, you know, specific of
 10 Russian politics .
 11 Q. And he tells us in his witness statement that at those
 12 meetings they discussed banking and the economy and
 13 Alfa, the Alfa Group. Is that your understanding, that
 14 he discusses those things with Mr Putin?
 15 A. You should ask Mr Aven probably, but I think so .
 16 Q. Well, you see, we have been through this . You recruited
 17 him because you needed connections with the government
 18 during the Yeltsin period and he has remained your
 19 business partner and he's telling us that in his witness
 20 statement, so it 's something I want to ask you about .
 21 Did you know he had that relationship with Mr Putin?
 22 A. Sorry, did he know?
 23 Q. Did you know he had that relationship with Mr Putin?
 24 A. At the moment we hired him, we invited him, we did not
 25 know at all because we did not know this name and

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1 Mr Putin at that time was tiny, low level bureaucrat in
 2 St Petersburg .
 3 Q. You hired him because you needed a connection with the
 4 Yeltsin government and the evidence suggests his
 5 connection has carried on at the highest level through
 6 the Putin years as well?
 7 A. We hired him because he was a prominent economist and
 8 financier . He was a liberal politician who introduced
 9 free exchange of currency to Russia and he was a good
 10 partner of us and one of his duty was also to establish
 11 working relationship with the government .
 12 Q. When he has those meetings with Mr Putin, you say maybe
 13 two or three times a year, does he report back to you
 14 about those meetings?
 15 A. No, of course he didn't report me. He just share with
 16 me certain key point of this meeting of discussion with
 17 Mr Putin .
 18 Q. Right. What's the difference ?
 19 A. The difference is actually from my understanding of
 20 English, "report" means he obliged to do that .
 21 Q. Oh, I see .
 22 A. "Share" means he just as a partner --
 23 Q. No, I'm sorry, then it 's my problem .
 24 A. Sorry for my English. Maybe I'm wrong .
 25 Q. I don't mean report in the -- I mean report back in the

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1 sense that he comes back and tells you about what's gone
 2 on at the meeting .
 3 A. Okay .
 4 Q. I'm sorry .
 5 A. No problem .
 6 Q. So does that happen?
 7 A. Yeah, he share with me, you know, kind of the key topic
 8 for discussion .
 9 Q. In paragraph 18 in your witness statement {C/1/5} --
 10 A. Yeah .
 11 Q. -- you say you have never met Putin on a one-to-one .
 12 What do you mean by -- in a one-to-one situation . What
 13 do you mean by that?
 14 A. I mean meeting one-on-one, if just two of you in the
 15 meeting room .
 16 Q. Oh, right , just the two of you in a room?
 17 A. Yeah .
 18 Q. Right. And you say you don't have private meetings with
 19 Putin. Does that mean the same thing?
 20 A. Yes, exactly .
 21 Q. Right. Why do you emphasise that?
 22 A. Because actually one of allegation which contained
 23 Mr Steele's report was that I'm providing informal
 24 advice to Mr Putin on politics , on foreign policy ,
 25 whatever. Without having meeting one-on-one, it is

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1 probably impossible to provide informal advice .
 2 Q. Really?
 3 A. Yeah, probably because normally I participate in the
 4 kind of big group of people, with like 20 people there .
 5 It 's very formal meeting, which normally media presence
 6 there. So I'm not have ability to make any informal
 7 advice .
 8 Q. Right. But a private one-to-one meeting with the
 9 president is one thing. I can see you saying you don't
 10 have those .
 11 A. Yeah .
 12 Q. These big set piece , choreographed meetings with Russian
 13 businessmen, where the cameras are there, is another
 14 thing, but there are lots of possibilities in between,
 15 aren't there, to meet somebody?
 16 A. I don't know any other possibility to provide informal
 17 advice on foreign policy without having quite informal
 18 meetings .
 19 Q. Your evidence is that the only meetings -- the only time
 20 you have ever met the man is in those big groups, those
 21 choreographed groups, the only time you have ever met
 22 him, other than 1997?
 23 A. Yes, and also with Lord Browne and other people from BP
 24 when we met, couple of times, in smaller group, but
 25 still group of people .

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1 Q. And you say you have a relationship with him. You seem
 2 to be accepting -- at 18, you say {C/1/5}:
 3 "Our relationship is not a close or personal one."
 4 But you have a relationship with him, is that right?
 5 A. Yes, I have relationship with President of
 6 Russian Federation.
 7 Q. It's not close or personal. What do you mean by "close
 8 or personal"?
 9 A. I have a relationship as a kind of pretty big
 10 businessman in Russia and the president of the country.
 11 Q. Right. So big businessman/president relationship,
 12 rather than a personal relationship?
 13 A. Right. No personal relationship.
 14 Q. At {D/22/1}, please, at page 7 {D/22/7}, the judge in
 15 the Washington case found that, when he was giving the
 16 judgment in 2005, you and Mr Aven had maintained a close
 17 relationship to the highest reaches of
 18 Russian Government. Would you disagree with that?
 19 A. I disagree with the definition "close relationship".
 20 Q. At any event, it would be fair to say that you and Alfa
 21 prospered after 2000 under the Putin regime, wouldn't
 22 it?
 23 A. Say again, please?
 24 Q. It would be fair to say that you and Alfa Group
 25 prospered after 2000 under the Putin regime?

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1 A. Yes, we prospered, but -- okay, prospered.
 2 Q. This wasn't true of other oligarchs, was it, in the
 3 Yeltsin group of seven but who became vocal opponents of
 4 the regime?
 5 A. Yes.
 6 Q. I think in this country of Mr Berezovsky, who was
 7 threatened with prosecution for fraud and embezzlement
 8 in Russia and didn't return in 2000?
 9 A. That's correct.
 10 Q. Lived in this country. We think of
 11 Mikhail Khodorkovsky, who remained in Russia but was
 12 prosecuted for fraud in 2003?
 13 A. That's right.
 14 Q. Convicted and imprisoned until released by pardon from
 15 Putin in December 2013.
 16 A. Yeah.
 17 Q. You avoided those sorts of consequences?
 18 A. So far, yes.
 19 Q. And, to the contrary, were very successful under Putin?
 20 A. True.
 21 Q. I want to ask you about the 2003 merger with TNK. This
 22 was a merger between TNK, the company we discussed
 23 earlier, and BP's Russian operations?
 24 A. Correct.
 25 Q. And you mentioned this in passing at the end of

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paragraph 14 in your witness statement {C/1/4}.
 2 A. Yeah.
 3 Q. The final sentence.
 4 A. Right.
 5 Q. We have dealt with what happened. Money-wise, you said
 6 about 7 to 8 billion BP paid in 2003 and they bought or
 7 they ended up with in effect 50% of the new venture, an
 8 even split; yes?
 9 A. Yes.
 10 Q. And it was the largest corporate deal in Russian
 11 history?
 12 A. Probably, yes, in that time.
 13 Q. You say, at paragraph 15 {C/1/4}, that whilst on a state
 14 visit to London --
 15 A. Correct.
 16 Q. -- Mr Putin attended a ceremony with Tony Blair for
 17 signing off the deal?
 18 A. That's correct.
 19 Q. It has been reported that the deal had to be and was
 20 approved by the government. Is that correct?
 21 A. Yes, of course we have anti-monopoly permission always
 22 regulatory approval to make this deal happen.
 23 Q. Anti-monopoly rules?
 24 A. Correct.
 25 Q. And that would mean Mr Putin approving it?

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1 A. As far as I know, Mr Putin was approached by
 2 Mr Tony Blair with the request to get a blessing to this
 3 deal and he effectively give it.
 4 Q. Just by Mr Blair or anyone else?
 5 A. As far as I know, initially that was request of
 6 Mr Blair.
 7 Q. Can we have {D/29/1}, please. {D/29/9}. This is
 8 a business forecasting report dealing with Alfa Group.
 9 It is suggested that you made a personal appeal to
 10 Mr Putin to help arrange this deal.
 11 A. No, that's completely untrue.
 12 Q. Just right in the middle of the page --
 13 A. Yeah, I've seen it.
 14 Q. --:
 15 "... Alfa Group regularly seeks explicit government
 16 assistance for its operations ... The ultimate example
 17 of this is Fridman's personal appeal to Putin to help
 18 arrange the marriage of TNK and ... BP in 2003."
 19 Were you aware that it's been reported that you were
 20 personally involved in getting Putin's approval?
 21 A. Frankly, I don't know. I haven't read this report.
 22 Q. It is certainly true to say that the first five years of
 23 the BP link-up were a success story, is that right?
 24 A. No.
 25 Q. No?

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1 A. No.
 2 Q. The New York Times reported that was the case
 3 in July 2008, but you say that's wrong?
 4 A. That's wrong. The whole story of TNK-BP was very big
 5 success story for both sides, for BP as well.
 6 Q. Well, I'm just asking you about the first five years at
 7 the moment.
 8 A. Oh, yes, first five years definitely was success story.
 9 Q. Technological improvements -- we don't need to look at
 10 it. This is what the article says. Just tell me if you
 11 agree. Technological improvements, increased
 12 efficiency, large net profits, is that fair?
 13 A. Yeah, fair point.
 14 Q. If we look at {D/32.1/1} again, please, Lord Browne's
 15 take on it, at 9 {D/32.1/9}. You have to expand it
 16 again, I think. On the left-hand page, right in the
 17 middle, it says:
 18 "It was the fastest-growing oil business in Russia.
 19 It deployed advanced technology. The dividends were
 20 huge."
 21 Is that right?
 22 A. Where's that, sorry?
 23 Q. In the middle of the page, on the left-hand side. I'm
 24 sorry, 148 internal.
 25 A. Yeah, "... dividends were huge". Right, yeah.

1 Q. Helped nudge BP ahead of Shell to the number 2 player in
 2 the world behind Exxon Mobil. Is that right?
 3 A. Yes.
 4 Q. For the first five years I think it's right that your
 5 side, the Russian side, and BP were locked into the
 6 deal, is that right?
 7 A. Yeah.
 8 Q. Under the agreement?
 9 A. Yeah.
 10 Q. Neither side could sell out?
 11 A. Yeah.
 12 Q. So you had to make a go of it, didn't you, during those
 13 five years?
 14 A. Say again, please?
 15 Q. You had to make a go of it together, there was no way
 16 out?
 17 A. Yeah, yeah.
 18 Q. But in 2008, as soon as it was possible for stakes to be
 19 sold, things began to unravel very publicly, didn't
 20 they?
 21 A. That was not connected with lock-up period, as you
 22 mention. That was just kind of evolution of
 23 relationship and partnership.
 24 Q. Between 2008 and 2013 there was a long, slow, falling
 25 out between the Russian side and BP, wasn't there?

1 A. No. That was ups and downs in relationship, but it was
 2 very efficient and constructive joint venture.
 3 Q. No, there was a bitter power struggle between the
 4 Russian side and BP, wasn't there?
 5 A. No, that was not a power struggle. That was the
 6 struggle for more efficiency and transparency of the
 7 company.
 8 Q. Those events happened in the full glare of the western
 9 mainstream media -- business media, didn't they?
 10 A. That's correct.
 11 Q. And were reported upon?
 12 A. Yeah.
 13 Q. Yes?
 14 A. Yeah.
 15 Q. And, in the process, the media reported on both yours
 16 and Mr Khan's role in the breakdown of that
 17 relationship, didn't they, in some detail?
 18 A. Yeah.
 19 Q. So if we look at {D/30/1}, please. This is a New York
 20 Times article, July 2008, "Fate of TNK-BP joint venture
 21 lies in a Russian tussle". If you look at the top of
 22 page 2 {D/30/2}, it describes pressure being put on the
 23 company, on the joint venture company, by the
 24 administration, by tax authorities, allegations of
 25 labour violations, involvement of security services.

1 This is the New York Times reporting this. Do you
 2 remember this?
 3 A. Yeah, I don't remember this article, but it's --
 4 I remember the whole this story.
 5 Q. Do you remember these things being reported at that
 6 time?
 7 A. Yeah, yeah.
 8 Q. And in the middle of the page it refers to Mr Khan
 9 encouraging the official pressure from the
 10 administration on BP. Read that whole paragraph.
 11 A. Yes.
 12 Q. "People close to TNK say there is strong evidence that
 13 German Khan ... encouraged the official pressure as part
 14 of a campaign to weaken BP's control of the company."
 15 Writing to immigration authorities to ask them to
 16 cut the number of work permits for BP's side employees.
 17 Do you know anything about that?
 18 A. Yeah, but that's not true at all.
 19 Q. Not true. You see, what is being alleged here is that
 20 he was in effect colluding with the Putin administration
 21 against the BP side of the joint venture.
 22 A. It's not possible to kind of direct Putin's
 23 administration.
 24 Q. Look at the two paragraphs that follow that middle
 25 paragraph. You declined to be interviewed for this

1 article in 2008?
 2 A. No, that Mr Khan declined.
 3 Q. I'm sorry, Mr Khan declined to be interviewed. You're
 4 quoted.
 5 A. Yes.
 6 Q. Read those two paragraphs.
 7 A. Yes.
 8 Q. During this period in 2008, and thereafter, you didn't
 9 stand up for the joint venture or BP's role in it, did
 10 you?
 11 A. No, we protected the interest of joint venture strongly.
 12 Q. You took the side of the government?
 13 A. No. I took side of the company, not the side of BP, but
 14 side of TNK-BP.
 15 Q. You wanted the outcome -- you and Mr Khan wanted the
 16 outcome the government wanted?
 17 A. No, we just wanted to improve efficiency of the company
 18 as much as possible.
 19 Q. In the end, Bob Dudley, TNK-BP's chief executive who had
 20 been appointed by BP, left Russia complaining of
 21 harassment, didn't he?
 22 A. Yes, he left the company.
 23 Q. Complaining of harassment?
 24 A. That's I don't know.
 25 Q. You don't know?

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1 A. No, he didn't complain me, you know, but publicly
 2 I don't know whether he complain about harassment or no.
 3 Q. He left the country, not just the company, complaining
 4 of harassment, didn't he?
 5 A. We have always quite normal personal relationship with
 6 Mr Dudley so ...
 7 Q. Can we look at {D/122/1}, please. This is an article in
 8 The Economist magazine. You know The Economist
 9 magazine. It is a very important western publication,
 10 isn't it, in the business world?
 11 A. Sure.
 12 Q. And look at page 2 at the top {D/122/2}, the second
 13 paragraph in:
 14 "The venture proved lucrative, but rancorous."
 15 Read that paragraph.
 16 A. Yeah. Probably, yes, I seen it, "... complained of
 17 'sustained harassment'".
 18 Q. The Economist is reporting on allegations that your side
 19 enlisted the FSB, the Security Service, in this
 20 corporate contest. Do you remember that being alleged?
 21 A. Yes, but it's not anyhow connected with our activity.
 22 Q. You say:
 23 "Yet 'especially in a country like Russia ... where
 24 the rules of the game are not always very clear', in
 25 general you 'should be prepared for a fight'."

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1 What did you mean by that?
 2 A. I mean, first of all, legal fight. I mean that we
 3 sometimes -- we sue BP, if you could recall it, here in
 4 London by the way, and won the court case against them.
 5 Q. The head of the FSB reports to the president, I think,
 6 doesn't he?
 7 A. Sorry?
 8 Q. The head of the FSB reports into the president,
 9 Mr Putin?
 10 A. Yes, yes.
 11 Q. The president is aware of what the FSB is doing?
 12 A. Probably, yes.
 13 Q. Anyway, I hear your evidence and it is on the record in
 14 answer to my questions, but a public view had emerged,
 15 hadn't it, in the western media, that your side was
 16 working with the Putin government to push BP out?
 17 A. Effectively BP was not pushed out at all. BP was
 18 a partner in this joint venture and benefited a lot from
 19 this joint venture and public opinion always building
 20 conspiracy theory, especially in country like Russia.
 21 Q. {D/66/1}, please. This is an article in the Ukrainian
 22 website -- news website. If you go to page 2 {D/66/2},
 23 there's a gentleman called Zaslavskiy who holds himself
 24 out as persecuted and a whistleblower in relation to
 25 this episode. Do you know of him?

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1 A. No.
 2 Q. He was a TNK-BP employee who was accused of industrial
 3 espionage by the Russian authorities. Do you know
 4 anything about that?
 5 A. I heard about that, but I don't know this person.
 6 Q. You heard about it but you don't --
 7 A. I heard about it certain case regarding the certain
 8 employee of TNK-BP who was accused of espionage.
 9 Q. Yes. Well, he claimed the FSB had trumped up
 10 allegations of industrial espionage against him and that
 11 they had been put up to it by the Alfa-Access-Renova
 12 side, AAR, didn't he? Did you know about that?
 13 A. No. I don't know who is that person.
 14 Q. In the end of this period, the long, slow, fallout
 15 between 2008 and 2013, Rosneft, the state oil company,
 16 stepped in and bought the whole entity for €55 billion,
 17 didn't it?
 18 A. That's correct. 54.
 19 Q. Alfa got how much, 14 billion?
 20 A. Something around that.
 21 Q. And Putin personally approved that transaction, the
 22 Rosneft transaction, didn't he?
 23 A. Probably, yes. I don't know.
 24 Q. Well, there's no probably about it, is there,
 25 Mr Fridman? The Russian state doesn't spend €55 billion

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1 under Mr Putin's leadership without him approving it?
 2 A. Yeah, that's why I'm saying probably because I haven't
 3 seen any documents like that.
 4 MR MILLAR: My Lord, we're making very good progress.
 5 I don't know how late you're proposing to sit tonight?
 6 MR JUSTICE WARBY: Well, if we're making good progress
 7 there's no particular reason to sit beyond 4.30.
 8 MR MILLAR: I think I say this with a degree of
 9 confidence: I think we'll finish cross-examination by
 10 lunchtime of all three witnesses, because this is the
 11 main witness.
 12 MR JUSTICE WARBY: Well, that's good. No need to sit before
 13 10.30 tomorrow in order to get things done so we will
 14 sit again at 10.30.
 15 Mr Fridman, I have to give you this warning. When
 16 a witness is still giving evidence when the court day
 17 ends, as is just happening now, I have to tell you that
 18 you mustn't talk to anyone about the case or about your
 19 evidence until your evidence is over. That's obviously
 20 so that you can't be influenced. It's also because it's
 21 a good thing that you can be seen not to be influenced
 22 by anyone outside who might want to have a chat to you
 23 about it.
 24 A. Okay.
 25 MR MILLAR: Mr Fridman, it is only fair to say we have very

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1 nearly finished your cross-examination. There will be
 2 a little more in the morning, but we've very nearly
 3 finished.
 4 A. Thank you very much.
 5 MR JUSTICE WARBY: 10.30 tomorrow.
 6 (4.30 pm)
 7 (The court adjourned until 10.30 am
 8 on Tuesday, 17 March 2020)

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