



Neutral Citation Number: [2024] EWHC 2174 (Comm)

Case No: CL-2020-000358

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**COMMERCIAL COURT (KBD)**

Royal Courts of Justice, Rolls Building  
Fetter Lane, London, EC4A 1NL

Date: 26/09/2024

**Before :**

**HIS HONOUR JUDGE PELLING KC**  
**SITTING AS A JUDGE OF THE HIGH COURT**

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**Between :**

**ALEXANDER GORBACHEV**

**Claimant**

**- and -**

**ANDREY GRIGORYEVICH GURIEV**

**Defendant**

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**Paul Stanley KC, David Scorey KC, Alexander Halban and Christopher Lloyd (instructed by CMS Cameron McKenna Nabarro Olswang LLP) for the Claimant**  
**Helen Davies KC, Tom Weisselberg KC, Daniel Cashman and Rowan Stennett (instructed by PCB Byrne LLP) for the Defendant**

**Hearing dates:** 15th, 16th, 17th, 18th, 22nd, 23rd, 24th, 25th, 29th, 30th April  
1st, 2nd, 7th, 8th, 9th, 10th, 13th, 14th, 15th, 16th, 21st, 22nd and 23rd May 2024

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**Approved Judgment**

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**HIS HONOUR JUDGE PELLING KC SITTING AS A JUDGE OF THE HIGH COURT**

## HH Judge Pelling KC:

### Introduction

1. This is the trial of the liability issues that arise in this claim by the claimant that he is entitled to 24.75% of the defendant's shares in PJSC PhosAgro ("PhosAgro"), a Russian company that is publicly quoted both in Moscow and on the London Stock Exchange ("LSE") following an Initial Public Offering in 2011, to which I refer in more detail later in this judgment<sup>1</sup>. PhosAgro is alleged to have had a market capitalisation at the date of the amended Particulars of Claim of about £3.7bn. The claim is advanced on the basis that either the defendant created an express trust by orally declaring himself to be the trustee of the shares that the claimant claims in the course of a conversation or conversations that took place during 2005 either in a sauna and/or a public house in London or thereafter in either the Ritz Hotel or the Wolseley restaurant in London and/or in the street outside the Wolseley restaurant and/or in conversations that took place between them in London in 2008 or alternatively on the basis of a common interest constructive trust or by operation of a proprietary estoppel. Each of these claims is advanced on the basis that they are subject to English law. The claim is described by the defendant and his counsel as a "*shakedown*".
2. In his opening submissions on behalf of the claimant, Mr Stanley KC described this claim as presenting essentially two sets of issues, being one factual and the other legal. As to the first, there is no documentation or other corroborative material that supports the claimant's claim, which from first to last depends on conversations alleged to have taken place between the claimant and defendant in Russian that were not witnessed by others. The outcome of the dispute concerning the factual issues that arise depends upon an assessment of factual evidence concerning a business and personal relationship going back decades starting in or around 1989. As to the second set of issues, which, if any, of them will require resolution will depend upon the factual findings I make and I propose to say no more about them at this stage and to turn to them only having made the necessary factual findings.
3. The defendant is a sanctioned individual who as a result was unable to travel to the UK in order to give his evidence in relation to this claim. On 16 January 2024, the parties made a joint application to me for an order directing that the defendant's evidence be given orally in Dubai before me sitting as a special commissioner. I acceded to that application for the detailed reasons I gave in a judgment I delivered orally on 31 January 2024 ([2024] EWHC 247 (Comm)). One of the reasons that both parties sought this order was because the defendant (unlike the claimant) does not speak English and his evidence would have to be given via interpreters. Mr Stanley was concerned that in a case that depends upon the detailed testing of oral evidence, cross examination via an interpreter with only remote access would create avoidable obstacles to a fair cross examination by him of the defendant whereas Mr Weisselberg KC (who acted for the defendant on the application) was equally concerned that it would be unfair for the defendant to have to give evidence in this way when the claimant was able to give

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<sup>1</sup> The amended Particulars of Claim refer to "*the fertiliser business*" meaning a conglomeration of businesses in that industry formally owned by Group Menatep Limited. However, there is no evidence that any of these businesses continued to operate otherwise than as part of PhosAgro's business certainly by the time of the IPO offering in 2011, or that the defendant (whether beneficially or otherwise) owned or was interested in any functioning fertiliser business other than his beneficial interest in PhosAgro by the time of the declarations on which the claimant relies.

evidence in person. As things turned out there was a clear benefit in the defendant's evidence being given in the manner I ordered.

4. The trial took place between 15 April and 23 May 2024. During the course of the trial, I heard oral evidence from the following witnesses. The entities with which those witnesses were formerly connected are identified below. The role of those entities in the narrative relevant to the resolution of the factual issues that arise is explained later in this judgment:

- i) On behalf of the claimant, I heard oral evidence from:
  - a) The claimant;
  - b) The claimant's wife, Ms Larisa Smirnova;
  - c) Mr Sergei Sereda, former partner at Arthur Andersen; Deputy Chairman of the management board of Group Menatep Limited ("GML"); Head of Audit Function at PhosAgro; General Director of LLC Voskresenkie Mineralnye Udobreniya ("VMU") and Deputy General Director of PhosAgro 2012-17;
  - d) Mr Dmitry Gololobov, a Russian-qualified lawyer who was formerly Deputy General Counsel at CJSC Rosprom ("Rosprom") and later Yukos;
  - e) Mr Andreas Karas;
  - f) Mr Andrey Leonovich, a former employee of Investment Commercial Bank of Scientific and Technical Progress ("Bank Menatep") and then OAO Yukos Oil Company ("Yukos");
  - g) Mr Luc Maene, director general of the International Fertilizer Association until 2012;
  - h) Mr Sergei Fedorov, who held senior roles in OJSC Apatit ("Apatit") before becoming General Director of PhosAgro AG, a post he held until late 2004;
  - i) Ms Olga Brizitskaya, a former employee in various potentially relevant entities including the PhosAgro marketing operation. and
  - j) The claimant's son, Mr Mikhail Gorbachev;
- ii) On behalf of the defendant, I heard oral evidence from:
  - a) The defendant;
  - b) The defendant's son, Mr Andrey Guriev Jnr;
  - c) Mr Maxim Volkov, who was a director of Anvilco, a senior employee of PhosAgro who worked on both the initial abortive IPO and the

successful 2011 IPO, who was General Director of PhosAgro from 2005-2013 and is currently CEO of JSC Pikalevskaya Soda;

- d) Mr Evgeny Mariashin, a lawyer employed in the legal department of PhosAgro and a “protector” or former “protector” of the claimant’s Cypriot trusts;
- e) Mr Sergei Tarakhnenko, who was Head of the legal department at PhosAgro until 2004 and who resided in London between 2004 and 2009; and
- f) Mr Nikolay Bychkov, a former GML employee and Senator who left Russia in 2004.

The statements of Messrs Sergei Levchenko and Sergei Pronin were admitted by the claimant without cross examination.

- 5. Given the issues that arise, much of this evidence was at best tangential and in some cases was obviously partisan and self-interested. Very significant credibility issues arose in respect of many of these witnesses, which generated a lot of cross examination. Given the issues that arise, it will not be necessary to refer to much of the witness evidence. Where the oral evidence is at least potentially relevant, generally I address the credibility issues that arise when considering that evidence.
- 6. There were two experts reports tendered in evidence, one from each of the parties and neither of which was the subject of any challenge.
  - i) The defendant relied on an opinion from Mr Maxim Kulkov, a Russian qualified lawyer who gave evidence on issues of Russian law. The effect of his undisputed evidence is that:
    - a) the oral agreements the claimant alleges were reached between him and the defendant in Russia in the 1990s and early 2000s were not binding or enforceable as a matter of Russian law;
    - b) the oral statements that the claimant alleges the defendant made to him in London in 2005 that he alleges created a trust would not be valid and binding as a matter of Russian law;
    - c) common intention constructive trusts and proprietary estoppel causes of action do not exist in Russian law; and
    - d) the Russian law limitation period applicable to claims for breach of fiduciary duty is three years running from the expiry of a reasonable time period for the performance of the relevant obligations.
  - ii) The claimant relied on an expert report from Mr Thomas Phinney. The claimant disclosed some documents generated by a Cypriot lawyer (Ms Charidemou). Mr Phinney’s evidence was concerned with the font in which those documents were drafted. The detail does not matter. The point is that the relevant font (Calibri) was available generally only from 30 January 2007 from which (it is submitted

by the claimant) it necessarily follows that the documents (which bear dates in 2005 and 2006) have been backdated. As I have said Mr Phinney's evidence is not in dispute.

7. As will become apparent from what I say later in this judgment, any assessment of the parties' respective cases will depend very heavily on the credibility of their oral testimony. In the course of challenging the credibility of that testimony, allegations of dishonesty and wrongdoing were made (particularly by the defendant against the claimant) in relation to events that occurred decades ago that were often tangential to the issues that arise. The purpose of this was to demonstrate that particular witnesses could not be relied on and that I could not safely rely on the oral evidence of either the claimant or defendant. Finally as will be apparent from what I have said already, the trial involved a detailed investigation of events occurring as long ago as 1989 and the critical events on which this claim depends which are alleged to have occurred in 2005.
8. In those circumstances, it is important to identify at the outset some fundamental principles that I am bound to apply and have applied when reaching conclusions as to what has been alleged. In summary:
  - i) The legal and evidential onus of proof rests from first to last on the claimant who must prove his pleaded factual case on the balance of probabilities although an evidential burden rests on the defendant to prove any affirmative case he seeks to advance;
  - ii) Whilst the standard of proof in a civil case is always the balance of probabilities, the more serious the allegation, or the more serious the consequences of such an allegation being true, the more cogent must be the evidence if the civil standard of proof is to be discharged – see Re H (Minors) (Sexual Abuse: Standard of Proof) [1996] AC 563 *per* Lord Nicholls at 586, where he said:

"The balance of probabilities standard means that a court is satisfied that an event occurred if a court considers that on the evidence the occurrence of the event was more likely than not. In assessing the probabilities, the court will have in mind as a factor to whatever extent it is appropriate in the particular case that the more serious the allegation the less likely it is that the event occurred and hence the stronger should be the evidence before court concludes that the allegation is established on the balance of probabilities. Fraud is usually less likely than negligence...Built into the preponderance of probabilities standard is a generous degree of flexibility in respect of the seriousness of the allegation."
  - iii) The oral evidence of each of the witnesses of fact should be tested, wherever possible, against such contemporary documentation as there is, admitted and incontrovertible facts and inherent probabilities – see Onassis and Calogeropoulos v. Vergottis [1968] 2 Lloyd's Rep 403 at 407 and 413 – and their subsequent conduct – see Bailey v. Graham [2012] EWCA Civ 1469 *per* Sir Andrew Morritt CHC at [57];

- iv) In reaching conclusions on the issues that arise and on whether a party bearing either the legal or an evidential burden has discharged that burden, it is necessary to consider all of the relevant evidence and not simply such documentation as may be available – see Kogan v. Martin [2019] EWCA Civ 164 *per* Floyd LJ at [88]-[89]. There is however nothing either in of these authorities or the requirement to consider all of the evidence that prevents the evaluation of oral evidence using the techniques I have referred to in (iii) above;
- v) Given the passage of time since the occurrence of the events that are said to give rise to this claim and those that are said to be relevant to assessment of the credibility of the witnesses generally, and of the claimant and defendant in particular, use of the techniques I have referred to in (iii) above (to the extent that is possible in the circumstances) is all the more appropriate – see Gestmin SGPS SA v. Credit Suisse (UK) Limited [2013] EWHC 3560 (Comm) *per* Leggatt J (as he then was) at [15]-[22];
- vi) In assessing whether a witness is lying it is usual to test that proposition by five main tests being (1) consistency with what is agreed or clearly established by other evidence, (2) internal consistency, (3) consistency with previous statements of the witness, (4) the general credit of the witness and (5) his demeanour<sup>2</sup> – see Bailey v. Graham (ibid.) *per* Sir Andrew Morritt CHC at [47(1)]; but
- vii) Where it is concluded that a witness or party has lied in relation to a particular issue, it is necessary to remember that it does not necessarily follow from the fact that a witness has been shown to be dishonest in one respect that his evidence in all other respects is to be rejected. Experience suggests that people may give dishonest answers for a variety of reasons including an entirely misplaced wish to strengthen a true case that is perceived to be evidentially weak as opposed to a desire to advance a dishonestly conceived case in a dishonest manner. What such conduct will usually mean however is that the evidence of such a witness will have to be treated with great caution save where it is corroborated, either by a witness whose evidence is accepted or by the contents of contemporaneous documentation, or is against the witness's interests or is admitted.

## **The Factual Issues**

### *Introduction*

- 9. Before turning to the issues that matter it is necessary to introduce the principal personalities, the corporate entities that are material to the issues that arise and the factual framework against which the dispute has to be resolved.
- 10. Before turning to the detail, it is necessary to understand that this dispute arises from what Mr Stanley describes in his opening submissions as the “*revolutionary dislocation*” of what in the early 1990s were still the “... *Soviet Union's industrial and*

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<sup>2</sup> It was the potential importance of this factor to an assessment of the relative credibility of the claimant and defendant that led amongst other things to the joint application that the defendant's evidence be heard in person in Dubai.

*physical assets” and that what occurred was “... a million miles from the sort of organised business planning that is discussed in MBA seminars. It is one of improvisation in the face of chaos, of political and personal danger, and massive legal risk.”* I have borne in mind these points throughout my assessment set out below. That said, most of the factors that I have taken into consideration are not ones where a different conclusion can or should follow when these background matters are taken into account, as is more particularly explained below.

### *The Parties as Witnesses*

11. Although each party submits that the other’s evidence is of no value at all and should be disregarded, that does not really assist. In truth, as Mr Stanley submitted, there “... *is much at stake for both central protagonists. Both have powerful motives to lie. Neither can claim a record of unsullied accuracy and reliability.*” That is why what each alleges has to be approached in the manner I have identified earlier. I accept that just because the onus of proving the factual issues that matter rests exclusively on the claimant, it does not follow that where neither of the participants in those conversations can be relied on as implicitly truthful and accurate, then the party bearing the burden of proof fails. Emphatically, I have not approached the resolution of the issues that matter in that way. Rather it is necessary to approach each of the pathway issues that are relevant to an assessment of what actually happened, wherever possible by testing them against the contemporary documentation material to that issue, if any, admitted, incontrovertible or otherwise proven facts and inherent probabilities. It is the conclusions reached in relation to the pathway issues that will enable a conclusion to be reached on the ultimate issues that arise.
12. That said, the credibility of the claimant as a witness is likely to be very important as a factor to be considered in arriving at a conclusion on the issues that matter because, ultimately, his case depends on his uncorroborated evidence. It is for that reason that I make the detailed findings set out below for two distinct reasons – first in order to assist in arriving at a conclusion on the pathway issues relevant to my conclusion as to whether the claimant has proved his case concerning the oral declarations in 2005 and 2008 and secondly to enable me to make judgments concerning the degree to which I can safely rely on his oral evidence in relation to those pathway issues and concerning the alleged oral declarations. I have not had to focus to the same extent on the credibility of the defendant because he does not have to prove anything and in any event much of his case concerning the surrounding events is supported by such contemporary documentation as there is, admitted and incontrovertible facts and inherent probabilities.
13. There are five other factors of general importance to the factual findings I have to make that I should identify at this stage. Firstly, I fully accept the point made by Mr Stanley that it would be unsound to arrive at conclusions concerning factual allegations or the reliability of the parties as witnesses simply from their mis-recollection (or non-recollection) of dates. However, that is to miss the point that is made on behalf of the defendant concerning the claimant’s recollection of dates and that of some of the other witnesses he relies on. It would have been perfectly understandable for the claimant or such a witness to have said that he or she was unable to recollect the dates of events that are alleged to have taken place 20-25 years ago. However, that is not what the claimant did. As I explain, he pleaded with apparent clarity of recollection that certain events occurred on specific dates or within clear date ranges, which then changed to

different but also apparently clearly recalled dates or date ranges. When tested, this apparent clarity (in some cases at least) proved illusory. That is material to an assessment of the credibility that can be given to the claimant's evidence because what is relied on is not a lack of recollection but asserted recollection of dates or date ranges followed by a change of evidence concerning them that then could not be justified when tested in cross examination.

14. Secondly, I do not accept that credit is to be given to the claimant in my assessment of his evidence because he was as Mr Stanley put it "... *candidly to admit error and wrong*". It is not appropriate to make findings at this level of generality at this stage in the judgment. That suggestion has to be tested in relation to each issue where the point arose. Generally however, a reluctant willingness to admit error or that particular assertions were wrong when driven to make such concessions by careful and sustained cross examination does not lead to the conclusion that the evidence of the witness concerned can safely be relied on. The purpose of such cross examination is to demonstrate that the witness's evidence cannot safely be relied on and, where such cross examination is successful, that is its orthodox effect.
15. Thirdly, I do not accept that I can safely proceed on the basis that the claimant's account "... *has remained consistent for a decade...*". It has not, as I explain below.
16. Fourthly, I do not accept that it is material to an assessment of the claimant's evidence that the claimant was either an "*involuntary*" exile or that he speaks little English. His English was sufficiently good to enable him to give evidence in English and the substance of what he wished to say was clear at any rate to me. He could have sought the assistance of interpreters had he chosen to do so. Russian speakers who also spoke English were present at many of the meetings to which I refer below, others took place in Russian and it is idle to suppose that if the claimant had requested interpreting assistance it would not have been provided at any rate by professionals whom he was consulting professionally. That the claimant applied for and obtained political asylum in the UK is in my judgment entirely immaterial to an assessment of whether what he told me was the truth, other than when testing the inherent probability of certain of the allegations made in relation to some of the pathway issues I consider below.
17. Finally, whilst I have tried to approach the pathway issues that arise in chronological order, I have for the most part attempted to determine all the pathway issues before turning to my findings concerning the 2005 and 2008 declarations that form the exclusive factual basis of the claimant's claim in these proceedings. I have done so because the pathway events that are relevant to a conclusion concerning the declarations occur both before and after the declarations are alleged to have been made. That said, there are some events material to an assessment of whether the declarations were made as alleged that can only really be addressed following at least a provisional assessment of the position regarding the declarations. Where that is so, I have adopted that course.

#### *The Start of the Relationship between the Claimant and Defendant*

18. It is necessary to start with an outline of the corporate structure from which this dispute originates. The Menatep Group was a group of companies at the pinnacle of which was GML, an entity ultimately owned by individuals who the claimant characterises as Russian Oligarchs, of which the most prominent were Mr Mikhail Khodorkovsky and



Mr Platon Lebedev. Although how it came about is opaque, it is clear that the defendant had a relationship with Mr Khodorkovsky that was well established by the end of the 1980s. The claimant was unknown to Mr Khodorkovsky at that time.

19. In or around 1991, a joint venture was established between the defendant and Mr Khodorkovsky, acting on behalf of GML, using as its corporate vehicle an entity called CJSC Menatep-Lars (“Menatep-Lars”). Its business was to acquire and develop real estate in Russia. This entity was owned as to 30% by the defendant and as to the balance by the Menatep Group. The profits were divided in similar proportions. At least some of the property purchased by Menatep-Lars was financed by Bank Menatep, of which Mr Khodorkovsky was the founder and Board Chairman and which was a subsidiary of GML.
20. At or about the time Menatep-Lars was formed and started to trade, Mr Khodorkovsky also became the ultimate beneficial owner or controller or one of the owners and controllers of OAO Yukos Oil Company (“Yukos”), a Russian entity formally owned by the Russian state that controlled a number of oil fields within Russia. He did so by causing subsidiaries within the Menatep Group to acquire control of it. ZAO Rosprom (“Rosprom”) was a GML subsidiary. Internally it was divided into two departments – the Oil and Gas Department, which was concerned with the Yukos businesses, and the Mining and Chemical Department, which was the department or corporate division of relevance to this dispute.
21. The claimant and defendant first met in or around 1989, when each were first secretaries of District Committees of the Moscow Komsomol, the youth wing of the Communist Party of Soviet Union. A commercial relationship of convenience developed between them at a time when the claimant was able to assist the defendant to obtain planning and development approvals for projects being carried on by Menatep-Lars. As a result of this relationship, by December 1994, the claimant had become the Deputy General Director of Menatep-Lars – see T2/166/16-21. At that time, Mr Antoshin was Menatep-Lars’ chief accountant. His importance to the narrative of this case will become apparent later in this judgment. The claimant’s evidence was that he was paid commissions on transactions that he was involved with at a rate that was ultimately determined by the defendant – see T2/168/18-169/8. It is not suggested that the claimant ever had a beneficial interest in Menatep-Lars – see T2/168/25-169/1. Although the defendant asserted in his statement that he could not “...recall a single project that Mr Gorbachev brought to completion at “Lars” and because of this he didn’t earn any percentages on such deals...”, when it was suggested to him in cross examination that this was incorrect, his answer was

“I suppose I chose my words incorrectly. He did not receive any percentages from these deals. The percentages from these deals went to Mr Alimkhanov. Mr Alimkhanov suggested how much Gorbachev should be paid for the assistance that he provided. The only person who received percentages from all the deals was director general of Menatep-Lars called Mr Akhmet Alimkhanov. Gorbachev was his deputy, not my deputy.”

Although I reject the suggestion made on behalf of the claimant that the defendant’s original evidence was dishonest, and I accept the defendant’s oral evidence on this issue

to the extent that it matters, the error to which the defendant admitted illustrates why some care must be taken before accepting the uncorroborated evidence of the defendant at face value save where it is admitted or is against his interest.

22. It is next necessary to turn to the company that is the source of this dispute. Apatit was a Russian state-owned phosphate mining company, which owned mines from which apatite-nepheline ore was and is extracted, from which phosphate-based fertiliser products are produced. It was a substantial business but one that was poorly managed and owed substantial amounts to lenders and in particular to Bank Menatep, which wished to recover some of the sums that it had loaned.
23. In or about July 1994, a company called ZAO Volna (a subsidiary within the GML structure) acquired 20% of the shares in Apatit from the Russian State as part of a privatisation process. By 1995, ZAO Volna had acquired majority control of Apatit. Mr Platon Lebedev was a close business associate of Mr Khodorkovsky, a shareholder in GML and executive head of Yukos. Although the position is opaque, it would appear that Mr Lebedev was heavily involved in the acquisition by ZAO Volna of the shares in Apatit.
24. Following the acquisition of shares in Apatit by ZAO Volna, Rosprom's Mining and Chemical Department became responsible for the management of PSC Apatit and its businesses. In mid-1995, Mr Khodorkovsky proposed to the defendant that he should take over the management of Apatit and by 28 July 1995, he had done so, with the claimant being part of the defendant's management team. The discussion leading to the defendant taking over management of Apatit was exclusively between Mr Khodorkovsky and the defendant, with the defendant then deciding to involve the claimant – see T2/169/25-170/5.
25. There is an issue between the parties as to what if any agreement was entered into between the defendant and Mr Khodorkovsky concerning Apatit, and the defendant's role and remuneration for this role. That dispute must be viewed in context. The claimant accepts that all relevant discussions took place between the defendant and Mr Khodorkovsky – see T2/169/11-24. The claimant accepted that at the time the defendant was the deputy head of the investment department of Menatep Bank and the claimant was a senior manager of the investment department of Menatep Bank - see T2/180/6-18. In my judgment that accurately reflects the relative positions of each in the Menatep hierarchy at the time and why all relevant discussions took place between the defendant and Mr Khodorkovsky and did not involve the claimant. It is also why (as the claimant accepted) it was the defendant who asked the claimant to become involved and why (again as the claimant accepted) the claimant was reliant on what he was told by the defendant for his knowledge of what was discussed between the defendant and Mr Khodorkovsky – see T2/169/22-170/9.
26. The claimant's pleaded case is that:

“In or about July 1995, Mr Khodorkovsky agreed to pay Mr Guriev a fixed fee for managing Apatit during the aforementioned one-year trial period. At a subsequent meeting in or about July 1995, Mr Guriev agreed to pay Mr Gorbachev

30% of the fee that he (Mr Guriev) would ultimately receive from Mr Khodorkovsky (the "July 1995 Arrangement")..."

and that "... (i)n exchange for his 30% share of Mr Guriev's fee, Mr Gorbachev took over primary responsibility for managing and developing Apatit during the one-year trial period." The defendant's case is that there was no such arrangement or trial period and that I should reject the claimant's case on this issue.

27. The claimant's pleaded case was abandoned by him in his witness statement. His case at that stage was that he was told by the defendant that in or about July 1995, the defendant had agreed with Mr Khodorkovsky that if he and his management team (including the claimant) "... could have a go at managing Apatit for about 1 year as a trial period to understand the problems..." then "... we would be paid a fixed fee for this trial period, if we agreed to do it..." but that although "...I knew I would be entitled to a part of the fee, but not the size of the fee, and what my share would be, and how it would be calculated. It was also not discussed how the fixed fee would be split among the wider management team, if at all." By the time he came to give oral evidence on this issue, it was:

" Q. ... And at the time you assumed your first deputy role in 1995 you didn't have any agreement with Mr Guriev entitling you to any specific share of any payments Mr Guriev received, did you?

A. Not in 95, no.

Q. It was -- the first agreement you say you had with Mr Guriev in relation to a split was January 1996; is that right?

A. Yes, ... yes."

The defendant's case is that there was no agreement for a trial period or a fixed fee. He did not concede otherwise in his cross examination – see T13/79/14/25.

28. In light of the answers given by the claimant, I conclude that there was no agreement in 1995 entitling the claimant to any specific share of any payments Mr Guriev received. I also reject his evidence concerning a discussion about a fixed fee. Whilst the issues I am now considering are not substantively relevant, because the claimant does not make any claim arising out of his dealings with the defendant between 1990 and 2003, the issue is one that potentially affects the credibility of the claimant and defendant, with the defendant arguing that the claimant's approach to this issue has been both confused and contradictory.
29. In my judgment the assertion, then abandonment, of the claimant's pleaded case concerning the fixed fee and percentage share referred to above is entirely unsatisfactory and impacts adversely on his credibility as a witness. The claimant cannot credibly have had the recollection necessary to make the pleaded assertion set out above at the time the pleading was signed and served but then maintain that recollection to have changed without an explanation being offered as to how the pleaded assertions came to be made in the first place or what caused the change. No such

explanation was offered. That is a particularly stark omission given that the Particulars of Claim was amended.

30. It follows from this change that the pleaded assertion in paragraph 17 of the amended Particulars of Claim that “*(i)n furtherance of the July 1995 Arrangement, and in or about July 1995, Mr Gorbachev was appointed as the Deputy General Director of ZAO Apatit-Trade ("Apatit-Trade")...*” must also be rejected because there was no 30% share arrangement which is the premise of the paragraph. When this point was put to the claimant in cross examination it resulted in the following exchange in which, ultimately, he accepted this was correct:

“Q. Your appointment as deputy general director had nothing to do with an agreement by Mr Guriev to share a fee with you, did it?”

A. Yes, it's correct. Not when the deputy director, only when CEO.

Q. So the whole of this last sentence of paragraph 17 is wrong, isn't it?

A. And it's not correct with date and appointment, but 30% is correct ...

Q. Well, what part of that sentence are you suggesting is correct? Just focus on the words in your pleading.

A. Yes, the 30% is correct, was have deal, but date and when I was appointment CEO.

Q. Look at the sentence in paragraph 17 that I am asking you about, Mr Gorbachev: "In furtherance --

A. Last two, the date and deputy director, it is not correct, yes. But 30% was correct and it was made later.

Q. We are coming to that but I am just focusing on this allegation and I just suggest to you if you were trying to assist my Lord you would accept that that last sentence is incorrect?

A. Last sentence, yes, it's not correct.”

31. The claimant also asserts in paragraph 79 of his witness statement that:

“I understood from the early days of my involvement with the project that, if we were to continue managing Apatit after the trial period ended, the management team would receive 10% of shares and interest in Apatit, and could later discuss a further option to get more, to give us some incentive. According to Mr Guriev, this is what Mr Khodorkovsky promised him. I

specifically remember Mr Guriev telling me that “we” would get this in one of our conversations.”

He asserted that this discussion “...*happened early on during the trial period*”. This allegation is not pleaded anywhere in the amended Particulars of Claim.

32. It is inherently improbable that the claimant would recall the 10% arrangement alleged in his witness statement at the time that document was prepared but apparently not have any such recollection at the time the Particulars of Claim or its amendment were prepared. His answers in cross examination only served to emphasise these points. In relation to his case concerning the alleged 10% arrangement, he was asked:

“ Q. What do you mean by "early on during the trial period"?  
Do you mean a few weeks, a few months, what do you mean?

A. Yes, possibly a few weeks or months, yes, approximately.

Q. It's your witness statement, Mr Gorbachev. What are you saying?

A. Because I told already in the witness statement I don't remember exactly the time but it was shortly after, yes, start trial period time.

Q. So the trial period, have I understood this correctly, started after your initial assessment of Apatit on your --

A. It was not fixed deal or any agreement in writing. It was approximately estimated from our first visit to Apatit in July 1995, yes.

...

Q. So if this conversation about the 10% that you were referring to in paragraph 80 happened shortly after that, it was some time in the autumn of 1995; is that what you're remembering?

A. Yes, possibly, yes.

Q. Possibly -- I am asking what you remember, Mr Gorbachev.

A. I don't remember exactly. But I remember it was definitely some period of time after first visit.

Q. Before 1996?

A. I think so, yes.”

This evidence satisfied me at the time that the claimant had no genuine recollection of the conversation with which these exchanges were concerned. He was asked about the fact that these allegations were not pleaded:

“Q. So there is no pleaded case of a discussion in autumn 1995 about the 10%, is there?

A. Yes.

Q. Yes, there is a pleaded case? Where is that pleaded, Mr Gorbachev?

A. No, I mean it's not here.

Q. It is not here?

A. Yes.

Q. So are you suggesting that what you are telling us now is something that was just inadvertently omitted from the pleading?

A. No, it's my witness statement, it's my better recollection, yes.

Q. So the pleading's wrong?

A. Something maybe it is not there, yes. Not pleading wrong, but maybe it is not everything there.”

No attempt whatsoever was made to explain how it was that the claimant could credibly recall an issue of this sort when preparing his witness statement whilst not recalling it when he was preparing either the Particulars of Claim or its amendment. There is no obvious reason why such a 10% interest would have been transferred to the defendant to hold on behalf of others in or about July 1996 (when the claimant alleges that the asserted trial period came to an end). There is an additional circumstantial point that makes improbable the suggestion that acquiring shares in Apatit in 1995 – July 1996 represented a financial reward. As the claimant accepted, following his initial visit to Apatit in April 1995, it was in a “*pretty dire state*” as this exchange in the course of his cross examination shows:

“Q. It was burdened with debt?

A. Yes, it was financial problems, yes.

Q. It had high production expenses?

A. Yes.

Q. Low production volumes?

A. Yes.

Q. Lacked an effective sales and distribution network?

A. Yes.

Q. And there appeared to be a lot of corruption?

A. Yes.

Q. With criminal gangs extracting large amounts of money from Apatit as a result?

A. Yes.

Q. And so although you thought it could be turned around there were no guarantees, were there, that it could be turned around?

A. It was a possibility, it was like huge potential project, yes, but on this period of time it was a little difficult.

Q. There were no guarantees you were going to be able to make a success of it, were there?

A. Guarantee, not.

Q. There was a lot of risk that you might not be able to make a success of it?

A. Yes, it was risk.

Q. And owning shares in Apatit was not an obvious way of making money in 1995, was it?

A. Yes, not obvious, yes.”

As the claimant accepted, these problems or some of them continued or worsened into 1996 – see T3/31/23-32/2 and T3/72/7-73/5 – and ultimately profits were not made until after the devaluation of the Rouble in 1998. In those circumstances, it is inherently improbable that anyone would be willing to accept remuneration in the form of shares in a company in the condition that Apatit was in at the period within which the claimant alleges the 10% arrangement was made. In those circumstances, I reject the claimant’s case on this point and further conclude that in the circumstances and for the reasons I have summarised already, that is a further reason why in my judgment I must be very cautious before accepting the claimant’s evidence save where it is corroborated, admitted or contrary to his interest.

33. Following the acquisition by ZAO Volna of the shares in Apatit, in 1995, a new entity was formed (called ZAO Apatit Trade and referred to by the parties and below as “Apatit-Trade (Moscow)”) to carry on the commercial aspects of Apatit’s business. The claimant’s pleaded case then turns to what is described as being “*The January 1996 Arrangement*”, the relevant parts of which are as follows:

“21. At a meeting held in or about January 1996 (in the offices of the Menatep Group located on Kolpachny Lane in Moscow) Mr Guriev told Mr Gorbachev:

(1) That Mr Khodorkovsky had agreed in principle (and subject to the outcome of the one-year trial period) that Mr Guriev would have a 10% interest in “the fertiliser business” (meaning any

entities carrying on business in the fertiliser industry which formed part of the Menatep Group, including, at this stage, the Apatit Group); and

(2) That Mr Khodorkovsky had agreed that there may be an option for Mr Guriev to increase his interest in "the fertiliser business" from 10% to 50% in the future, depending upon the success of the business.

....

23. At the same meeting held in or about January 1996 (as referred to at paragraph 21 above) Mr Guriev and Mr Gorbachev had a discussion about the management of the business and agreed that Mr Gorbachev would become the General Director of Apatit-Trade...

...

24. At the same meeting held in or about January 1996 (as referred to at paragraphs 21 and 23 above) and in exchange for Mr Gorbachev's agreement to become General Director of Apatit-Trade, Mr Guriev agreed and/or represented that, subject to the outcome of the one-year trial period and the implementation of the arrangements that Mr Guriev had agreed with Mr Khodorovsky [sic] (as described in paragraph 21 above), Mr Gorbachev would have a 30% interest in each of:

(1) Mr Guriev's 10% interest in "the fertiliser business" (following the conclusion of the one-year trial period); and

(2) Any further interest which Mr Guriev might subsequently acquire in "the fertiliser business";"

34. The claimant's case is that in the course of these discussions it was agreed that "...my interest will be always from the beginning hold under the Guriev name." – see T2/140/13-15. When it was suggested that the effect of this arrangement was to make the claimant a joint albeit indirect owner of Apatit along with Mr Khodorkovsky, Mr Lebedev and Mr Brudno, the claimant's response was "I am not sure that its correct position". When asked to explain why, his response was "(b)ecause my interest is hold by Guriev, yes, under his name, under the structure what was together with other...". This inconsistency has never been explained – either the claimant was beneficially entitled to the shares he refers to and was, therefore, a joint owner or in truth he had no entitlement to the shares.
35. On 27 January 1996, the claimant was appointed as the General Director of Apatit Trade (Moscow). Later in 1996, a new entity called Apatit-Trade (Elista) was incorporated, apparently in order to obtain legitimate tax advantages for Apatit. Thereafter, the business of Apatit-Trade (Moscow) was transferred to Apatit-Trade (Elista), which became the main company carrying on the commercial activities of the Apatit business.



36. It is necessary now to consider the January 1996 Arrangements in some detail because those arrangements are said to be the origin of the 2005 declarations that are the true subject matter of this claim – see T3/48/22-25.
37. It is common ground that this alleged arrangement is not recorded anywhere in writing. The claimant’s explanation for this is that it would have been politically or legally risky for the claimant to be recorded in a document as having a beneficial interest in Apatit or fertiliser business if different. The underlying explanation for this is that on becoming the General Director he became the “*financial signatory*” of Apatit Trade and thus liable for its activities. This was not accepted by the defendant, not least because in 1996, Menatep was (on the claimant’s case) to be a joint owner of Apatit with the claimant and defendant and Menatep had a close relationship with the Government of the Russian Federation at that time. This led the claimant to say in the course of his oral evidence that:

“It was risk because it was strong suggestion from Mr Guriev that my shares, and later on when he agreed about Antoshin shares, will be hold on his name and he will be never on the any signed commercial or contract deal and it will be safety under his name until yes, we are operated by the commercial business and potentially have some risk, commercial risk and criminal risk as well. ...

It's -- not about proper attack. It was, yes, strong suggestion from Mr Guriev, yes, that it will be better keep my interest to my shares under his name because he will be never on the risk on any commercial deal. What we can see what's happened later on. ...

Because if something happened it is nothing under my name and nothing could be taken from me and it was the reason.”

I am very sceptical about the claimant’s evidence on this point because I consider it highly improbable that anyone and least of all the defendant would have considered there was a material risk of this sort in 1996 for the reasons referred to above.

38. The claimant’s case as to the alleged 1996 arrangement is ostensibly corroborated by his wife, whose evidence was that she had been told by the claimant that “... *their split was 70/30...*”. Her oral evidence was that she could remember the conversation but not the date other than it was before Autumn 1996 when she became pregnant with their first child. Her recollection of the conversation was however very limited. She said it was “... *nothing special...*” T7/146/4 – the conversation had been placed by Ms Smirnova as being in 1995 in her statement. That was no longer sustainable once the claimant had accepted there was no such conversation in that year. The conversation she referred to in paragraph 11 of her statement was the one she placed as being early on in her first pregnancy. In that conversation, she maintained that the claimant had said his share was 25%. Initially she accepted that paragraph 10 was concerned with 1995 and paragraph 11 with 1996 – see T7/144/13-144/16. When pressed with the fact that the claimant did not suggest that a 70/30 split had been agreed in 1995, she then said the conversation she alleged in paragraph 10 of her statement had not taken place in

1995, then that she did not remember when it had taken place. When she was pressed to acknowledge that there was no conversation her response was that she did not remember the date but she remembered the conversation.

39. The defendant invites me to reject Ms Smirnova's evidence in its entirety. The evidence I am now considering is of significant importance in relation to a pathway issue on which both parties focussed heavily.
40. I am bound to say I found the evidence in paragraphs 10 and 11 of Ms Smirnova's statement implausible. Firstly, she was apparently able to recall at least the year of the two alleged conversations until pressed with the fact the claimant accepted that the alleged 70/30 share agreement had not been made in 1995. Secondly, the paragraphs move seamlessly from apparently recording an agreement to a 70/30% share in paragraph 10 to recording a 25% entitlement in paragraph 11, without apparently ever asking about the reasons for this 5% reduction. This was not an error – her evidence was that “... *No, I don't ask him. I did not ask him. Because as I say, it is for me just - it is new thing, shares so I know his shares was enough.*”. This is not an answer to the point, particularly as later in her evidence she acknowledged her belief that “... *having shares anyway, this is like an opportunity to have money in these shares, I would say.*” That point received added significance from this exchange:

“Q. Yes. And he didn't need to be a shareholder, did he, to receive good money?”

A. We had a plan to build a house, so I assumed it is not enough for future life. And of course I would have to be ...independent.”

The last point was an allusion to the fact that Ms Smirnova had ceased her employment by this stage. These factors – that Ms Smirnova had given up her employment, that she and her husband wished to build a house and that she understood that shares represented wealth – all lead me to reject as implausible the notion that she would not have been interested in a reduction of 5% on the holding to which the claimant had supposedly become entitled. She did not strike me as someone who would not be interested in or discuss issues such as this with her husband. She acknowledged discussing in detail with her husband issues relevant to them as a family. It is implausible that she would have taken no interest in a gift of shares or an apparent unilateral reduction in the volume of shares after they had been apparently unconditionally gifted. Ms Smirnova is not an independent witness. She acknowledged the importance of the claimant's claims to her as well as the claimant – see T2/132/22-134/2. Whilst I do not consider it appropriate to reject her evidence in its totality as I was invited to do, I am not able to accept her evidence on this issue.

41. In May 1996, the claimant became the defendant's deputy in the Mining and Chemical Department of Rosprom, on 7 June 1996 the claimant and defendant were both appointed members of the board of directors of Apatit and on 2 September 1996, the claimant was appointed the General Director of Apatit-Trade (Elista), a role that he continued in until December 1998 after which he concentrated on the creation and implementation of a scheme to found a trade association to represent Russian companies involved in fertiliser production, which became known as the PhosAgro Association. It was the claimant's activities for and on behalf of Apatit-Trade (Elista)

that formed the basis of the criminal charges ultimately brought against him by the prosecuting authorities of the Russian Federation and which led to him fleeing from Russia and, ultimately, applying for and obtaining asylum in the United Kingdom.

42. The claimant's case is that during this period, his alleged beneficial interest was reduced from 30% to 25% of the defendant's interest to accommodate a 5% interest being given to Mr Antoshin. Whether this is so depends upon what view I come to concerning the First and Second Option Agreements to which I refer in more detail below. However, the claimant's case concerning his beneficial interest first of 30% then 25% cannot be correct if the Option Agreements were genuine documents that were intended to take effect in accordance with their terms. However, I am sceptical about this supposed reduction of the claimant's interest from 30% to 25%. Leaving to one side the conclusions I have reached concerning the evidence of Ms Smirnova on this issue, it is entirely unclear to me why a beneficial interest for Mr Antoshin should come exclusively (or indeed at all) from a beneficial interest previously awarded unconditionally to the claimant and for that matter why that issue was not at least discussed between the claimant and defendant. My doubts as whether there was any allocation of shares as alleged by the claimant are increased by the doubt the claimant expressed in the course of his cross examination referred to earlier as to him having becoming a joint albeit indirect owner of Apatit along with the defendant, Mr Khodorkovsky, Mr Lebedev and Mr Brudno and his interest being allegedly held for him for protective reasons notwithstanding that from 1995 – 2003 GML and those who owned it, or were senior managers employed by it, were protected. There was no reason for shares to be held secretly by the defendant on behalf of the claimant, nor any reason why the claimant rather than the defendant should contribute what on his case were his shares in order to enable Mr Antoshin to receive shares and it is inherently improbable (if the claimant is correct in saying that shares were held by the defendant secretly for him) that there would have been no discussion between the claimant and defendant about using the claimant's shares for that purpose. Whilst reaching a final conclusion on these issues must await my consideration of the evidence concerning the option agreements referred to below, these factors support the conclusion that there was no arrangement to the effect alleged by the claimant.
43. In the period 1996-8, the defendant maintains that he and his team developed the Apatit business by acquiring factories that manufactured fertilisers. This strategy included the Menatep Group acquiring in 1997 a controlling stake in VMU, which was then managed by the Mining and Chemical department at Rosprom. In 1999, the Menatep Group formed another entity called Balakovskie Mineralnye Udobrenia ("BMU") for the purpose of acquiring certain mineral fertiliser production facilities from its insolvent operator. The PhosAgro Association was launched on or about 11 June 1999. The claimant was appointed as its Vice President and Executive Director. The members of the PhosAgro Association included Apatit Group, VMU and BMU.

*Acquisition by Phosco of 50% of PhosAgro*

44. The defendant's case as set out in his witness statement concerning the acquisition of an interest by him in Apatit starts in the autumn of 1995, when Mr Khodorkovsky offered him a 50% interest for US\$4 million. The claimant concedes that such an offer was made and I find that it was. The defendant's evidence was that he refused the offer because he saw no real possibility of making Apatit profitable at that stage and he had

no desire to become a shareholder in a loss-making enterprise. On the defendant's case this changed only in 1998, when the Rouble was heavily devalued, debts owed to state-owned enterprises were restructured and as a result Apatit became profitable. That this was so was not disputed by the claimant. It was this context that led to the defendant acquiring 50% of GML's shares in Apatit. Although it was suggested to the defendant that the offer to sell him 50% of the shares in Apatit remained open throughout the period between 1995 and 1999, the key point is (and I find) that at no stage during that period did the defendant consider it remotely appropriate to proceed. He said, and I accept, that to decide otherwise would have been commercially irrational because as he explained in his cross examination:

“A. ... by investing my own money, I would be stuck in this project, but knowing the whole situation, knowing the story and knowing there will be no profit there for the foreseeable future, given the number of debts in Apatit and the corruption and the horror on the management level. Of course, this very general "offer" of being a 50/50 owner and investing \$50 million for that time, investing in a dead corpse, as it were, it wasn't very attractive at all. It was easier for me to earn, keep earning 10% from my existing enterprises. That was a pure business decision that was normal at the time.”

As he repeated, whilst GML may have been willing to sell prior to 1999, he was not willing to buy – “... *I didn't want to do that, for the reasons I gave you above*” – see T13/81/21-22. I reject therefore the claimant's characterisation of this period as being one that was “... *far from his denial in his Defence and witness statement that [the defendant] had any interest or promise from Khodorkovsky that he could buy the shares before 1999.*” The offer had been made and declined and was of no interest to the defendant before the events in Russia in 1998. In my judgment this is inherently probable given the financial and commercial situation in which Apatit found itself. I conclude that the defendant had no intention at all of buying an interest in Apatit until the financial crisis occurred in 1998 and the financial position of Apatit changed as a result and expressed no interest in doing so until mid-1999, when the events I refer to below occurred. Although it was suggested by the claimant that the acquisition in the end was not funded from funds belonging beneficially to the defendant, I do not consider that assists. Even if that was so, it would mean that Apatit (which was already loss-making and saddled with debt) would become saddled with more debt and so would be even less profitable than it already was. It follows that I reject the claimant's submission that the First SPA (referred to in more detail below) by which the defendant acquired 50% of PhosAgro “... *formalised a pre-existing agreement by which Khodorkovsky had offered to sell 50% of the fertiliser business to Guriev...*”. That being so, I reject the claimant's submission that “... *the fact that he may not have held a formal interest does not matter.*”.

45. This conclusion renders it inherently improbable that the defendant would have been gifting 30% then 25% of an interest in Apatit to the claimant at a time when he did not have any such interest and had no intention of acquiring such an interest. It also fatally undermines the notion that the defendant had been given 10% interest at some earlier stage. If that had been so, there would not have been any discussion of a sale of 50% to

the defendant by GML and what would have been discussed would have been a sale of 40% to the defendant. As I explain below, that is not what happened.

46. The documentation that is available suggests that it was in 1999 that it was first agreed in principle between GML (or at any rate Rosprom apparently acting on its behalf) and the defendant that there would be a joint venture in relation to the fertilisers and phosphate mining businesses between the defendant on the one hand and the Menatep Group on the other. This is apparently evidenced by the minutes of a meeting dated 3 July 1999 attended by Messrs Khodorkovsky and Lebedev amongst others. It records at paragraph 1 that it was resolved:

“1.1. To create, together with A.G. Guriev, one whole holding for mining and chemical complex (Apatit, VMU, and other plants, excluding trading companies), 50% of this holding shall be taken for GML

1.2. A.D. Golubovich to submit an opinion about the most preferred jurisdiction for the above- mentioned holding for the best quotation of its stock in the western market.

1.3. V.G. Prokofiev to work out a scheme for creating this holding, taking account of the possibility to exclude a potential complication in the current activity of the mining and chemical complex.”

This provides some limited support for the defendant’s case concerning when and why he acquired his interest in Apatit.

47. It is not in dispute and is actively part of the defendant’s case that he was the ultimate beneficial owner of a BVI registered entity called Phosco Industries Limited (“Phosco”).
48. There is what purport to be the Minutes of a Phosco Board Meeting apparently held on 20 September 2000 in Cyprus. The directors identified as being present are Mrs Eleni Chrysanthou (a Cypriot lawyer who was heavily involved in the formation and administration of various offshore structures for the parties) and Mr Constantinos Christoforou. The main business of the meeting was apparently to resolve:

“To enter into transaction with 'Chemicals and Mining Universal Limited' on purchase of the 50% Stock of Shares of 'Anvilco Holdings Inc.' and further management of the whole business of 'Anvilco Holdings Inc.' on the terms and conditions of the listed further agreements and documents;”

Chemicals and Mining Universal Limited (“CMU”) was an Isle of Man registered company, ultimately owned and controlled by GML that held the shares in Anvilco Holdings Inc (“Anvilco”), a Bahamian registered company that in turn held the relevant shares in various phosphate fertiliser businesses ultimately then controlled by GML including Apatit, VMU and BMU.

49. The joint venture to which the Rosprom and Phosco minutes referred to above relate was apparently carried into effect by a share purchase and sale agreement dated 31 October 2000 (“the First SPA”), under which Phosco (the entity controlled by the defendant) ostensibly purchased 50% of the shares in Anvilco held by CMU for a price of US\$65m payable in cash within 3 days after 31 October 2000. The purchase price is said to have been financed by a loan from Hellenic Bank Limited dated 15 November 2000 (that is long after the date for payment under the share sale agreement). The signatures on the loan agreement are witnessed by Mrs Chrysanthou.
50. The defendant’s case is that the effect of these arrangements was that he became the ultimate beneficial owner of 50% of the various phosphate fertiliser businesses hitherto ultimately beneficially owned by GML including Apatit Group, VMU and BMU, with the remaining 50% being owned ultimately by GML or the ultimate beneficial owners of that entity. This is consistent with the terms of a declaration provided by each of the individuals concerned to the Banking Corporation of Geneva dated 7 March 2001.
51. The claimant submits that the effect of these arrangements was that the defendant “... *risked not a kopek of his own money to acquire PhosAgro—each SPA was paid for out of the business, leaving (at the end of the day) a deficit in Phosco...*”, apparently for the purposes of damaging the standing or credibility of the defendant. I assume that the reference to Phosco (being the entity wholly controlled by the defendant) is a mistake for PhosAgro. If it is not, the point the claimant makes is obviously without substance. The real point however is that this funding argument goes nowhere for present purposes. The claimant does not dispute that GML agreed to sell 50% of its ultimate beneficial interest in the various companies forming the fertiliser business for US\$65 million using this mechanism.
52. The claimant maintains that in entering into the First SPA the defendant was not doing so exclusively for his own benefit but was representing an undefined management group that however included both the claimant and defendant. As to that, even if the claimant is correct to suggest that the defendant was able to acquire the businesses concerned without personal cost, that does not support the suggestion that the sale was to an undefined management group represented by the defendant. I reject that suggestion because it is unsupported by the documentation that exists in relation to the sale, to which I have referred above. If that had been the case, there would have been no logic in structuring the acquisition as it was structured, using Phosco – an offshore entity controlled exclusively by the defendant – and it is inherently improbable that the documents would have been in the form they are in had GML or any of its ultimate shareholders or the lawyers who acted on its or their behalf understood the transaction in these terms. I also reject that contention because (as explained below) what occurred subsequently is not consistent with there being any such scheme.
53. The claimant sought to bolster this part of his case by adducing evidence designed to establish how his standing in relation to the “fertiliser business” was understood by others at the time. In my judgment this evidence does not assist simply because however the claimant held himself out or was held out or perceived at the time says nothing about what actual arrangements were made and when. I accept that the material is circumstantial evidence that is consistent with the claimant having an interest but that is to put its effect at its highest.

54. The claimant placed some reliance on the testimony of Ms Brizitskaya as demonstrating his relative importance within the business. She was employed between 1997 and 2013 by Apatit Fertilizers, and later PhosAgro Marketing and PhosAgro AG. She described her role as being “... *involved issuing invoices for customers and a number of other functions, such as organising meetings, contract negotiations, interpreting and organising business trips ...*”. She said her reporting line was to Mr Filimonov who in turn reported to the claimant. From 1998, she described her role as being to arrange events and receptions, organise catering, liaising with trading partners, providing visa support and speaking to directors and managers of the factories using her Russian, French Italian and English linguistic skills. I accept this evidence. I also accept her evidence that to her the relationship between the claimant and defendant appeared a close one, because that is not in dispute at any rate at all times down to the time when the claimant left Russia, which is the period Ms Brizitskaya can speak to, or for that matter down to 2008, when as I explain below, the hitherto close personal relationship between the claimant and defendant broke down.
55. Ms Brizitskaya refers to a conversation which the claimant relies on as supporting his case on the issue I am now considering. Her written evidence on this issue was:

“I had various other encounters which offered insight into the ownership of the business as well. At the celebration for the anniversary of Apatit in November 1999 referred to above, I remember referring to Mr Gorbachev as a boss or a manager and was corrected by Ms Irina Borisovna Strizhova, who was a commercial director of the company Balakovskye Mineralnye Udobreniya, Saratov oblast, at the time. She said Mr Gorbachev was better described as a ‘master’ of the company. ‘Top boss’ or ‘manager’ was not high enough to describe him. I took this as further confirmation that Mr Gorbachev was one of the owners of the business. I also recall that Mr Guriev, Mr Gorbachev and Mr Antoshin stood together during the church ceremony for Mr Lymar’s funeral. This was another occasion when I was told ‘our masters’ were present by Mr Vladimir Sergeevich Sushev, the director of science from the research institute, OAO NIUIF, since 1998. The funeral was very religious, and I expressed my surprise at this to him and I recall him responding to say words along the lines of “don’t be surprised it is religious as our masters are here”; they were there and wanted it to be religious. He also told me not to ask any additional questions.

Throughout my employment, I remained of the view that there were three owners of the business, Mr Guriev, Mr Gorbachev, and Mr Antoshin. As well as the rumours and conversations with Mr Yushkov and Ms Strizhova, you could see that Mr Guriev, Mr Gorbachev and Mr Antoshin were owners from their behaviour, that was part of the post- soviet way. The way a person behaved, talked, walked, and shook hands for example would all demonstrate they were in charge. Mr Guriev and Gorbachev in particular also had offices, drivers and security to reflect their status.

...

I understood Mr Guriev, Mr Gorbachev, and Mr Antoshin bought the business from Mr Khodorkovsky in around 1999. Mr Khodorkovsky was getting rid of non-core businesses to focus on the oil business and ownership went to our masters. I came to know about this at a meeting at the end of May 2000 with US partners, IMC Global. IMC Global's top management, Mr Gorbachev, Mr Filimonov and Mr Stanislav Pomytkin attended the meeting. Mr Guriev did not attend. At the meeting, Mr Gorbachev said we had bought the business from Mr Khodorkovsky and said something along the lines of "we are our own masters". I understood he was referring to himself, Mr Guriev and Mr Antoshin. Mr Filimonov was a good friend of Mr Gorbachev but not as important."

56. It goes without saying that Ms Brizitskaya had no direct knowledge of the actual arrangements because she was not party to them or present at any of the meetings or discussions at which they were allegedly made. Her evidence is therefore largely impressionistic. It may well have suited both the claimant and the defendant at the time to create an impression as to the position. That does not lead necessarily to the conclusion that the impression thereby created reflected the true position. The evidence depended on Ms Brizitskaya recalling accurately conversations that took place nearly 25 years ago. The suggestion that anyone had bought the fertiliser business from GML in May 2000 was wrong on any view because the first SPA was entered into on 31 October 2000. When it was put to her that the dates she had given must be incorrect, she did not accept she might be mistaken as to the date. Instead she denied that she was mistaken in vehement terms "... *I am not mistaken about the dates. That was the intention and this is my understanding...*". That said, I bear in mind that honest witnesses sometimes given evidence in vehement terms that is wrong but which they are honestly mis-recalling, particularly in relation to the date of events that are said to have occurred many years earlier. For that reason I leave the date point to one side in assessing this evidence. However, even if the date point is ignored, what is attributed to the claimant by Ms Brizitskaya is wrong in fact because even after the First SPA, GML remained the ultimate owner of 50% of the business. When this point was put to Ms Brizitskaya in cross examination, her response was:

"A. Well, in that case what he meant is that we shall put a line, you know, between us and Mr Khodorkovsky, put a kind of border between us who by now was concentrating solely on his oil projects."

Her reference to "Masters" was apparently not understood by the claimant and in any event in her oral evidence she rather backed off this point, particularly when it was pointed out the claimant did not understand the use of that word in the context in which she uses it, and in the end said of her evidence that the word was used, that it was "(s)omething like that translated in Russian, that was the meaning, that was the essence." However, that concession deprived her evidence of much of the sense that she was seeking to give it by the use of that word in her original written evidence. It is also the case that the claimant does not suggest Mr Antoshin had an equal interest to



his, yet this is the impression that Ms Brizitskaya was apparently left with at any rate at one stage.

57. I do not reject Ms Brizitskaya's evidence on the basis that it was dishonestly given in an attempt to mislead me. However, I reject it as unreliable for the reasons that I have given. It was substantively inconsistent with the objective facts, could not be correct in relation to the dates that she gave, which she insisted were correct, and in any event was impressionistic and so forms an uncertain basis for reaching conclusions on the issues I have to determine, particularly so long after the event. In my judgment to the extent that it is necessary to do so, it is safer to reach conclusions by reference to what contemporaneous written material is available and by the consistency of what is alleged with what objectively happened after the events I am currently concerned with.
58. The claimant relied on similar evidence from Mr Sereda, Mr Leonov, Mr Gololobov and Mr Leonovich. In my judgment this evidence is of no more assistance to the issues I have to decide than is that of Ms Brizitskaya for the same reasons – it is both circumstantial and impressionistic. So far example, Mr Sereda's evidence on this was that "...I knew that Mr Guriev and Mr Gorbachev were, they were two who were owners of the PhosAgro, because all the decision been made by both people." He added that he made no enquiries as to who owned Phosco – see T7/28/6-22. In any event he did not start working for PhosAgro until 1 April 2003 – see T7/29/1 – and possibly on a full-time basis until the end of June 2003 – see T7/31/5- 32/9 – and so long after the period in the chronology I am considering. His impression stemmed from that time and no earlier. The value of his evidence on this issue was encapsulated by the following exchange in the course of his cross examination:

"Q. Yes. So I am just -- first of all, I was just trying to clarify, when you say in paragraph 35:

"It was at this time that I formed a concrete understanding ..."

As to the ownership of Phosco, you are talking about the time you joined PhosAgro in spring 2003; is that right?

A. That's correct.

Q. And is the concrete understanding that you say you formed at that time, what you describe if we go back in your statement to paragraph 31 {D1.1/27/5}: the belief that Mr Guriev and Mr Gorbachev "co-owned PhosAgro's 50% share of the business 50/50"? Is that the concrete understanding you're referring to?

A. Yes, that's correct.

Q. Was that what Mr Gorbachev told you?

A. No, it's because how Mr Guriev treated Mr Gorbachev, addressed to him during the meetings with the management team.

Q. So it was your perception based on watching the two of them interact together; is that what you're describing?

A. That's correct, it's my -- it was my understanding.

Q. But not based on anything you had been told, just your perception of seeing the two individuals working together?

A. No. I never discussed the co-owners of the PhosAgro, neither with Gorbachev nor with Guriev.”

How the defendant chose to treat the claimant in the presence of others, I repeat, says nothing either actually or inferentially about the substance of what the claimant alleges had been agreed in 1996. Similar considerations apply to the evidence of Mr Leonov, Mr Gololobov and Mr Leonovich. In my judgment it provides very little assistance in resolving the issues that arise.

59. It is necessary that I mention Mr Fedorov at this point. His evidence relevant to the matters I am now considering was that he considered the claimant to be the true leader of the business as early as 1996. Regrettably I must reject Mr Fedorov’s evidence in its entirety. Putting to one side the manner in which he chose to conduct himself in the course of his evidence when faced with questions from Ms Davies that he found difficult (which conduct was unacceptable when it occurred and continued after I had warned him about it), the manner in which he chose to give his evidence satisfied me that the defendant’s description of him as “... *a very cynical, rude and at times a very irascible man...*” was correct. He evaded answering at least some questions and gave untruthful answers to others, he disclosed a significant personal animus towards the defendant – he variously described his role in this litigation as being “... *what I am interested in is for my Lord to understand the details and to punish the criminals as I consider them. First they rob one company, then another and today they are buying castles and chateaus costing billions of dollars, whereas people back in Kirovsk don't have enough to eat...*” – see T9/142/4-11; he referred to the defendant as “... *I expect that life and God, if not life itself, my Lord, will punish Mr Guriev, will punish him, will expropriate his 25 bedroom castle...*” – see T9/156/11/13 – that the defendant “... *was part of the criminal group...Allow me to explain. This case was to do with the imprisonment of Mr Khodorkovsky and Lebedev. There were links of one chain and Mr Guriev was a member of this criminal group and he put it in his statement. You believe him, don't you, because he's your client, your defendant...*” – see T9/131/6-2 – that the defendant “... *was a thief...*” – see T10/120/4-8 – and that “... *he is a criminal...*” – see T10/125/9-16.
60. Aside from his unqualified animus towards the defendant, Mr Fedorov obviously considered that he had something to gain from the litigation – he described himself as being “...*the victim here. I bore a loss...*” – see T10/7/7/18. He indicated that he was expecting payment (including the repayment of a loan previously made by his wife to the claimant) in the event the claimant succeeds in his claim – see T9/156 *passim*, but when asked to be specific his response was “... *I don't think this is a decision or a question for the court or for you to ask me. It is a personal, personal matter and it's not the kind of money that should be of interest to the High Court. I think there are a lot more important questions to deal with.*” His apparent concern was that he had been

promised a 1% interest in Apatit which he considered the defendant had not honoured. Ultimately he was asked “(d) *o you think that Mr Gorbachev will give you the compensation that you say you would like to receive if he succeeds in this claim?*” to which the response was “*Well let him win first*” – see T10/8/6-9. Unsurprisingly, in his closing submissions, Mr Stanley characterised Mr Fedorov’s evidence as to his knowledge of the claimant’s interest in PhosAgro as “*confused and inconsistent*” – see paragraph 176 of the claimant’s closing submissions. I do not intend to further lengthen what promises to be a lengthy judgment by further consideration of Mr Fedorov. I accept the submissions made by the defendant at paragraph 63 of his closing submissions. Mr Fedorov is a witness whose evidence is unreliable from first to last and must be rejected in its entirety.

### *The First Option Agreement*

61. The next issue of substance that I need to mention concerns what is described in these proceedings and this judgment as the “*First Option Agreement*”. The First Option Agreement is apparently dated 14 July 2001 and made between the defendant (described as the “*Transferring Party*”), the claimant (described as the “*Second Receiving Party*”) and Mr Antoshin (described as the “*First Receiving Party*”). It was governed by English law – see clause 7.
62. The defendant’s case is that the First Option Agreement was the means by which the defendant granted share options to each of the claimant and Mr Antoshin and is accurately dated. The claimant’s case is that the First Option Agreement has been backdated, that he signed it in December 2003 and that it was “... *the first step in a process, which was necessary preparation for the IPO...*” of a corporate entity which held the fertiliser business or to which it was to be transferred. If the defendant is correct on this point, the First Option Agreement pre-dated by years Mr Sereda’s involvement with PhosAgro. If the First Option Agreement is a genuine document that was intended by the parties to take effect in accordance with its terms then it is entirely inconsistent with the claimant’s case that in 1996 he was given a 30% interest in the defendant’s interest in what became PhosAgro that was later reduced to 25%.
63. The defendant’s evidence concerning this arrangement in summary was that he decided to emulate the practice of GML by giving both the claimant and Mr Antoshin the opportunity to each acquire 5% in Phosco. His evidence was that there was no discussion as to the terms, that he intended to extend the same arrangement to Mr Fedorov (then the general director of PhosAgro) if he remained in post and to Mr Lymar but for his untimely death. His evidence was that he delegated the task of drafting the document to Mr Tarakhnenko who delegated the drafting task to Mr Mariashin or Mr Mezentsev and that the mechanism was what had been recommended to him by Mr Tarakhnenko. His evidence is that he recalled signing the First Option Agreement in “... *around the summer 2001...*”.
64. By clause 1 of the First Option Agreement, it was provided that “... *for a consideration of USD 1 (one), which is paid by the Receiving Parties, [the Transferring Party] guarantees to the Receiving Parties the option (hereinafter “Option”) for them to acquire 10% of the total number of Company shares (hereinafter “Company Shares”) for disposal, with transfer of title to the Company Shares (hereinafter “Transfer”) to the Receiving Parties in the proportion of 5% each (hereinafter “Participation*

*Interest") at the terms provided by this Agreement."* The obligation to transfer the shares the subject of the option was to be triggered by a "Transfer Demand" by one of the Receiving Parties. However by clause 2(d) a Transfer Demand could be made by no later than 31 December 2003. In default of a Transfer Demand having been made by that date "... the Transferring Party shall no longer be bound by the Transfer obligations undertaken by this Agreement." The document is signed by all three parties and the signatures of the parties are (apparently) collectively witnessed by Messrs Volkov and Mariashin.

65. The claimant's case is that the First Option Agreement has been backdated, that he signed it in December 2003 and that it was "... the first step in a process, which was necessary preparation for the IPO, by which a paper trail was created to explain how he and Antoshin had acquired their interests in PhosAgro..." and that it "... was not intended to represent the full extent of Gorbachev's interest in PhosAgro." The "IPO" referred to in the quotation (which is from Mr Stanley's opening submissions) was a possible initial public offering of the business, at that point jointly owned by Phosco and CMU. The claimant's case is that the First Option Agreement was in at least these respects a sham – that is it is a document which was intended by the parties thereto to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations (if any) which the parties intend to create – see Snook v. London and West Riding Investments Limited [1967] 2 QB 786 *per* Diplock LJ (as he then was) at 802D. As Diplock LJ emphasised, "... for acts or documents to be a "sham," ... all the parties thereto must have a common intention that the acts or documents are not to create the legal rights and obligations which they give the appearance of creating." It was not suggested I should understand the claimant's use of the word "sham" or the use of that word on his behalf as meaning anything else.
66. There were two provisions of the First Option Agreement that appear out of the ordinary. Firstly, by clause 3 it was provided that:

"3. Value and Method of settlement

The value of each of the Participation Interests will be further agreed by the Contracting Parties, but in any case must not be less than the nominal value and must be determined on a reasonable basis, on the principles of mutual partnership (hereinafter "Value of the Interest").

The payment method, terms and dates will be further agreed by the Contracting Parties."

This provision is out of the ordinary because it contemplates that each of the Receiving Parties was expected to pay for the shares that ostensibly they were entitled to demand transfer of. The clause is entirely silent as to what sum was to be paid for the shares or how any payment was to be calculated other than the sum payable had to be a reasonable sum calculated "... on the principles of mutual partnership." It was not on the face of it an entitlement to demand transfer of the shares for no or a discounted value or for a fixed price. It is this that makes the arrangement unusual in an employment reward context or at any rate a UK employment context. The other provision that was unusual

was clause 6, which provided that there was to be only one copy of the First Option Agreement and it was to be held in a safe deposit box in any jurisdiction agreed between the parties and accessed only in the presence of all three parties. There is no evidence of this document having been dealt with in this manner before the events in 2005 to which I refer below.

67. The document treats both Mr Antoshin and the claimant similarly and apparently created a right to acquire 5% of Phosco that in turn owned 50% of Anvilco, which ultimately owned the fertiliser business as it then existed. The claimant accepted that he understood that to be the effect of the document at the time he signed it – see T4/18/16-18. That was so whether the document was signed on or about the date in bears or in December 2003 as the claimant alleges. However, that does not accord with what the claimant maintains was the agreement or understanding between him and the defendant arrived at in 1996. The claimant’s explanation for this was that “... *I would receive my shares at a later stage, not immediately from the first step*” – see T5/19/12-14. As he added, this arrangement was necessary because “... *it's difficult to explain when I have from the beginning nothing and -- from the first step I have 25% and specially if it's option agreement.*” None of this makes sense. Phosco was a privately held company. The defendant was the ultimate beneficial owner of the company and he was fully entitled to deal with those assets as he chose. If the position was as the claimant alleged there is no obvious reason why the defendant and those who advised him would have drawn the document as this was drawn (if as the defendant alleges the document was drawn up without consulting either Mr Antoshin or the claimant) or, if the document was the subject of discussion between at least the claimant and defendant, why the claimant would not have asked for the document to reflect what he claims to have been the true understanding between the parties. None of the legal or political difficulties that afflicted GML in 2003 were apparent in 2001 so the point I made earlier concerning there being no need to conceal the true arrangements applies as much in 2001 as it did in 1996. If (as the claimant alleges) the agreement was signed in December 2003, then those political and legal issues had manifested themselves. However, as I explain below, precisely because that was so, there had ceased to be any question of an IPO taking place.
68. The defendant’s case as to the genesis of the First Option Agreement is corroborated by Mr Volkov. Mr Volkov trained with Arthur Andersen first in St Petersburg then in Moscow. He and a colleague at Arthur Andersen joined GML at about the same time. He joined Bank Menatep as head of the development department on 26 January 2001 and officially remained in that position until 15 January 2003. He was appointed by CMU as a director of Anvilco in 2001. He was the Chief Executive Officer of PhosAgro between 2005 and 2013 where he was heavily and directly involved in what became the effective IPO in 2011. He is currently the owner and Chief Executive Officer of JSC Pikalevskaya Soda. Mr Sereda alleged that this compromised his independence as a witness because that company was reliant on PhosAgro. However, he was forced to acknowledge that the company was and is in fact a key customer of PhosAgro – see T7/69/1-3. Mr Volkov accepted that as a result of the IPO he had made millions by having been a shareholder in PhosAgro – see T17/130/21-131/8. The same point concerning the continuing dependence of JSC Pikalevskaya Soda on PhosAgro advanced but abandoned by Mr Sereda was put to Mr Volkov and was rejected by him on grounds that satisfied me there was no continuing dependence of JSC Pikalevskaya Soda on PhosAgro. I conclude that Mr Volkov is and was at all material times since the

commencement of these proceedings, independent of the claimant and defendant. I am satisfied that Mr Volkov was a witness whose evidence I should accept.

69. Mr Volkov describes his role during the period between January 2001 and January 2003 as being involved in running the Mineral Group (that is the part of the business concerned with Apatit and its various associated entities and businesses) “... *mainly focussed on analysing any inefficiencies in the business, on deciding how to best structure the business, and doing the preliminary work to prepare the Mineral Group for an IPO.*” He describes how the defendant “... *used me to challenge people within the business to make it as efficient as possible. It was my role to raise uncomfortable questions with the managers responsible for different divisions within the business. This included Mr Gorbachev.*” He understood the claimant’s role as being “... *a high-level manager and supervisor of the traders, but I did not understand him to be involved in other operational issues, such as the production side of the business.*” I conclude from this evidence that Mr Volkov was well positioned to understand and observe the dynamics between the key individuals from January 2001. He describes the defendant as being “... *the key decision-maker in all aspects of the Mineral Group businesses. He had the relationship with Mr Lebedev, who was the main person with responsibility for the business from the Group Menatep side. Mr Guriev was the individual with overall responsibility and everyone reported to him. He led all the management meetings.*” I accept that evidence as entirely consistent with the evidence considered and my findings set out so far.

70. In relation to the claimant and Mr Antoshin, he describes their roles as being:

“... key members of Mr Guriev’s team ... It seemed to me at the time that Mr Antoshin was more important than Mr Gorbachev within the business, as he handled all financial matters and so was closely involved with the functioning of the business. On the other hand, Mr Gorbachev only handled the sales side of the business, although I quickly recognised that he was not really involved in the detail of the sales process itself, rather he appeared to manage the relationships with senior contacts at various clients. Mr Antoshin was very trusted by Mr Guriev, and I personally saw him as his number 2. The relationship between Mr Antoshin and Mr Gorbachev at this point was not good. They were colleagues, but certainly not friends. Mr Gorbachev spent a lot of time with Mr Guriev during these years, going on vacation with him and trying to get as close to him as possible. It was common in the business to go on holiday together at that point (I went a couple of times) with Mr Guriev. However, Mr Antoshin did not go, or only very seldomly went, on such joint holidays. In my eyes, Mr Antoshin was a completely self-sufficient individual and was not trying to improve his position in the group by making friends with people.”

I accept this evidence. I have no reason to think that Mr Volkov had any reason to mislead me. His evidence was fair and objective. His summary of the role of the claimant during this period struck me as probably accurate. He said of the claimant that:

“I had a good relationship with Mr Gorbachev who was popular and well-liked within the business. He was outgoing and sociable and formed many good relationships with other individuals who were involved with the Mineral Group, hence why he was involved with sales relationships. This was his main skill. There is a phrase in Russian called the “wedding general”, which describes a person who can behave in high society as if they are powerful and influential, but in fact they are neither of those things. This, to me, describes Mr Gorbachev. My view of Mr Guriev at that time was that he was an introvert and he used Mr Gorbachev as his ‘front man’, giving him instructions on how to behave and what to tell people. Mr Guriev, unlike Mr Gorbachev, did not like making speeches or attending big formal dinners, but on occasions when an important speech needed to be made on behalf of the business, it was Mr Guriev who would work with the speech writers to get the messages correct.”

71. In relation to the issue I am now considering, Mr Volkov’s evidence was that between 2001 and 2003 he was concerned with preparing the Mineral Group for a potential IPO. Critically for present purposes, his evidence was that “...*(u)ntil the middle of the 2002 I had been discussing the potential IPO of the Mineral Group only with Platon Lebedev and nobody from the team of Mr Guriev was involved in the process at that stage as it was very preliminary discussions.*” Mr Volkov’s evidence was that it was only at the end of 2002 that the defendant first suggested involving the claimant. If that is so, and if the First Option Agreement was signed on or about the date it bears, then it is inherently improbable that the reason for the claimant’s entitlement being limited to 5% was as described by the claimant, even if that reason made any legal or commercial sense which, with respect, it does not as I expand upon below.
72. In relation to the First Option Agreement, Mr Volkov’s written evidence was that he discussed the concept in general terms with the defendant and Mr Mariashin and that:

“As the document involved PhosCo, I was involved in reviewing drafts of the agreement, being prepared by Mr Mezentsev and Mr Mariashin. I understood from Mr Guriev that he wanted to give Mr Gorbachev and Mr Antoshin a 5% share each in PhosCo out of his stake. I did not have any specific discussions with Mr Guriev about the level of the incentive that was granted, but I do recall that it was granted by PhosCo, as I do not believe that the incorporation of PhosAgro had been completed by that stage. I do not recall discussing the arrangement with Mr Gorbachev or Mr Antoshin at the time, although I of course discussed the option with both individuals on various occasions over the subsequent years.”

He confirms that he witnessed the document together with Mr Mariashin and added that:

“At no point when the option was granted did Mr Gorbachev mention that he was entitled to shares greater than this 5%. It is

illogical to me that he would be entitled to more than this or more than Mr Antoshin. It also seems totally contrary to the importance that Mr Gorbachev clearly still placed on the 2001 Option in 2005, when Mr Gorbachev and his lawyer requested to have the document re-signed and notarised in London, an event I attended. If he was entitled to a greater shareholding, I cannot think of a reason why he would not have wanted this reflected in the original agreement.”

73. In summary therefore, Mr Volkov confirms that the document was signed in 2001, that the 5% figure came from the defendant and that at no stage did the claimant suggest he was entitled to a greater share. He says the share allocated to Mr Antoshin was the same and (given his understanding of the relative roles of him and the claimant) it was illogical that the claimant should have more than Mr Antoshin.
74. Critically for present purposes Mr Volkov’s evidence was that he could not think of a reason why the claimant would not have wanted his greater share reflected in the agreement if that was the understanding. This is important because the ultimate explanation offered by the claimant is that this was to assist with the IPO. However, Mr Volkov was the person with everyday responsibility for the IPO. In relation to this point his evidence was that:

“... My understanding of the requirements of the IPO was that there was no requirement from a legal perspective to show a paper trail of how shareholders had obtained shares in the IPO process. The only necessity was to disclose the identity of the shareholders in the IPO memorandum, but not to disclose how the shareholders obtained shares.”

As he added in his second statement, “... *(f)or the same reason, it makes little sense to me why we would arrange to give Mr Gorbachev an option for only 5% if Mr Gorbachev did indeed hold a greater interest...*”.

75. The offering with which Mr Volkov was concerned in 2001 was one on the New York Stock Exchange (“NYSE”), not the London Stock Exchange (“LSE”) – see paragraph 24 of his first statement. There is no evidence that contradicts what Mr Volkov says in the section of his evidence quoted above in so far as it relates to NYSE offerings. Even if the claimant was correct to say the plan was for the 2001-3 offer to be made at the LSE, that does not assist him. Appendix 1 to the defendant’s closing submissions sets out a summary of the law and practice relevant to LSE offerings. There is nothing within these provisions that suggests Mr Volkov’s evidence on this issue may be wrong. There is no part of this material that provides a commercial, regulatory or legal basis for what the claimant suggests and it is not suggested on behalf of the claimant that the defendant’s submissions on these points are wrong.
76. The defendant was not pressed with the full detail of what the claimant’s case was on this issue. However, he was asked about the claimant’s case that the document was prepared “... *in the context of the IPO preparations, simply as a way of explaining in due course how he had acquired his interest*” and the defendant rejected that – see



T14/64/23-65/11. I accept Mr Volkov's evidence referred to above and in consequence accept what the defendant says on this issue.

77. In those circumstances, I accept the defendant's submission that the alleged failure to identify the true size of the claimant's interest in the First Option Agreement (or its less advantageous terms when compared to what he says was the 1996 arrangement) cannot be explained by reference to the IPO then being planned. There was no requirement to show how shareholders had obtained shares, nor was there any reason (even if that had been the case) for seeking to disguise the true position or to produce what on the claimant's case would be a knowingly false narrative in order to explain how shares had been acquired. Given these conclusions, the failure of the defendant to make provision within the First Option Agreement for what the claimant alleges was the true arrangement is inexplicable if the 1996 arrangement was as the claimant alleges, given how close the claimant and defendant were in the period down to the end of 2008. It is equally highly implausible that the claimant would not have insisted on the document setting out the true arrangement if it was as he alleges. If the explanation for the First Option Agreement was not to disguise what the claimant alleges as to his true entitlement for the purposes of the IPO – and it was not for the reasons I have given – then there was no reason for entering into the First Option Agreement unless it was intended to reflect what was agreed and understood between the parties to it at the date it was signed originally. If that is so then what was agreed was inconsistent with there being any arrangement to the effect alleged by the claimant in 1996.
78. Before leaving this issue I need to consider the claimant's case that the document was backdated and that in fact it was signed in December 2003. Before doing so, it is necessary to understand that from June 2003 onwards, the Office of the Prosecutor General of the Russian Federation commenced a series of investigations and arrests of individuals associated with GML. It is common ground between the parties that this was politically motivated and resulted from Mr Khodorkovsky's criticism of the government of the Russian Federation generally and of President Vladimir Putin in particular. Whether this was the motivation is not an issue that I have to decide and I reach no conclusions about it. In the result however, in June or July 2003, Mr Lebedev was arrested on the basis of an allegation that ZAO Volna had acquired the shares in Apatit at an undervalue, thereby defrauding the Russian state. In October 2003, Mr Khodorkovsky was arrested in Russia and charged with and later convicted of various alleged criminal fraud and embezzlement offences. Messrs Lebedev and Khodorkovsky were imprisoned at all times material to this claim from October 2003. Whether the allegations made against Messrs Lebedev and/or Khodorkovsky had merit is not material to and so has not been investigated in these proceedings and I make no findings about that. It is common ground however that the result of these events was that the IPO preparations ceased.
79. I reject the claimant's evidence that he was invited to sign and in fact signed the First Option Agreement in December 2003 for the following reasons. Firstly, given the conclusions I have reached so far, the claimant's evidence as to the First Option Agreement lacks any credibility. Secondly, his evidence is contradicted by Mr Volkov, whose evidence I accept as credible for the reasons that I have developed at length already. Thirdly, the claimant's evidence that he signed the First Option Agreement in December 2003 is also contradicted by the other witness to the document, Mr Mariashin. Even if I concluded that caution needed to be exercised in relation to Mr

Mariashin's uncorroborated testimony, as the claimant suggests, that is of no application in relation to the issue I am now considering because his evidence is corroborated by Mr Volkov. Fourthly the claimant's evidence is contradicted by the defendant, whose evidence on this issue I accept because it is corroborated as explained already. Fifthly, that the defendant only became the registered owner of the Phosco shares on 12 November 2001 is not to the point and does not justify me accepting the claimant's evidence that he signed the document in December 2003, because he controlled them prior to that date – see T14/52/12-17. Whilst it made no sense for the defendant to be offering shares in 1996 at a time when he had no intention of acquiring an interest in Apatit, that ceased to be so from the date in 1999, when the joint venture concept came into existence between him and GML.

80. Finally, the claimant's case that the document was signed in December 2003 is inherently improbable. My reasons for reaching that conclusion are as follows.
81. Firstly, all work on the IPO that had been in contemplation since 2001 ceased with Mr Lebedev's arrest on 2 July 2003 – see the oral evidence of Mr Sereda (who was called to give evidence by the claimant) at T7/49/1-11. I accept this evidence on the basis that it is inherently probable that an IPO planned for offer through the NYSE would be at least suspended and in all probability abandoned in such circumstances and because that evidence is contrary to the interests of the claimant. On any view, it could not credibly have been maintained following the imprisonment of Mr Khodorkovsky in October 2003. Contrary to the claimant's submission it is entirely implausible that he could have thought or been told in December 2003 that it was possible there would be a political settlement of the dispute concerning Mr Lebedev and Mr Khodorkovsky that would permit the IPO to proceed. Any suggestion to the contrary is contradicted by what the claimant says in paragraph 293 of his witness statement, where he says that “... when Mr Khodorkovsky was arrested, it was understood that the IPO would not go ahead after all. I understand that all work on it stopped then...” As I have said, Mr Khodorkovsky was arrested and imprisoned in October 2003. It was put to the claimant that in these circumstances there was no sensible basis for him being asked to sign what he maintains to be a sham document in December 2003 but he continued to insist that “... I remember when I signed this document ...” – see T4/33 *passim*. Given the claimant's case that the First Option Agreement was a sham created for the purpose of facilitating the IPO, it is strikingly improbable that it would have been entered into for that reason in December 2003 as the claimant alleges.
82. Secondly, as I have said no other witness with direct knowledge of the events I am now considering accepts that the document was entered into in December 2003.
83. Thirdly, it is inherently improbable that a document would be signed in December 2003 in relation to an option that on its face was due to expire only a matter of days later.
84. Fourthly, what the claimant now says is the position is inconsistent with what he told the police in the UK in 2015. The context for his statement to the police was an allegation that he had been intimidated. In paragraph 4.10 of that statement the claimant asserted that the arrangement, which he described as being that “*I was promised 25 per cent of the shares by him, with 5 per cent share option...*”, occurred in 2001 not 2003 as he now asserts. It is also noteworthy that the claimant makes no mention in this statement of the arrangement being the result of an intended IPO but in respect of shares

held by the defendant “... *apparently for my own protection because questions were being asked by Russian authorities following earlier privatisations.*”

85. I now turn, albeit briefly, to the claimant’s suggestion that the First Option Agreement is a sham. Although this part of his case is not as clear as it might be, it appears to be dependent on the fact that it was entered into in December 2003 and backdated and the provisions within it referred to earlier were unusual for the reasons previously given. Although these provisions are unusual at any rate in an employment context as an English lawyer would look at the document, I have come to the conclusion that the claimant has not proved the document to be a sham in the sense identified earlier. My reasons for reaching that conclusion are as follows. Firstly, the assertion that the agreement is a sham in the sense of having no effect at all is entirely inconsistent with the claimant’s positive case that it was entered into for the purpose of facilitating the IPO by creating what on his case is the false impression that the claimant’s share in the relevant company was genuine but smaller than in fact it was. Secondly, no purpose has been identified as to why the parties or the defendant would unilaterally enter into a document that was a total sham other than the narrative concerning the IPO, which I have rejected. Thirdly, no explanation has been offered as to why the document would be sham in relation to the claimant but not in relation to Mr Antoshin or why Mr Antoshin would be willing (or for that matter required by the defendant) to enter into an agreement that was a sham. The agreement might not have been advantageous to either the claimant or Mr Antoshin as and when either considered exercising it but that does not mean that the First Option Agreement was intended by all the parties to it to be of no effect in law. Fourthly, as I explain below, what I refer to as the “*B&C arrangements*” were entered into by the defendant for the purpose of facilitating the exercise by Mr Antoshin and the claimant of the options conferred on them. If the First Option Agreement was a sham there would be no reason for the defendant to enter into these arrangements.
86. In those circumstances and for those reasons, I find that the First Option Agreement was a genuine document entered into by the defendant in 2001. The conclusions I have reached concerning the First Option Agreement, in combination with the factors already considered above prior to my consideration of the First Option Agreement, lead me to reject the claimant’s case as to what he alleges was agreed in 1996.
87. These conclusions are important not merely because they have an impact, albeit indirectly, on what the claimant alleges the defendant declared in 2005 but because these conclusions have a direct impact on my assessment of the credibility of the claimant as a witness. The claimant’s evidence concerning the date on which the First Option Agreement was entered into must clearly be rejected. This is not an error of recollection as to a day or a month but a positive case that the First Option Agreement was signed in December 2003 not on or about the date it bears in 2001. Recalling dates, even years, of events some 20 or more years after they occurred can be difficult. However, the same cannot be said of a positive case to the effect that an arrangement was entered into for the purpose of dishonestly misleading potential investors in an IPO on the NYSE. That is a positive case, which for the reasons set out above can only have been fabricated for the purpose of explaining away the obvious inconsistency between what the claimant maintains was in fact agreed or arranged between him and the defendant in 1996 (as a means of alleging that his current case as to what he alleges the defendant declared in 2005 and 2008 has a genuine and coherent commercial genesis)

and what is recorded in the First Option Agreement. In my judgment this, in combination with the other conclusions concerning the claimant's credibility I have reached earlier in this judgment lead me to conclude that I should be very cautious before accepting the claimant's evidence save where it is corroborated or is admitted or is contrary to his interests.

*The Defendant's Appointment as a Senator*

88. Before turning to the events that led to the departure of the claimant from Russia, it is necessary to note that in November 2001, the defendant was appointed a member of the Federal Council of the Russian Federation (informally known as a Senator) representing the Murmansk Region. He retained that role until 2013.
89. It is common ground that at that time, a member of the Federal Council could hold shares in, but was not permitted to participate in activities involving the management of, a business, company or any other commercial organisation. Accordingly, the defendant resigned from his various Apatit related roles when he became a senator, although he continued to be involved thereafter in what in England and Wales would be described as a *de facto* or shadow director role.
90. It is part of the claimant's case that the defendant maintained that he was holding the shares to which the claimant was otherwise entitled on an undocumented basis as a protective measure because as a senator the defendant enjoyed a level of immunity that provided some protection from arrest. Other than in one minor respect, this has no impact on the issues I have considered so far since those issues have been concerned with percentages and timing. The minor respect is that this protective effect cannot be said to have been relevant to any of the events that the claimant alleges occurred in 1996 because they pre-date the date when the defendant became a Senator. At that stage the alleged protective effect arose from the defendant supposedly not having any financial signing rights in relation to Apatit.
91. In my judgment the alleged protective effect that derived from the defendant being a Senator has been overstated by the claimant. My reasons for reaching that conclusion are as follows. Firstly, while I accept that at least in theory senators enjoyed a level of protection not available to ordinary Russian citizens, I also accept the point that these protections were capable of being avoided or removed with relative ease by the authorities of the Russian state where it was considered necessary or desirable. Indeed, by the time when the defendant was cross examined this appears to have become common ground – see T14/110/20-22. Secondly, the degree of protection afforded to the defendant by being a senator was not sufficient to negate any need for him to seek a *krysha*<sup>3</sup> relationship following the arrest of Mr Lebedev and Mr Khodorkovsky. I address this in more detail below but in the end there does not appear to be much if any dispute that such was the case. Thirdly that the degree of protection enjoyed by the defendant was limited and may ultimately have been of little or no benefit is established by the B&C arrangements to which I turn below. This issue is of peripheral importance but it does assist in assessing the likely concern the defendant had about the prospect of the claimant returning to Russia after he had fled in the circumstances referred to

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<sup>3</sup> literally “roof“ but in the context of Russian social, political and commercial life a person who is able to provide protection to another person by reason of the protector's social, political or commercial influence.

below and giving evidence to the Prosecutor General in order to avoid or mitigate proceedings that might be used against the defendant.

*Claimant's Flight from Russia*

92. Following discussions between the claimant and defendant and others formally involved in Apatit, the claimant decided or was encouraged by the defendant to decide to leave Russia in July 2003, initially fleeing to Turkey then Belgium and Switzerland before finally on 5 April 2004, arriving in London, where he applied for and ultimately was granted asylum on the basis of a well-founded fear that he would suffer persecution if he were to return to Russia.
93. Although it is common ground the claimant returned to Russia for a period between 25 December 2003 and 28 January 2004 (when, as explained above, the claimant alleges, he signed the First Option Agreement), he fled again having been told by Mr Antoshin that he was to be summoned to the General Prosecutor's Office ("GPO"). I expand on this below when considering how the claimant has described these events on various different occasions.
94. On 27 January 2004, charges were filed against the claimant alleging he, Mr Khodorkovsky, Mr Lebedev and Mr Brudno, had embezzled Apatit's funds by causing it to sell product to Apatit Trade at an undervalue (an allegation that the claimant denies has any substance and which he alleges is politically motivated) and, on 30 January, a letter was issued by the General Prosecutor's Office summoning Gorbachev to appear in order to hear the charges. On 1 April 2004, an arrest warrant was issued by the authorities in Russia for the arrest of the claimant.
95. It is common ground that the defendant assured the claimant that he and his family would be looked after financially as long as he (and, ultimately, they) remained outside Russia and that thereafter he (and his family while they remained in Russia after he had fled) received payments from two offshore entities (Polyfert AG and GM Services SA ("GMS")) owned jointly by CMU and Phosco. This was probably motivated by the essentially transactional nature of the claimant's exit from Russia, by a desire on the part of the defendant to prevent the claimant from supplying information to the Prosecutor that would be damaging to his position and which might expose him to a heightened risk of arrest and imprisonment but also because at this stage the claimant and defendant remained close.

*The B&C Arrangements and the Second Option Agreement*

96. Meanwhile, in December 2003, the defendant entered into various agreements that he maintains were entered into in order to protect his interests and those of the claimant (and Mr Antoshin) under the First Option Agreement. The claimant characterises these agreements as shams in the sense already identified.
97. In summary, on 18 December 2003, a meeting of the board of CMU apparently took place that resolved to approve a transfer of ownership of all the shares in Phosco to B&C Consultants Limited ("B&C"), a Belize registered entity. The approval was sought and given pursuant to a shareholders agreement between CMU and Phosco that required such consent. The formal document giving effect to this resolution was entitled "*Deed of Waiver*". It is dated 23 January 2004 and contains within it the statement that:

“We hereby acknowledge receipt of the letter from the Seller addressed to us (CMU) dated 21 of January 2004 relating to the sale by you of one hundred per cent (100%) of your shares in PI, constituting one hundred per cent of the authorised share capital of PI (the "Shares") to a third party(ies) (the "Sale").”

The letter referred to is not in evidence.

98. The defendant executed two agreements, each dated 19 December 2003 with B&C, one providing for the transfer of 10% of his shares in Phosco to B&C and the other providing for the transfer of 100% of his shares in Phosco to B&C. Each agreement recited that the defendant was the legal and beneficial owner of the Phosco shares and that he had agreed to sell the shares to B&C on the terms set out in the agreements. The consideration for the 100% shareholding was said to be US\$200,000. The agreement for the sale of the 10% shareholding also provided that the purchase price payable was US\$200,000. One or other or possibly both of these prices are unlikely to be reflective of the true worth of the Phosco shares to which they relate. On any view 100% and 10% of the shares could not each be worth the same. On 19 December 2003, B&C purported to grant the defendant an option in consideration of the payment of US\$1.00 to purchase 10% of the Phosco shares at a price of US\$225,000. The option agreement was signed by the defendant and Ms Loizou on behalf of B&C. I refer to it below as the “*B&C Option*”.
99. It is not suggested that the agreement for the sale of the 100% shareholding ever became effective. The explanation offered by the defendant for this in his oral evidence was that “... *I cancelled the first agreement and left the second one for 10% because I realised I was too hasty. The situation became readable, the situation became settled, and that happened over a couple of days, and there was no need to transfer 100% of the shares.*” – see T14/76/9-13. As I understood his evidence, this was an oblique reference to what was perceived to be a risk of action against him by the Russian authorities. He added in reply to the suggestion that “... *B&C was really just a company that Ms Charidemou ran in order to hold your assets?*” that “...*I explained why I came to Cyprus. I came there to protect my assets. Therefore, I signed these agreements previously having informed CMU, Menatep, and then I signed all these agreements.*” What none of this explains is why if the 100% transfer was considered not to be needed why it was thought appropriate for the 10% transfer to take effect.
100. Contrary to the claimant’s submission, I accept that at least in theory these arrangements would render the 10% shareholding less amenable to attachment than if they had remained in Phosco. B&C was a bearer share company. It is possible therefore that the defendant and his advisers thought that level of anonymity might provide additional protection for the 10% shareholding if the defendant came under scrutiny. Ultimately however, the issue that arises is not whether the arrangements would have protected the assets to which they related or would have withstood scrutiny by the prosecutorial authorities in Moscow but the motive of the defendant in entering into them.
101. The defendant’s amended pleaded case as to the reasons for these arrangements was that:

“In 2003, in the circumstances of the investigation into the affairs of Yukos and Mr Gorbachev’s departure from Russia, and in circumstances where Mr Gorbachev was unlikely to exercise the option before the end of 2003 (the time limit specified in the First Option Agreement), Mr Guriev agreed with the advice of Ms Charidemou and Mr Mariashin that his shareholding in Phosco (and thus also the share option) should be restructured. As a result, a further option agreement was entered into between Mr Gorbachev and B&C Consultants Limited which came to be dated 19 November 2003 (the “Second Option Agreement”), pursuant to which Mr Gorbachev was re- granted a 5% share option in PhosCo. B&C Consultants Limited was a company formed to hold a stake in PhosCo. ...”

This required a new Option Agreement. It is common ground that this document was not in fact created until 2007 but (in the case of the claimant) was back dated to 19 November 2003 (that is a month prior to the date of the B&C documentation). I refer to this document as the Second Option Agreement. A similar document was prepared for and signed by Mr Antoshin but back dated to 19 December 2003 – the date on the B&C documentation referred to above. It is impossible to be sure, but I consider it likely that the Second Option Agreement was erroneously dated 19 November and should have been dated 19 December. That accords with the date when the other B&C arrangements documentation was dated. The Second Option Agreement was backdated as I have said and was made between the claimant and B&C. That was consistent with the purported effect of the document giving effect to the B&C arrangements. It recited that B&C was the “...*absolute legal and beneficial owner of 5% of the shares in...*” Phosco and purported to grant to the claimant an option to purchase 5% of the Phosco shares to be exercised in a period between 1 January 2005 and 31 December 2006. In relation to price, the Second Option Agreement provided that

“2.4 In case the Option is exercised in the year 2005 the compensation to be paid by the Purchaser for the Option Shares shall be equal to 120,000.00 US dollars (one hundred twenty thousands).

2.5 In case the Option is exercised in the year 2006 the compensation to be paid by the Purchaser for the Option Shares shall be equal to 140,000.00 US dollars (one hundred forty thousands).”

The Second Option Agreement provided that in the event that B&C had “...*lost title to the Option shares...*” upon exercise by the claimant of the Option, B&C would “... *pay penalty in the amount of 4,880,000.00 USD (four million eight hundred eighty thousands)...*”. On a date that it is now unknown but which purported to be 29 November 2005 the claimant purported to assign the benefit of the Second Option Agreement to Ms Charidemou and Ms Marina Loizou as Trustees of the Gamini Trust. I return to this later in this judgment. It is relevant to note at this stage however, that Mr Mariashin was entrusted with drafting the relevant documents. His evidence was that that the Second Option Agreement (and a similar document with Mr Antoshin) should

have been completed at the same time as the B&C documentation referred to earlier and the failure to do so:

“... was, of course, my fault, because I had never got round to finalising the agreements between B&C and Mr Gorbachev and B&C and Mr Antoshin. Whilst I was conscious of the fact that they would have to be done at some point, it really was never a priority for me, because the arrangements between Mr Guriev and Mr Gorbachev were confirmed by the 2001 Option Agreement and I thought that agreements with B&C could be executed at any point.”

This of course makes sense only if the expiry of the First Option Agreement at the end of December 2003 had been overlooked. His evidence was that he considered that the problem could be rectified preparing the relevant document and then backdating it. Again, I am not concerned with whether this is correct as a matter of legal analysis but whether it was thought subjectively to be correct.

102. It was suggested to Mr Mariashin in the course of his cross examination that the reason why the Second Option Agreement was not executed in 2003 was because the B&C documentation was signed but concealed by Ms Charidemou in Cyprus and was being “...kept for use in the event that Mr Guriev was arrested...” and that he wanted the B&C documentation to which I referred earlier “... kept out of sight in Cyprus”. Mr Mariashin rejected this suggestion stating:

“A. That is not the case. If you open the trade register of B&C company, you will see that in January 2004 B&C company became a 10% shareholder in Phosco, and this document was executed, it was realised, one of those documents. And nobody asked me to hide anything. It was an official document, it was open. You could open the register and see it with your own eyes.”

103. There are aspects to this evidence from Mr Mariashin that regrettably I must reject as untrue. He asserted in cross examination that B&C was not a company ultimately beneficially controlled by the defendant and that the company was owned by Ms Charidemou or her family. I reject this evidence as plainly untrue given it is inconsistent with what the defendant appeared to accept in the course of his evidence and because the amounts paid for the shares was close to *de minimis* when compared with their likely value. It is probable that Mr Mariashin was driven to this position because of the purpose of these arrangements. If they were not an arm’s length transaction between the defendant and B&C then they would not have been effective to protect the shares in the event that the Russian authorities took steps against the defendant and that it is necessary for Mr Mariashin to maintain that position in case a similar situation should arise in the future.
104. That said, none of this persuades me that the probable purpose and reasons for the B&C arrangements were anything other than what the defendant’s case is – it was an attempt to protect the shares to which the claimant and Mr Antoshin were entitled in the event that the defendant came under scrutiny by the Russian authorities. In his oral evidence,



the defendant maintained that the request for these arrangements came from either the claimant or Mr Antoshin (either directly or indirectly through either Mr Tarakhnenko or Mr Mariashin) on the basis that “... *to have an option from a Cyprus company. That was their protection mechanism, because I could have been under threat.*” – see T14/88-90 *passim*. Although the defendant was cross examined on the basis that his recollection of these events and the reasons for them were not clear, I consider this evidence should be accepted. No suggestion was pleaded by the claimant or put in the course of cross examination as to why these arrangements were entered into, and it is difficult to see any reason why they would be entered into, other than on the basis suggested by the defendant in the course of his cross examination. Further it makes sense to have first adopted the 100% solution on the basis that the defendant too had a concern about his vulnerability but that once he was satisfied as to his position he nonetheless wished to comply with such a request from the claimant and/or Mr Antoshin. If the First Option Agreement was (as I have concluded) a genuine arrangement then it makes sense that the claimant would wish to have protected his rights under it. The ostensible sale to B&C of the 10% shareholding is consistent with a request by one or other that steps be taken to protect those interests from the risk of action by the authorities in Moscow against the defendant. As I have said no other reason for making these arrangements has been suggested.

105. Inevitably perhaps the underlying reasoning for these transactions is opaque, affected by incompetence in execution and by different perceptions of risk by the claimant on the one hand and the defendant on the other. It is also affected by evidential inconsistencies principally between the evidence of Mr Mariashin and the defendant. In those circumstances reaching any definite conclusions on this issue is difficult and in the end probably not particularly helpful to resolving the real issues that arise. That said, I consider it more probable than not that Mr Mariashin is correct when he says that the failure to draft the Second Option Agreement at the same time as the other documents giving effect to the B&C arrangements was the result of error on his part. There would be absolutely no reason not to draft and arrange execution of the Second Option Agreement at that time.
106. In summary therefore I find that the B&C documentation was probably entered into for the purpose of attempting to protect at least the interests of Mr Antoshin and the claimant in the event that the defendant became a target of the Russian authorities as appeared to be at least a real possibility in the second half of 2003 and onwards. I accept that the Second Option Agreement should have been executed on or about the same date that the remaining B&C documentation was executed and that it was not was probably the result of error on the part of Mr Mariashin. I accept that the documentary record in relation to these arrangements is threadbare but it remains that no coherent reason for the defendant entering into these arrangements has been identified by the claimant whose only interest is in distancing himself from the concept that his interest in PhosAgro never exceeded 5%.
107. Although I find that Mr Mariashin’s evidence that B&C was owned beneficially by Ms Charidemou or her family is untrue, that does not matter substantively for present purposes although it does mean that caution has to be exercised before accepting his evidence save where it is corroborated, against the interests of the defendant or admitted.

108. I conclude that ultimately the reason why the absence of the Second Option Agreement came to light is because the claimant sought to exercise his option some years later. I address this further below in its correct chronological context. I strongly suspect that all parties had forgotten that the First Option Agreement contained a provision that caused it to expire at the end of December 2003. This was not something that was likely to be at the forefront of anyone's mind given what was happening in the period between the date it was signed and the date when the claimant fled Russia or thereafter down to the date when the option was purportedly exercised. It is noteworthy that no one ever suggested that the expiry of the First Option Agreement should preclude the parties entering into the Second Option Agreement. That suggests that expiry of the first option had either been forgotten or was regarded as immaterial. I also accept the submission that the defendant thought at the time the B&C arrangements were being made that the Second Option Agreement had been or would be entered into. I accept that to be so because I accept as true his evidence that at this time (the end of 2003):

“Q. And the first agreement was a single agreement with Mr Gorbachev and Mr Antoshin, but on this occasion there were separate agreements, one with Mr Gorbachev and one with Mr Antoshin; that's the first difference, and you understand that?

A. Yes.

Q. And is that what you had instructed Mr Mariashin to do?

A. I gave him only one single instruction: to officially reflect a new option agreement to protect the assets of my friends. At that time, they were people very dear to me, like family, like family.”

109. The claimant's case is that he has and has had from mid-1996 an entitlement to 24.75% of the defendant's interest in (or what became ultimately) PhosAgro. The defendant's case is that at no stage has the claimant had any entitlement to anything other than the 5% interest created initially by the First Option Agreement. The sale (whether actual or ostensible) of the 10% interest in Phosco to B&C, in combination with the B&C Option, is consistent with the terms of the First Option Agreement by which each of the claimant and Mr Antoshin had at least a conditional right to 5% of the Phosco shares. None of this material is consistent with the claimant having a greater interest than 5% and none of these events took place after the claimant and defendant had fallen out – indeed they took place at a time when there was a strong personal relationship between them. There was no logical reason for any of these arrangements other than to protect the shares to which the claimant and Mr Antoshin were conditionally entitled under the First Option Agreement at a time when the arrangements concerning the Apatit businesses by and with the Menatep Group was (and was known by the defendant to be) under intense scrutiny.

110. The claimant challenges the notion that the disposal to B&C was an effective transaction. As I have explained, that is immaterial. The critical point that emerges from these arrangements is that the 10% sale and the B&C Option is consistent with the First Option Agreement accurately recording the understanding between the claimant and defendant as it was at least down to the end of December 2003, as is the Second Option Agreement when in the end it was drafted and executed. None of this is consistent with

the true understanding of the parties being as the claimant alleges was the effect of the 1996 arrangements.

*The Claimant's 2004 Flight from Moscow and his Asylum Application*

111. Having arrived in the UK on 5 April 2004, on 18 June 2004, the claimant applied for and on 18 April 2005, was granted asylum. In November 2004, a warrant for the arrest of the claimant was issued by Bow Street Magistrates' Court at the request of the Russian Federation. On 17 August 2005, the extradition proceedings that followed were stayed as an abuse because the claimant had been granted asylum. The claimant was represented throughout in relation to the asylum application by Gherson & Co., a firm of solicitors specialising in immigration and asylum litigation. He was represented in relation to the extradition proceedings by another firm of solicitors, Messrs Peters & Peters. It is common ground that all the claimant's legal costs were met by payments from offshore companies (including GMS as referred to earlier, and Fresnillo Trading Limited ("Fresnillo")). These payments (and the claimant's living costs and those of his family still located in Russia) came ultimately from the defendant. This was consistent with the promises made to the claimant by the defendant at the time of his flight from Russia.
112. Gherson & Co prepared both an Asylum and Human Rights Statement and a witness statement for the claimant, both dated 8 March 2005, in support of his asylum application. At paragraph 5-7 of his witness statement, the claimant sets out a description of what he called in the statement his "...*Main positions from 1995 to date*". At no stage whether in this paragraph or otherwise did he suggest that he had any interest, much less a 24.75% interest in Phosco or any entity connected with the fertiliser business conducted by either the defendant or Rosprom or the Menatep group. This is so notwithstanding his evidence concerning shareholdings in paragraph 7. The short point that arises is that the claimant alleged that the Russian authorities were interested in the claimant as part of the political persecution of Mr Khodorkovsky and his associates. It follows that a claim to be the beneficial owner of 24.75% of the company that was central to the allegations being made by the Russian state in that context would have provided very significant support for the asylum application. Indeed it is in many ways the mirror image of what the claimant alleged was the reason for keeping that interest secret in and after 1996. That allegation was not made. His response to this point in cross examination was:

"Q. The reason you didn't explain in your asylum statement that you were a co-owner of Apatit alongside Mr Khodorkovsky, Mr Brudno and Mr Lebedev is that you know you weren't. That is right, isn't it?"

A. No, it is not correct. The reason was that I have to protect Mr Guriev, Mr Antoshin because in one stage what lawyer explained my statement will be open to the Russian prosecutor on the extradition case and one of my important position was not extradite, and secondly it was strong message from Mr Guriev through Mr Mariashin who was deeply involved on preparation of my statement asylum and was a lot of meeting with Gherson and provide document and it was strong message that I will need

to protect Mr Guriev, Mr Antoshin and not give any information about their name and their involvement of this business.

Q. That didn't stop you saying that you were a co-owner. Even if that had happened that wouldn't have stopped you saying you were a co-owner of Apatit?

A. But in this case I have to open Mr Guriev and I have to protect him.”

It would have been straightforward for this point to have been made good by adducing evidence from the lawyers concerned. The point being made is an obvious one and the claimant has been represented throughout in these proceedings by very experienced legal advisers. As things stand, the only answer to this obvious point is an uncorroborated statement made by the claimant in the course of cross examination that he was prepared to compromise the success of his asylum application for the purpose of protecting the defendant. I explain below the circumstances in which the claimant came to leave Russia in January 2004. Given the evidence on that issue, I am very sceptical that the claimant would have been willing to compromise the success of his asylum application.

113. The claimant prepared with the assistance of his solicitors an “*Asylum And Human Rights Statement*” dated 8 March 2005. It ran to 72 pages. At paragraph 61, the claimant’s evidence to the Home Secretary was that:

“When I left Russia on 28 January [2004] I travelled by air from Moscow to Geneva, Switzerland, arriving the same day. I travelled on my own and the main purpose was to seek medical assistance. The secondary reason concerned business. I had a Swiss visa which permitted multiple visits for 90 days (in total or per visit, I'm not sure which) and was valid from July 2003 to July 2004.”

This is to be compared with what he said in paragraph 339 and following of his witness statement in these proceedings:

“339. I returned to Russia after New Year and my family skiing trip. The following night after I returned, I got a note from Mr Antoshin through his driver, in the middle of the night. The note told me not to call anyone or use any credit cards, just buy a ticket with cash and fly out to Geneva as soon as possible because otherwise I could be arrested – I had been invited for a “conversation” with the prosecutors.

340. I took an 8am flight, the first available one, to Geneva. My driver went to the airport and bought a ticket in cash. I was very nervous.

341. I fled Russia for Geneva. For money, I still had my credit card. I could also just ask Mr Goussarov for cash when I needed it.

342. After leaving Russia, having been invited for interrogation by the prosecutors, I became more careful in my telephone communications. I got a Swiss telephone number and started passing most messages to Mr Guriev through Mr Volkov, Mr Antoshin or secretaries.”

In the course of his cross examination, he confirmed as true what he had said in his statement about the note from Mr Antoshin – see T4/71/1-18 – and that he left Russia the next day in order to avoid the potential of being arrested – see T4/71/19-23 – and that the reason for his professed nervousness was that the Russian prosecutor might learn that he was leaving and try to stop him and about what would happen to him if he was arrested before he left – see T4/ 72/8-19. He attempted to maintain the position that he left mostly for medical reasons – see T4/72/22-25 – but that was untruthful evidence, which I reject. It is nonsensical to suggest this was his motivation in leaving as and when he did using the means (using his driver to purchase a ticket with cash) that he used. He may well have had some dental treatment after he arrived in Geneva (there is no means for me to resolve the issue other than by reference to the claimant’s uncorroborated evidence) but that was not the reason for his departure. In truth, what he said in paragraph 61 of his evidence to the Home Secretary cannot have been truthful if what he says in paragraph 339-342 of his first statement in these proceedings is true or *vice versa*. On his oral evidence, it is his statement in these proceedings that is truthful. In my judgment this is material I am bound to take into account in deciding whether I can safely accept the claimant’s uncorroborated evidence. It supports the conclusion that I cannot.

114. In paragraph 63 of his Asylum And Human Rights Statement, the claimant asserted that:

“The first I heard about the prosecutors' interest in me was within a few days of leaving Russia. It was the very end of January 2004 or start of February and I was in Geneva. In the course of a telephone conversation with someone in my office in Moscow, I was informed that a summons had been served on me at work to attend the GPO<sup>4</sup>. I was not unduly worried because I assumed it was a summons to attend as a potential witness, and such summonses were very common. ... ”

The first sentence of this is untrue if what he says in paragraph 339 of his first statement in these proceedings is true, as is his assertion that he was not “ ... *unduly worried because I assumed it was a summons to attend as a potential witness...*”, if his assertions in paragraph 340 of his first statement in these proceedings are correct, or *vice versa*. The claimant accepted that to be so in his cross examination – see T4/74/2-19. His explanation – that the information had come from Mr Antoshin not the prosecutor (see T4/74/18-19) – is an evasive answer that highlights as true the problem I have identified concerning the reliance that I can place on the claimant’s uncorroborated evidence. This too is material I am bound to take into account in deciding whether I can safely accept the claimant’s uncorroborated evidence. It too supports the conclusion that I cannot.

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<sup>4</sup> General Prosecutor’s Office

115. In paragraphs 66- 67 of his Asylum And Human Rights Statement, the claimant stated that:

“66. The purpose of the UK visa was essentially tourism. As I recall, it was before I left Russia that I engaged the travel agent concerned to obtain a fresh UK visa for me. ...

67. I would like to make it absolutely clear that when I left Russia on 28 January I was not running away and that my purpose in putting a UK visit visa application in train was not to give me somewhere else to run to. I point out that in late January 2004, when the UK visit visa application was started, I already had visas for countries I could flee to, if that had been my objective at that time. In addition to the Swiss visa (valid July 2003 to July 2004), I also had a US visa (valid July 2001 to July 2004) as well as a Schengen visa (valid 7 October 2003 to 6 October 2004).”

The narrative therefore is that the claimant travelled to the UK for legitimate, non-asylum related reasons and only claimed asylum here when, while here, he realised it was unsafe to return to Russia. However, the first sentences of paragraphs 66 and 67 cannot be true if what he says in paragraph 339 of his first statement in these proceedings is true. Again, his explanation was that the information had come from Mr Antoshin – see T4/75/1-4. This plainly misses the point and in my judgment did so deliberately. This too is material I am bound to take into account in deciding whether I can safely accept the claimant’s uncorroborated evidence. It too supports the conclusion that I cannot.

116. In paragraph 76 of his Asylum And Human Rights Statement, the claimant stated that:

“Up to the last days of March 2004, I had been absent from Russia for medical and business reasons and not because I was seeking to evade the authorities there. Up to this time, it was my belief that the authorities' interest in me was, at most, to ask me (as one potential witness among very many) a few questions.”

This too could not be true if what is said in paragraph 339 and following of his first statement in these proceedings was true. His explanation that he considered that the prosecutor only wished to interview him as a witness prior to the end of March 2004 (see T4/76/21-18) is one that I reject. That was not the basis on which Mr Antoshin sent him a note advising him to leave Russia in the middle of the night, it was not the basis on which he left Russia the following day or the basis on which he arranged for his driver to purchase his ticket for cash, any more than the basis of all this was to return to Geneva for dental treatment. This too is material I am bound to take into account in deciding whether I can safely accept the claimant’s uncorroborated evidence. It too supports the conclusion that I cannot.

117. What this material establishes is that the claimant is willing to give materially different accounts of events as and when he perceives that to be helpful to his cause or otherwise serves the needs of the moment. As I have noted already, it supports the conclusion that I cannot safely accept the claimant’s uncorroborated evidence. None of the points I have identified above can be or were explained on the basis of a need to protect the

defendant. The implicit suggestion in the claimant's closing submissions that this can be explained away as an error by the claimant's immigration lawyers is one I reject. Whilst it may be correct as the claimant submits that the matters I have considered so far in this section of the judgment "... *do not bear on the matters in issue here*" that is certainly not so in relation to the omission to claim he had a 24.75% beneficial interest in PhosAgro by reason of an arrangement made in the course of his employment in 1996. The failure to assert such a claim is inconsistent with him having such an interest.

118. In his Asylum And Human Rights Statement at paragraph 45 he stated positively that "... *I was never a shareholder in PhosAgro.*". He added at paragraph 149 that "... *I would also like to state and emphasise that I never had a shareholding in Apatit or Apatit-Trade or any of the other "intermediary" company. I only received an employee's remuneration and it was all declared for tax purposes.*" [Emphasis supplied] In the course of his oral evidence the claimant confirmed these statements as true – see T1/155/21-156/11. Paragraph 45 is positively untrue if he had a 24.75% interest in PhosAgro as a result of what he says were the arrangements made in 1996. He did not rely on his interest being in Phosco rather than PhosAgro. He justified these answers as being true as well as being consistent with his case in these proceedings "... *because personally I have never been a shareholder of PhosAgro because all my interest in PhosAgro was held under the Guriev name not personally me, and this is true.*"
119. In my judgment this explanation must be rejected because (a) on his case the emphasised part of the final sentence quoted above is not and could not reasonably have been thought to be true and is not in any sense explained by the justification he offered; (b) the explanation is not consistent with a need to protect the defendant – that could be achieved by omission but did not necessitate the inclusion of positive untruths; and (c) in any event, his assertion that he was not a shareholder could only be true in the narrowest of senses if, as he alleges, he considered at the date of the asylum statement that he was beneficially or otherwise entitled to 24.75% of the shares in Phosco. A wholly accurate statement would have made precisely that point in particular in paragraphs 45 or 149 of his asylum statement. In that regard I infer that it is improbable that he instructed Gherson & Co that he had such an interest but that he could not disclose it without damaging the defendant because if that is what he had instructed that firm, they would have been at least likely to advise him against including paragraph 45 in the terms it was drafted. No solicitor would permit a client to knowingly tell a lie in a witness statement. His evidence in his Asylum And Human Rights Statement is not surprising however if at the time the statement was made (a) he knew that the option granted by the First Option Agreement had not been exercised; and (b) he did not consider he had an interest such as is claimed in these proceedings.

#### *Acquisition by Phosco of MHL's Remaining Shares in PhosAgro*

120. The other event in 2004 that is significant was the acquisition by Phosco of the remaining 50% of the shares in Anvilco, which as I have explained held the remainder of GML's 50% shareholding in PhosAgro. The negotiations leading to the transfer of the remaining Anvilco shares held by the Menatep group were conducted by the defendant supported by Mr Volkov and the defendant's legal advisers, principally with a lawyer acting for the Menatep Group and/or GML's ultimate beneficial owners. The documentation appears to have been signed in London on that date.

121. As might be expected this transaction generated a significant number of documents but the most significant was dated 17 December 2004 and was entitled “*Acquisition Agreement For Share Purchase and sale*”. It is described in these proceedings as the “*Second SPA*” and was made between CMU as seller and Phosco as purchaser. Under it CMU ostensibly sold and Phosco ostensibly purchased the remaining (25,000) shares in Anvilco. The price was not specified in the second SPA but was fixed by a Supplementary Agreement, also dated 17 December 2004, at US\$150m. There was a debate in cross examination as to whether this was a high or low price. That is not an issue that I can possibly resolve on the evidence as it is because there is no valuation evidence that has been deployed by either party. It is likely however that the price was as Mr Stanley put in his closing submissions “*a bargain price*” given that the sale was in effect by Mr Khodorkovsky, who as Mr Volkov impliedly accepted was not at that stage going to be rehabilitated – see T17/37/19-25. Even so, the price paid supports inferentially a conclusion that the price in the B&C documentation was an obvious undervalue.
122. The Supplementary Agreement contained an option, which Phosco exercised, to pay the purchase price by three equal instalments over three years starting 60 days after 17 December 2004. A Stock Transfer Form in evidence suggests the shares were transferred from CMU to Phosco on 17 December 2004. The “*consideration money*” is described as being US\$150m. It is not suggested that was paid on 17 December however and there is a yet further agreement (“Counter Transfer Agreement”) also made on that date, by clause 1 of which Phosco purported to transfer the shares back to CMU subject to a provision in clause 2 that the counter-transfer would be “... *null and void in the event that Phosco Industries Limited fulfils its obligations stipulated in the ACQUISITION AGREEMENT FOR SHARE PURCHASE AND SALE entered into by Phosco Industries Limited and Chemical and Mining Universal Limited on December 17, 2004*”. On this basis it could not be said in any real sense that Phosco became the unconditional owners of the remaining 50% of the Anvilco shares until the final of the three stage payments had been made and clause 2 of the Counter Transfer Agreement had taken effect.
123. It is common ground that the payments under the Supplementary Agreement were made on 10 February 2005 (US\$50m), 9 February 2006 (US\$62m) and 9 February 2007 (US\$56m). If this is correct then the total sum paid was US\$168m and so US\$18m more than the ostensibly agreed purchase price. That may be explainable by reference to the interest provisions within the Supplementary Agreement but there is no evidence to that effect. In any event, no one suggests and I find that clause 2 of the Counter Transfer Agreement could not take effect before 9 February 2007.
124. It is not suggested that the claimant was involved in or was consulted about the terms of the Second SPA or was aware of the detailed arrangements that had been made concerning the acquisition of the remaining 50% of the Anvilco shares other than to the extent he was informed about them by Mr Volkov in London on or about 17 December 2004. Given the terms of the Counter Transfer Agreement, I am unable to accept the proposition in paragraph 103 of the Statement of Common Ground that “*(f)ollowing the execution of the Second SPA, PhosCo held 100% of the shares in Anvilco subject to paying the consideration as set out in the Supplementary Agreement.*” Precisely the opposite was the case until 9 February 2007 if the various agreements to which I have referred are to be taken at face value. However, if this analysis is wrong then Phosco



became the owner of the remaining shares on the date of the stock transfer form namely 17 December 2004. On any view therefore either Phosco acquired the remaining shares on 17 December 2004 or did not do so until 9 February 2007. These conclusions are relevant to the assessment I make later in this judgment concerning what the claimant alleges the defendant said in 2005 and 2008.

*Defendant's Visit to London July 2005*

125. It is now necessary to consider in some detail what happened in and after July 2005, which is when the events at the heart of this claim are alleged to have occurred.
126. It is now common ground that the defendant visited London in 15-19 July 2005 and met with the claimant on a number of occasions during that period. It is the claimant's case that this visit was when the defendant made what is referred to in these proceedings as the 2005 Declarations. As explained at the start of this judgment, I do not intend to decide whether the declarations were given as alleged at this stage because it is necessary to consider events occurring after as well as before they are alleged to have been made in order to arrive at a conclusion.
127. That the defendant should make contact with the claimant on his visit to London is entirely unsurprising given the close relationship that then existed between them, the reasons why the claimant was living in London and that his lifestyle in London (and that of his family in Russia) was being heavily supported financially, for the reasons explained earlier. The claimant also maintains that he and the defendant discussed

“(1) The current state of the operations of the Fertiliser Companies and future expansion plans;

(2) The recent convictions of Mr Khodorkovsky and Mr Lebedev (both of whom had been sentenced in May 2005 to lengthy terms of imprisonment by the Russian courts);

(3) The ongoing investigation by the Prosecutor General in Russia (with whom Mr Guriev had met in 2004) and the Russian Government's application to extradite Mr Gorbachev from the UK; and

(4) The fact that Mr Gorbachev had recently been granted asylum (in April 2005), the fact that this grant of asylum meant he would not be able to be extradited to Russia, the fact that he had been granted indefinite leave to remain in the UK and the fact that his family would join him in England.”

- see paragraph 108 of the List of Common Ground and Issues.

128. It will be necessary for me to refer to the claimant's pleaded case as to what occurred because, ultimately, absent amendment of that pleaded case, that is the case the claimant must prove. In essence however his case is that at a health club / sauna on North Row in Mayfair (“sauna”), where and when it is alleged the defendant made the First Declaration, and again in the street outside the Audley Public House, where the claimant and defendant went after leaving the sauna, where and when it is alleged the

defendant made the Second Declaration, the defendant confirmed the terms of the arrangements the claimant says were made in Russia in 1996 in terms that constitute an English law oral declaration of trust.

129. The defendant disputes this on the basis that the claimant had no interest other than that established by the First Option Agreement (which in fact by then had lapsed although I consider it likely that by then all parties had forgotten that was so) and that he did not declare that he would hold the claimant's alleged interest in the fertiliser business under his name, not least because the claimant had no such interest. He does so on the basis that (a) the dates that the claimant gives in his pleading are plainly wrong, (b) the narrative context given by the claimant as being the or at least a reason for the visit is equally plainly wrong and (c) what is alleged to have been said between them is untrue. On the claimant's case the conversations on which he relies took place in Russian and were not witnessed by anyone. The defendant does not suggest otherwise. The claimant characterises the defendant's evidence in relation to these issues as "...*melodramatic and pejorative*...". Whilst I consider this to be overstated, as I have said much earlier in this judgment, these issues are most safely to be resolved by reference to evidence other than that of the claimant and defendant in the first instance although my conclusions on those issues will help me to reach a judgment as to which of the protagonists' evidence is to be preferred on the critical issues.
130. The claimant's pleaded case as set out in his Claim Form is that the conversations on which he relies took place between the claimant and defendant "... *in London on or about 25 June 2005 and/or 17 August 2005 and/or 18 August 2005 and/or 19 August 2005...*" His case as pleaded in his amended Particulars of Claim is that what he characterises as the "*First and Second 2005 Declarations*" were made between "... *about 24 and 26 June 2005...*" – see paragraph 91 – and at paragraph 94(1) he pleads that:

"94. During the course of the same visit and on or about 25 June 2005, Mr Guriev and Mr Gorbachev visited a health club on North Row in Mayfair for a couple of hours. Whilst in the sauna and in the relaxation area at the health club, Mr Gorbachev and Mr Guriev discussed (amongst other matters) their interests in "the fertiliser business". Whilst they were together in the sauna and in the relaxation area:

(1) Mr Guriev said to Mr Gorbachev (in Russian) words to the effect that "You shouldn't worry about anything. Your interest is protected and secured under my name. It is more protected now because I am a Senator and they cannot come after me. I will continue holding your interest until the situation will be resolved in Russia" (the "First 2005 Declaration")."

The claimant's pleaded case as to the Second 2005 Declaration is:

"95. After they had left the health club on North Row, Mr Gorbachev and Mr Guriev went together to the Audley Public House in Mayfair. During the course of their discussions at the Audley Public House:

(1) Mr Gorbachev told Mr Guriev that (following his grant of asylum in April 2005 and his grant of indefinite leave to remain) since the plan was that that his family were to join him in England (as they had already discussed) he would need financial provision to purchase a property.

(2) Mr Guriev said (in Russian) words to the effect that "I will hold your 25% of the fertiliser business for you under my name. You shouldn't worry about anything." (the "Second 2005 Declaration")."

131. The defendant's case is that he was only ever in London in the period between June and August 2005 between 15-19 July 2005. He makes good that allegation by reference to the passports that have been disclosed for the defendant and his wife. The claimants' pleaded case had been abandoned by the time written openings had been filed because in the claimant's opening it was stated at paragraph 38 that between "...15 and c.20 July 2005 Guriev visited London with his wife and daughter..." and that this "... was the first time Gorbachev and Guriev had met in person since Geneva in March 2004." I find that the relevant visit to London in fact took place between 15-19 July 2005.
132. There were some documents notarised during this visit. The defendant's evidence was that he was not aware that this was happening or how the documents being notarised arrived in London – see his oral evidence at T14/109/3-14. This task was undertaken largely by Mr Volkov – see T17/78-81. Much time was taken up in the course of the trial investigating various alleged visits to notaries and then to organisations offering safe deposit box services. Whilst I accept Mr Stanley's submission in paragraph 39 of his written opening submissions that "(t)he key factual dispute in this case is whether Guriev made the First and Second 2005 Declarations during their visit to the health club and at the Audley Public House", resolving that issue will necessitate deciding amongst other things who visited notaries and safe deposit box facilities and when.
133. As I said earlier, I accept the point made on behalf of the claimant that a witness cannot be criticised for not being able to recall the precise dates of undocumented meetings that took place 20 or more years ago and that the primary focus should be on what is recalled of the substance of such meetings. However the differences in timing cannot be ignored altogether, again for the reasons I identified earlier. At a technical level, the amended Particulars of Claim should probably have been amended to reflect the claimant's current case as to the dates between which the 2005 Declaration are alleged to have been made but that is not the significant point. In the context in which the phrase "...on or about..." is used in the Claim Form and paragraph 94 of the amended Particulars of Claim, it can only have been intended to apply to the period between 24 and 26 June 2005. It is now accepted that this was on any view a mis-recollection. However, there is nothing in the Particulars of Claim that suggests the only recollection that the claimant had was of discussions that took place sometime during the summer of 2005 – which is how he characterises his recollection in his first witness statement, where at paragraph 393 he states that "... Mr Guriev visited me in London in 2005, around summertime. The weather was hot." Thus what is stated in the pleading (and what apparently he recalled at the time when the pleadings were drafted and the statements of truth signed) is much more specific than what is said in his witness statement.

134. If what the claimant says he recalls in his witness statement is correct, it is improbable that he could have been any more precise when the amended Particulars of Claim were prepared and he signed the statement of truth at the end of the document. The failure to qualify his recollection as to the date of the critical meeting and discussions in his pleaded case provides further support for the conclusion I have set out earlier in this judgment concerning the claimant's uncorroborated or unadmitted evidence. To be clear, I do not conclude that the claimant's factual case should fail because he could not recall the dates of the 2005 visit or because he has not applied to amend the dates given in the amended Particulars of Claim to plead his case now as to the date of those visits (although in my view that is what should have happened) but I conclude that the way in which he presented his pleaded case on the date issue suggests at least a willingness to exaggerate or to express himself in more certain terms than his true recollection warrants. This must be considered together with my conclusions reached by reference to what he said in his asylum statement compared with what he said about the same events in his first statement in these proceedings. These conclusions are significant because they reflect adversely on the truth and accuracy of his evidence on more critical matters which depend upon his recollection of oral conversations between him and the defendant that took place in Russian and when no one else was present. This is so even if (as Mr Stanley submits) there is no merit in the suggestion that he changed his evidence after seeing the defendant's passport evidence referred to in more detail below.
135. Similar considerations apply in relation to what the claimant characterises as the third to fifth declarations. In the Claim Form, the date range for these alleged declarations is identified as "... 17 August 2005 and/or 18 August 2005 and/or 19 August 2005..." In the amended Particulars of Claim the third, fourth and fifth 2005 declarations are alleged to have been made in a period between "...*(i)n or about August or September 2005...*" He pleads at paragraph 100 that:

"Mr Gorbachev understood (from his discussions with Mr Guriev and Mr Volkov) that the purpose of Mr Guriev's visit to London was to finalise the arrangements by which his offshore companies were acquiring the remaining 50% interest in "the fertiliser business " (including PhosAgro) from the Menatep Group (as had been discussed and agreed between Mr Guriev and Mr Gorbachev between about 24 to 26 June 2005: see paragraph 92 above). Mr Gorbachev had been involved in earlier discussions relating to this acquisition from the Menatep Group, In particular, Mr Volkov had visited Mr Gorbachev in London and they had spent time discussing the terms of the acquisition."

By the time the claimant came to sign his first witness statement his evidence in relation to the timing of the visit in which he alleges the third to fifth declarations were made was

"The next visit by Mr Guriev was, I think towards the end of 2005 or early on in 2006. It could have been autumn but I think it was spring, possibly in March or April. I wore short sleeves, but in the evening, it was colder, so I had to wear a jacket. I still

lived at Lancaster Gate, so the visit was definitely before August 2006 when I moved into Ormidale.”

136. Two points emerge from this: firstly the changes in recollections as to timing shows that in truth the claimant’s recollection as to the timing of the defendant’s second relevant visit to London was no more than he describes in his witness statement and so gives rise to the same point I have made already in relation to the visit when the First and Second Declarations were allegedly made, in respect of his earlier apparently much more certain recollection as to dates. Secondly, his pleaded case as to his understanding of the purpose of the visit is wrong in that it was not and could not be for the purpose identified, given that the Second SPA, Supplementary Agreement and Counter Transfer Agreement had all been entered into on 17 December 2004 and the first payment had been made on 10 February 2005. Whilst Mr Stanley submits that I cannot safely accept that documents in this case were signed on the date ostensibly they were signed on, that is more difficult in relation to this suite of documents because (a) no reason for mis-dating them has been suggested and (b) the initial payment is consistent with the documents being dated on or about the date claimed. That makes it improbable that the defendant informed the claimant that the purpose of the visit was as pleaded in paragraph 100 of the Particulars of Claim. This pleaded material cannot be dismissed as innocent mis-recollection because it is a positive assertion as to what he alleges he was told by the defendant and Mr Volkov. If that is so then that also undermines what he says was discussed on the defendant’s first 2005 London visit, given what is said in parenthesis in the part of paragraph 100 quoted above concerning what had been said in paragraph 92.
137. As a matter of fact, the passport evidence that is available suggests that the defendant (and his wife) arrived in London on 4 September 2005, left London on 6 September 2005 and arrived in Cyprus on 7 September 2005 and that he did not visit the UK again until he arrived on 29 July and left on 3 August 2006.
138. I find that the visits took place on the dates to be deduced from the passport evidence to which I have referred, that is that the defendant arrived in London on 4 September 2005, left London on 6 September 2005 and arrived in Cyprus in the early morning of 7 September 2005. Whilst there is some evidence that the defendant had a second passport, I accept his evidence that he did not use that passport in relation to private business trips to the UK. It follows that I find that he did not visit the UK again until he arrived on 29 July and left on 3 August 2006. These conclusions suggest that in truth the claimant has no real recollection of the dates concerned and his suggestion that there was a further visit in late 2005 or early 2006 is simply wrong and was not put to the defendant in cross examination.
139. It is unclear whether the assertion of a further visit in late 2005 or early 2006 continues to be relied on by the claimant – see paragraph 271-2 of his closing submissions. To the extent that assertion continues to be relied on I reject it. More generally on the basis of what I have said so far, I find that the claimant has no real recollection of the dates when the various meetings are alleged to have occurred other than in the most general of terms. To the extent that his pleadings suggest otherwise, I conclude this was the result of what could only be conscious exaggeration. It is that factor, rather than his understandable inability to recall specific dates so long after the event, that provides

further support for my conclusion that his evidence must be treated with caution save where it is admitted, is corroborated or is against his interest.

140. I return to what is likely to have occurred on the two visits by the defendant to London in 2005 that I have found occurred later in this judgment. As I have said earlier, I do so because my conclusions concerning those events are likely to be assisted by my conclusions concerning what occurred and in particular what the claimant said and did or permitted others to say and do on his behalf after those visits had occurred. Those events are of course to be considered together with the conclusions I have so far reached concerning what occurred in the period down to July 2005, including in particular what is likely to have occurred in 1996, and the degree to which I can safely rely on the evidence of the claimant (on whom rests on the onus of proof in respect of what is alleged).

*The Relevant Post July 2005 Events*

141. A significant amount of time was taken up at trial with the detail surrounding the acquisition of a property in London for occupation by the claimant. The property ultimately acquired is called and is referred to in these proceedings as “*Ormidale*”. The detail concerning how it was acquired and the tax structures that were used in its acquisition contribute very little to the resolution of the issues that arise. It is necessary I note at this stage in the narrative however an issue that arose concerning the claimant’s domicile because, potentially, that is material to an assessment of his credibility.
142. The defendant’s case, as I explained earlier, is that he supported the claimant and his family following his flight from Russia. His case is that

“After Mr Gorbachev left Russia, I tried to support him in many ways because I felt a moral obligation for a person with whom I worked and was friends for many years. I think Mr Gorbachev was also aware of the risks connected with his criminal prosecution. Following the recommendations of the “Menatep” group lawyers, Mr Gorbachev decided to settle in England. I gave instructions to Mr Antoshin (as my personal treasurer) to provide all the necessary assistance to him.”

This is consistent with the nature of the relationship between them as described above and by the essentially *ad hoc* nature of the support provided. I conclude however (as I have already mentioned) that I consider the defendant to have been motivated also by a strong desire to keep the claimant out of Russia and away from the GPO because of a concern that what the claimant might say to the GPO could impact adversely and seriously so on the defendant and his personal interests. The support provided is not consistent with it being attributable to a defined interest in the assets of a company (whether capital or income) because it was not calculated or remitted on that basis and no form of accounting was maintained by either party on that basis. However, these receipts gave rise to tax issues. That provides the context for what follows.

143. As I have set out in detail earlier, on 18 April 2005 the claimant was granted asylum in the UK and on 17 August 2005, the extradition proceedings against him were stayed. In Paragraph 114(4) of the amended Particulars of Claim, it is pleaded that “(a)s at the date of the 2005 Declarations, Mr Gorbachev was domiciled and habitually resident in

*England (having been granted asylum there) and could not return to Russia...*” However, at the time he was taking a significantly different position in relation to his tax affairs.

144. In October 2005, he sought specialist tax advice. It was arranged by Mr Gherson of Gherson & Co. the solicitors who acted on behalf of the claimant in relation to his immigration affairs. The initial meeting with the tax advisers (Mr Saunders of International Fiscal Services Limited (“IFS”)) took place on 17 October 2005 and 4 days later Mr Gherson wrote to Mr Saunders returning his letter of engagement signed by the claimant together with KYC materials relevant to the claimant. This, in combination with the fact that Ms Charidemou did not attend the first meeting but Mr Gherson did, satisfies me that it was he who introduced the claimant to IFS. It follows that I reject the claimant’s evidence (see T5/106/8-19) that the meeting was arranged by Ms Charidemou.
145. The attendance note of the 17 October 2005 meeting shows that the claimant attended the meeting together with Mr Gherson, his solicitor, and a Russian speaking associate employed by Gherson & Co. It recorded the claimant’s plans as being “...*to restructure his life in the UK, acquire a house and possibly in the future set up businesses in the UK...*” but a few lines later the claimant is recorded as saying that as “...*he would like to return to Russia as soon as he can, he is non-domiciled in the UK...*”.
146. This is inconsistent with his pleaded position that at this time he was domiciled in England. It is another example of the claimant providing information that suits the requirements of the moment and in my judgment impacts adversely on the credibility that can be attached to his uncorroborated evidence. It is not open to him to say credibly that he did not understand what was taking place. The claimant accepted in cross examination that Mr Levtoev (Mr Gherson’s associate) was a Russian speaker who was able to translate in the course of the meeting as and when the claimant required assistance. It is inherently improbable that he would not have asked for clarification in Russian had there been any doubt as to what was being said and it is also improbable that Mr Saunders would not have wanted to be sure of what he was being told by requiring information to be sought in Russian if he thought that was necessary. That after all was the reason or at least a reason for taking a Russian speaking associate to the meeting.
147. On or about 31 January 2006, the claimant signed an HMRC form following his arrival in the UK. The form was completed in English and signed by the claimant below a statement that confirmed that the information in the form was “... *correct and complete to the best of my knowledge and belief*” and that he would notify HMRC “*without delay if there was a change in my circumstances or intentions which would affect any of the answers given*”. In answer to the question “(w)here do you consider you are domiciled ...” the claimant answered “*Russia (Moscow)*”. The claimant says that this was completed by his tax adviser (Mr Saunders presumably). I accept that evidence only because plainly the form has not been completed by the claimant in his handwriting although he has signed the form.
148. The claimant sought to distance himself from this document in the course of his cross examination:

“Q. But you signed this form, didn't you?

A. I signed it but it was prepared by the tax adviser and I think it is correct.

Q. If you look at the declaration at the bottom, do you see that you are specifically declaring that you will notify the UK Inland Revenue without delay if there was a change in your circumstances or intentions and that the information that you have given in this form is correct and complete to the best of your knowledge and belief. Do you see that?

A. Yes, but I don't remember this document here.

Q. You understood, didn't you, Mr Gorbachev, that it was important that this document was true?

A. No, because it was prepared by the tax lawyer I think it was correct.

Q. You understood, didn't you, that it was important that what was said in this document was true?

A. I think so, yes.

Q. And you must have looked at what was said in this document before you signed it, mustn't you?

A. Not really, because I believe that it's information correct what was prepared by the tax adviser. It was not my handwriting.

Q. So you had told your tax adviser, hadn't you, that you considered yourself to be domiciled in Russia?

A. No, I don't remember about conversation.

Q. You had also told your tax adviser that your intention for the future was to return to Russia, if you look at 18(a)?

A. No, I don't remember all of this conversation exactly.

Q. And if you look at 18(b), you had also told your tax adviser that you intended, had originally intended that your residence would cease in 2005 but now you intended it would cease as soon as possible. Do you see that?

A. It's not my handwriting, and I don't remember this.

Q. Your tax adviser could not possibly have put this information in a form for you to sign unless you had told them this information, could they?



A. Possibly we discuss some option but I don't remember exactly that it was agreed like this word.”

Although later and wrongly denying it (see T2/20/13-17), the claimant accepted that in the tax returns that he submitted for the period 2006-2007 his asserted position is that he was not domiciled in the UK for tax purposes – see T2/15/18-23.

149. In light of the conclusions I have reached so far, I have no hesitation in rejecting the claimant's evidence (if ultimately that was his evidence) that the information contained in the form came other than from instructions given by him to his tax adviser. This is important to events I refer to later in this judgment because a recurring theme in the claimant's evidence when faced with an inconvenient statement in a document prepared by a third party on his behalf was to attribute the statement to the individual completing the form even though appearing (as in this case) in a document signed by him and even though the third party was a professional who it is inherently probable would seek instructions from the claimant before completing the form.
150. In 2007, the trustees of the Gamini Trust took tax advice from Lawrence Graham. Mr Jacob, the partner at Lawrence Graham who was providing advice, gave advice in relation to the claimant's domicile which is summarised at paragraph 2 of the attendance note of the meeting on 17 January 2007 in these terms:

**“Domicile**

NDJ explained that it would be useful for both Mr & Mrs Gorbachev to prepare detailed domiciled statements demonstrating their intention to return to Russia in order to avoid any risk of their being treated as domiciled in the UK for tax purposes. If they were domiciled in the UK for tax purposes then they would be taxable on their worldwide income and gains on the basis they were UK tax resident and their full estates would be liable to UK Inheritance Tax in the event of death.”

Although the claimant denied that it was explained to him that he was only not domiciled here if he intended to return to Russia – see T2/1721-24 – I reject the claimant's evidence on that issue if for no other reason that it is plainly contrary to what is said in the attendance note quoted above and his explanation as to what he was told (“*I remember they told I will be domiciled if I will be in the UK more than 10 or 14 years, something like this*”) makes no sense as a matter of law (in an area a tax adviser, particularly a solicitor specialising in tax affairs, can reasonably be expected to have detailed knowledge) and is not anywhere reflected in the attendance note of the meeting with Mr Jacobs or any of the attendance notes of the meetings with Mr Saunders. In the result in each relevant tax return the claimant said he was not domiciled in the UK although he also said he was not claiming to pay tax on the remittance only basis.

151. Whilst the point is not one that is as important as for example the conflict between what is said in the Asylum statement and what is said in the claimant's statement in these proceedings, the conflict between what the claimant was prepared to state for tax purposes in relation to his domicile and what he pleads to be the position in these proceedings is stark and provides further support for the conclusion that the claimant is willing to say what he considers most helpful to his cause at any particular time or in

any particular circumstances. This provides yet further support for the conclusions I have reached concerning the degree to which I can safely rely on the claimant's uncorroborated evidence.

152. The other issue that arises from the claimant's tax affairs has a more direct impact on the substantive issues that arise in this claim. The claimant accepted that in the course of the initial meeting with Mr Saunders, Mr Saunders was attempting to understand what assets the claimant owned and where they were located – see T1/163/1-6. It was then put to the claimant that the assets identified did not include any interest in PhosAgro or Phosco, or of any such interest being held on his behalf by the defendant. He agreed – see T1/163/13-24. Given the timing of these discussions (which took place about 2 months after the alleged July Declarations and little more than a month after the alleged September declarations) this is a striking omission. His explanation was that “... *it's question is what I personally have...*” by which he meant that “... *if any document that I have shareholder under my name it is personal, otherwise it's not.*” This led him to deny that his tax advisers were interested in what beneficial interests he might have – see T1/164/13-20. No reason, much less a good reason, was suggested for concealing from his tax advisers the effect of the declarations which the claimant alleges were made in July and September 2005 when seeking advice as to whether what he alleges had occurred gave rise to any tax risk. This approach is consistent with him having (or him thinking he had) rights under an option that had not been exercised at the time. It is entirely inconsistent with what he maintains were the arrangements reached in 1996 or what he says was the effect of what he alleged the defendant said in July and September 2005.
153. The claimant attended a further meeting with his tax advisers on 6 December 2005. In the course of that meeting there was a discussion as to the terms of a letter that might be sent to HMRC. The proposed letter included the following:

“Due to a change in Mr Gorbachev's residency status in Russia he was obliged to withdraw all his cash from his Russian bank account and place it in a safe deposit box in Russia. Mr Gorbachev's only other asset is 90% (tbc) of the shares of Fresnillo Trading Ltd, a Cypriot-incorporated company, which are held upon trust for him, During the accounting year ending 31 March 2005, Fresnillo Trading Ltd has not/has had X of profits.”

This demonstrates firstly that (as was self-evidently the case) the claimant's tax advisers were concerned with the assets he owned beneficially. This was put to the claimant and resulted in oral evidence that was unsatisfactory:

“Q: ... Do you not accept, Mr Gorbachev, that your tax advisers were trying to find out what assets you had, whether you owned them legally or beneficially?”

A. Yes, but personally.

Q. Personally?

A. Yes.

Q. You mean -- by personally you mean in your name; is that right?

A. Yes, yes.

Q. The Fresnillo shares were not held in your name, were they?

A. I am not sure. At some stage I think it was my name.

Q. Mr Saunders' understanding at the time of this conversation is that they were held on trust for you which would mean they were not held in your name, wouldn't it?

A. No, I am not sure about the trust.”

It is also notable for the lack of any mention of a vested right in PhosAgro or Phosco. This is consistent with having rights under an unexercised option but not with an unconditional right to 24.75% or any part of the defendant's shares in Phosco or of his ultimate beneficial interest in PhosAgro.

154. There was a further meeting between the claimant and his tax advisers on 16 December 2005. When it was put to him that he attended this meeting his response was “(p)ossibly. I'm not exactly remember, yes.” Since there is an attendance note showing he attended, I find that he did. In his later answers, he accepted that one of the attendees was Mr Mariashin, that he spoke Russian and that he would have been able to assist with translation if the claimant required it – see T2/2/5-14. The purpose of the meeting was to “... clarify certain aspects in relation to AG's personal tax situation, in particular his shareholding in Fresnillo Trading Ltd ("F"), a Cyprus- incorporated company.”
155. The claimant was asked in cross examination about various parts of the attendance note. This resulted in answers such as “Possibly, I don't remember exactly...” and “(p)ossibly, I don't remember this meeting here.” On the face of it, this suggests that the claimant has a poor recollection of the events that took place in 2005. This is not a criticism concerning dates but is apparently an acknowledgement by the claimant that first he did not recall the meeting (which independently generated documentation satisfies me took place on the date referred to in the attendance note) and then that he did not recall critical parts of it. Whether this denial of recollection was itself dishonest or genuine does not matter for present purposes. Either way, it undermines any confidence that the claimant is able to recall what occurred in 2005 or give accurate evidence in relation to it.
156. Following these exchanges, there was then some detailed cross examination in relation to documents that showed the shares in Fresnillo or some of them were being held by corporate trustees on trust for the claimant. This led to the claimant accepting he signed the documents concerned, maintaining that he did not recall them, asserting that he signed the documents only because he was advised to do so and denying that he knew that the shares in Fresnillo were being held on trust for him as the documents demonstrated – see T2/4-6 *passim*.

157. Following these exchanges, Ms Davies returned to the question that she had asked originally the previous day:

“Q. Now, you also understood, didn't you, Mr Gorbachev, that your advisers, your tax advisers were interested whether -- in what assets you had in trust as well as in your personal name?”

A. Possibly, but I'm not sure it's here.”

In my judgment this answer was a concession that what had previously been denied was in fact correct and the claimant's tax advisers were concerned to know what assets were held on trust for the claimant and the claimant knew that was so. I consider this concession to be almost inevitable in the circumstances and the failure to make it when asked originally further undermines the degree to which I can safely rely on the claimant's uncorroborated evidence. But for Ms Davies's (entirely correct) persistence in relation to this issue I would have been left with an inaccurate and misleading answer.

158. The claimant accepted that he understood that in the course of this meeting his tax advisers were attempting to understand what assets the claimant had in order to make a truthful declaration to HMRC – see T2/8/6-10. In the attendance note of the 16 December 2005 meeting, paragraph 13 of the note records:

“[Mr Saunders] summarised that his understanding is that AG's assets amount to the cash in the safe deposit box in Russia, 10% of the shares in [Fresnillo] and the monies he had received for consultancy services in Switzerland, which he will declare in his 2004/2005 tax return. RS asked AG to confirm his understanding that these are the only assets AG owns.”

Plainly the failure to mention the 24.75% interest that the claimant alleges was being held by the defendant as his nominee following the 1996 arrangements and which he claims in these proceedings by reference to the July or September Declarations was bound to mislead Mr Saunders, unless in truth the claimant considered he was entitled only to an unexercised option to acquire a 5% interest in Phosco or the defendant's ultimate beneficial interest in PhosAgro. The following exchange then took place between the claimant and Ms Davies concerning the contents of paragraph 13 of the 16 December attendance note:

“Q: So Mr Saunders was asking, wasn't he, for confirmation at this meeting that you attended that these were the only assets you owned?”

A. I don't remember he ask me or Areti Charidemou.

Q. You did not tell Mr Saunders, did you, that you also had a shareholding in PhosAgro or Phosco?

A. No, because I don't held. It was under Guriev name, not my name.

Q. You did not tell Mr Saunders, did you, that you had a shareholding in PhosAgro or Phosco being held on your behalf by Mr Guriev?

A. No.

Q. Nor did you tell Mr Saunders that you were receiving income as a result of an interest you had in a fertiliser business in Russia?

A. No.”

These are significant omissions. Both would either actually or potentially expose the claimant to tax liabilities and should have been disclosed to Mr Saunders if accurate advice was to be obtained; the failure to mention the interest that it is now claimed based on the alleged July or September 2005 Declarations is inconsistent with him having any such interests and his failure to claim that the payments he was receiving from Russia were attributable to an interest he had in either PhosAgro or Phosco is inconsistent with his assertion that those payments were attributable to such an interest and were not *ad hoc* payments made by the defendant.

159. The claimant’s attention was drawn to a letter signed by him addressed to HMRC dated 31 January 2006, which contained the following statement:

“Due to a change in my residency status in Russia, I was obliged to withdraw all my funds from my Russian bank account, place it in a safe deposit box in Russia, and leave the country rapidly. My partner, who resides in Russia, has access to the contents of the safety deposit box, to provide herself, our two children and also me with funds for living expenses by paying the funds into a Russian bank account on a regular basis.

My only other asset is 10% of the shares of Fresnillo Trading Company, a Cypriot-incorporated company, which is currently held upon trust for me.”

This accurately reflected the instructions the claimant had given. There then followed this exchange between the claimant and Ms Davies:

“Q. The reason you told HMRC in this letter in January 2006 that your only other asset was 10% of the shares of Fresnillo held on trust for you was that that was the truth?

A. Yes.

Q. Now, your case in these proceedings, as we understand it, is that you had a 24.75% interest in what you call the fertiliser business and that Mr Guriev had specifically told you in 2005 that he continued to hold your shares under his name, yes?

A. Yes.

Q. Now, if that was true you could not possibly have written a letter in these terms to Her Majesty's Revenue and Customs on 31 January 2006, just a matter of months later, could you?

A. Because I am not hold those shares myself and what I understand I don't need to report it to HMRC.

Q. You were reporting to HMRC assets that were held on trust for you. Do you see that in the first sentence of the third paragraph?

A. Yes, but I explain already I was not aware about the structure of the holding. I don't remember that it was trust.

Q. You were telling HMRC specifically that the only other asset you had were these shares held on trust and Mr Gorbachev, I suggest to you it really -- if your case in these proceedings really were true you could not possibly have said that to HMRC on 31 January 2006?

A. No, because it was not under my name. I cannot report it hold someone for me, what I understand.

Q. Nor were your shares in Fresnillo under your name Mr Gorbachev.

A. In this period of time I think it was under my name.

Q. We just looked at the trust deeds, Mr Gorbachev.

A. Yes, but I told I don't remember this document exactly. I have not been involved on the preparation.”

There is no obvious distinction to be drawn between the Fresnillo shares held on trust for the claimant on the one hand and the 24.75% interest in PhosAgro which he alleges were held for him by the defendant other than the absence of a document or documents evidencing such an arrangement. In any event, even if this is wrong, in my judgment, it is highly significant that none of the documents disclosed by the claimant as coming from his tax advisers record him disclosing what he alleges were the arrangements concerning the Phosco shares, much less him seeking or being given any advice that could justify him saying that his understanding was that he did not have to disclose what was held on his behalf either in relation to his assets generally or, specifically, about what he claims to be his interest in the Phosco (or PhosAgro) shares. On the basis of the material available, the claimant made no mention of his alleged interest in Phosco or PhosAgro or the “*fertiliser business*” if that is different. That can only be either because the claimant knew he had no such interest or because he had made a conscious decision not merely not to disclose it to HMRC but not to mention it to his advisers or seek advice as to his position in relation to what he alleges to be a vested interest.

160. There is no explanation offered as to what legitimate reason the claimant would have for not disclosing that he had a 24.75% interest in Phosco (or PhosAgro) if he had such

an interest, when at the same time he was disclosing that he had a beneficial interest in Fresnillo, unless he wished to avoid any tax consequences that might follow from him disclosing his alleged interest. However that was not suggested by him or on his behalf and had it been it would itself have been severely damaging to his credibility as a witness.

161. There was no explanation offered as to why the claimant did not assert that the payments he was receiving ultimately from the claimant were attributable to his alleged beneficial interest in Phosco or PhosAgro if that was the truth. Whether the truth is that the claimant did not disclose his alleged interest because in fact he had no such interest is something that I can reach conclusions about only having considered the rest of the evidence, but in the absence of an explanation as to these events, it is to be inferred from this material that the claimant did not have such an interest either as a result of what he claims to have happened in 1996 or as a result of any declarations alleged to have been made in July and September 2005.
162. It is next necessary to consider the circumstances surrounding the alleged exercise by the claimant of his rights under the Option conferred by the Second Option Agreement. This is a highly contentious issue between the parties. I should make it clear that the claimant does not accept that the Option was ever exercised and maintains that the sums that were paid over following its purported exercise were simply the capitalised sums judged necessary for the claimant and his family to live in England at the level they had established for a future period of between 5-7 years. His case is that there was no genuine exercise of the option or subsequent sub sale of the claimant's 5% interest in Phosco, that the documents relied on by the defendant were shams as is to be inferred from there having been no negotiations concerning the exercise of the option or any valuation of the claimant's 5% interest, much less one that could justify a valuation of US\$20m. I address these issues below. However, even if I accept the claimant's case on this issue it does not assist him in demonstrating that in truth he had the 24.75% interest that he claims. It may mean that the Second Option Agreement is valid but its exercise was invalid. If that is so then the claimant may have a continuing 5% interest in the defendant's interest in Phosco or PhosAgro. However, that does not form any part of his claim in these proceedings and I make no findings concerning that possibility. What matters however is that the claimant's attack on the exercise of the Second Option does not lead to the conclusion that the claimant has the 24.75% interest he claims, particularly given the conclusions I have reached concerning what he claims were the arrangements made in 1996, and the inconsistencies of his conduct thereafter.
163. I have already made findings about the expiry of the First Option Agreement in accordance with its terms, the B&C arrangements entered into by the defendant and the circumstances in which the Second Option Agreement came to be drawn up. I need say no more about that. To an extent the issues concerning the exercise of the second option are interwoven with the acquisition of Ormidale and its subsequent renovation, which for convenience I set out at this stage.
164. Before turning to the substance, it is necessary to say something at least in outline about the offshore structures that it is alleged by the defendant were involved in the alleged exercise of the option. The offshore structure that permeates this part of the case is to a large degree opaque. It is dominated by Ms Charidemou, in the sense that she formed and then administered most of the constituent entities either herself or with her daughter

Ms Marina Loizou. Ms Charidemou has acted for the defendant as his Cypriot lawyer since no later than 2000 and she also acted for the claimant between 2005 and 2012.

165. For present purposes it is necessary to note that Ms Charidemou was a trustee of the Gamini Trust and a nominee director of First Link Management Services Limited (“First Link Management”), a corporate trustee of the Goaliva Trust. First Link Management is ultimately beneficially controlled by the defendant. Ms Loizou was also a trustee of the Gamini Trust, a nominee director of B&C Consultants Limited and a nominee director of First Link Management. As well as being a corporate trustee of the Goaliva Trust, First Link Management was the corporate vehicle used to pay funds into the Goaliva and Gamini Trusts. I explain the role of the Gamini and Goaliva Trusts below.
166. The Gamini Trust was a Cyprus-based trust established by Ms Charidemou but nominally settled by Fresnillo Trading Limited by a deed dated 7 November 2005 between Fresnillo as settlor and Ms Charidemou as trustee for the purpose of purchasing Ormidale using funds passed to it by Fresnillo. The claimant, Ms Smirnova and their children are beneficiaries of the Gamini Trust. The Goaliva Trust is also a Cyprus-based trust, also established by Ms Charidemou and of which the claimant and members of his family are beneficiaries. The purchase of Ormidale was (originally at least) planned for completion in late January 2006. The proposed purchase was the subject of advice from IFS contained in a letter dated 5 January 2006, which contained advice as to how the property could be acquired and held in a manner that was most tax efficient and records that the claimant did not want ownership to be registered in his own name for “*asset protection purposes*”. That advice appears not to have been followed.
167. Ultimately the property was purchased by Ms Charidemou and Ms Loizou as trustees of the Gamini Trust at a price of £4,880,000. The purchase was completed on 14 March 2006. The purchase was funded by a loan from Roland Management Limited (an English registered company) (“Roland”) of US\$6m to Fresnillo. The loan was the subject of a written loan agreement dated 27 February 2006. By what was in effect a novation agreement of the same date, between Fresnillo, Ms Charidemou and Ms Loizou as trustees of the Gamini Trust and Roland, it was agreed that the Gamini Trust would repay the loan plus agreed interest directly to Roland and the respective obligations of the Gamini Trust and Roland under the loan agreement were released. It is agreed between the parties by paragraph 123 of the List of Common Ground and Issues that the purchase price was ultimately funded by companies of which the defendant was the ultimate beneficial owner and so (as the defendant submits) he was the ultimate source of the purchase price. Subsequently further loans were advanced in order to fund renovation work to the property. These were financed by loans totalling £4,328,762 from Lightwater Holdings Limited (a Seychelles registered company), that were made the subject of an “*after the event*” loan agreement contained in a deed dated 7 November 2005.
168. Turning now to what the defendant alleges to have been the claimant’s exercise of the option conferred by the Second Option Agreement, it is common ground that in the end shares were not transferred to the claimant other than notionally by reason of any alleged exercise by him (or on his behalf) of his option or otherwise. The defendant’s case is that ultimately what happened was that Phosco agreed to pay the claimant US\$20m for the shares to which the claimant would be entitled on exercise of the



option. The claimant describes this as “... a fictitious sale of a backdated option agreement to get money to me...” and that “... the sale of an option agreement was not a real sale and was simply designed to provide an explanation for providing money to me...”. The purpose of the arrangement was that the claimant would have what he calls “understandable money”, that it was designed to pay for all his living expenses for a period of 5-7 years until he was able to return to Russia; that it was not anything other than a sham sale of his 5% interest because no attempt was made to value the 5% interest and that what took place was not intended to have any impact on the money that would be available to him for his living or other expenses. This is inherently contradictory. In summary, however, on the claimant’s case everything that took place in and around the purported exercise of the option conferred by the Second Option Agreement was window dressing designed to create the impression that he had a legitimate source of income derived from a capital sum located offshore at a time when he was non domiciled in the UK. If the claimant’s case is correct then it would appear to be his case that everything that occurred was for the purpose of evading UK tax that would otherwise have been payable on the sums concerned.

169. The defendant’s case is that he was first informed by either Mr Antoshin or Mr Mariashin (who handled the day to day arrangements concerning the support provided to the claimant ultimately by the defendant) that the claimant wished to exercise his option; that at that time the shares in Phosco were nearly worthless because the assets it held were the shares in PhosAgro and it and Apatit were in turn virtually worthless because of huge tax claims that had been made against them by the Russian authorities. The claimant left the detail to Mr Mariashin. His evidence was that the claimant was concerned about the possibility of the tax authorities commencing an investigation into his source of funds and that shortly after the Second Option Agreement documentation had been finalised, the claimant:

“... confirmed to me and to Mrs Charidemou that he wished to exercise his option to acquire 5% of shares in PhosCo. Thus, on 29 October 2007 he gave notice to B&C of his intention to do so. It was agreed that the shares would then be re-purchased by PhosCo for a sum of US\$20 million. The figure of the USD 20 million was provided by Mr Volkov, because, I think, he knew the approximate value of the Phosco’s shares based on the various valuations of the business that were carried out. I am not sure whether Mr Volkov discussed this figure with Mr Guriev. However, I know that Mr Guriev became aware of the fact that the payment of the USD 20 million would be made.”

170. It is now necessary that I set out the documents by which the defendant alleges the claimant exercised his rights under what became the Second Option Agreement. The ostensible dates that appear on the documents do not make any sense.
171. Ostensibly the first in time is a Deed of Assignment by which the benefit of the Second Option Agreement was assigned to the Gamini Trust. The ostensible date of this document is 29 November 2005. However, that cannot be right in fact since the (ultimately backdated) Second Option Agreement had not been drawn up by that date. However, in fact it must have been made at or after the date when in fact the Second Option Agreement had been entered into since it refers to the Option as being one to

which B&C is a party and as being dated 19 November 2003 (the (erroneous) back date of the Second Option Agreement). The assignor is the claimant and the assignees are Ms Charidemou and Ms Loizou as trustees of the Gamini Trust. The main recital within the Deed states that:

“WHEREAS the Assignor has an Option agreement with "B & C. Consultants Limited" a company duly incorporated and existing under the Laws of Belize and having its registered office at 60, Market Square, PO Box 364, Belize City, Belize, dated 19 November 2003 for the purchase of 5% of the shares in the issued share capital of company "Phosco Industries Limited" an International Business Company existing under the laws of BVI and having its registered office at Mill Mall, Suite 6, Wickhams Cay 1, P.O. 3085, Road Town, Tortola, BVI (hereinafter called "the option" ).”

This recital is consistent with the terms of the Second Option Agreement (since it is only that which is with B&C). That being so, it has plainly been backdated. The Deed is otherwise unremarkable. Clause 2 made clear that the Option was to be held subject to the trusts of the Gamini Trust.

172. The next document in ostensible date order is an Addendum to the Second Option Agreement. It is dated 26 December 2006. Again that is before in fact the Second Option Agreement was entered into. It is probable therefore that this document too was back dated. The parties to this document are Ms Charidemou and Ms Loizou as trustees of the Gamini Trust and B&C Consultants Limited. It refers to the Deed of Assignment dated 29 November 2005. The only conclusion that can safely be reached about this is that the Addendum was executed at or after the date when in fact the Deed of Assignment had been signed, whenever that was. It refers in terms to an Option Agreement dated 19 November 2003 (i.e. the backdated Second Option Agreement). It purports to extend the time for exercising that option to 31 December 2007.
173. The final document in this run is an Assignment Agreement, which is dated 4 August 2007. It is between Ms Charidemou and Ms Loizou as trustees of the Gamini Trust and First Link Management as trustee of the Goaliva Trust. This document purports to record that:

“The Assignor as Trustee of the said Gamini Trust has an obligation under a loan agreement ("The Loan") to repay to the lender thereunder the sum of US\$6,000,000 (six million US dollars) plus interest thereunder until the date of repayment and any fees or expenses connected to the Loan and intended to repay the Loan and associated costs out of the proceeds of the sale of the Option shares.”

By Clause 1 of the Assignment Agreement Ms Charidemou and Ms Loizou purportedly assigned to First Link Management the benefit of the Option subject to what is referred to as the Loan. This would appear to be the loan in aid of the purchase of Ormidale referred to earlier. Other than that this document would appear to postdate the actual making of the Second Option Agreement (because it refers in terms to the Option

granted by B&C dated 19 November 2003) it is not possible to be specific as to when in fact this agreement was entered into. Although it is described as being an agreement it is to be treated as a Deed having regard to the language used, even though it lacks some of the formal contents normally to be found in a deed.

174. Plainly the dating of these documents is highly unsatisfactory but in my judgment is clear that each of them was entered into in contemplation of and probably on or after the date when the Second Option Agreement had been entered into. The metadata for the draft Second Option Agreement suggests that the last amendment to it was made on 26 February 2007 and in my judgment it is probable that the version of the Second Option Agreement signed by the claimant was signed either in late February or early March 2007. Mr Mariashin's oral evidence on this issue was initially that the document was signed in January or February 2007 but then that it was signed "later" in 2007 – see T19/53/9-13. This does not assist in resolving the question other than it may have been signed after the end of February 2007.
175. Although some caution has to be shown in relation to deriving date information from materials generated by Ms Charidemou and Mr Mariashin, there is an email that assists on the timing issue. In mid-2007 Ms Charidemou opened some discussions with Julius Baer International Limited ("Julius Baer"), a UK regulated private client bank based in London, for the purpose of handling the US\$20m payment as and when it came to be made. She sent an email to Mr Pitsillides of Julius Baer dated 13 June 2007, which in so far as material said:

"Further to our telephone conversation attached is the option agreement with the extension of time and deed of assignment of the option agreement to the trustees.

I also attach a CV for [the claimant].

The company Phosco industries agreed to buy it's shares from the trustees for approximately US\$20,000,000 (final figure is not agreed yet)."

Although there is a dispute as to whether a copy of the Second Option Agreement was enclosed, a copy of the Deed of Assignment between the claimant and the Trustees of the Gamini Trust (which refers to the Second Option Agreement) was enclosed. Absent any better evidence, I conclude that the Second Option Agreement and the Deed of Assignment between the claimant and the Trustees of the Gamini Trust) were signed on a date or dates now unknown between the end of February and on or about the beginning of June 2007.

176. The Addendum was probably signed some time thereafter because if the extended date referred to was in contemplation when the Second Option Agreement was signed it would have been the work of a moment to insert or alter it so as to include the later date. The Assignment Agreement between the Trustees of the Gamini and Goaliva Trusts was probably the last of the documents to be signed because if it had been signed at the same time as either of the others, the others would probably have recited the effect of the Assignment Agreement.

177. I now turn to the question whether the option contained in the Second Option Agreement was exercised. Whilst on balance for the reasons that follow I conclude that the option conferred by the Second Option Agreement was probably exercised as alleged, I do so with hesitation. In any event I regard this issue as peripheral to the issues that I have to decide because, as I have said already, if the option was not in truth exercised that does not assist the claimant to prove his positive case.
178. Firstly, clearly something stimulated Mr Mariashin to take steps to replace the expired First Option Agreement. No attempt had been made by anyone to rectify the position following expiry of the First Option Agreement and the carrying into effect of the B&C arrangements. It is probable this would have continued unless and until the exercise of the supposed option came to be considered. It is at least a real possibility therefore that what stimulated the steps leading to the drafting and signature by the claimant of the Second Option Agreement was a desire on the part of the claimant to exercise what he considered to be his option. I accept that of itself would not be anywhere near enough to enable any firm conclusions to be reached on the issue I am now considering but it is a factor that needs to be borne in mind when the further material to which I refer below is considered. I also accept that this could have been the first step in a sham structure to mislead HMRC as to the claimant's sources of income, although in my view the former is inherently more likely than the latter.
179. Secondly, although the back dating of the Second Option Agreement appears to be relied on as a springboard for the claimant's suggestion that there was no valid exercise of the option, the one does not follow from the other. The backdated creation of the Second Option Agreement is conceptually and factually distinct from its purported exercise. In any event, even though the Second Option Agreement was backdated, it was actually signed by the claimant, as was the assignment of the Second Option Agreement to the Gamini Trust. Thus if and to the extent that these documents were part of a sophisticated scheme to dishonestly mislead HMRC by using sham documentation, it was a process in which the claimant was a knowing participant. It strikes me as inherently unlikely that a person in the position of the claimant would wish to take any risks of that sort. Again this is not in any sense decisive but nonetheless it is a factor to be taken into account when considering the totality of material relevant to the issue I am now considering.
180. Thirdly, there is some documentation that is consistent with the claimant wishing to exercise his 5% option. It was discussed for example at a meeting with Mr Jacob of Lawance Graham on 24 January 2007, which records the following in relation to the Option:

**“1. Option**

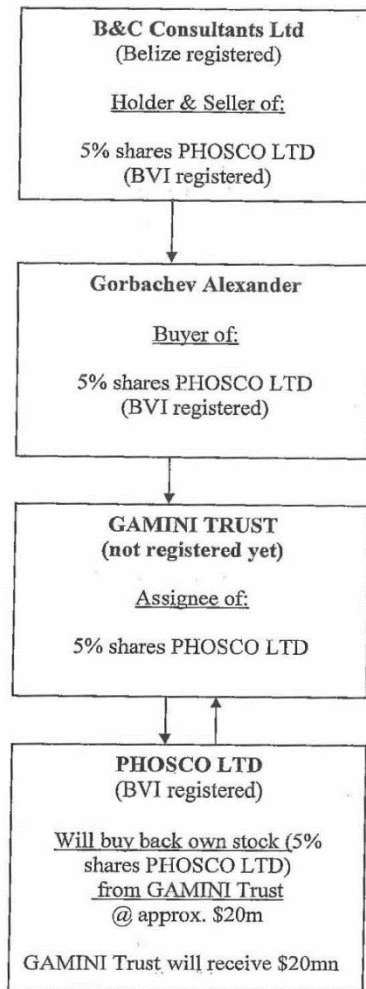
1.1 This has been extended until the end of February 2007.

1.2 The Trust was established in November 2005, and the option was assigned shortly after that to the Trust. This was contrary to the information that had been supplied to [Mr Jacob] earlier. It would thus be the trustee who would exercise the option, acquire the shares, and have the ability to sell them. They believe they would be able to sell them for US\$20 million.”

181. Mr Stanley is correct to submit that this is materially inaccurate in that the option had not been extended to the date mentioned and the option had not been created at the alleged date of assignment. However, the discussion proceeded on the basis that the option was to be exercised and the resulting shares sold for US\$20m. It is not open to the claimant sensibly to say that he was not there because he is recorded as being present, nor that he did not understand what was being said because Mr Volkov was present and could interpret anything that the claimant did not understand. His oral evidence that he was unable to recall this discussion – see T5/117/19-20 – takes matters no further, given the terms of the attendance note. If this was all part of the window dressing by Ms Charidemou and Mr Mariashin, it is not obvious why the claimant attended the meeting. However it makes more sense that he should attend and the discussion should be in the terms summarised if what was in contemplation at that stage was the exercise of an option and the sale of the 5% shareholding he would be entitled to on the exercise of the option. That said, I accept that the discussion could not have proceeded in any other way if Mr Jacob was not to be professionally embarrassed so little weight can be placed on this factor in deciding what is likely to have happened and that misleading Mr Jacob could all have been part of a sophisticated scheme to dishonestly mislead HMRC by using sham documentation. However, as I have said, I consider it inherently unlikely that the claimant would have wished to participate in such a scheme given the risks that discovery posed for him.
182. Fourthly, it would be fair to say that from the defendant’s perspective, the minutiae surrounding how the transaction was to be carried into effect did not matter to him – as he put it, it did not matter what went into the documentation because “... *I paid up on my obligations and I bought the shares from Gorbachev for 20 million.*” – see T14/104/2. However that does not lead to the conclusion that the sale of the claimant’s interest for US\$20m was not a genuine commercial agreement. That the defendant continued to make substantial *ad hoc* payments to support the claimant and his family after the purported exercise suggests the exercise of the option was not perceived by the defendant to be in respect of the support of the claimant as the claimant alleges and that this happened is inconsistent with the claimant’s case that the US\$20m was simply a capitalised sum of the amount necessary to support him and his family for the next 7 or so years that had been disguised by the parties to mislead HMRC. If that was so then the *ad hoc* payments would have ceased or reduced.
183. Consistently with this, Mr Mariashin apparently sent an email to the claimant dated 25 May 2007, which refers in terms to “... *the receipt of USD20 million by the Trust as payment for 5% Option for Fosco’s shares...*”. This email was disclosed in the Cyprus proceedings to which I refer below in hard copy. The claimant served notice requiring this document to be proved. At trial, the claimant was cross examined by reference to this document. His evidence was that “... *I think I don’t receive this email because I don’t remember it at all...*”. However, as to this, it was sent to an email account that the claimant accepted he was using at the time – see T5/122/2 – but was an account that the claimant had maintained could not be opened and so could not be made available on disclosure – see T5/121/16-24. Mr Mariashin was cross examined on the basis that the email was one that had in fact been sent by him to the claimant and the suggestion that it had not been was not put to him – see T19/53-57. Mr Mariashin was not asked whether the email “bounced back” when it was sent. In summary, the email was sent to an account to which the claimant had access at the time and there is no evidence that it was not received in the account other than the claimant’s evidence that he considers it

was not received because he does not recall it. In light of this, I am satisfied that this email was sent by Mr Mariashin to the claimant and that on the balance of probability it was received at the account to which it was sent. Further, I am satisfied that if it was sent to that account it would have been seen and read by the claimant. Even if I could accept the claimant's uncorroborated evidence on this issue (which I cannot) it is not evidence from which it can be inferred either that the email was not sent or if sent was not received because his evidence is that he does not remember the email.

184. The significance of the email for present purpose is that it is consistent with a payment being made for the claimant's option to acquire 5% of the Phosco shares and that it had been agreed that the price that would be paid was US\$20m. There is no email or other written communication by or on behalf of the claimant challenging either of these propositions, nor was it suggested that there has been such a response. This is consistent with the discussions with Mr Jacob at Lawrence Graham.
185. Fifthly, as the claimant acknowledged, a meeting took place on 11 July 2007 with officials at Julius Baer, the claimant and Ms Charidemou. There is a dispute as to whether Mr Mariashin also attended the meeting but whether he did or not does not matter for present purposes. The claimant agreed that the purpose of the meeting was to persuade Julius Baer to open an account in the name of the Gamini Trust – see T5/126/14-127/4. He denied that the reason for the conversation at that stage was because the trust would shortly be receiving US\$20m – see T5/128/1-9.
186. Prior to this meeting, Ms Charidemou had met with Mr Pitsillides, who was then Julius Baer's Executive Director, Private Clients. Following that meeting (but before the 11 July meeting) by an email dated 27 June 2007, Mr Pitsillides emailed Ms Charidemou, enclosing a draft background information document on the Gamini Trust. Inferentially, this document had been prepared following the meeting between Ms Charidemou and Mr Pitsillides and reflected Mr Pitsillides' understanding of what he had been told by Ms Charidemou. The email invited Ms Charidemou to "... *expand/add/correct any comments ...*" to the document, including in particular those highlighted in yellow (reproduced below). The draft document included the following summary, which although the email does not say so in terms, inferentially reflects what Mr Pitsillides had been told by Ms Charidemou at the meeting was intended:



This part of the draft ended with the following narrative:

“Request:

- To open a Trust bank account (Gamini Trust – not registered yet) with Julius Baer Guernsey. In this account approximately ½ of \$20mn will be deposited in the JS account, the rest will go towards settling various expenses. Outgoing \$10m payments to be clarified
- The JS account will be a discretionary managed account (mandate profile to be determined).
- Further, he is considering releasing ½ equity from his London residential address. JB may provide the financing and the proceeds will be managed by JB on a discretionary account.
- Trustees of the GAMINI Trust will be Areti Charidemou and Maria Loizou (Cypriot based lawyers). ...”

Ms Charidemou responded to this email the following day, enclosing a marked version of the document sent to her by Mr Pitsillides. In her corrections, she deleted the words

“Buyer of:” in the second of the boxes set out above and the words “(not registered yet)” from the third of the boxes set out above. The table set out above was not otherwise altered.

187. When cross examined about what had been discussed at the subsequent 11 July meeting, the following exchange took place between Ms Davies and the claimant:

“Q. Now, what I am going to suggest, Mr Gorbachev, is, given that this was being discussed between Ms Charidemou and Julius Baer shortly before your meeting with them, this must be what you were discussing with Julius Baer in the meeting with them?

A. No, I don't remember we discuss all this transaction or this structure of the shares, not at all. ... They ask me about, because what I understand, to open an account and beneficiary, yes, and Red Notice, and I understand Areti told me they ask my personal attention on the meeting, and most of the question was about the case, about all this Interpol, about charge, etc, etc, and I told them all the story about the extradition and all of this situation. But we not discuss about any structure of the shares and sale and 20 million.

Q. There must have been some discussion about what the account was going to be used for, Mr Gorbachev?

A. It is for use, yes, was a trust for property and for beneficiary, yes.

Q. And to receive the 20 million which they had been discussing in the documents?

A. No, we not discuss receive 20 million, no.”

There is an obvious difficulty caused by the fact that none of the participants of the meeting other than the claimant have given evidence. However, so far as the claimant is concerned, he had no recollection of who attended the meeting on behalf of Julius Baer (see T5/129/3-10) yet apparently recalls there was no discussion of the underlying transaction in respect of which facilities were being sought from Julius Baer. Whilst I have little doubt that the circumstances in which the claimant had left Russia, Interpol's involvement and the attempt to extradite the claimant from the UK to Russia were discussed, I consider it inherently improbable that the underlying transaction would not also have been discussed, not least because in the text of his summary, under the heading “*Request*” set out above, Mr Pitsillides sought further clarification in particular of the highlighted parts of the Note. It is difficult to see why those issues would not be discussed at all at the meeting when they had previously been identified as issues on which clarification was sought or how any discussion around those issues could have taken place other than with some discussion of the intended transaction. It is also inherently unlikely that the transaction would not have been discussed given that the initial approach to Julis Baer was to facilitate the transfer of the US\$20M to the trust.



188. Sixthly, the claimant's current case concerning the exercise of the option contained in the Second Option Agreement is inconsistent with the position he adopted in some Cypriot proceedings commenced against the defendant by him or in his name.
189. The background to this activity was the PhosAgro IPO on the LSE in 2011. Had the claimant been entitled to 24.75% of the shares in that company at the date when this offering was made then he would have become entitled to very substantial sums as a result. It will be necessary for me to refer to the IPO in some detail later in this judgment. I mention it at this stage only because it provides context for the commencement of the Cyprus proceedings. The other introductory point that must be made at this stage is that in order to facilitate the Cyprus proceedings the claimant entered into a Deed of Assignment with a BVI registered company called Marholm Limited ("Marholm"). The purpose of this arrangement would appear to have been to finance the cost of the litigation then contemplated. It provided that following assignment of the alleged causes of action available to the claimant against the defendant and others, the assignee (Marholm) became entitled to the whole of the proceeds resulting from enforcement of those causes of action less 75%, which the claimant was entitled to. By clause 3.1 of the Deed of Assignment, the claimant agreed that he would use his

"... best endeavours by providing all assistance as and when required by the Assignee, in the form of advice, access to his files and papers, copy documents, access to persons advising him and otherwise to assist the Assignee and its advisers and Connected parties in relation to all and any matters as required by the Assignee or on its behalf to progress any actions, claim, negotiation and discussion with any party in respect of the Chose in Action..."

and by clause 3.5, the claimant:

"... hereby appoints the Assignee as his lawful attorney to act in the name of the Assignor as is necessary to take action and otherwise negotiate or obtain sums in relation to the Chose In Action for the Benefiting Parties ..."

By a Deed dated 2 May 2015, the parties entered into an Addendum to the Deed of Assignment. The trigger for the addendum identified in the second recital was that Marholm "... considers the best course of action in relation to recovery of funds pursuant to the Chose in Action would be to pursue a claim in Cyprus." The effect of the Addendum was broadly to reduce the claimant's entitlement to 70% of the proceeds but net of the costs proceedings. These arrangements were in substance a litigation funding arrangement.

190. The first proceedings commenced in Cyprus was a private prosecution. In those proceedings, which were commenced on 14 May 2015, it was alleged that the Defendants, including the defendant, conspired in July 2011 to defraud the claimant of his alleged beneficial ownership of 24% of the total share capital of PhosAgro. Thus it was being alleged that the claimant was the beneficial owner in 2011 of 24% of the shares in PhosAgro.

191. A second criminal case was commenced by or in the name of the claimant on 16 November 2015. Chronologically this was the third set of proceedings commenced in Cyprus. The two criminal cases were interspersed with the commencement of the civil claim I refer to below. The defendants to the second criminal case were the defendant, First Link Management, Mr Mariashin and Ms Charidemou. The substance of the allegation made in those proceedings was of a conspiracy to defraud by disposing or selling “ ... a number of shares in a proportion of 5% (value beyond 300.000.000 US Dollars) in PHOSCO INDUSTRIES LTD... since the benefit they acquired ... as the disposal value of the shares was by far reduced of the real value which is beyond 300.000.000 US Dollars, and the disposal value was 20.000.000 US Dollars...”. This allegation was that the claimant was entitled to 5% in Phosco and the allegation was that they had been bought and sold by the defendants at an undervalue. This is the polar opposite of what is now the claimant’s case.
192. Both criminal proceedings were discontinued without ever being considered on their merits.
193. The civil proceedings commenced in Cyprus were commenced on 12 October 2015. The claimants were the claimant, his wife and children. The defendants were First Link Management, Ms Charidemou, Mr Mariashin, the defendant and Phosco. The Declaration sought as set out in the Claim Form was for a declaration that:

“... the Plaintiffs, acting as beneficiaries of the "THE GOALIVA TRUST", registered in Cyprus on 03/08/2007, have had and still have a substantive benefit on the amount of 5% of the shares of the Defendant 5 from 2008, as also, have been and still are the beneficiaries of the profits or the distributed dividends attributable to the abovementioned shares thenceforth.”

This was followed by Particulars of Claim, specifically in relation to the allegations being made against the defendant. It records the transfer from the Gamini to the Goaliva Trust of the Second Option Agreement (something that occurred as part of an attempt to separate the Trust holding Ormidale and the liabilities arising in connection with its acquisition from the trust holding the other assets). It treats the Second Option Agreement as a valid agreement. In relation to the issues I am now considering, it was alleged that the Option had been exercised but at an undervalue. At paragraph 16 it is alleged that on “... 2/11/2007 an agreement was signed between [First Link Management] in its capacity of trustee of the GOALIVA TRUST and ... PHOSCO - under which [First Link Management] sold and transferred to [Phosco] 5% of the share capital of PHOSCO for the amount of USD20,000,000...” This again is the polar opposite of what the claimant alleges in these proceedings. In relation to the price paid, it is alleged that each of First Link Management, Mr Mariashin and Ms Charidemou:

“... knew that the value of 5% ... of the 'PHOSCO' shares, was much higher, namely amounted to USD 360,000,000, the latter in order to damage the value of the trust for the benefit of [the defendant and Phosco], conspiring with them to deceive, under whose instructions they acted and to serve their own interests, have accepted to make this sale and make a market in the shares causing damages to the trust and the Claimants amounting to

USD 340,000,000 which the Claimants claim on the Defendants ... jointly and or separately.”

This statement of claim was replaced with a statement of claim relevant to the claims being made against First Link Management, Mr Mariashin and Ms Charidemou and Phosco dated 18 February 2016. The key allegation made was at paragraph 14 where it was asserted that:

“On the 2/11/2007 [First Link Management] acting as Trustee of GOALIVA TRUST signed an agreement with the ... PHOSCO powered by the [First Link Management] sold and transferred to [the defendant] the 500 shares, namely the 5% of the share capital of PHOSCO by consideration with the amount of 20,000,000 US DOLLARS since the latter with her own decision decided to buy back the said 500 shares.”

And paragraph 18, where it is alleged that:

“18. While [First Link Management, Mr Mariashin and Ms Charidemou] knew that the value of the 5%, namely in total 500 shares on the value of the shares of "PHOSCO" were of much greater value, namely amounted 360,000,000 US DOLLARS, the latter with the purpose of damaging the trust for benefit of [the defendant and Phosco], conspired with them to defraud, under those instructions they acted also to serve their own financial interests, they have accepted to make the aforementioned sale and disposal of the shares causing damage upon the trust and to the Claimants rising to 340,000,000 US DOLLARS the amount which the Claimants claim from the Defendants ... jointly and severally.”

It was stated expressly in paragraph 12 of the revised statement of claim that “*B & C signed with the Claimant*” the Second Option Agreement and that he had assigned the option to the trustee of the Gamini Trust – see paragraph 13. This is not to treat either the option or its assignment as a sham. This was admitted by the claimant in the course of his oral evidence – see T5/147/12-16. Ultimately these proceedings were dismissed as against the defendant in June 2018.

194. The claimant was cross examined as to the apparent contradiction between what was said in the Cyprus civil proceedings and his case in these proceedings. He was asked whether he accepted that the Second Option was assigned to the Gamini Trust, which then assigned it to the Goaliva Trust, which then exercised it. His response was first “*(n)o, I don't remember, because the date, had not been at this date in Moscow at all...*” which was a reference to the back dating, the fact of which is not in dispute, and then “*(p)ossibly, but I don't remember exactly, yes.*” In relation to the sale at US\$20m, he denied that was a real disposal because:

“... we always discuss about provide money to the trust, and all this document, all what created by Areti, yes, with Mariashin possibly, it just creates a paperwork structure to provide money to the trust. And this option agreement will used, yeah, like one

of the document that Areti can exercise or under this document receive the money on the trust.”

With those answers in mind attention turned to the second criminal proceedings. It was pointed out what was being alleged in those proceedings – as to which see above – then he was asked whether he knew what was being alleged in those proceedings, to which he responded:

“A. I not been involved on preparation, but later on they informed me that, yes.

Q. You knew that was being alleged in Cyprus in a criminal prosecution in your name?

A. Later on, yes.

Q. And you didn't take any steps, did you, to stop this criminal prosecution immediately upon learning about it?

A. No, because not been deeply involved on this, yes.”

As will be apparent from these exchanges, the claimant was seeking to distance himself from the allegations being made in the second criminal proceedings.

195. There was a hearing in those proceedings on 21 March 2016. The claimant was asked whether he recalled attending that hearing to which his answer was “No” – see T5/152/6-10. His attention was then drawn to the order of the court made on that occasion and to the fact that it records “*Claimant 1*” (that is the claimant) as being “*Present*” and to Mr Mariashin and Ms Charidemou also being “*present*”. The claimant continued to dispute that he was present. I find that he was on the basis of the contents of the Cyprus court order and I reject the claimant’s evidence that he was not present.
196. This was a significant hearing because the claim was dismissed as against the defendant whilst the proceedings were continued against Mr Mariashin and Ms Charidemou. In relation to the point that he knew what was being alleged his evidence was:

“Q. You knew certainly by this time that what was being alleged was that there was a fraud based on the sale or disposal of the 5% of the Phosco shares?

A. It was prepared by a Cyprus lawyer and I not been involved, I explained before, all this situation, yes, in Cyprus.”

His developed answer was that he did not give the relevant instructions, which were given by Marholm – the funders I referred to earlier. There is difficulty about this point because the Cypriot lawyer on record for the criminal claimants (either Mr or Ms Onoufriou of Loukis G Loukaides & Co LLC) has not given evidence, nor has anyone from Marholm. I consider it highly improbable that a reputable lawyer would instigate criminal proceedings of this sort without first satisfying him or herself that the allegations had a factual basis. That could only sensibly be done by taking instructions as to the allegations being made from the claimant. However, the critical point is that

whatever happened prior to 21 March 2016, by that date when the claimant was sitting in court he must have appreciated what was being alleged. In this context the claimant's evidence was:

“Q. You were prepared for allegations of criminal conduct to continue to be made against First Link, Ms Charidemou and Mr Mariashin on the basis that there had been a sale or disposal of the 5% of the Phosco shares, and you knew what was being alleged and you were prepared to allow the criminal proceedings to continue in your name weren't you, Mr Gorbachev?

A. I was advised from Cyprus lawyers, yes.

Q. Which you took, so you were prepared to --

A. They will prepare all this material, yes.

Q. And you agreed with them that they could continue making allegations on that basis, didn't you?

A. I not agree because I'm not give instruction for them.”

197. I accept that the source of instructions to Mr Onoufriou was Marholm. However, it is highly improbable that he or she could have put their name to the documents containing the allegations made in it without some direct input from the claimant. That was implicitly conceded by the claimant when he said that he was “... *advised from Cyprus lawyers, yes.*” This is consistent with the evidence given by the claimants' wife, Ms Smirnova, in whose name the second criminal proceedings were also brought, as the following exchange in the course of her cross examination shows:

“Q. Now, criminal proceedings I'm sure you'll agree are very serious proceedings indeed?

A. I was not explained at that time. Probably, yes.

Q. And before criminal proceedings could have been issued in your name you must have authorised the lawyers to do so, yes?

A. I authorised lawyers.

Q. Yes, you authorised the lawyers and you must have known what the basis of the claim that was being brought on your behalf was?

A. Probably, yes.

Q. And you must, I would suggest, have looked even if only briefly at the criminal indictment that was being issued in your name?

A. I trusted lawyers.

Q. You trusted the lawyers?

A. Yes and I was not really -- I read briefly but I trusted lawyers.

Q. You trusted the lawyers not to mislead the Cypriot court as to the factual basis of the claim, didn't you?

A. I trusted lawyers fully, it was lawyers.

Q. So is the answer to my yes, you trusted the lawyers not to mislead the Cypriot court?

A. Not to mislead. They are lawyers.”

198. What emerges from this is that (a) Ms Smirnova authorised the lawyers to commence the proceedings in her name; (b) she knew the basis of what was being alleged and (c) she trusted the Cypriot lawyers not to mislead the court. There is nothing at all surprising about that evidence which is plainly evidence that is contrary to her interests or at least the interests of the claimant and I accept it.
199. In those circumstances, I consider it highly probable that the claimant (a) authorised the commencement of the proceedings and (b) knew the basis of what was being alleged. The difference is that the claimant had actual knowledge of what had occurred. I also reject as inherently improbable the notion that the lawyers of record in Cyprus would have commenced proceedings and particularly criminal proceedings in any other circumstances.
200. In those circumstances, I reject the notion that the proceedings were started without the claimant’s knowledge as to what was being alleged. It follows that I find on the balance of probability that the source of the information that led to the allegations made in the second criminal proceedings was the claimant and that he was aware of what was being alleged in them. What was being alleged is as I have said inconsistent with this case in these proceedings but more particularly for present purposes, it is inconsistent with his case that the Second Option Agreement or its exercise was a sham. The second criminal proceedings and the civil proceedings both proceed on the basis that the Second Option and its assignment were genuine but that the sale of the shares to which ultimately the claimant was entitled under the Second Option had been sold at a massive undervalue as a result of an alleged conspiracy between the various defendants.
201. The final Cypriot proceedings that I must refer to is an Originating Summons filed by the claimant, Ms Smirnova and their children on 20 April 2016 by which they sought an Order from the Cypriot court “ ... *ordering the dismissal and/or the termination of the appointment ARETI CHARIDEMOU, from the position of commissioner/trustee of the international trust "THE GAMINI TRUST" which was formed in the Republic of Cyprus on 07/11/2005.*” The application was supported by an affidavit sworn by Mr Onoufriou, the Cypriot lawyer who acted nominally for the claimant and his family. It is likely that this lawyer was instructed by Marholm. In his affidavit however, Mr Onoufriou swore that:

“I am a lawyer and I work in the Law Firm of P.N.Onoufriou LLC, lawyers of the applicants, I know the facts of the present

case which I say below, from information that I have received from Applicant 1 as well as from the study of the documents which are related with the present case. I swear in this affidavit with authorisation of the Applicants because of their inability to attend in person in the Court for the purpose of this Affidavit because of their absence abroad.” [Emphasis supplied]

Thus, Mr Onoufriou deposes on oath to the fact that the contents of his affidavit is based on information obtained from the claimant (described as being “Applicant 1”). In cross examination of the claimant the following exchange took place:

“Q. And that he swears this affidavit with authorisation of the applicants, because they are unable to attend Cyprus?

A. Possibly, but I don't remember exactly this document.

Q. So you had provided him with information and authorised him to swear the affidavit leading to the application to remove Ms Charidemou as a trustee of the Gamini Trust. That is right, isn't it?

A. Yes, we discuss it, we need to take action and to try to remove trustee, yes.”

Notwithstanding this, the claimant maintained that all this took place when Marholm was involved and that he was not involved in the details – see T6/8/7-11. When it was suggested to the claimant that this must be untrue given what was said in paragraph 1 of the affidavit quoted above, he accepted that Mr Onoufriou had received both the documents to which he refers and the information in the affidavit from him – see T6/8/13-19 and 22-23 – but denied any knowledge of the requirements of an affidavit – see T6/8/22-24.

202. The claimant was then taken to paragraph 6 of the affidavit where it was alleged that Ms Charidemou “... *illegally transferred and assigned [the option] to Goaliva Trust, sold on 2/11/2007 the [5% share capital] for the amount of 20.000.000 US Dollars instead of its real value which was 360.000.000 US Dollars.*” This treats the Option as genuine not a sham, its assignment as effective but “illegal” and the sale as a genuine sale but at an alleged undervalue. It was suggested to the claimant that “... *what is being alleged on your behalf in the Cypriot court, in an affidavit based on information from you which you authorised, is that there was a sale of the 5%, isn't it?*” to which the claimant responded

“A. I not authorised. I told already, I am not been involved in preparations of this document.”

I reject this evidence because (a) he had earlier accepted that the information in the affidavit came from him and (b) because it is inherently improbable that a Cypriot lawyer would tell a court in Cyprus in an affidavit (that is evidence under oath) that the contents of his or her affidavit came from information supplied by the claimant when it had not been. To do so would be likely to expose that lawyer to the risk of suffering serious regulatory and criminal consequences. In any event what the claimant denies

came from him is consistent with an affidavit apparently sworn by him in the same proceedings, to which I refer in the following paragraph.

203. There is what purports to be an affidavit of the claimant sworn in the same proceedings as that of Mr Onoufriou referred to above. By an application dated 30 May 2017, the claimant's Cypriot lawyer had applied for "... *(p)ermission by the Court allowing the Applicants to file a supplementary affidavit.*" That application had been supported by an affidavit sworn by a lawyer employed by the claimant's Cypriot lawyers, which attached a draft affidavit to be sworn by the claimant, which was the subject of the application. The claimant's lawyer said of the draft that it was:

"The draft of the affidavit of Alexander Gorbachev — Applicant — Claimant, on the present originating summons derives by his own personal knowledge and consists primary evidence on which the court can rely for the purpose of solving all the legal issues."

There is a version of the affidavit in English dated 12 or 17 October 2017 but bearing only the typed name of the claimant. It is stamped by the Cypriot Court. It is in materially similar but not identical terms to the draft attached to the lawyer's application for permission to rely on it. It was suggested to the claimant that the original signed by the claimant would have been retained by the Cypriot Court. The claimant claimed not to be familiar with the process and there is no other evidence that this is so. In relation to his knowledge of the document, his evidence is summarised in the following exchange:

"Q. You must have seen it and approved it, Mr Gorbachev; if you were being honest --

A. Possibly, but I don't remember."

Given the absence of a signed version of this affidavit being available I have considered whether the safest course is simply to place no reliance on it. However the circumstantial evidence suggests that the affidavit was filed with the Cypriot court. It is materially similar to the contents of the draft attached to the application for permission to adduce it and the claimant has not denied that he swore the affidavit but has stated only that he possibly signed it but cannot remember doing so. On balance therefore, I accept that he probably did swear it.

204. In the paragraph 14 of the affidavit, the claimant states of the option conferred by the Second Option Agreement that it was exercised and the 5% shareholding in Phosco sold back to Phosco for US\$20m. He also claimed in paragraph 18 of his affidavit that:

"I did not know until the year 2013 that the trustee had negotiated the sale of the 5% option which had been converted into shares of 5% in PHOSCO for the amount of 20,000,000 USD, an amount which is insufficient taking into account the actual value of the shares as of July 2011 according to London Stock Exchange that exceeds 360,000,000 USD as well as today."



As is apparent from what I have said earlier, his evidence that he was not aware until 2013 of the sale of the 5% shareholding is plainly untrue given the discussions with Mr Jacob and Julius Baer. There is no mention in the affidavit of an entitlement to 24.75% of the shares in Phosco, nor of any declaration of trust giving rise to such an entitlement either in London in 2005 or otherwise. Although he apparently acknowledges that the option was exercised and the shares then sold back to Phosco for US\$20m., at paragraph 24, the claimant denies that he agreed the price of the shares at US\$20m.

205. When he was cross examined about this issue the following emerged:

“Q. There is no mention in your affidavit of this being paperwork or not being a real sale, is it?

A. Yes, but I told you already I don't remember preparations of this document.

Q. You told us yesterday that your position has always been that there was no real sale. But that's just not true, Mr Gorbachev, is it? Because in this affidavit to the Cypriot court, your own affidavit, you were saying it was a sale?

A. No, it was not a sale for me, because if it's a real sale it should be real valuation and real money. If it's not, it's not real sale.

Q. How did you come to tell the Cypriot court in your own affidavit it was a sale?

A. Because it's been paperwork like sale, but not a real sale.

Q. Are you accepting you were telling an untruth to the Cypriot court?

A. No.

Q. How do you explain based on your current evidence that you weren't telling an untruth?

A. Because it was prepared by the lawyer, the documents what they have.

Q. So is your position that if a lawyer prepares a document, even if it is in your own name, it doesn't involve you telling an untruth to the court?

A. Sorry, what is the question?

Q. This is your affidavit, Mr Gorbachev.

A. Yes, but I told you --

Q. And I put to you that on your current account you are suggesting you told an untruth to the Cypriot court, and your response was: no, the lawyer prepared it?

A. Yes, it was prepared by the lawyer, yes.

Q. So I am just testing that and asking you: is your position if a lawyer prepares something, even if you sign it, it doesn't involve you telling an untruth to the court?

A. No, I think I told the truth.

Q. How could you tell the truth unless the truth is, as I submit it is and put to you that it is, there was a sale of the option in 2007?

A. It was produced document that it looked like sale, but it was not real sale.”

Whilst maintaining that the sale was a sham in cross examination he accepted that he knew of what had occurred in 2007, thereby acknowledging that what he said in paragraph 18 was not true:

“Q. Just taking that in stages, Mr Gorbachev, you knew in 2007 that 20 million was coming to your trust in connection with the exercise of the option, its assignment and the transfer of the shares, didn't you?

A. No. 20 million, yes, but it was not from shares or real sale for that option agreement. It was just provide money to the trust, what has been agreed. But by paperwork, yes, it was prepared like this. But I knew that it was not real sale, yes.

Q. The paperwork that you yourself signed in 2007 was paperwork which related to an assignment of the option, in order to enable the option to be exercised by your trust and the 20 million to be transferred, yes. You knew that in 2007, didn't you?

A. I signed the document what was agreed to prepare by Areti, but it was not agreed that it was sale in real shares for 20 millions.”

The complaint in the affidavit is that the 5% interest had been sold on what was then being alleged to be a gross under value. It was not being alleged that the 5% option had not been exercised or that its exercise was a sham or that the claimant's real interest was 24.75% nor that any such interest was the effect of a declaration of trust made orally in London in 2005 or was the result or ante-cedent agreement or understanding reached while the claimant was living and working in Russia. This was put to the claimant in cross examination and resulted in the following exchanges:

“Q. Well, Mr Gorbachev, I suggest to you that cannot be true, because you are telling the Cypriot court that there had been a

sale of the shares at a very significant undervalue; you are refusing to say that this is untrue in your affidavit, and so if this is true, you knew it was a sale?

A. No, my position always was that it was not real sale, no real valuation, yes, but they cannot provide any document of the support of their valuation and that theirs was real sale. But for paperwork, yes, it looks like this.

Q. If your position really had been it was not a real sale -- I will just give you one last chance -- how were you saying to the Cypriot court: Ms Charidemou was in breach of her duties as trustee by selling the shares at a gross undervalue?

A. I told you I don't remember to be involved on this document. I don't remember this details, but my position always is the same.

Q. It is your own affidavit, Mr Gorbachev. You must have read it before you signed it?

A. I not really remember all this document.”

206. As I have said already, this case is not concerned with an allegation that the Option was not exercised or was exercised and the shares to which the claimant was otherwise entitled were sold at an undervalue. The claimant's case is that the Second Option Agreement and the option it apparently conferred was a sham. That is, as I have observed already, the opposite of what was being alleged in the second criminal proceedings, the civil proceedings and the originating summons proceedings in Cyprus. In any event the evidence is not available that would enable the question of sale at an alleged undervalue to be assessed. There are at least two factors to be borne in mind. Firstly, the value to be attributed to a non-influential minority interest in a privately held company (as was Phosco) is not necessarily to be calculated as a simple percentage of the value to be attributed to the assets of the company. Mr Stanley disputes that is a correct analysis but these proceedings are not the venue to attempt to resolve that question. Secondly, the assets of the company consisted of shares in PhosAgro. The defendant alleges and it appears not to be in dispute that PhosAgro had been subjected to allegedly politically motivated tax demands that were resolved by the courts in Russia only finally in 2009. Again Mr Stanley disputes that this is correct because of the success PhosAgro had in defeating the claims. That issue has not been the subject of any worthwhile evidence. This is simply an issue that I cannot begin to resolve on the evidence available to me. It is not necessary that I should attempt to do so given the actual issues that arise in this claim. It simply diverts attention from what is the real issue in this case.
207. What emerges from the affidavit evidence of the claimant in the Cypriot originating summons proceedings is that (a) he did not allege a 24.75% interest in PhosAgro; (b) he did not suggest that the 5% option was a sham; (c) he did not allege that the 5% option had not been exercised in accordance with its terms but (d) he did allege that the resulting price was an undervalue. All of this is inconsistent with the claimant's case that the second option and its purported exercise were shams.

208. I have not so far commented on the allegations made in the first criminal proceedings. Superficially the allegations made in those proceedings are closer to what is alleged in these proceedings. However, there is no mention anywhere in those proceedings that the basis of the claimant's claim was a declaration or declarations of trust in London in 2005, nor is there any mention of either the First or Second Option Agreements being shams as alleged in these proceedings. What is alleged in those proceedings is inconsistent with what had been alleged in all the other Cypriot proceedings. In those circumstances there is nothing to assist the resolution of this dispute in what was alleged in the first criminal proceedings, other than to provide yet further support for the conclusion reached previously concerning the degree to which I can safely rely on the uncorroborated evidence of the claimant.
209. In those circumstances, I conclude that I should not accede to the submission made by Mr Stanley that I should reject the Second Option Agreement and/or the documentation apparently showing it was exercised as a sham. I do not accept that I should conclude this material was window dressing to justify the payment of millions of dollars to the claimant, not least because as I have explained if these arrangements were a sham and were used to minimise the claimant's tax liabilities that would necessarily involve me finding that the claimant had been knowingly complicit in those arrangements. I reject the notion that the claimant would willingly run such risks. That said, I regard this whole episode as one that is clouded in obscurity as I have explained and in my judgment is not an episode that I should regard as critical to the determination of the claim made in these proceedings.
210. Before returning to the core of the claimant's case (the alleged oral declarations in 2005) there are some other events that occurred thereafter that I need to refer to because they impact on the assessment of the claimant's evidence as to what he says occurred.
211. There was a falling out between the claimant and defendant. The claimant's case is that he was informed by his son of a conversation his girlfriend had with the defendant's son's girlfriend in 2008 on a yacht owned by the defendant in which it had been suggested that the claimant had sold his shares in PhosAgro. The claimant's case was that "... *Mr Guriev Jr was talking bullshit and about this kind of stuff to his girlfriend while getting drunk was completely unacceptable.*" The claimant's case is that this led him to suggest in the course of a meeting between him and Mr Antoshin at the Audley Public House that he wanted some clarity on how things were structured. The claimant alleges this was reported to the defendant by Mr Antoshin and the defendant was angered by what he perceived as a breakdown of trust.
212. There are a number of difficulties about this account. Firstly, it is said that the conversation took place on the yacht in 2008 but in fact the yacht was purchased in 2011. This has been established by the correspondence relevant to the purchase, which has been disclosed by the defendant.
213. The claimant's case is inconsistent with what he told Mr Fitzgerald. Mr Fitzgerald was a barrister retained on behalf of the claimant who acted at a preliminary stage in the development of these proceedings. One of the documents prepared by Mr Fitzgerald was a chronology that was meant to set out the claimant's recollections of the events with which these proceedings are concerned. This document records as the claimant's recollection at that time that

“In June/July 2011, Guriev Jr. and his wife are holidaying in the Mediterranean on Guriev's mega yacht. Gorbachev Jr. and his girlfriend are invited to join them. They do so. One night after dinner and several vodkas, Guriev Jr.'s wife asks Gorbachev Jr.'s girlfriend "why are you going out with him. He's not worth it. He does not have any money. His father is broke". Gorbachev Jr. advises his father of this conversation. Gorbachev is now becoming worried that his 24% may not be honoured.”

When cross examined about this discrepancy, his evidence was that it happened sometime in 2008 – see T6/75/15-18 and that his explanation for what appeared in the Fitzgerald chronology was “... *maybe it is some mistake with year*”. There then followed these exchanges:

“Q. You can't have made a mistake telling Mr Fitzgerald in 2012 about when the yacht trip was because the trip was only a year later -- you are having this conversation with Mr Fitzgerald only a year later than June/July 2011, aren't you?

A. Yes, but what I remember that it was conversation 2008 with my son.

Q. Mr Guriev's mega yacht is the Alfa Nero, isn't it, or at least it was?

A. Possibly, but I don't know exactly the ...

Q. You say in your third witness statement at paragraph 196.4.4 that Mr Guriev bought that yacht in 2008. Do you see that?

A, Yes, approximately, yes.

Q. You weren't involved in that purchase, were you?

A. No.

Q. And the purchase was in fact in 2011, Mr Gorbachev?

A. Yes, okay.

Q. You are not in a position to disagree with that, are you?

A. Possibly not, but they can use the yacht before.

Q. They didn't use a yacht before. The yacht trip was in 2011, as you told Mr Fitzgerald, Mr Gorbachev?

A. Maybe it's my mistake, yes.”

In this evidence, the claimant accepted that the yacht was purchased in 2011 and attributed his evidence concerning dates to a mistake on his part. These concessions are consistent with the evidence of Mr Guriev Junior (see paragraph 17 of his witness

statement). That evidence was not challenged in the course of Mr Stanley's cross examination for obvious reasons given the claimant's concessions in the course of his evidence. The only yacht trip mentioned by Mr Gorbachev Junior was one he said took place in 2012.

214. I have already made a number of findings concerning the credibility of the claimant as a witness. These concessions further fuel those conclusions. I do not accept that the correct explanation for the change in date was an error on the part of the claimant. The recollection he had when he gave instructions to Mr Fitzgerald are likely to have been correct for the reasons put in cross examination. No attempt was made to justify the change in evidence. No document was referred to that justified the changes. To be clear I find that there was no conversation of the sort alleged in 2008 and I reject the claimant's evidence contained in his witness statement to contrary effect.
215. These conclusions are significant because they impact fatally on the claimant's case as to the reasons for his falling out with the defendant. There could not have been any discussions with Mr Antoshin concerning the discussion on the yacht on 5 December 2008, as alleged by the claimant in paragraph 577 of his witness statement. He could not have said to Mr Antoshin on 5 December 2008 that "... *Mr Guriev Jr should keep his mouth shut, and that him and his girlfriend saying all this bullshit about closed information was completely unacceptable to me. I was really upset about this because any sort of information like this going around was not in my and my family's interests.*" These conclusions mean that I must also reject the claimant's evidence that the effect of this conversation was reported to the defendant by Mr Antoshin and that the defendant had become upset at what he perceived to be a breakdown of trust as a result. That was a claim that the defendant rejected in emphatic terms – see T15/137/15-138/4. His evidence as set out in his witness statement was that:

"Mr Gorbachev at §582 says that I refused to go to Mr Antoshin's birthday celebrations because I was "upset" that Mr Gorbachev allegedly "did not trust" me, and wanted to sign something in respect to his supposed "interest". This allegation is not true. I did not have such a discussion with Mr Antoshin. Mr Gorbachev did not have this alleged interest, or indeed any kind of interest in my business given that by that time he had already exercised his option."

Given my conclusions set out above, I accept this evidence.

216. The defendant's case as to the cause of the breakdown in his relationship with the claimant is that it followed a visit by the defendant to London in the middle of 2008. One of the reasons was for the defendant to view a property called Witanhurst, said to be one of the largest residential properties in London. He visited the property together with the claimant, the defendant's wife and son and Mr Bychkov amongst others. The defendant's case is that in the course of that trip he asked the claimant to head the Witanhurst renovation project for the purpose of selling the house on but that the claimant "... *looked at me , fully apathetic, and said that it did not interest him and he would rather go and play tennis...*" – see paragraph 199.2 of the defendant's second witness statement. The defendant's case is that "(t)he fact that Mr Gorbachev in such a harsh manner rejected my sincere offer to help him find employment, and did it so

*publicly, was taken by me as a personal humiliation. This was a great disappointment. ... he got too accustomed to being externally financed and unused to real work.”* The defendant described in his oral evidence his reaction to this as being “... *from the word go, he told me exactly where to go and it was extremely rude and my illusions were shattered. This person was beyond the pail now. He did not want to even bother to pick up the money which was showered on him, to pick it up from the ground. That's what I saw*” – see T15/135/9-14. The defendant maintains that it was after and as a result of this that “... *I stopped communicating with him after that trip. He would communicate with Mariashin only...*” – see T15/138/2-4. As he added a little later in his oral evidence:

“A. My relationship with Mr Gorbachev cooled off, as I said to you earlier, when he insulted me in front of me son and other people. Crudely speaking -- well, no, I will not speak crudely. He refused to work for me, in a very cynical and a very obnoxious way. That was before the trip to Israel. And after that, Gorbachev no longer existed for me. There was no point discussing him because my blood was boiling from a sense of antipathy towards Gorbachev.”

217. The defendant’s case on this issue was corroborated by Mr Tarakhnenko where it was suggested to him that the claimant had said to him he was “... *very interested in the Witanhurst project...*”, to which Mr Tarakhnenko responded:

“A. No, not at all. That is not true at all. He said that Mr Guriev offered him to get engaged in the reconstruction and the building works in Witanhurst, but he refused. He said no, thank you. That's all I know.

Q. Did Mr Gorbachev mention to you that it would have been possibly unwise for his name, as a wanted man in Russia, to be so publicly associated with Mr Guriev's project at Witanhurst?

A. No, he did not explain these things to me, he just told me that he received the offer and he refused it. He was offered to look after Witanhurst project but he refused.”

218. Mr Stanley invites me to dismiss the defendant’s evidence on this issue as entirely artificial. He maintains that it is “*obviously false*” because if he had been as grievously offended as he alleges he would not have spent the next two days shopping and visiting public houses with the claimant and others and that had he “... *been so insulted, he could have cancelled his plans with Gorbachev on the following two days without making a scene (if he wished not to make a scene), and severed the relationship from that date. He did not do so.*”
219. The defendant was particularly emphatic in his evidence about this issue but as Mr Stanley submits this has to be weighed with the undisputed fact that the defendant continued to provide financial support for the claimant until 2012 and then offered the claimant US\$30m when what became this claim surfaced. This leads Mr Stanley to submit that the explanation for this is that the defendant did not consider the relationship at an end until 2012.

220. These points undoubtedly have forensic traction and are important because the claimant relies on the continued payments as evidencing a continuing equity interest in Phosco or PhosAgro and the income stream derived from that interest. The defendant explained this apparent contradiction in answer to a question I asked him at the end of his oral evidence. This evidence is worth setting out in full:

“JUDGE PELLING: ... Do I understand you to say that in 2008 you were so grievously offended by the way in which Mr Gorbachev behaved towards you that you considered that to be a breakdown in relationships with him?

A. Of our personal relationship, yes, indeed.

JUDGE PELLING: Can you explain to me, therefore, why it was that until 2012 you continued to provide voluntary support for his living expenses to the tune of many millions of dollars?

A. Because I was obliged to do it, so that he would be here and would live in a certain way, decent way. I did not communicate with him. I wasn't interested in him. He only dealt with Mr Mariashin. Nobody wanted him. He refused to go into business with me, decided he wanted to have business relations with other people. His financing was about 1.5 or 2 million and that would ensure his calm and normal life.

JUDGE PELLING: By that stage, on your case, he had exercised his option to acquire shares and then immediately sold them back to you for \$20 million, hadn't he?

A. Indeed, correct.

JUDGE PELLING: Why was that not the end of the relationship and the obligation?

A. Well, he sold the shares prior to 2008. It all worked -- inertia set in. It all worked. He sold his shares in 2007 but he refused to look after my business in 2008. Well, if you refuse to earn your money, okay, live off charity. I was obliged to him that he left, that he lived in London, and I knew that, whatever my attitude towards him, it was my duty to maintain his lifestyle and maintain him.”

221. This evidence cannot be considered separately from what follows and I set it out now rather than hereafter, when it becomes relevant chronologically. In 2012, following the IPO to which I refer in more detail below, and after the claimant had intimated a claim based broadly on his claim to be entitled to 24.75% of Phosco's interest in PhosAgro, the defendant caused the claimant to be offered US\$30m. It is the defendant's case that, at that time, the claimant wished to enter into a business arrangement with two individuals whom the defendant did not like or trust. I asked for the defendant's explanation as to why he was prepared to offer such a sum notwithstanding his case that the relationship had broken down in 2008 and the claimant had no entitlement to



shares in either Phosco or PhosAgro following the exercise of the Second Option Agreement option. His explanation was:

“JUDGE PELLING: In those circumstances, what were you proposing to offer \$30 million for?”

A. The figure -- the origin of the figure was very simple. He wanted to go into business with the people I mentioned. I've already described those people. So I gave him the money that he wanted to go into business projects and then I said: that's it.

JUDGE PELLING: Why?

A. So that I would discharge all my responsibility for him, because after that, he would have had to be responsible for himself, because he chose other friends for himself.

JUDGE PELLING: And, just so I'm clear, the responsibilities you thought you were discharging by offering \$30 million were what?

A. I was responsible for him because he left Russia and I had to maintain him financially, but after he wrote this letter, and prior to that, he had desired to go into business with the people I had mentioned and to invest \$30 million with them, together. I decided: well, if you feel more comfortable with these people, live with them and deal with them. I gave him 30 million, so that he could go into business with those people.

JUDGE PELLING: Finally, the obligation to look after Mr Gorbachev, you have just described, all other things being equal, was that going to be a life-long obligation?

A. If he hadn't left for London --

JUDGE PELLING: No, forgive me, he did leave for London. You said you had to look after him. I'm asking, did you perceive that to be a life-long obligation?

A. Well, if he wasn't working I would have to maintain him. What else could I do?

JUDGE PELLING: So is the answer to my question, that you considered it to be a life-long obligation, "yes" or "no"?

A. Yes.”

222. There are real difficulties in evaluating oral evidence about an issue like this. This is one of the relatively few parts of the evidence where demeanour is material, yet in many ways it is critical to an overall assessment of where the truth of this dispute lies at a

factual level. This is the reason why in retrospect at least I consider hearing the evidence of the defendant in person was important to a fair and just outcome in this case.

223. The particular difficulty is that the relationship between the claimant and defendant was not simply a commercial or business relationship. It is common ground that on any view it was a close personal relationship as well. However, the relationship strikes me not as one of social equals engaged in a common business enterprise but as one that was more patriarchal or at least hierarchical than that. It was formed and developed in a society that appears from the evidence in this case to be and to have been much more hierarchical in its social, political and commercial structures than was common elsewhere. It was a relationship that has to be viewed in the context of what Mr Stanley called in his opening submissions the “*revolutionary dislocation*” of Russia in the 1990s with its attendant political and personal danger, in which the *krysha* concept took on a particular importance. The relationship was therefore, in part at least, one in which the claimant had looked to the defendant for protection just as the defendant in turn looked for protection from others. That is one of the reasons why the defendant continued to support the claimant in London although as I have said there were other reasons as well including what I consider the defendant perceived to be his own self-interest. In that context I conclude that a refusal by the claimant to become involved either with or on behalf of the defendant in a substantial project in London at his request, particularly if badly or disrespectfully phrased, might result in a more negative reaction than might otherwise be expected. I also conclude that it is the nature of the relationship and the risks that a public falling out and ending of support might spell for the defendant that led him to act as he did for the remainder of the trip and then as he did until 2012. What is significant is that after this visit all business between the parties was conducted through intermediaries.
224. Having observed the defendant’s demeanour throughout his evidence and even taking account of the limitations that resulted from him giving evidence in Russian, I conclude that his evidence on this issue was largely genuine though exaggerated in expression. I reach a similar conclusion concerning his evidence where the defendant was driven to mention Patriarch Kyril. Given that the claimant’s case on the cause of the breakdown of his relationship with the defendant in 2008 suffers from the fundamental difficulties identified above, I conclude that I should reject the claimant’s evidence on that issue and accept that of the defendant.
225. Before leaving 2008 (aside from the 2008 declaration that is part of the claimant’s pleaded case and which I consider below, together with the alleged 2005 declarations since together they form the alleged factual basis for his claim) there is an issue that arises concerning a trip that the defendant took to Israel, with Mr Litvinenko on 24-25 September 2008.
226. The underlying proposition relied on by the claimant was that Mr Litvinenko by this time was providing the defendant’s *krysha*. The defendant’s evidence was that from 2004 he needed such protection since that formerly enjoyed by him from his association with GML and its ultimate owners had disappeared with the arrest and imprisonment of Mr Lebedev and then Mr Khodorkovsky – see T16/26/19-27/3. Mr Litvinenko was able to offer protection to the defendant by reason of his close connection with President Putin – see T16/28/18-25. The claimant’s case is that it would have been unacceptable to Mr Litvinenko for the claimant to be involved in PhosAgro, given the interest that

he maintains the GPO continued to have in relation to his role in the affairs of Apatit. The defendant disputed that to be so – see T16/29/1-30/1 – and relied on the point that Mr Litvinenko had purchased shares in PhosAgro (or, possibly Phosco) in 2007 knowing the claimant was the beneficiary of an option to purchase shares and maintaining (contrary to the claimant’s case) that no one told him that “... *one needs to kick out Gorbachev from that business*” – see T16/30/6-7.

227. This is the context for the claimant’s case as to what happened in a hotel in Israel. He was not present. It was in relation to this issue that Ms Goldenberg’s evidence was said to be relevant. She is the estranged daughter of Mr Litvinenko, who changed her name in 2014. She was asked to provide her statement by the claimant – see paragraph 2 – for which the claimant agreed to pay Ms Goldenberg £150,000 plus expenses, which to the date of her statement were said to €20,000, plus a further £50,000 for “*security related expenses*” – see paragraph 8 of her statement. Her evidence was that she will be paid these sums irrespective of the outcome of this litigation – see T8/69/4-24.
228. This of itself requires me to exercise great caution about her evidence, not least because what she said in cross examination suggested a lack of frankness on this issue. When she was asked whether the agreement to pay was in writing, her evidence at first that she could not remember – see T8/70/3 – then “*(p)robably there is something but I don't remember. My husband earns much more money than me, so I'm not kind of dependent on this money, you know*” – see T8/70/6-8. Then there was the following exchange between Mr Weisselberg and Ms Goldenberg:

“Q. Are you really suggesting you can't remember whether an agreement to pay you £150,000 is in writing or not, Ms Goldenberg?”

A. Probably there is something but again, I do not recollect.

Q. Do you know where the document is?

A. Probably at my home.”

In my judgment, none of this was evidence that was full or frank or in reality truthful. It is inconceivable that if Ms Goldenberg was unconditionally entitled to the sums she refers to (totalling £200,000 and expenses) she would not know whether it was the subject of a written agreement and if it was where the agreement or her copy of it was located.

229. She then acknowledged that £140,000 had been paid to her in 2023 – see T8/71/8 and 15 – before she signed her witness statement – see T8/72/3-7. This evidence meant that paragraph 8 of her statement – in which she had said that the claimant “... *has agreed to make a payment to me of £150,000 plus expenses for my assistance in this case*” – was untrue. Rather than admit that was so, Ms Goldenberg responded to Mr Weisselberg first by saying “*So what do you want from me?*” which was obviously inappropriate and designed to deflect attention from the point, then by disputing the point rather than conceding it, as would a witness of truth attempting to assist the court – see T8.72/19-73/9. When she was asked when she expected to be paid the balance, she said that it depended on the contract (which on her evidence was or may not have been in writing) but that she did not remember. She also claimed not to be able to

remember who had paid her even though she was paid as recently as 2023. In my judgment these were answers that were answers of convenience rather than of truth and accuracy. Having listened to this part of the witness's evidence with care, I am bound to say that I found it unconvincing and improbable. This of itself leads me to conclude that I should be very cautious before accepting Ms Goldenberg's uncorroborated evidence.

230. Against that background, I turn to Ms Goldenberg's evidence concerning the Israel trip. Her evidence is that there was a discussion in the Lobby of the Hilton Hotel where everyone was staying and that the relevant part of the discussion was attended by Mr Litvinenko and Ms Goldenberg on one side and the defendant and Mr Antoshin on the other. Mr Volkov had been present but she maintains he had been asked to absent himself during this part of the discussion. She says the purpose of these discussions included "... (2) *people matters inside PhosAgro including Gorbachev; and (3) separating PhosAgro from two other companies to make its structures acceptable to President Putin*". In relation to the second of these subjects, her written evidence was:

"I have a good recollection of the meeting. I remember the tenor of the discussions very well, although I do not remember the exact words used. In this meeting my father explained to Guriev words to the effect that "the company has to be clean" and transparent. The reference to the "company" was a reference to PhosAgro. Father did not use a direct reference to President Putin but there was no doubt that he means that President Putin did not want strangers or people that they did not trust or "Khodorkovsky mafia", in PhosAgro. In Russian father called it an organised crime group. There was to be just competent company people. Father repeated that there should be no strangers in the company. No people that they did not trust. This was a direct conversation about Sasha. As I have said, Sasha is what my father called Gorbachev. As I have explained, this was not the first time this subject had come up in conversation. There had been earlier discussions. I remember that Guriev did try and push back. I saw it in his face. In my opinion it was hard for him. He kept saying something along the lines of "not now", "I need time", and "why, what's the problem". But my father took a tough position. He wanted it resolved as quickly as possible. In my father's mind, Gorbachev was a done deal - he was out. There was no context where Sasha could be allowed to stay.

74. You can tell how my father tries to express himself in how he behaves: he will be animated and bang the table. When my father understands that he is in charge he can be a bit emotional. My father gave a very clear task to Guriev, using f words, saying something to the effect "Clean, Clean and again Clean". "No Aliens/UFO's in the Company". No foreigners and no connection to foreigners, or anything that could be suspicious for President Putin had to be removed. Guriev asked about his son and my father said this was okay. Guriev said he understood what he had to do. He asked how much time he had. My father shouted, "as

soon as you can", to which Guriev replied, "I cannot do it straight away, I need to think how to do it".

75. My impression was that Guriev tried to push back on excluding Gorbachev but understood that this was not possible. Guriev then tried to negotiate time to do this, but again my father said there was no time. The impression my father conveyed was that this was a demand from above. This impression was created by him pointing his finger upwards."

When this came to be tested in cross examination, the evidence was much less clear. She was pressed to confirm whether she specifically recalled a discussion about the claimant's shareholding to which her response ultimately was "*I do not remember*". There were no notes taken of these discussions. She accepted that she had not heard her father refer to the claimant as being a shareholder – see T8/122/2. Her evidence about when she was maintaining the defendant arrived and left, while irrelevant, was confused, inconsistent and in one respect at least absurd. When pressed on the dates the defendant maintains he was present she suggested gratuitously that he may have had two passports. As suggested to her in cross examination that involved the proposition that the defendant arrived and left on one passport before returning and then leaving again using another.

231. Equally unreal in my judgment was Ms Goldenberg's description of Mr Volkov as "*... acting like Guriev's assistant, he was taking his bags, for example. He was kind of his butler, let's say...*". Given Mr Volkov's background, training and experience, his role as the CEO of PhosAgro and his central importance to the IPO this was nonsensical and partisan evidence that I must reject as inherently improbable. In my judgment this evidence further damages the credibility of this witness's evidence.
232. That I should reject her evidence gains further support from the gratuitous way in which Ms Goldenberg sought to inflict collateral damage on the defendant while answering questions which did not require the responses she gave. By way of example, when she was being asked a fairly technical question about whether there was any discussion about maximum shareholdings in PhosAgro for either her father or the defendant, she responded:

"A. How many shares did he have?

Q. Yes, what was the discussion about end point?

A. As far as I remember my father wanted to increase his part in PhosAgro, but again, this what I can recollect.

Q. What percentage was connected to an end point, Ms Goldenberg?

A. I cannot recollect that, but I remember he was very, very aggressive about Mr Gorbachev.

Q. Was there any discussion of an end point for his shareholding in PhosAgro?

A. There was a conversation that Guriev should do all his best and as soon as possible to get rid of Sasha from this company, yes.”

Yet another example of the difficulty which this witness presents is the manner in which she chose to answer questions she perceived to be difficult for her. I have given one example earlier. Another was when asked whether in light of earlier evidence she had given, part of her statement could not be correct, her response was “*You say so. Have you been in the meeting?*” This was followed up, when the question was repeated with the answer “*Why you suggest so*”. Whilst an isolated example of this sort of conduct can be overlooked as not being material to appraisal of the oral evidence of the witness concerned, with this witness it was not isolated and must be taken together with the other factors identified above. Ultimately there was this exchange:

“Q. Well, I am asking you, you used the term "end point" in your witness statement and I am asking you what the end point was. Was the end point by the time of the IPO?

A. Probably -- I was thinking that my father wanted to increase his shares by taking them from Mr Gorbachev but this is my suggestion.

Q. It is your suggestion. You didn't hear him say that, did you?

A. Not really, no.”

In relation to the statement in her witness statement at paragraph 72 that “*Today my father controls more than 20% of PhosAgro. This end point was discussed in this meeting ...*”, Ms Goldenberg was asked repeatedly to confirm her understanding that such was to be the end point achieved by the time of the IPO to which I refer later in this judgment. She replied first that her father’s interest had been transferred by him to her mother and then that her father was “*... a kind of wallet for Putin...*” and that what her father acquired was for himself in part and for President Putin in part. Ultimately this issue can be distilled into this exchange:

“Q. And what you are saying is that there was a discussion about an end point being reached of your father having 20% of PhosAgro. Do you see that?

A. Yes.

Q. Do you remember having that conversation?

A. Yes.

Q. The end point that was being referred to was the time of the IPO, correct?

A. I suggest the end point was how many shares will get the President, this is what I suggest.”

The key point was that in fact by the IPO, Mr Litvinenko held 10.03% of the PhosAgro shares either directly or as an “*economic beneficiary*” – see page 177 of the PhosAgro IPO Prospectus. In those circumstances, it is difficult to see how the end point could ever have been thought to be 20+%.

233. None of these answers (which in my view were calculated both to deflect from a question the witness did not wish to answer and to embarrass the defendant or perhaps inflict collateral damage on her father) came close to answering the question being asked. I have asked myself whether any of this can be explained away by the stress of giving evidence and/or by any linguistic difficulties. However, at no stage did this witness appear in any way distressed or intimidated by the process of giving evidence and whenever she said she did not understand questions they were repeated. She did not suggest that she did not understand the questions to which I have referred and the question concerning the meaning of end point was one repeated on a number of occasions, legitimately I might add since it was not being answered.
234. I conclude that Ms Goldenberg is not a witness on whom I can safely place any reliance. Her evidence was not full and frank but on the contrary was partial, argumentative, exaggerated as became apparent when tested in cross examination and in consequence was, I conclude, almost entirely unreliable. I conclude that in truth she has no real recollection of what was said in the lobby of the Hilton in 2008 or has not been full and frank in her recollection.
235. In the course of the cross examination of the defendant an attempt was made to elide the likely perception by Mr Litvinenko to any continued association with Mr Khodorkovsky with how he would have been likely to perceive an association with the claimant. That was put to the defendant in cross examination and he rejected it – see T16/29/1-10. In his closing submissions, Mr Stanley urged me to accept this analysis because the claimant is a “*wanted man in Russia*” and it is inherently plausible that both President Putin and Mr Litvinenko would regard the claimant as part of the “*Khodorkovsky mafia*” so as thereby to make inherently likely that there was a conversation much as Ms Goldenberg said there was. In my judgment this is not an appropriate inference to draw. There is no evidence as to how the claimant is currently viewed in Russia The Red Notice was withdrawn in or about 2014 and in 2015 Mr Gorbachev’s data was deleted by Interpol. Mr Gorbachev’s evidence in paragraph 302 of his first statement is that “*(t)he criminal case against me continues to this day. It is more than 18 years old, and I still remain “under suspicion.”*”. However there is no evidence that corroborates this assertion, which I reject as inconsistent with the withdrawal of the Red Notice. However, the point that matters is that Mr Litvinenko started to accumulate shares in PhosAgro no later than September 2007. In his closing submissions, Mr Stanley submits that:

“The proposition that Litvinenko was happy to purchase preference shares in PhosAgro knowing that Gorbachev had a 5% option is implausible – unless, that is, Litvinenko had been assured that Gorbachev would be removed from the business.”

However, on this analysis he was acquiring shares in PhosAgro months before the conversation that is alleged to have taken place in Israel.

236. The defendant was cross examined to the effect that there had been a discussion between the defendant and Mr Litvinenko in Israel broadly in the terms alleged by Ms Goldenberg. The defendant denied there was any such discussion, with the defendant making the point that the claimant had disposed of his interest in 2007 and that thereafter the claimant was not in a position to influence or interfere in the affairs of PhosAgro. It was suggested this was the reason for the cooling off of the relationship in 2008 – see T16/31/ 5-6. The defendant rejected this suggestion, saying “... *(m)y relationship with Mr Gorbachev cooled off, as I said to you earlier, when he insulted me in front of me son and other people. ... He refused to work for me, in a very cynical and a very obnoxious way. That was before the trip to Israel...*”.
237. There being no other evidence to support what is alleged to have happened in Israel, I conclude that this issue should be resolved by rejecting Ms Goldenberg’s evidence and concluding there is no evidence that supports the claimant’s case on this point. If the defendant’s case concerning the exercise of the option is correct, then that obviously enhances the improbability of there having been a conversation to the effect alleged by Ms Goldenberg. If the position is that the option was genuine but in truth had not been exercised as claimed by the defendant then the alleged conversation in Israel is consistent with the existence of genuine option that had not been exercised at the date of the conversation. The existence of a genuine option in the terms set out in the Second Option Agreement that had not been exercised is not consistent with the claimant’s case in these proceedings.
238. Before turning at last to the declarations that are the factual basis of the claimant’s claims, it is necessary that I deal with what happened in the period down to the date when the PhosAgro IPO took place because that impacts upon an assessment of the veracity of the parties’ respective cases.
239. I have already referred to the fact that notwithstanding the breakdown in the personal relationship between the claimant and the defendant, the claimant continued to be supported by payments made ultimately or at least with the authority of the defendant. The sums involved are substantial. They are calculated by the claimant at over US\$13m excluding the sums received as a result of the exercise of the option – see paragraph 339 of the claimant’s closing submissions. Of this sum over US\$5.5m was paid by way of living expenses in the period between 2008 and 2012. The claimant invites me to find that the ultimate source of the funds was the “*fertiliser business*” – see paragraph 336 of the claimant’s closing submissions. I assume by this what is meant is income derived by the defendant from PhosAgro.
240. In truth it is impossible to reach any definitive conclusions about the ultimate source of the funds other than that they came ultimately from the defendant. However, I am prepared to assume that most of the funds paid to the claimant came from the defendant’s income derived from PhosAgro because during the period I am now considering that was his sole or at any rate principal source of income. Mr Stanley submits that this volume of support “... *cannot be explained on the basis of charity by Guriev or a moral duty to help a PhosAgro employee in exile.*” The difficulty about that is that the payments made were not ever accounted for either by reference to the alleged capital value of the claimant’s interest in PhosAgro or the income that the defendant derived from it during this period. Indeed as the claimant appears to accept there was no proper accounting by either party – see paragraph 348 of his closing submissions.



Whilst it would be in the defendant's interest to disguise any such accounting because it would provide some support for the claimant's case that he had a continuing interest in PhosAgro after the apparent exercise of the option, that does not make sense when the position of the claimant is considered. As I have said, had this been the understanding, then the claimant would have sought financial information about PhosAgro either from open sources or from the defendant or his advisers for the purpose of calculating what his entitlement was less the sums that in fact he was paid rather than uncritically accepting what was sent to him as and when it was sent. There is no evidence of any such activity on the part of the claimant. This is particularly stark for the period after the falling out between the claimant and defendant in 2008.

241. As things stand, the continued payments made after the meeting in 2008 do not assist the claimant in establishing a continuing beneficial interest in 24.75% of the shares in Phosco or PhosAgro because the payments made differed from year to year and were not accounted for by either party on the basis that they were dividends or part capital payments for shares to which on the claimant's case he remained entitled. Whilst it may be argued that the payments being made at a time when the 2008 Declarations are alleged to have been made make it more probable that the 2008 Declarations were made, the difficulty about that is that it is not suggested that the 2008 Declarations (or for that matter the 2005 Declarations) were qualified by reference to the sums then being paid to the claimant or that the interest he claims to have had was in any way affected by what was being paid.
242. The defendant's evidence is that this was a personal obligation that arose from the promises made when the claimant left Russia. Whilst that is undoubtedly part of the explanation, I emphasise the point I have made already – I consider that the defendant is likely to have continued with the arrangement notwithstanding his views as to the claimant's behaviour not merely because he considered himself obligated to do so by reason of what was said when the claimant fled Russia but also because it was in his interests to do so. If the claimant's lifestyle in the UK was not maintained then the possibility of the claimant deciding to return to Russia arose and with it the prospect that either commercial rivals or the state would seek information from the claimant that could damage the defendant personally or his fortune.
243. I have already drawn attention to the PhosAgro IPO offering made on the LSE in July 2011. I have also referred already to the Prospectus that was issued in respect of that offering in relation to Mr Litvinenko's shareholding in PhosAgro at the time when the offering launched. It is relevant to note that the offering was governed by the Financial Services and Markets Act 2000 and Prospectus Regulations. It is relevant to note that PhosAgro's legal advisers in respect of the offering included Clifford Chance LLP, London and Clifford Chance CIS Limited, Moscow and Linklaters LLP and Linklaters CIS advised the managers<sup>5</sup>. The audited statements included within the prospectus were audited by the Russian branch of KPMG. The prospectus had to be approved by the Financial Services Authority (the predecessor regulator to the Financial Conduct Authority). It was and is a criminal offence to offer securities to the public unless the prospectus has been approved and made available prior to the offer being made – see

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<sup>5</sup> Citigroup Global Markets Limited ("Citi"), Renaissance Securities (Cyprus) Limited, CJSC "Investment Company 'Troika Dialog'", ZAO Raiffeisenbank TD Investments Limited, Credit Suisse Securities (Europe) Limited and BMO Capital Markets Limited.

s.85 of the Financial Services and Markets Act 2000. The Prospectus Regulation requires that a prospectus must include a declaration:

“...by those responsible for the registration document that, having taken all reasonable care to ensure that such is the case, the information contained in the registration document is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import”.

244. That information includes details concerning the full remuneration paid (including any contingent or deferred compensation) and any benefits in kind granted to any of the individual members of Administrative, Management, and Supervisory Bodies and Senior Management of the company whose shares are being offered and the name of any person other than a member of the administrative, management or supervisory bodies who, directly or indirectly, has an interest in the issuer’s capital or voting rights which is notifiable under the issuer's national law, together with the amount of each such person’s interest or, if there are no such persons, an appropriate negative statement.
245. Aside from these requirements, a common law duty of care rests on those issuing prospectuses to “... *state everything with strict and scrupulous accuracy, and not only to abstain from stating as fact that which is not so, but to omit no one fact within their knowledge, the existence of which might in any degree affect the nature, or extent, or quality, of the privileges and advantages which the prospectus holds out as inducements to take shares...*” – see The New Brunswick and Canada Railway and Land Company. v Muggerridge (1860) 1 Drewry & Smale’s Reports 363; 62 ER 418 *per* Sir Richard Kindersley, Vice-Chancellor, at 425. The prospectus expressly stated that PhosAgro “... *accepts responsibility for the information contained in this Prospectus, and having taken all reasonable care to ensure that such is the case, the information contained in this Prospectus is, to the best of the Company's knowledge, in accordance with the facts and contains no omissions likely to affect its import.*”
246. Unsurprisingly given that this was an LSE offering, the legal requirements and duties summarised above and the express representation by PhosAgro recorded above, the shareholdings at the time the offering was made are set out in significant detail at page 177 and following of the prospectus. It summarised the position as being that:

#### **“PRINCIPAL AND SELLING SHAREHOLDERS**

Immediately prior to this Offering, Mr. Andrey Guriev and members of his family are economic beneficiaries of 81.23 per cent. of the ordinary shares, Mr. Vladimir Litvinenko holds 10.03 per cent. of the ordinary shares either as an economic beneficiary or directly, Mr. Igor Antoshin holds 7.03 per cent. of the ordinary shares either as an economic beneficiary or directly and Mr. Maxim Volkov is a shareholder of 1.0 per cent. of the ordinary shares. Several employees and former employees of the Group are economic beneficiaries of 0.7 per cent. of the ordinary shares. Mrs. Evgeniya Gurieva directly holds 100 per cent. of the A2 Convertible Preferred Shares (as defined below).”

Later in the same section of the Prospectus, there appears a table that sets out the registered shareholders and the ultimate beneficial owners of the shares where the registered holder was a company in these terms:

“The following table sets forth information regarding the shareholders of the Company's ordinary shares (i) immediately prior to the Offering, and (ii) immediately after the Offering, assuming that 1,282,000 Shares are sold in the Offering by the Selling Shareholders, which assumes no exercise of the Over-Allotment Option. The ordinary shares held by Dubberson Holdings Limited, Fornido Holding Limited, Carranita Holdings Limited, Dubhe Holdings Limited, Chlodwig Enterprises Limited, Adorabella Limited, Miles Ahead Management Limited and Owl Nebula Enterprises Limited are ultimately held on trust where the economic beneficiaries are Mr. Andrey Guriev and members of his family. The ordinary shares held by Feivel Limited are ultimately held on trust where the economic beneficiary is Mr. Vladimir Litvinenko. The ordinary shares held by Vindematrix Trading Limited are ultimately held on trust where the economic beneficiary is Mr. Igor Antoshin. The ordinary shares held by Maderatcha Consulting Limited are held on trust where the economic beneficiaries are several employees and former employees of the Group.”

247. In my judgment this material is significant for three reasons. First it shows that those concerned with the preparation of this material were very conscious of the need to disclose the true beneficial ownership of the shares in PhosAgro and well understood the difference between legal or registered ownership and beneficial ownership. Secondly it suggests a willingness on the part of the defendant to disclose the full beneficial interest that he and his family had in the shares of PhosAgro and those owned beneficially by employees or former employees including Mr Antoshin, and thirdly anyone in the position of the claimant who troubled to read this material would realise that it was not being suggested that any of the shares registered in the name of corporate vehicles controlled by the defendant were being disclosed as held on trust for the claimant or that he was an economic beneficiary of any part of those holdings.
248. The reality is this: if as the claimant suggests the defendant held 24.75% of his shareholding as nominee for the claimant, the defendant could not honestly have permitted it to be said that he was the economic beneficiary of the shares referred to in the Prospectus as being his. Equally the prospectus would have misrepresented the position as to who the ultimate beneficial owners of the shares in PhosAgro were.
249. Mr Volkov was the CEO of PhosAgro at the time when the IPO was being prepared for and then launched. He was the principal employee involved with the task. His evidence at paragraph 19 of his second statement is that:

“As the Chief Executive Officer of PhosAgro I had the primary legal responsibility for the disclosures made in the IPO Prospectus and, (without waiving privilege) having been warned at length by our investment banks and Clifford Chance on the

liabilities that could flow from any material non-disclosure, I would never have agreed to the IPO Prospectus being issued if it did not properly list the owners of PhosAgro.”

I accept this evidence, which was not challenged in cross examination and which in any case is obvious. Clifford Chance were the solicitors acting for PhosAgro in relation to the issue as I have explained and as was stated expressly in the prospectus. It is close to inconceivable that Clifford Chance would not have advised PhosAgro and Mr Volkov as he describes. It is inherently improbable that this would not have been passed on either directly or indirectly to the defendant and I consider it inherently improbable that the defendant (or for that matter the other major shareholders including Mr Litvinenko) would have been willing to run the risk of incurring such liabilities or the attendant reputational damage that would result from such a nondisclosure or, worse, a misrepresentation, as it would have been had the registered and beneficial shareholders been misdescribed.

250. The claimant was aware of the IPO before it happened. That was what was put to Mr Volkov in the course of his cross examination and he agreed that was so – see T17/125/17-21 – and it is what the claimant acknowledged in the course of his cross examination – see T6/90/6-8. Whilst the reasons for his knowledge might be in dispute, that dispute is immaterial to the issues I am now considering. It is not in dispute that the claimant had been aware from at least 2009 that the IPO was to happen and, critically for present purposes, that he knew there would be no reference to him owning shares in PhosAgro – see T6/90/9-14. He acknowledged that there had been no communication with the defendant from the end of 2008 and therefore thereafter no direct or indirect acknowledgement by or on behalf of the defendant that he was holding any shares on behalf of the claimant – see T6/91/6-11. The claimant acknowledged that the effect of the IPO would be that “... *the shareholders in the IPO obviously stood to make very considerable sums of money...*” – see T6/92/2-4. There was then this exchange with the claimant in cross examination:

“Q. For the purpose of the prospectus, what had to be disclosed was not just legal ownership, but also the economic beneficiaries of the legal ownership?

A. Yes.

Q. And unless I have misunderstood your case, your case is that as at 2011, you were the economic beneficiary of shares being held by Mr Guriev; is that right?

A. Yes, it should be, yes.

Q. And so what I am suggesting is that it was just as much a problem for the prospectus that you had that claim in relation to shares, as being registered a legal owner of the shares?

A. Possibly, yes, but ... It depend of the risk, yes, what --

Q. The risk?

A. -- Guriev think about. If open my name with all criminal case in Russia and all Interpol, it could be of course risk and damaging for IPO. And maybe for him it's less risk not to open my interest.”

251. Although Mr Stanley submitted in closing that the claimant was “*obviously right that it would be damaging to PhosAgro and to Guriev if the Prospectus had revealed that a wanted fugitive from Russian justice was an economic beneficiary of the company...*” I reject this as argument, not evidence, and an argument that I should reject. The risk of damage to the IPO caused by a material non-disclosure or misrepresentation was potentially much more serious for the defendant because of the impact it would or may have on all existing shareholders both registered and beneficial. However, this all misses the point – if the claimant considered that he had a 24.75% ultimate beneficial interest in the share capital of PhosAgro it makes no sense for him not to have made contact with the defendant either directly or indirectly in order to raise that issue. That is all the more the case because it is common ground that his relationship with the defendant had broken down and there had been no communication between them since the end of 2008. If that had occurred it is inconceivable that the issue would not have been grappled with at that stage. Simply ignoring it makes no sense from the claimant’s point of view and making no mention of it makes obvious sense if the defendant is right when he says that the claimant had long ceased to have any interest in the company.
252. Whilst it is possible that the defendant could have chosen to ignore the issue and dishonestly permit the prospectus to record the existing beneficial shareholdings dishonestly, I consider that inherently improbable given that the defendant stood to gain very substantially from the IPO and the consequences that might follow from a misdescription or misrepresentation in the prospectus. Given their personal interest in the outcome of the IPO, I reject the claimant’s submission that “... *Volkov and Antoshin were Guriev’s yes-men. If Guriev told them not to reveal Gorbachev’s economic interest in PhosAgro at the time of the IPO, they would have done as they were told, even if that meant breaches of the listing rules.*” I consider this particularly misplaced in respect of Mr Volkov, given his evidence, which I accept, that “... *I had the primary legal responsibility for the disclosures made in the IPO Prospectus...*” and the advice that he had received from Clifford Chance concerning the obligations that arose.
253. When this was put to the claimant in cross examination his answer was that he didn’t do any of these things including making contact with the defendant “... *because I am still Interpol in criminal case in Russia and it would be not in my interest.*” This makes no sense however, because even supposing the claimant was correct and the claimant and defendant had a mutual interest in keeping what the claimant claims to be his 24.75% beneficial interest secret, that does not preclude them discussing the issue privately with the defendant either directly or through trusted intermediaries. Merely saying nothing is inconsistent with the claimant’s case as to his ultimate beneficial interest in PhosAgro and is something that I consider it is inherently improbable that a person in the position the claimant maintains he was in would adopt such a position.
254. Ultimately the claimant’s explanation was that he didn’t do so because “... *I think it will be much more successful for me after IPO, when it will happened and will be structure and it will be successful and will be easy conversation with Guriev about this.*” He alleged this was consistent with what he had agreed with the defendant namely

“... that in IPO my name was not open, but Guriev will hold my interest and after IPO it will be easy for me to conversation with him how it will be structured.” – see T6/100/9-12. When pressed to say when this alleged agreement had been reached, he first acknowledged that it could not have been in 2003 (because there was no prospect of an IPO then) but then said “... (m)aybe not 2003 but later on definitely, yes.” He was then pressed to say when he alleged this agreement had been reached and responded “... definitely on the first visit in 2005 here in London, yes, we discuss about it.” This was an untrue answer which I reject – there was no prospect of an IPO in 2005, there is no such allegation pleaded and no such suggestion made by the claimant in his witness statements. In any event this makes no commercial sense. As appears to be accepted at paragraph 372.3 of the claimant’s closing submissions, “... Gorbachev’s moment of maximum leverage was before the IPO... , an obvious point which cannot have been lost on Gorbachev.” The submission in the same paragraph that the claimant’s conduct was “...as one would expect someone to behave who had an undisclosed stake held by a trusted friend and partner in a company which was about to float a significant percentage of its shares” is one I reject both because it makes no commercial sense in its own terms but more particularly it ignores entirely the point that the claimant and defendant had fallen out in 2008, as is common ground. The dispute is as to the cause of the falling out; not that it had happened.

255. I have alluded elsewhere in this judgment to the suggestion by the claimant that the payments made ultimately by the defendant to the claimant evidence that he had a substantial but hidden interest in the shares in Phosco and therefore in PhosAgro. I have also found (and it is not in dispute) that there was no accounting of any sort for any element of the sums so paid to the claimant by reference to any interest that the claimant alleges he had in either company. Not merely was there no such accounting but there was not the slightest attempt by the claimant to seek an accounting on that basis. As is obvious, Phosco would have received dividends as and when they were declared. However:

“Q. During the entirety of the period from 2003 when you left Russia until 2012, you never asked, did you, for information as to the financial performance of PhosAgro?”

A. No.

Q. Or, for that matter, Phosco?

A. No.

Q. You didn't know, did you, how much money Mr Guriev was receiving because of his interest in Phosco?

A. Not exactly, no.

Q. ...

You didn't receive any accounts from Phosco?

A. No.

Q. And you didn't receive any accounts from PhosAgro?

A. No.

Q. If you weren't receiving that sort of financial information, how were you ever going to know what money was owed to you in respect of your claimed interest?

A. It's depend of the shares. It's not only about money, yes.

Q. But on your case from 2003 onwards, in fact, before that, but certainly from 2003 onwards, Mr Guriev was holding shares for you, yes?

A. Yes.

Q. And if he was holding shares for you, wouldn't it follow that any amounts he received in relation to the shares he was holding for you, he was also holding for you?

A. Yes.

Q. So what I am suggesting is if you didn't have any financial information at all, how were you ever going to know how much money was owed to you in respect of the shares you say he was holding for you?

A. Yes, when we finally will be met and agreed how it will be structure of balance of previous financial, yes, it will be agreed the vision together.

...

Q. 2003-2012 you received no financial information at all as to how PhosAgro or Phosco were performing, did you?

A. Yes, but I don't need it.

Q. The reality is the reason you didn't ask for that financial information was because the only entitlement you ever had was the option to acquire 5% of Phosco shares, which option you exercised in 2007. That is the truth, isn't it, Mr Gorbachev?

A. No, that's not correct, no."

256. A number of points emerge from these exchanges. The first is that the failure to seek financial information in the period down to 2012 makes no sense given the claimant's concession that if the defendant was holding shares for the claimant, any dividends or the equivalent he received by reference to the shares he was holding for the claimant was also being held for the claimant. This was likely to be of importance to the claimant because if the dividends being received for the shares he claims to be the beneficial owner of exceeded the *ad hoc* payments being made to him, he was entitled to the

balance. The sums are likely to have been substantial. In his closing submissions, Mr Stanley submits that in the period between January and July 2011 alone, PhosAgro paid dividends totalling US\$1bn. This suggests that if correct the claimant would have been entitled to approximately US\$247.5m for that period alone.

257. Not asking for this information, in combination with the likely value of the dividends to which he would have been entitled had his entitlement been as he alleges and the *ad hoc* nature of the payments made, strongly suggest that the claimant had no interest of the sort alleged in these proceedings or any interest other than his 5% option interest. There would have been no entitlement to dividends unless he exercised the option and if (as I conclude was probable) the option was exercised and the shares sold back immediately, there would be no entitlement to dividends then either unless any had been declared but remained unpaid at the date when the option was exercised and the shares sold on. The claimant's answer that this would all be resolved "... *when we finally will be met and agreed how it will be structure of balance of previous financial, yes, it will be agreed the vision together...*" is entirely inconsistent with the notion that the defendant was then holding shares in Phosco for the claimant in effect as a nominee or bare trustee, which is the claimant's case.
258. Equally inconsistent with the claimant having such an interest is the conduct of the defendant. If the *ad hoc* payments made to the claimant were on account either of dividends or the capital value on a hidden interest owned beneficially by the claimant, it would manifestly have been in his interests to account for the sums being paid by reference to these sources. Even if it was not thought expedient to do so externally in his relations with the claimant, it would almost certainly have been made internally. As I have said earlier, whilst I cannot rule out the possibility that the defendant or his close personal advisers would consider it in the defendant's interests to conceal any such accounting in these proceedings, what is important is that not merely was the defendant apparently not accounting in this way even internally but the claimant was not seeking that information either. This is consistent with the defendant's case not that of the claimant.

#### *The 2005 Declarations and 2008 Declarations*

259. Much earlier in this judgment I referred to the declarations that the claimant relied on in these proceedings. I made clear that I would not reach any final conclusions on the factual basis of the allegations until I had considered what took place both before and after the alleged declarations had been made. Having done that, it is now necessary to consider the declarations relied on. In doing so, it is necessary to consider each of the alleged declarations in turn.
260. The First Declaration on which the claimant relies is pleaded in paragraph 94(1) of the amended Particulars of Claim as having been made at a health club on North Row in Mayfair, which it is alleged that the claimant and defendant visited together "*for a couple of hours*". It is now common ground that the date alleged is wrong. The substance of what the claimant alleges the defendant to have said is:

"Mr Guriev said to Mr Gorbachev (in Russian) words to the effect that "*You shouldn't worry about anything. Your interest is protected and secured under my name. It is more protected now*"



*because I am a Senator and they cannot come after me. I will continue holding your interest until the situation will be resolved in Russia" (the "First 2005 Declaration")."*

In his witness statement, the claimant said that they had visited the Sauna at “*midday*”. That was abandoned by the claimant in his oral evidence – see T4/175-176 *passim*, where this was corrected under cross examination to between 1330 and 1400 – and in so doing the claimant acknowledged that he could not recall that sort of detail – see T4/176/15-177/3. The claimant had been asked in a Part 18 Request, to set out the words in Russian that he alleged the defendant had used. This was supplied. It is not suggested that there was any mention of the 25% or 24.75% interest. His evidence as to what was said by the defendant changed materially by the time of his witness statement to:

“Mr Guriev told me that the prosecutors could not find any evidence against him as there were no documents, and that as a senator he had immunity. He said that whatever documents they did find were related to his department position at Rosprom, so they could not charge him based on them. There were no documents with his financial signature that the prosecutors could use against him. So, he said, my 25% (which was the shorthand used by both Mr Guriev and me at the time for my whole interest in the business, held by Mr Guriev) were much safer under his name and there was no need for us to worry. I specifically remember that Mr Guriev said these things about my interest being safe with him while we were in the sauna’s relaxation area. I also recollect that, separately, Mr Guriev said the same thing about Mr Antoshin’s interest.

405.6 To the best of my recollection, I remember Mr Guriev saying specific words along the following lines:

...

(Well now, everything – bought everything from Menatep, the three of us have 100% of the business, no Jews left! Don’t worry, don’t worry, they don’t have anything on me. They cannot officially summon me, I am a senator, I have immunity, that’s why they invited me only for an informal conversation, I went to it myself. They won’t get to me - your share is under my protection. As long as the situation in our case in Russia is not resolved, your share will be under me.)”

This is materially different from what was pleaded – in particular because it mentioned for the first time what the claimant alleges to be his 25% (or more accurately his 24.75%) interest in Phosco. He was cross examined about this absence, where the following exchange took place:

“Q. Mr Gorbachev, if there really had been a reference in the sauna to a 25% figure that would have appeared in your particulars of claim, wouldn’t it?

A. It should be, yes.

Q. Yes, but it is not and the reason it is not is because it wasn't said?

A. No, it was said.

Q. And not only would it have appeared in your particulars of claim, it would also have appeared in the response to the further information in September 2021?

A. It was definitely said. Why it's not here it difficult to explain, yes.”

There is no mention of the three individuals owning 100% of the business in the pleading either.

261. As explained earlier any assertion to the effect alleged concerning the acquisition of the remaining 50% interest of GML would be inconsistent with the facts surrounding the acquisition of the remaining 50% interest, which as explained earlier was subject to a transfer back to the vendor until the last instalment had been paid. In any event, had what is alleged been said in the course of the Sauna meeting it would surely have been recalled and pleaded when the Particulars and then the amended Particulars of Claim came to be prepared or when the further information came to be supplied. For these reasons I conclude that it is inherently improbable that the defendant would have asserted that Phosco had acquired the remaining 50% of PhosAgro at the Sauna visit and I reject the claimant's evidence that he did.
262. Further I conclude that there was no mention of the 25% or 24.75% interest because if there had been it would have been pleaded. To my mind it is significant that the claimant recalls specifically that “... *Mr Guriev said the same thing about Mr Antoshin's interest...*”. The defendant's case is that each had an option to acquire 5% of PhosAgro and that such was the reason for transferring 10% of the defendant's interest in PhosAgro to B&C. Given the disparity between what the claimant alleges was his entitlement and what it is common ground was Mr Antoshin's interest, I consider it improbable that they would be discussed by either the claimant or defendant in the same way.
263. There are other reasons for rejecting the notion that the defendant mentioned either the 24.75% number or said words to the effect that such a holding was safe in his hands because “... *I am a senator, I have immunity...*”. Firstly, such a proposition is contrary to the reasons that in my judgment underlay the transfer of the 10% holding to B&C. No other reason for transferring this holding has been suggested other than to shelter it for the benefit of the claimant and Mr Antoshin and that undermines this point for reasons that I explained in some detail earlier in this judgment. Secondly, it is inconsistent with the evidence as to the personal risk faced by the defendant in 2005. PhosAgro was under severe pressure as I have explained and the theoretical protection that the defendant enjoyed by being a senator was essentially illusory – see Mr Volkov's evidence at T7/50/13-22 and my conclusions on this issue set out earlier. Even Mr Fedorov was clear that in his view the defendant was constantly afraid “... *that something might happen to him, his shares, that his entire comfortable life would*

*collapse*” and this was a continuing state of affairs in 2008 – see T11/2/4-25, where he makes the point that after “... *Khodorkovsky and Lebedev found themselves behind bars he was twice as scared. He lost his krysha, he lost his roof, protectors.*”. In those circumstances it is inherently improbable that the defendant would have said anything about shares being safe in his hands or words to that effect.

264. The Second Declaration was said to have been made in the course of discussions between the claimant and defendant at the Audley Public House which they visited after they had left the sauna. As pleaded it is alleged that

“Mr Guriev said (in Russian) words to the effect that "I will hold your 25% of the fertiliser business for you under my name. You shouldn't worry about anything.””

In the Part 18 Request, the claimant had been asked to set out the words in Russian that he alleged the defendant used and those were supplied. The substance of what was alleged was the defendant’s alleged comment that “*And for your 25% you don’t worry; they are under my cover until they close the criminal case on you*”. The claimant’s evidence was that the defendant said “...*he had talked about this with the Russian Orthodox Church Deputy Patriarch Kyril, who is a powerful political figure in Russia and is now the Patriarch (and is now sanctioned). Something to the same effect had also been discussed in the sauna. I remember Mr Guriev saying roughly the following: ... ‘Let’s drink to us three, to our 100%! I’ve spoken with Kyril, and told him: “now it’s just 3 of us Orthodox Christians owning 100% of this business, no Jews left!’*”.

265. I should make clear that the defendant denied in clear and emphatic terms the remarks attributed to him concerning Patriarch Kyril and the remark attributed to him concerning Jewish people being involved in owning the remaining 50% acquired by Phosco. I commented on this evidence earlier in this judgment. The claimant’s evidence was that this discussion took place while he and the defendant were sitting on a kerb outside the public house. The defendant’s evidence was this was untruthful because he was not able to sit in this manner as a result of an old injury. He also maintains there was no discussion about a 25% share – see T15/25/22-26/1.
266. There are a number of elements to this evidence that are difficult from the claimant’s perspective. The first point is that it is not obvious why it would have been thought by the defendant to be necessary or appropriate to repeat without prompting what it is alleged he had said in the more confidential atmosphere of the sauna. Secondly, as I have said already, the claimant did not have a clear recollection of the timings respectively of the visit to the sauna and the arrival at the public house notwithstanding that his statement suggested that he recalled the timing of their arrival at the sauna at noon and his recollection of their arrival at the public house at between 5pm and 5.30pm – see T4//175/10-177/3. This suggests that it is improbable that he has a clear recollection of what was said. Thirdly as I have said, his evidence in his witness statement was that they sat on the kerb of the road outside the public house. As I said earlier, the defendant had said in his statement that this would have been physically impossible for him. Under cross examination, the claimant’s recollection changed:

“Q. That after you had finished at the sauna you think you visited the Audley pub in Mayfair, yes?

A. Yes.

Q. And because it was busy you think you sat on the kerb outside the pub, yes?

A. Yes.

Q. So on the edge of the pavement in the street; is that what you're --

A. No, not street, it was next door, antique shop in its -- antique shop door but it was closed and we sit in there. Not on the street.

Q. You say "we were sitting on a kerb". What do you mean by a kerb?

A. Where is next door outside Audley pub is antique shop and it is the kerb on the door of this shop.

Q. So it is a low-level door, is that what you are describing?

A. Yes, like level door but it has like step. Porog in Russian. (Interpreted) Threshold. (In English) Yes, porog.

Q. Kerb is not the right word then, is it?

A. Maybe it is the wrong translation, yes.

Q. Because Mr Guriev, as you know, had judo injuries from his youth, didn't he?

A. Yes.

Q. And he isn't able to sit down low, is he, because of those?

A. No, he sit down very relax.”

Ms Davies returned to this issue the following day. The claimant was asked to confirm whether the antique shop was on the right or left of the pub. He said it was on the right, which was Mount Street. He was then taken to a photograph of the antique shop and it was then put to him that there was nowhere to sit. This then led the claimant to deny the injury the defendant claimed to suffer from. He was then asked:

“Q. So your evidence is you were sat effectively on the pavement; is that right?

A. Yes, on the -- yes, steps, or some ...

Q. I am suggesting that couldn't have happened, Mr Gorbachev?

A. No, it's happened, sorry.”

When it came to the cross examination of the defendant on this issue, there was – and was only – the following exchange:

“Q. Right. Now, you agree, I think, that during that visit you spent time with Mr Gorbachev, during the July visit, didn't you?

A. I have already agreed with you ten times that I did meet. We actually hugged each other and we went to drink some beer. We were friends at that time.

Q. He recalls a visit to the sauna in the early afternoon, or a health club, where you stayed for a few hours; and you agree with that?

A. Yes, I agree with that.

Q. And then after that, a visit to a pub where you drank two or three pints of beer; you agree with that?

A. Yes, I remember drinking Guinness. When I come to London I enjoy drinking Guinness.

Q. And I don't suppose you can remember where you stood or sat in the pub, can you, in 2005?

A. I remember that I have never sat on a tarmac near any pub or bar in Moscow or London, for the very reasons that I give in my witness statement.

Q. I won't pursue that.”

267. In light of this, I have no choice but to accept the defendant's evidence in his statement concerning his injury and his reasons for saying he did not sit down in the road outside the public house. I am also bound to reject the claimant's evidence that there was nothing to prevent the defendant sitting down on a kerb and finally I am also bound to reject his evidence concerning sitting on a threshold outside the antique shop because (i) there was no threshold and (ii) that suggestion was not put to the defendant. Finally I reject the claimant's evidence as to this issue because his oral evidence is inconsistent with his written evidence on the issue and because as I have held already, great caution must be exercised before accepting the claimant's uncorroborated evidence.
268. These conclusions are important because firstly it provides yet further reason for being cautious about the claimant's oral evidence, secondly, it demonstrates that in truth the claimant has limited recollection of what occurred both at the sauna and afterwards at the public house and thirdly because this lack of recollection when pressed on timing and on his previously clear evidence concerning where the claimant and defendant sat when visiting the pub all undermine my confidence concerning what the claimant maintains was said on either occasion.

269. I find that the claimant has failed to prove that the defendant made the statements the claimant attributes to him that he characterises as the First and Second Declarations. I reach those conclusions for each and all of the reasons set out so far in this judgment, including but not limited to my conclusions concerning what the claimant alleged was agreed in 1996; the First Option Agreement, the Second Option Agreement, the inconsistencies between what is alleged to have been declared and what was alleged much later in the Cyprus proceedings and the claimant's conduct in relation to the 2011 IPO, which I conclude was inconsistent with the claimant having the interest he alleges that he held. I also derive support for these conclusions from my further findings set out hereafter, which I have taken into account in reaching these conclusions.
270. The Third Declaration relied on is pleaded as having been made in or about August – September 2005 on the occasion of a visit to London by the defendant, his wife and son. His pleaded case was that:

“ 94. The purpose of Mr Guriev's visit to London was to finalise the agreement by which his offshore companies would acquire the remaining 50% interest in “the fertiliser business” (including PhosAgro) from the Menatep Group (as had been discussed and agreed between Mr Guriev and Mr Gorbachev between about 24 to 26 June 2005: see paragraph 87 above). Mr Gorbachev had been involved in earlier discussions (between June 2005 and August 2005) relating to this acquisition from the Menatep Group. In particular, Mr Volkov had visited Mr Gorbachev in London in or about early August 2005 and they had spent time discussing the proposed terms of the acquisition.

95. During the course of a meeting between Mr Guriev and Mr Gorbachev held in London (the day before the intended execution of an agreement relating to the acquisition of the Menatep Group's remaining 50% interest in “the fertiliser business”) Mr Guriev said in Russian (of the proposed acquisition) words to the effect that “we will soon get 100% of the whole fertiliser business from the Menatep Group” (the “Third 2005 Declaration”). ”

By the time of his witness statement this statement is alleged to have been made on the morning of a visit by the claimant and defendant (together, possibly, with the defendant's wife and son) to a safe deposit box operator in Park Lane, which, it was alleged, occurred after the defendant's arrival in London. Thereafter the parties are alleged to have parted and then met that evening first at the Ritz Hotel then the Wolseley Restaurant. In the course of discussions between them during that evening, the claimant alleges the defendant said words to the effect that “... *We will soon complete the deal to get 100% of the fertiliser business from Menatep Group; two more payments to go and we are settled.*”

271. There are a number of points that need to be made about this alleged Declaration. Firstly, there is a material timing difference between how it is pleaded and how it is described in the witness statement. It is not explained how plausibly the claimant could have recalled that the statement was made in the course of a meeting on the day the

defendant arrived in London at the date of the Particulars of Claim and the amended Particulars of Claim but have changed to a different but equally apparently clear timing recollection in his witness statement.

272. Secondly, the premise of the alleged discussion is wrong – as I have explained and as is now common ground the Second SPA had been entered into on 17 December 2004, as the claimant expressly accepted in the course of his cross examination – see T4/85/25-86/1. The claimant knew that to be so because he was told about it by Mr Volkov on the evening it happened. It follows that everything alleged in paragraph 94 of the amended Particulars of Claim is wrong and untrue. This was put to the claimant in the course of his cross examination. The responses were entirely unsatisfactory:

“Q. No, but look at your draft particulars of claim which must have been based on information you provided to your lawyers. It was all assuming, these paragraphs, weren't they, that the acquisition had not happened until September 2005?”

A. No, it's not correct.

Q. I know it is not correct, but your particulars of claim assume that, don't they?

A. Yes, because it maybe was not correct because I explained that until the instalment payment will be made it could be some reversal of the agreement, and in 2005 it was not complete all transactions, all repayment, but it is something not correct.

Q. As you know, Mr Gorbachev, that is not an explanation for what's in your draft particulars of claim. Look at the last sentence of paragraph 94: "In particular, Mr Volkov had visited Mr Gorbachev in London in or about early August 2005 and they had spent time discussing the proposed terms of the acquisition." That is an allegation, is it not, that you and Mr Volkov were discussing on what terms you would buy?

A. It should be 2004. It's maybe a year mistake, yes, because all this discussion was in 2004.”

The discussion with Mr Volkov was on or about 17 December 2004 on Mr Volkov's evidence, which I accept. The pleaded information I find could only have been supplied to the claimant's lawyers by the claimant.

273. It necessarily follows that what is alleged in paragraph 95 is also untrue. The original statement of this part of the case was to be found in some draft Particulars of Claim produced on or about the time when these proceedings were being commenced on the basis that the Second SPA was executed in September 2005. It was suggested that the allegations were left in the Particulars of Claim because:

“Q. ... you couldn't change the terms of the alleged third declaration, because that was an important part of your case, and changing it would suggest you couldn't actually recall what had

been said. So you left it as it was in the pleadings in your actual particulars of claim ... even though you knew it didn't make any sense?

A. No, it makes sense for me.

Q. Neither the third or fourth declarations were actually said, were they?

A. Because I explain already, that part of the 50% acquisition was on the two, yes, transfer shares and final payment, and it's the same deal but with two action, and..."

274. For all these reasons I find that the claimant has failed to prove the making of the Third Declaration.
275. It is necessary next to consider the Fourth 2005 Declaration. As pleaded, this is said to have resulted from two statements made by the defendant in the course of either drinks at the Ritz Hotel or dinner at the Wolseley and when walking back to the Ritz in which it is alleged that the defendant said "*We finally have 100% of the fertiliser business*". However this makes no sense either.
276. Aside from the point that no reason has been identified as to why the defendant would wish to make this point unprompted, if it was premised on something happening in London between the Third and the Fourth Declarations it is untrue. As I have said the acquisition documents were signed in London on 17 December 2004. If it was a reference to the Second SPA it cannot be right either – either the defendant had or was regarded by him and the claimant as having beneficial entitlement to the shares in PhosAgro as a result of the Second SPA and the Stock Transfer Form dated 17 December 2004 in which case the use of the word "*finally*" is entirely inapposite; or the Counter Transfer Agreement took effect in accordance with its terms, in which case the concept of having 100% of the "*fertiliser business*" was equally inapposite because Phosco would not have 100% of PhosAgro until after payment of the final two instalments on 9 February 2006 and 2007.
277. Whilst it is true to say that in paragraph 432 of his witness statement, the claimant said that he recalled the defendant saying at either the Ritz or the Wolseley that "*...We will soon complete the deal to get 100% of the fertiliser business from Menatep Group; two more payments to go and we are settled...*" I have no hesitation in rejecting that evidence given that it is not an allegation that appears anywhere earlier in this litigation than the statement and does not reflect his pleaded case. I also reject it because it is obviously inconsistent with what the claimant alleges in paragraph 433 of his witness statement when he claims that the defendant said "*So, we have 100% of the fertiliser business*". The points I made earlier in relation to the alleged Third Declaration apply with equal force to this allegation. What is said in paragraph 432 of the statement was not put to the defendant in cross examination – see T15/53/16-54/10. What was put was what appeared in the pleading and was denied. The apparent attempt to suggest that the Second SPA was only complete when the documents were placed in the deposit box was an attempt to avoid the difficulties created by the way this part of the case has been pleaded.



278. The claimant also alleges in paragraph 433 of his witness statement that in the course of a discussion between him and the defendant outside the Wolseley, the defendant said to him that “*Despite the criminal prosecution of our company and you, we managed to get 100% of the fertiliser business*”. When the claimant was cross examined about this assertion, he accepted that the company he was suggesting the defendant had referred to was Apatit. However, there is no evidence that Apatit was ever prosecuted either in Russia or anywhere else. Initially the claimant sought to avoid this point by apparently referring to the criminal prosecution of Mr Khodorkovsky and Mr Lebedev. However that is not what he was alleging the defendant referred to. This then led to the following:

“Q. But there was never a criminal prosecution of Apatit, Mr Gorbachev, as you know?”

A. Not directly Apatit, not, but 20% involve Apatit, yes.

Q. And given there was never a criminal prosecution of Apatit, Mr Guriev cannot have said:

"Despite the prosecution of our company ..."

Meaning Apatit?

A. Yes, because 20%, it was important case and it was related with Apatit. It's 20% of the Apatit, and it's important of course.

Q. Mr Gorbachev, you know that's not true as well, don't you? You are just sticking to it to try and avoid changing your case?

A. No, I knew that it's true, yes.”

It was not suggested to the defendant that he said what is alleged. I reject the claimant’s evidence in relation to this issue. The allegation is not one that is pleaded. It is inconsistent with the facts as the claimant accepts them to be and it is inherently improbable that the defendant would have said what was alleged in those circumstances.

279. The final point that arises in relation to what the claimant calls the Fourth Declaration is his assertion that the drinks at the Ritz and meal at the Wolseley were “*celebratory*” or “*... a small celebration...*”. Given the true context of what had happened it is difficult to see what the supposed celebration was about. When the defendant was cross examined on this issue, his responses were:

“Q. Yes. And so I think you've just told us that after you deposited the documents there, that was worth a small commemoration, and you think you probably went to have a drink to commemorate that; correct?”

A. I think we probably raised a toast to each other. But to commemorate, as we say in Russia, we commemorate a kind of setting a first stone to a building or toasting something major.

Nothing like that. We just raised a drink and then I flew out to Cyprus.”

Unsurprisingly, the claimant abandoned his pleaded case that the occasion was celebratory:

“Q. Your own case is that there was a celebration after the documents were placed into the safe deposit box?

A. It's not like celebration. It is just like toast or something like, yes.

Q. Toast?

A. Yes.”

No doubt a celebration might have been appropriate if what was alleged in paragraph 94 of the amended Particulars of Claim had been true but it was not. In those circumstances, the claimant could not credibly maintain that either the drinks or the meal was celebratory. Notwithstanding all this, in his witness statement, the claimant had said that “... *Mr Volkov had booked the Wolseley for a small celebration*”. This led to the following exchanges between Ms Davies and the claimant in the course of his cross examination:

“Q. Look at paragraph 429, the last sentence. We can strike the words "for a small celebration", as well, can we? Because that is not true either.

A. No, yes, maybe it's yes.

Q. "No, yes, maybe" is not an answer. We can strike the last four words because that is not true either?

A. Okay, it's not correct, yes.”

In relation to the underlying alleged reason for the toast there was the following exchange:

“Q. Now, as I understand it, it wasn't a celebration, but you do say that at the Wolseley there was a toast that you had 100% of the fertiliser business?

A. Yes.

Q. But if you were going to be toasting acquiring 100% of the fertiliser business, surely you would have been doing that on Mr Guriev's first visit to London in July 2005?

A. Yes, we did it as well with him, yes, on the pub.”

280. In my judgment all this further undermines the claimant’s case concerning what he calls the Fourth Declaration. There was no celebration because there was in truth nothing to

celebrate as the claimant now accepts because the agreements relevant to the acquisition of the remaining 50% interest in PhosAgro had all been signed the previous December. There was no toasting in any significant sense for a similar reason. His answers in particular in relation to the reason for the dinner at the Wolseley set out above show in microcosm why it is that the claimant's evidence cannot safely be accepted. His answer to the question concerning what would have happened in July 2005 set out above is also significant. There is no suggestion of toasting or celebration pleaded in respect of that visit and his witness statement there is only the reference to the allegation that the defendant said *'Let's drink to us three, to our 100%! I've spoken with Cyril, and told him: "now it's just 3 of us Orthodox Christians owning 100% of this business, no Jews left!'* which I made findings about earlier.

281. The point that matters for present purposes is that there was no logical reason for celebrating or toasting anything on the visit I am now considering. I consider on the balance of probabilities that the defendant was right when he described what happened as *"(w)e just raised a drink and then I flew out to Cyprus."* I reject the claimant's evidence in relation to these issues. I accept the defendant's evidence, which is in effect now conceded by the claimant (in relation to his assertion that he then flew to Cyprus) because that is corroborated by confirmation from the airline that the defendant was booked on *"... BA0664 dated 6 September 2005 from London to Larnaca,"* which departed at 1900 London time (which means that the defendant must have been at Heathrow at least an hour before that and so must have left the Wolseley (assuming he had already checked out of the Ritz) between 45 minutes and an hour before that (i.e. not later than 1715) and arrived in Larnaca at 0130 the next day, local time. This assumes that the defendant travelled to Heathrow using public transport. If he travelled by car, it is likely that he would have to have left earlier than that given the time of day and that 6 September 2005 was a Tuesday.
282. The claimant's pleaded case as to the Fifth Declaration is that it is alleged to have been made on the day following the discussions at the Ritz and Wolseley referred to above. As pleaded in paragraph 106 of the amended Particulars of Claim it is the claimant's case that:

"106. On the following day (and whilst Mr Guriev and Mr Gorbachev were again together alone at the Audley Public House):

...

(2) During the course of their discussions, Mr Guriev said (in Russian) words to the effect that "don 't worry, I still hold your interest in the fertiliser business under my name " and "I will stand by our deal " and "I hold the shares for you " (the "Fifth 2005 Declaration").

..."

By the time his witness statement came to be sworn, the claimant's evidence was that the discussion took place either at the Audley Public House or an Italian restaurant, though probably at the Audley Public House and that the defendant had used *"... specific words along the following lines ... Move your family to London, you do not*

*need to worry about your share in the business, all our agreements remain in force, under my name your share in the business is safe and secure...*” This was not put to the defendant in cross examination. What was put was that “... *you repeated the fact that his interest was safe with you; and you did that, didn't you?*” which the defendant denied. It was also suggested that “... *you told him that his 25% was safe with you, didn't you?*” to which the defendant responded:

“He asserts it's 24.75. No, I didn't say it. I didn't say anything about 24.75, nor about 25. He had an option for 5% which he hasn't used by then, he just notarised at the notary. The option agreement of 2001.”

283. The claimant's case in his witness statement (though not his pleaded case) was that the Third and Fourth declarations were given on the same day and the Fifth Declaration on the following day. The defendant's passport evidence shows that he was in the UK between 4 and 6 September 2005. The claimant denies that any of the alleged declarations were given during this visit and he also denies that the visit to the safe deposit box facility was on the same day as the visit to the notary. He maintains that the Fifth Declaration came on the day after the drinks at the Ritz and meal at the Wolseley which in turn was on the same day as the visit to the safety deposit box facility. The defendant's case is that he visited London between 4 and 6 September, that he left for Cyprus by air following the end of the Wolseley meal on 6 September and that he did not re-enter the UK between 6 September 2005 and 29 July 2006. It is a matter of record and is admitted by the claimant that the First Option Agreement was notarised on 6 September – see T4/123/22-124/1. The passport evidence suggests that the defendant did not re-enter the UK between 6 September 2005 and 29 July 2006.
284. Notwithstanding this, the claimant maintains that the Third to Fifth Declarations were given in conversations that took place during a single visit in this period in London – see T4/130/1. On his case therefore, the First Option Agreement was notarised on 6 September 2005, but not placed in a deposit box until some unknown time later, on another occasion when the defendant is alleged to have visited London (not using the passports disclosed) and the conversations said to constitute the third to fifth declarations are alleged to have taken place. The only basis on which the claimant's case would be arguable is if there was a credible basis for undermining the defendant's evidence (apparently corroborated by his passports) concerning when he was present in the UK in 2005 and 2006. That depended on a suggestion that the defendant had another passport and had used it to travel to the UK on the occasion that the claimant maintains the Third to Fifth Declarations were made.
285. It is common ground that the defendant had access to a diplomatic passport at the relevant time. As put to the defendant (T14/67-68) the defendant had a passport numbered 0389354 which was valid between August 2000 and August 2005, which had been disclosed, a passport numbered 0078222, which was valid for the period between April 2004 and April 2009, which had also been disclosed and there was a third passport, described as being a diplomatic passport, that was valid for the period January 2007 to January 2012. None of these passports are alleged to support the claimant's case on the issue I am now considering. It was suggested that the defendant would have had a diplomatic passport for the period between November 2001, when he became a senator, and January 2007. When this point was put to him in cross examination, the

defendant accepted that was so – see T14/68/12-17. The defendant was cross examined in relation to this passport as follows:

“Q. But you haven't been able to produce that passport in these proceedings; correct?

A. Yes, but that's quite understandable, because it expired and it must have been cancelled and handed over to the Ministry of Foreign Affairs for destruction. It's a diplomatic passport.

Q. Yes, I'm not complaining about it. I'm just identifying the fact that there's a passport that you haven't been able to produce because it's not available.

A. I didn't have it in my hands, no.”

There was then some questioning as to why the more recent diplomatic passport had not been destroyed even though it had expired as follows:

“Q. This passport has also expired, but it seems to have avoided being destroyed. You can see that, can't you?

A. Because later the procedures loosened a little, perhaps from 2009/2010, and passports were then returned -- rather, the diplomatic passports were given to people, into their own hands, and they could use them for private travel, not just for business travel; whereas that first passport I could use only for official travel. I was given it once to go with a delegation to Vienna, then I had to return it to the office of the Federation Council. But then the rules changed and I had no obligation of returning it.

Q. When do you say the rules changed?

A. Well, I need to see when my first trip was with a passport stamp, and that's probably when they changed. When you see I exited the country, that's the year when the rules will have changed. I don't remember exactly, 2007, 2008, 2009. Since then I always had that passport in my possession and I still have a passport in my possession.

Q. We can leave that topic.”

286. On this evidence I find that the defendant had access to a diplomatic passport between November 2001 and January 2007, that during this period the diplomatic passport could be used only for official travel and that on expiry it had been returned to and destroyed by the Ministry of Foreign Affairs. I accept too that the rules changed in 2007. I reach these conclusions because that was evidence from the defendant that was ultimately accepted in the course of his cross examination and is not contradicted by any other material available to me.

287. In my judgment on this evidence the conversations on which the claimant relies could only have taken place in the period between 4-6 September 2005 or after 29 July 2006. That is consistent with the claimant's originally pleaded case that this visit took place "*(i)n or about August or September 2005.*" The explanation as to how the change to what is said in the witness statement ("*...towards the end of 2005 or early on in 2006...*") came about was unconvincing: it was in essence that there was more time to consider the point than previously. However, there was no particular pressure of time when preparing the Particulars of Claim that were served nor was there any particular time pressure when its amendment was being considered and more particularly there was no identified or identifiable trigger for the change that occurred, as the claimant appeared to acknowledge, at least implicitly – see T4/137/15-138/1. These conclusions lead me to reject as untrue the claimant's evidence concerning the alleged Fifth Declaration – it could not have occurred either as pleaded or as alleged in the witness statement because the only date on the balance of probabilities when the declaration could have been made was on the day on which he had arrived in Larnaca at 0130 local time.
288. It makes no sense that having had the First Option Agreement and copies of it notarised on 6 September 2005, it and the copies would then have been retained for some 10 months before then being placed in a safety deposit box. True it is that there is some evidence from Mr Volkov that this occurred at an earlier stage in the chronology in relation to documents that were of importance to the defendant. However, the circumstances that applied on (as I find) 6 September 2005 were different. A safety deposit box facility had been identified and was visited and in those circumstances, having had the First Option Agreement notarised that day, it made no sense for some documents but not the original and copies of the First Option Agreement notarised that morning to be placed in the deposit box. When that point was put to the claimant in cross examination, his only explanation was that he didn't know if the First Option Agreement was ever placed in the safety deposit box. The difficulty about that is there came a time, some years later, where the safe deposit box was opened by the Metropolitan Police and the solicitors then acting for the defendant recovered the contents taken by the police, placed them in another safety deposit box and prepared a list of the documents so recovered. This records as Items 41-43, an original and two copies of the First Option Agreement notarised by Ms Sophie Jenkins. The notaries' certificate is signed and sealed by Ms Jenkins and dated 6 September 2005. As I have said, there was no reason why anyone would have wanted the First Option Agreement and copies notarised but then not placed in the deposit box immediately following that exercise. All this confusion arises only on the claimant's case.
289. There is no dispute, or at any rate I find, that both the claimant and defendant attended upon the notary on 6 September 2005. That is the evidence of Mr Volkov and necessarily follows from the genuineness of the signatures on the First Option Agreement being what was being notarised. I find that that the original and at least two copies of the First Option Agreement were notarised on 6 September 2005, and that on the balance of probabilities on that date the parties visited the safety deposit box facility in Park Lane and there various documents were deposited including the original and at least two copies of the First Option Agreement.
290. I accept the defendant's evidence that notarisation of the First Option Agreement was something sought by the claimant, because on balance I cannot see what benefit the

defendant would have obtained from such an exercise and it provided apparent additional security for the claimant (in the event the defendant came under scrutiny in Russia) given my conclusion that in all probability all parties had long forgotten that the First Option Agreement had a provision that meant it had expired by effluxion of time. Ultimately however, who wanted it notarised does not matter. On any view the claimant was present before the notary and actively participated in that exercise. I think it highly improbable that the First Option Agreement would have been notarised but then none of the copies placed in the box to which the claimant was to have a key, particularly if as is the defendant's case all parties visited the safety deposit box facility later on 6 September.

291. However that is not the central issue for present purposes, which is whether I should accept the claimant's case that the visit to the safety deposit box (and, therefore, what he alleges to be the Third to Fifth Declarations were made), on a date after 6 September 2005 as he alleges. I reject the claimant's case on that point for the reasons I have set out above. Whilst that conclusion is not of itself fatal to the claimant's case concerning the fourth and fifth declarations, it seriously undermines it and is fatal when taken in combination with the other findings I have made concerning those allegations because
- i) the Fifth Declaration could not have been given when it is alleged by the claimant to have been given;
  - ii) there is no other date in the window identified in the claimant's pleaded case ("*in or about August or September 2005...*") when it (or for that matter the Third and Fourth Declarations) could have been made;
  - iii) there is no date in the alternative window identified by the claimant in his witness statement ("*...towards the end of 2005 or early on in 2006...*") when it and they could have been made either. The only basis on which I could conclude otherwise is if I rejected the passport evidence from the defendant, which for the reasons already given I cannot and do not;
  - iv) the Fourth Declaration could not have been made in the street on the evening of 6 September given my findings that the defendant's flight on 6 September departed (or was due to depart) at 1900 London time and that, in consequence, the defendant must have been at Heathrow at least an hour before that and so must have left the Wolseley (assuming he had already checked out of the Ritz) between 45 minutes and an hour before that (i.e. not later than 1715);
  - v) whilst the claimant's ultimate explanation about the change in date between pleadings and witness statement was that "*I am not sure about, yes, the date*" (T4/129/6), that does not explain how he could have selected two windows with apparent certainty first in his pleaded case and then his witness statement (to which was attached a statement of truth) if in truth he was not sure about dates when there is no or no coherent explanation as why the claimant changed what he alleged concerning timings in his pleading to what he alleged in his witness statement. There was no new document that was disclosed after pleadings had closed or the Particulars of Claim amended that is alleged to have resulted in that change and the suggestion that there was more time to prepare the statement cannot now be maintained given the claimant's acknowledgment that there was

no pressure of time that applied in February 2020, when the Particulars of Claim was being prepared or in October 2020, when the amendment was being prepared – see T4/13617- 137/14.

For these reasons as more fully explained earlier in this judgment, I conclude that the claimant has failed to prove that the Fourth and Fifth Declarations were ever made. That conclusion renders the making of the Third Declaration itself inherently more improbable but in any event I have rejected the claimant's case on that issue for the reasons given earlier in this judgment.

292. Finally, it is necessary to consider what the claimant characterises as the 2008 Declarations. The claimant alleges in paragraph 136 of the amended Particulars of Claim that during the defendant's visit to London in "...*March or April 2008*..." the claimant and defendant with others had visited Witanhurst (the property the defendant wished to purchase, wished the claimant to manage the development of and which the claimant had declined to become involved with, thereby (as I found earlier) causing the breakdown in relations at a personal level between the claimant and defendant) and the day after the Prospect of Whitby public house with Mr Tarakhnenko (a lawyer formerly employed by Apatit also in exile in London). The claimant then alleges at paragraph 136(4)-(5):

“(4) The day after visiting the two aforementioned properties, Mr Guriev and Mr Gorbachev spent time together with Mr Sergey Tarahnenko [sic], who had been a lawyer for PhosAgro and who was in exile in London. They met at a cafe near to Mr Guriev's Vauxhall penthouse, and then travelled to the Prospect of Whitby public house in Wapping. During the trip to the Prospect of Whitby, whilst Mr Taranenko [sic] went either to the bathroom or to the bar, Mr Guriev and Mr Gorbachev discussed the Fertiliser Business. Mr Guriev told Mr Gorbachev that the investigation into Apatit in Russia was soon likely to reach a positive conclusion, and they were therefore starting to prepare for the IPO of OJSC PhosAgro. As such, Mr Guriev told Mr Gorbachev (in Russian) words to the effect of "don't worry", "our agreement remains the same" and "later on we can discuss how we will structure your holding in the fertiliser business"

(5) The following day, Mr Guriev and Mr Gorbachev went shopping in London with Mr Bichkov [sic]. During this shopping trip, Mr Guriev and Mr Gorbachev were alone in a cafe (whilst Mr Bichkov [sic] had stepped out for a few minutes) and they discussed the Fertiliser Business. Mr Guriev reassured Mr Gorbachev and specifically stated (in Russian) words to the effect of "I remember everything", "our understanding remains the same", "please don't worry", "everything is the same as before".”

The claimant pleads of these alleged facts that:



“137. In the premises, the declarations made by Mr Guriev in 2008 as set out in paragraph 136 above (and in particular Mr Guriev's repeated use of plural pronouns such as "we", "our" and "us") corroborated the fact that Mr Guriev made the 2005 Declarations and reasonably led Mr Gorbachev to continue to believe (1) that he was entitled to 24.75% of Mr Guriev's interests (howsoever held and whether directly or indirectly, including any future interests) in the Fertiliser Business (2) that Mr Guriev's interest in the Fertiliser Business at that time was 100% and (3) and that Mr Guriev would continue to hold 24.75% of his 100% interest in the Fertiliser Business for Mr Gorbachev.”

In his witness statement the claimant refers to two visits to the Prospect of Whitby public house. His relevant evidence at paragraph 546 and following in relation to the visit with Mr Tarakhnenko is:

“546. Mr Guriev said something to the effect that now everything was “in our hands”, there was no Menatep involvement or relationship with Yukos, and that one day the IPO will happen because the situation would improve. I do not remember exactly if Mr Tarakhnenko was present when Mr Guriev said this – he might have gone out to the restroom – but Mr Guriev would have been OK saying this in front of Mr Tarakhnenko, who had been the top lawyer of the business and could be trusted. It was also understandable to Mr Tarakhnenko [sic] that Mr Guriev and I were partners, and I believe he also knew what my interest was.”

His relevant evidence in relation to the other visit (allegedly accompanied by Mr Bychkov) was:

“549. When Mr Bychkov was not around, Mr Guriev told me there was nothing to worry about for me regarding my shares, my “25%”, because they were held under his name, and he, as a senator, was safe. I believe Mr Bychkov knew that we were partners then though.”

293. Given the conclusions I have reached in relation to the 2005 Declarations, it is inherently improbable that either of the alleged 2008 declarations were made. The inconsistencies between what is pleaded in the amended Particulars of Claim and what is said by the claimant in his witness statement fuel such a conclusion. What it is alleged the defendant said makes no sense in context. The agreement by which the balance of the PhosAgro shares would be acquired by Phosco was made (and was known to the claimant to have been made) on 17 December 2004 as I have found earlier and the final payment under the staged payment arrangement had been made a year before the 2008 meeting, in February 2007. That being so, there was no obvious reason for the defendant to refer to a proposed IPO that was yet to start or to the acquisition of the balance of the shares as if they were a recent event. There is a direct conflict on this issue between the claimant and the defendant. These factors, in combination with my conclusions set out above concerning the events in 1996 and thereafter and the faith I can place in the

uncorroborated evidence of the claimant, lead me to conclude that the claimant has not proved the facts to be as he alleges.

294. In relation to the Bychkov meeting, there is a conflict between what is said in the statement (which refers expressly to "...my "25%"...") as opposed to the claimant's pleaded case where there is no mention of this. The claimant's explanation for this difference was entirely unsatisfactory:

"Q. Could we look at your particulars of claim again, ... But no reference to the 25%, Mr Gorbachev?

A. Yes, because when we prepare the witness statement they ask me about more specific, yes.

Q. If there had been a reference in this case to 25% that would have been pleaded in this paragraph, Mr Gorbachev?

A. Possibly, but not necessary.

Q. Mr Guriev didn't say anything in 2008 about your shares, your 25% or holding things for you under his name, did he?

A. He did. He did say."

When the allegation that the defendant had described the claimant's interest as 25% and reassured him that his interest remained safe in his hands was put to the defendant, the defendant denied that was so, asserting once again that the claimant's interest had been limited to the option that had been exercised and the shares sold – see T15/137/3-10.

295. I reject the claimant's evidence on this issue. Aside from the fact that his alleged interest was 24.75% not 25%, it is inconceivable that if the claimant had recalled the defendant mentioning a 25% interest, it would not have appeared in the pleading. It did not because in truth there was no such discussion.
296. I have asked myself whether this is a wrong conclusion and that what is alleged could explain the claimant's inaction in the period after 2008 down to the date when the IPO was offered. On the face of it this derives some support from the fact that the meetings at the Prospect of Whitby came after not before the time when the claimant had declined to become involved in the Witanhurst project, a point that is relied on quite strongly by Mr Stanley in his closing submissions. As was put to the defendant in cross examination, it is not obviously consistent with being upset in the manner described by the defendant for the defendant then to accompany the claimant on two visits to a public house on the following days. I conclude that it does not for the reasons set out in detail earlier in this judgment.

#### *The Development of This Claim*

297. Before setting out my final conclusions on the factual issues that arise in summary, it is necessary for me to refer to some events that occurred once this claim became at least a possibility.

298. The first document that it is necessary for me to refer to is a letter dated 12 November 2012 apparently sent by Mr Fitzgerald ostensibly addressed to a Mr Paul Brown of Alliance Investments SAM in Monaco. Mr Fitzgerald was at the time a member of Monckton Chambers, a set of Barristers Chambers in London, instructed by the claimant under the Direct Access Scheme. .
299. The letter is odd. It is entirely unclear why it was that Mr Fitzgerald was writing to Mr Brown. There is no evidence as to who Mr Brown is or what Alliance Investments SAM was or what its business was or otherwise how it is connected with this litigation other than a suggestion that its business was or included litigation finance. The claimant claimed not to know who Mr Brown was – see T6/141/15 – which strikes me as very surprising given that it is inherently improbable that Mr Fitzgerald would be writing letters to anyone other than on the instructions of his client, who appears to be the claimant not Mr Brown or Alliance Investments SAM – see T6/140/5-7 – and the claimant maintains the letter was written on his instructions – see T6/140/8-14.
300. The letter is also odd because it refers to what is referred to in the opening paragraph as “*the Main Advice*”. This has never been produced, even though privilege was waived in relation to the letter. Mr Fitzgerald’s position was that there was no such Advice. If that is correct, it strikes me as irregular to put it no higher than the letter should say:

“Dear Paul,

**Re: Alexander Gorbachev ("Gorbachev")**

I refer to our recent discussion and to the detailed advice set out in my memorandum dated 2 November 2012 ('the Main Advice').

You have requested that I provide a brief, more succinct, summary of the Main Advice. I trust this letter is sufficient for that purpose: despite its length!!!! ... ”

The irregularity or unconventionality of all this became even more apparent from an exchange of correspondence that took place between CMS Cameron McKenna Nabarro Olswang LLP (“CMS”) and Mr Fitzgerald on 26 April 2024, following the completion of the claimant’s evidence and by reference to some questions I had asked the claimant at the end of his evidence – see T6/139/21-142/12. The material parts of the CMS letter were as follows:

“... ”

2. On 23 April 2024, at the end of Mr Gorbachev’s cross examination, HHJ Pelling KC raised a number of questions with our client in respect of the advice letter dated 12 November 2012, which you were involved in preparing (the “Advice Letter”).

3. The questions were raised in respect of the unredacted version of the Advice Letter and attached to an email that you sent to Nigel Stone, Boodle Hatfield, on 14 January 2013 (as enclosed). Our client was not copied on that correspondence. HHJ Pelling

KC queried who Mr Paul Brown was and why the Advice Letter was addressed to him.

4. Our client's evidence is that our client asked you to prepare a document that he could show to Mr Mariashin and Mr Volkov that would make clear that he had started taking legal advice. You produced the Advice Letter for that purpose and then a redacted version of the Advice Letter was shown by our client to Mr Mariashin and Mr Volkov towards the end of 201.

...

6. In the light of the queries raised by HHJ Pelling KC, we have a small number of further questions relating to the Advice Letter which we would be grateful if you could answer:

(a) Do you agree that the Advice Letter was prepared for the reasons given by Mr Gorbachev (as summarised at paragraph 4), and that Mr Gorbachev did not intend for the Advice Letter to be sent to Paul Brown?

(b) Do you agree that the Advice Letter was never sent to Mr Brown?

(c) Do you agree that Mr Gorbachev did not know who Mr Brown was?"

The response was surprising to say the least. Mr Fitzgerald purported to confirm that "*it is correct that Alexander asked me to prepare the Advice Letter to be shown to Mr Volkov (and later Mr Mariashin) to show that Mr Gorbachev had begun the process of taking legal advice.*" This has not been tested in cross examination so the value that I can attach to it is limited. What was much more surprising was what Mr Fitzgerald said about Mr Brown:

"Paul Brown is a good friend and business colleague of mine who I have known since the 1980s. We worked together in Monaco where we both lived. I lived in Monaco from 1985 to about 2016 (thus carrying out my practice at the bar from Monaco). From time to time my assistant and I shared full time part of Paul Brown's company office. His office provided support to me on a friendly basis.

Mr Gorbachev did not know Paul Brown and had never met him. Mr Gorbachev did not ask me to address the letter to Paul Brown.

I do not know why the letter was addressed to Paul Brown. It is possible that I addressed it to him so that my assistant could review the letter. However, my suspicion is the Advice Letter was never sent. I will make enquiries of Paul Brown to see if they have the letter on file. If they do it will simply have been for administrative convenience in order to be reviewed by my

assistant. Paul Brown would certainly not have been involved in Mr Gorbachev's matter.”

The defendant submits that this is both nonsensical and implausible. Given that Mr Fitzgerald has not given evidence I consider it better that I say no more about this correspondence other than that as things have been left I am not satisfied by the explanation that has been offered, nor with why the letter refers to “... (*the Main Advice*)...” when it would appear Mr Fitzgerald accepts there was no such document or why it should have been addressed to Mr Brown, particularly if he had no involvement with the claimant. On the face of it such conduct amounted to an obvious breach of the confidence a client is entitled to expect from a barrister or solicitor he, she or it has retained. Given what is said about how this letter came to be prepared and phrased as it was, I am bound to exercise extreme caution about its contents. There are however a number of points that arise from the letter that have a direct impact on the credibility of the claimant’s case. I address these below as succinctly as the circumstances permit.

301. Turning firstly to the reference to the Main Advice, the claimant’s evidence (which I reject) was that this was not discussed by him with Mr Fitzgerald. This was something that was tested in cross examination:

“Q. You must have appreciated, Mr Gorbachev, mustn't you, that the document that you were giving to Mr Mariashin and Mr Volkov to read referred to a main advice?”

A. No, I am not focusing about any main advice because I told you, I ask Mike Fitzgerald prepare some document just to show that I am start working with lawyers, and he was barrister, professional lawyer, and he prepares this document, I think it's reasonably correct. And what kind of main advice he mean for me really doesn't matter. I don't know. I haven't seen any main advice from him.

Q. Was it your request to Mr Fitzgerald that this document should refer so extensively to the main advice?

A. No.

Q. You must have discussed that with him, Mr Gorbachev?

A. Main advice?

Q. Yes.

A. No.

Q. You must, I am suggesting to you, have discussed with Mr Fitzgerald that this advice letter should refer to a much longer main advice?

A. No, I am not discuss with him about any main advice.

Q. So your suggestion is, is this right, that Mr Fitzgerald did this entirely on his own and without any discussion with you about it at all?

A. About main advice, yes.

Q. That is just not true, is it, Mr Gorbachev?

A. No, it's true.

Q. You say the main advice never existed?

A. No, I have not seen.”

In my judgment it is inconceivable that there was no discussion about the insertion of the reference to the “*Main Advice*” and I think it highly improbable that it did not exist – if it did not it is highly improbable that Mr Fitzgerald could properly or would have referred to it. For that reason I reject the claimant’s evidence in his fourth witness statement that “ ... *I have never seen and was not provided with a copy of the ‘Main Advice’ by Mr Fitzgerald...*” and that “... *there was, and is, no ‘Main Advice’.*”

302. The first substantive paragraph of the letter states:

“The Prospectus set out the capital structure of PhosAgro extensively. It detailed, in tabular form, the then shareholders of (sic) PhosArgo, together with the shares they owned, before and ( on a pro forma basis) after the Offering. The Prospectus disclosed, that, prior to the Offering, the majority (82.23%) of the PhosAgro shares on issue were collectively - and beneficially - owned by interests associated with Andrey Guriev (“Guriev”) and his family (“the Guriev Interests”). Gorbachev was astonished by this revelation: based on his calculations, he [ant]icipated that the Prospectus would reveal that he beneficially owned (pre offering) 24% of the shares of PhosAgro (“the Gorbachev Interest”) and that this was held on his behalf by the Guriev Interests.”

This is an extraordinary statement for the claimant to have instructed Mr Fitzgerald to write given his evidence in these proceedings summarised above. There can be no question on any view of the claimant being astonished about the contents of the prospectus given the evidence and findings concerning this issue set out above. If as appears to be his case, the claimant instructed Mr Fitzgerald in the terms set out above, it undermines much of his case on this issue if and to the extent that it is not undermined by the factors to which I have already referred in this judgment. The suggestion that this paragraph is consistent with his case in these proceedings is unarguable.

303. There are other obviously highly inconsistent elements within the letter. It alleges in the following paragraph, under the heading “*The Core Contract*” that:

“The Gorbachev Interest directly derives from the terms of a binding agreement, which Gorbachev claims he entered into

with Guriev in 1996 ('the Core Contract'). The Core Contract (when entered into) recorded, Gorbachev asserts, their simple agreement, namely that Guriev and Gorbachev would jointly and beneficially own (what became) PhosAgro between them on a 70 /30 (Guriev /Gorbachev) percentage split.”

This too is completely inconsistent with the claim advanced in these proceedings, which it will be recalled is advanced exclusively on the basis of the Declarations referred to above. In these proceedings it is not alleged that there was a core contract as alleged in the letter, nor is it alleged that the claimant had a 30% interest. The claimant’s pleaded case in respect of the January 1996 Arrangement was that he acquired a 30% interest in the defendant’s alleged 10% in the fertiliser business and any further interest Guriev might subsequently acquire in the fertiliser business. That the claimant instructed Mr Fitzgerald that his case depends on a contract entered into in 1996 by which he was entitled to a 30% interest seriously undermines the veracity of his case in these proceedings. This gets worse as the letter goes on. Thus on page 3 of the letter it is asserted that “... *Gorbachev claims that the Core Contract was an oral contract, and that it was governed by English law...*”. This is clearly and plainly inconsistent with his case and evidence in these proceedings. By page 10 of the letter, some consideration is given to claims other than a claim for breach of contract, but all are treated as “... *emanating as a consequence of - or referable to - the Core Contract...*” Whilst it is true to say there is a reference made on page 11 of the letter to a potential claim that the defendant “... *held the PhosAgro shares on trust for Gorbachev and, in breach thereof, took them and their sale proceeds for himself...*” that is premised on “... *an understanding that Gorbachev would receive the PhosAgro shares as per the arrangements set out in the Core Contract.*”

304. The conclusions that follow from this document are stark for the claimant. Firstly, the letter advanced a claim based on breach of an alleged oral agreement – a claim that was abandoned at the start of the trial of these proceedings and was not ever advanced in the Cyprus proceedings . If this letter was indeed written for the purpose of inducing the defendant to settle the claimant’s claims then it was fundamentally misleading and factually untrue. Whilst I do not suggest that Mr Fitzgerald was aware of either of these factors (had he been then as a member of the Bar he could not properly have drafted the letter either for the purpose of influencing the defendant or otherwise), it suggests that the claimant was willing to provide instructions that were both misleading and untrue. In combination with the other factors referred to elsewhere in this judgment, that conclusion is fatal to the credibility of the claimant as a witness of truth and accuracy and to the parts of his case that depends on uncorroborated evidence.
305. Secondly, and perhaps more fundamentally, the letter is entirely inconsistent with his case in these proceedings based on the alleged 2005 and 2008 Declarations, which are nowhere mentioned or even hinted at anywhere in the letter. Had Mr Fitzgerald considered the 2005 and/or 2008 Declarations legally or factually significant, he would have been almost bound to refer to them as evidencing the existence of the alleged core contract. As quoted above, when cross examined about this document, the claimant said that Mr Fitzgerald “... *prepares this document, I think it's reasonably correct...*”. Thus either the letter is the claimant’s true case, a conclusion that is fatal to his claim in these proceedings, or this evidence is untrue, in which case (taken together with the other facts and matters consider throughout this judgment) that is fatal to the claimant’s

credibility as a witness of truth and accuracy because he could not conceivably have considered what appeared in the letter to be "... *reasonably correct*..." on his pleaded and evidential case in these proceedings.

306. Finally it is necessary that I refer to a letter written on behalf of the claimants by Boodle Hatfield, the solicitors who then acted on his behalf (not CMS who were instructed much later). Although headed "*Without Prejudice*", the parties agreed to waive without prejudice privilege over the letter by a Consent Order of 21 February 2024. It came to be written following discussions about an attempt by the defendant to avoid this litigation by offering the lump sum of US\$30m on a full and final basis with no further support or other payments in the future referred to earlier in the judgment. That offer was rejected.
307. The key point for present purposes is that the letter advanced a claim based on an alleged oral agreement allegedly made in or about 1995-6. It also and incidentally included an assertion that "... (*during Mr Gorbachev's time in London, he has exercised a share option granted to him, but it was not agreed that this would affect his 24% interest pursuant to the Agreement.*)".
308. Two points arise from this letter. First as noted above there was an express acknowledgement that the claimant had exercised his share option rather than suggesting this was part of a sham to unlawfully shield the claimant's receipts from UK tax. This provides further support for the conclusion expressed earlier that the exercise of the option was probably genuine notwithstanding the various documentary inconsistencies that surround it and on which the claimant relies for his case that it was a sham transaction in aid of tax evasion. More fundamentally, it advances a case based exclusively on a contract alleged to have been made in Russia between 1995-6 – an allegation that carries with it all the same implications for the claimant as does the similar allegation in the letter drafted by Mr Fitzgerald.
309. This document was sent to the claimant in draft by his solicitors, who asked him to "... *please carefully read through the letter and confirm whether any of the information needs to be clarified or amended.*" This was sent to him in Russian and then the drafts were discussed by the claimant with Mr Fitzgerald and Mr Golodnitsky, who provided the Russian language assistance required by the claimant. The claimant was then asked by Boodle Hatfield to review the revised draft of the letter. The claimant's attempts to distance himself from this letter were entirely unpersuasive and I reject them.

## **Disposal**

310. As I explained at the outset of this judgment the legal burden rested on the claimant to prove his claim on the facts and in particular that the 2005 and 2008 Declarations on which this claim depends exclusively at a factual level were made.
311. For the reasons that I have explained above, he has failed to discharge this burden and in consequence the claim fails and must be dismissed. There are simply too many unexplained and unexplainable inconsistencies and inherent implausibilities about what the claimant has alleged over time to enable any other conclusion to be reached. In my judgment that in combination with the conclusions I have reached concerning the reliance that can be placed on his uncorroborated and unadmitted evidence means that his claim must fail.



312. In those circumstances there is no necessity for me to further extend this already over long judgment by determining the issues of law that would or might have arisen had the claimant succeeded in providing his factual claim. Indeed, there are powerful reasons for not attempting to do so since such an exercise would involve assuming the facts to be contrary to what I have found proved. In the circumstances the claim must be dismissed.