



Neutral Citation Number: [2012] EWHC 177 (QB)

Case No: HQ10D02547

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/02/2012

Before :

THE HONOURABLE MR JUSTICE TUGENDHAT

Between :

**THE HONOURABLE NATHANIEL PHILIP
VICTOR JAMES ROTHSCHILD**

Claimant

- and -

ASSOCIATED NEWSPAPERS LIMITED

Defendant

Hugh Tomlinson QC and Justin Rushbrooke (instructed by **Schillings**) for the **Claimant**
Andrew Caldecott QC and David Glen (instructed by **Reynolds Porter Chamberlain LLP**)
for the **Defendant**

Hearing dates: 23, 24, 25 and 26 January 2012

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

THE HONOURABLE MR JUSTICE TUGENDHAT

Mr Justice Tugendhat :

1. The Claimant (“Mr Rothschild”) sues the Defendant (“ANL”) for libel on an article headed “EXCLUSIVE: Mandelson, an oligarch and a £500m deal” which was published in the issue of the Daily Mail dated Saturday 22 May 2010 and online (“the Article”). The Article was described as a ‘special investigation’, and extended over the front page and pages 2, 8 and 9 of that issue. The headline on page 9 reads: “Revealed: the astonishing story of the night Lord Mandelson was flown to Moscow by private jet to join a billionaire friend desperate to strike a deal that cost British jobs”.

THE PARTIES AND OTHERS NAMED IN THE ARTICLE

2. The individuals named in the Article include the following.
3. Mr Rothschild describes himself as a member of the well known Rothschild banking family, who is a banker and businessman. He is the Co-Chairman of Vallar Plc, a company listed on the London Stock Exchange, and the Chairman of JNR Ltd, an investment advisory business primarily focussed on emerging markets and the metals, mining and resources sector. He states that he provides financial advice to Mr Deripaska, that he is a member of the International Advisory Board of United Company Rusal PLC (“Rusal”), and (through a company controlled by him) the holder of shares in Rusal purchased for a sum in excess of \$100 million. He is also a director of EN+ Group Ltd, which holds substantial interests in a number of Russian metal, mining and energy companies, including a controlling stake in Rusal.
4. Mr Deripaska controls Rusal and other major Russian businesses through his ownership of EN+ Group and Basic Element. He is amongst those commonly referred to as Russian oligarchs. Rusal is incorporated in Russia and the world’s largest alumina and aluminium producer.
5. Since 2006 Mr Rothschild and Mr Deripaska, together with Mr Peter Munk, have also had business interests together. Mr Munk is the Chairman and founder of Barrick Gold Corporation (“BGC”). BGC is incorporated in Canada and is one of the largest gold mining companies in the world. The business interests that they have in common include a project for the development of a port in Montenegro, which is mentioned in the Article, and other projects which are not mentioned. Three of those projects were not mentioned in the Article, but are of significance to these proceedings. One was a project for the exploitation of mines in Tajikistan and Kyrgyzstan. Another was a project for taking over a Russian gold producing company, Polymetal, for which they ultimately made an unsuccessful bid at a sum of \$900 million. A third was an interest in a gold mine called Jerooy which had until a short time before been licensed to an English company Oxus Gold Ltd.
6. Baron Mandelson of Foy (formerly Peter Mandelson) is a prominent and very well known Labour Politician. He served as a government minister between 2 May 1997 and 23 December 1998; between 11 October 1999 and 24 January 2001; and subsequently between 3 October 2008 and 11 May 2010. Lord Mandelson is, and has for many years been, a close and long standing friend of Mr Rothschild. They regularly socialise and take holidays together. In August 2004, it was announced that Lord Mandelson had been appointed as the next European Commissioner for Trade.

He formally resigned his seat for the Hartlepool constituency on 8 September 2004, and commenced his term of office as Commissioner on 22 November 2004. He left his post as Commissioner on 3 October 2008 in order to return to the UK Government as Secretary of State for Business Enterprise and Regulatory Reform.

7. As Commissioner, Lord Mandelson was responsible for the European Commission's Directorate-General for Trade. That is the body charged with designing, implementing and communicating EU trade and commercial policy. The Directorate-General's stated remit includes: defining the trade interests of the EU in defensive and offensive terms; negotiating bi-lateral, regional or multilateral agreements with third countries; monitoring the implementation of international agreements and tackling unfair practices; devising and monitoring internal and external policies which have a bearing on the EU's trade and external investments (including policies relating to inter alia, the single market, consumer, energy, competitiveness and competition).
8. Those who hold public office are obliged to conform to certain standards of conduct, not only in the performance of their public functions, but also in their private lives. In the case of Commissioners these standards were at the relevant time set out in the Code of Conduct for Commissioners SEC (2004) 1487/2, pursuant to Article 213(2) of the EC Treaty. The general requirements of this Code, in so far as they relate to private life, are so obvious as hardly to need stating. They are set out in its Introduction, which includes the following:

“The Treaty articles on the Commission make special reference to the complete independence enjoyed by Members of the Commission, who are required to discharge their duties in the general interest of the Community. In the performance of their duties they must neither seek nor take instructions from any government or from any other body.

In addition, the general interest requires that in their official and private lives Commissioners should behave in a manner that is in keeping with the dignity of their office. Ruling out all risks of a conflict of interests helps to guarantee their independence...”

9. The events in question in this action took place around the World Economic Forum (“WEF”) held at Davos in Switzerland on 26 to 29 January 2005. 29 January was a Saturday. On Sunday 30 January Mr Rothschild flew in his own plane from Switzerland to Moscow with Mr Munk, Lord Mandelson and others, including Mr Sebastian Taylor, who is a personal friend of Mr Rothschild. He had no business interests relevant to these proceedings. On the Sunday evening, after the dinners in Moscow described below, Mr Rothschild, Lord Mandelson, Mr Munk and Mr Taylor all flew with Mr Deripaska, in Mr Deripaska's private plane overnight from Moscow to Abakan in Siberia (“the Siberian trip”). On Monday the party went visiting together in Siberia, and enjoyed other activities. On Tuesday Lord Mandelson flew back to Brussels in Mr Rothschild's plane (which had followed them from Moscow to Abakan), while the other members of the party flew on to Tajikistan and Kyrgyzstan for meetings with the Presidents of those states, and other high officials, to discuss the business of the possible joint venture between them in mining.

OVERVIEW OF LIBEL AND THE COURSE OF THIS ACTION

10. It is important that I stress at the start of this judgment that neither Lord Mandelson, nor Mr Deripaska, nor any of the other persons mentioned above, are claimants in this action. The only persons mentioned who have given evidence, apart from Mr Rothschild himself, are Mr Munk and Mr Taylor (and the Article does not refer to Mr Taylor). Nothing in this judgment should be taken as a criticism by me of anyone who is not a party to the action. That would not be fair, because no one other than Mr Rothschild and ANL has been represented in court, or has made any representations to me about the matters in question.
11. Mr Rothschild sues for libel on the whole Article. But the Article includes much that does not relate to himself.
12. A claimant who sues in libel must show that words have been published about himself which are defamatory of him. For the purposes of this action, the definition of “defamatory” can be taken to be words that tend to lower the claimant in the estimation of right thinking members of society. It follows that a claimant cannot complain of a publication which is defamatory of someone other than himself. And he cannot complain of publications about himself which are inaccurate, but which are not defamatory (however offended he may be about the inaccuracy). The whole Article is relevant to Mr Rothschild’s claim, but most of it is relevant only as the context in which statements about him were made.
13. Since the Article is primarily about Lord Mandelson, it is particularly important to keep in mind that the claimant is Mr Rothschild, not Lord Mandelson or anyone else. And this action is not about whether the deal referred to cost British jobs, nor about tariffs or EU law. It is a libel action.
14. There is no dispute in this case that ANL did publish words about Mr Rothschild which are defamatory of him. The main issue between the parties is as to the meaning of the words ANL published, and whether they are true, or substantially true.
15. In a libel action what a publication means, in particular a long publication, is often a matter of dispute. Meaning is a central issue in most libel actions for two main reasons. First, if the claimant succeeds, the meaning of the words complained of determines how seriously the claimant has been defamed, and so the measure of any damages the claimant may be entitled to. Second, a defendant who is sued for libel has a complete defence if he can prove that the words complained of are substantially true (the defence is known as “justification” or “truth”). To determine whether or not words are true, or substantially true, it is first necessary to determine what those words mean. The law sets out how the court is to approach the determination of these questions.
16. In a libel action the common law (in England as in almost all common law jurisdictions) presumes that the words complained of are false, so that the burden of proving them to be true generally rests on the defendant. But it is the claimant, not the defendant, who gives evidence first at the trial. Although a claimant is not obliged by law to do so, in practice, and for obvious reasons, a claimant will normally give evidence himself, and call other witnesses, and seek to prove that the words

complained of are false. If he did not do that he would be very unlikely to achieve a substantial award of damages, or anything else of value, from the action.

17. So too, in practice a defendant who is seeking to prove the truth of the words complained of normally calls witnesses and documentary evidence to support his case. But he does not have to. He can rely on the evidence of the claimant, although it is very rare for that to happen. In the present case that has happened. Apart from one witness on a peripheral issue, ANL has called no witnesses, but has relied on the evidence of Mr Rothschild and the relatively few relevant documents.
18. The reason why this unusual situation came about is related to the changes in procedural law introduced in the Woolf reforms in the late 1990s. Each common law jurisdiction has developed its own law, most famously in the USA in 1964 to introduce special rules where the claimant is a public figure. In England the reforms of the law apply whoever the claimant may be. Since 2000 the claimant has had to disclose, by a letter written under the Pre-Action Protocol, sufficient explanation to enable the defendant to appreciate why words are inaccurate or unsupportable. And in advance of a trial both parties have to disclose the statements of the witnesses on whose evidence they intend to rely. These reforms thus represent a very significant alteration in the effect of the presumption of falsity. In practice a claimant can rarely, if ever, expect to rely on that presumption to conceal the true position.
19. When the time came for exchanging witness statements, ANL did not produce any witness statement. When ANL saw the witness statements of Mr Rothschild and of his two other witnesses, Mr Munk and Mr Taylor, it accepted that parts of the Article were inaccurate. But having seen Mr Rothschild's explanation of the respects in which the Article was inaccurate, ANL still maintained that the defamatory allegations against Mr Rothschild, while not wholly true, are substantially true. And it applied to amend its Defence to rely on the version of events put forward by Mr Rothschild.
20. Mr Tomlinson has been critical of ANL for its delay in accepting that the Article contains inaccuracies. But if ANL can prove its case relying only, or mainly, on the evidence of Mr Rothschild and his witnesses, then that is a course it is entitled to adopt. And if ANL succeeds in that way, it would not be appropriate for the court to criticise the course that it has adopted.

THE WORDS COMPLAINED OF

21. The passages set out below, represent the great majority of the Article. The numbers in brackets at the end of each paragraph reflect the numbering marked on the colour photocopy of the hard copy version which was prepared for the hearing. Being a long article, it contains a number of meanings which do not refer to Mr Rothschild, or which are not said to be defamatory of him. I am only concerned with the defamatory meaning that it does bear and which is a meaning relating to Mr Rothschild. There is no dispute that the Article is defamatory of Mr Rothschild. But there is a dispute as to what that meaning is.
22. For ease of reference, I have underlined the passages which seem to me to be most significant in giving rise to the meaning of the Article which is defamatory of Mr

Rothschild. Some of the passages which are merely incidental background or are repetitious have been omitted:

[On the front page and page 2:]

“Mandelson, an oligarch and a £500m deal over dinner that cost 300 British jobs (headline – also substantially repeated in large letters on page 9)

Damning questions about Lord Mandelson's role in a controversial Russian oligarch's £500million deal which undermined British manufacturing jobs are raised today. (1)

The former Business Secretary was a 'valuable extra' as a dinner guest as billionaire Oleg Deripaska entertained American aluminium executives in Moscow. (2)

The meeting, also attended by British-born financier Nat Rothschild, resulted in a deal to sell two of Deripaska's giant Russian-based RUSAL factories to a U.S. firm, Alcoa. (3)

But the 2005 agreement had for hundreds of British jobs. (4)

Mandelson - who was the EU Trade Commissioner - was in a position to allay 'concerns' over tariffs on imports from Eastern Europe. Indeed, over the following three years, they were slashed. (5)

This prompted the dumping of cheap aluminium on the European market, forcing at least four British factories to the wall. (6)

...

Questions were being asked last night about what exactly Mandelson told the Americans and Russians about EU tariffs. (9)

In the past, he has denied ever talking to Deripaska about aluminium or even meeting Deripaska before 2006. His presence at the private dinner has been confirmed to the Mail by eyewitness sources linked to both Alcoa and Rusal. Russian sources said he had been flown from Switzerland to Moscow in a private jet belonging to Deripaska's close adviser. Rothschild and Mandelson have been friends for years. (10)

The trip was 'unplanned' and made in such haste that Mandelson had no valid visa. A source close to Rusal said that it needed the intervention of the company's head of security, a former senior KGB officer, to secure his entry into Russia. (11)

'It was a big headache,' said the source last night. (12)

'But Peter Mandelson's presence at that dinner was a very valuable extra for Deripaska.' (13)

A source close to Alcoa said: 'We certainly didn't expect Mandelson at the dinner, and assumed it would just be folks from Rusal and Alcoa. 'Nat has known Oleg a long time, and he played match-maker.' (14)

[On pages 8 and 9]

Sunday was never the busiest night at Cantinetta Antinori, a fashionable Tuscan restaurant in Moscow. But this one crackled with the electricity that only powerful tycoons and a £500 million deal on the table can generate. (19)

Holding court in a private room upstairs was Oleg Deripaska,

controversial oligarch owner of Russia's giant aluminium producer, Rusal. (20)

He had only just returned to Moscow from the World Economic Forum in Davos. And, according to sources, his dinner had hardly begun when two more people appeared, hotfoot from Switzerland. (21)

One of the new arrivals was financier Nat Rothschild, scion of the British banking dynasty and ultra-loyal special adviser to Deripaska. (22)

Rusal executives will tell you that Rothschild liked nothing more than to please his billionaire patron. And to that end Rothschild had brought with him a 'surprise' VIP guest; none other than the European Union's Trade Commissioner, Peter Mandelson. (23)

By bringing his friend halfway across Europe in his own private jet - and getting him into Russia without a valid visa in his passport - young Rothschild had pulled a very unexpected and also rather useful rabbit out of his hat. How useful we can explain here for the first time. (24)

The bare fact that Mandelson had dinner with Deripaska in Moscow that Sunday evening in January 2005 was first made public 18 months ago. He had wanted it kept secret. (25)

Until now, the soiree had been viewed, as with similar meals, as yet another example of Mandelson's fatal fascinations for the company and lifestyle of the super rich; an attraction which in the past has led him into errors of judgment that twice forced him to resign from British ministerial posts. (26)

But we can now reveal that there was much more at stake in the Cantinetta Antinori that night than the chance for Mandelson to break ciabatta with Deripaska. So important was it that Rothschild was prepared to cause what one former Rusal executive described to the Mail as a 'serious headache' by engineering Mandelson's visa-less arrival to Moscow. (27)

According to the same source, that headache was cured only by Rusal's head of security, a former senior KGB officer, pulling strings to get Mandelson through passport control. (10) ...

Why the extraordinary efforts? (29)

Deripaska was dining with two of his closest cronies: Gulzhan Moldashanova, female chief executive of his Basic Element holding company and his Canadian friend and business partner, the gold magnate Peter Munk. (30)

But they were not the only people at that table that night. Eating with them were three senior executives from the American aluminium giant Alcoa. The presence of Alcoa chairman Alain Belda, executive vice-president Barbara Jeremiah and head of communications Jake Siewert, a former Press Secretary to President Clinton (and now an adviser at the U.S. Treasury) is enough to explain the real significance of Rothschild and Mandelson's helter-skelter trip across Europe. (31) ...

Alcoa was about to sign a deal to pay £250 million in cash for Rusal's two Russian aluminium plants.(32) ..

... Alcoa, the world's biggest aluminium producer. ... (35)

Under the Americans, the aluminium products would be

exported around the world, including Europe. But another source said 'there were concerns' from Alcoa about the level of import tariffs levied by the EU on Russian aluminium. (38) ...

As EU trade supremo, Peter Mandelson, president of think-tank Policy Network, ... was a very welcome guest at the 'close of deal' dinner that night in Moscow. (41)

By his presence, Mandelson could, at the very least, bless the £500 million union of the metals giants. It also signalled that he was well disposed to their efforts, which were projected to make some £30 million annual profit under the Americans. (24)

In short, it is very hard to believe that by being there Mandelson had not done Deripaska an enormous business favour. Certainly, the Mail has been told, the Americans did not expect him to be there. It is hard to believe that tariffs were not discussed. (43)

Whose interests were Peter Mandelson representing that night? Neither of the companies at the table that night was EU owned (44) ...

It was an infamous holiday on Corfu in the summer of 2008 that first drew public attention to the links between Mandelson and the Russian oligarch. (46)

The Rothschild family's holiday villa is on the island, and Deripaska's super-yacht was moored offshore. That August, Mandelson and the then Shadow Chancellor George Osborne enjoyed the hospitality of both. (47)...

Amid the claim and counter-claim, it became clear that the Mandelson Deripaska association predated Corfu by several years. (49)

But Mandelson did not want the world to know. (50)

His EU spokesman had first stated that the two men met 'at a few social gatherings in 2006 and 2007', but had never discussed aluminium. This was not true and, under pressure, Mandelson soon had to admit he first met the Russian in 2004 'to the best of my recollection'. (51)

Certainly the pair were seen together in Moscow in October 2004, just after Mandelson had been appointed EU Trade Commissioner but before he'd taken up the post. (52)

He officially entered office as EU Trade Commissioner on November 22, 2004. And EU records show that on November 23 his department began a review of the anti-dumping tariff imposed by the EU on Russian rolled aluminium imports – of the type which was being produced at the two plants Deripaska's Rusal was in the process of trying to sell to Alcoa. (53) ...

The Cantinetta Antinori dinner which followed threw a fascinating light on the dynamics in the relationship between Deripaska, Rothschild and Mandelson. (57)

'The dinner was simply supposed to be a meeting of Rusal executives and their counterparts at Alcoa,' says the former Rusal executive. 'Nat Rothschild bringing the EU Trade Commissioner to the table was a very valuable extra for Deripaska. (40)

'Mandelson's sudden arrival was one of the games Rothschild played to impress Deripaska and keep him close. 'It was all about Nat. You have to see the event through the prism of Nat. Rusal was full of

young, ambitious Russians and they did not like Nat taking all the glory. But Nat was literally dictating the colour of the loo paper at Rusal.' (59) ...

Revealed: the astonishing story of the night Lord Mandelson was flown to Moscow by private jet to join a billionaire friend desperate to strike a deal that cost British jobs (sub-headline on p.9)

Left at the table was the complex Deripaska network of money and influence. (62)

As we have mentioned, there was Peter Munk, owner of Barrick Gold, the world's largest gold producer. (63)

Munk also sat on Rusal's international advisory board. Nat Rothschild sat on the equivalent board at Barrick Gold and Munk has reportedly invested heavily in Nat's Atticus hedge fund. (64)

Deripaska, Munk and Rothschild were also co-developing Porto Montenegro, a resort for the super rich near the town of Tivat. (65)

On January 31, 2005, fewer than 24 hours after the Moscow dinner attended by Mandelson, the Rusal-Alcoa deal was closed and triumphant press releases sent out. (68)

That night, Rusal and Alcoa executives went off to dine at the Cafe Pushkin, another of Moscow's high-end restaurants where Deripaska and Mandelson are known to have met in 2004. (69)

This time Mandelson was not present, according to one ex-Rusal executive. The Rothschild-choreographed favour had been done and the Trade Commissioner's use to Deripaska was at an end, for the moment. (70)

But over the next four years his department in Brussels was to make a series of decisions on tariffs which had huge benefits for those who attended the Cantinetta Antinori dinner. (53) ...

A senior business figure who knows some of the parties present that night disputes that the relationship is without reward: 'I do not think there is some secret bank account where he has millions of pounds of under the table payments stashed away,' he said. (80)

But the people Mandelson seeks to mix with are able to equip the lifestyle he loves but cannot independently afford. They have the private jets, villas and yachts which they are prepared to put at his disposal. (81)

There is no evidence that Mandelson orchestrated these tariff reductions specifically to help his Russian friends, but he certainly has many questions to answer. (82)

Once again, his actions have brought his public offices and personal integrity into disrepute and exposed him to accusations of conflict of interest. (83)

By any standard, the desperate race to attend the Cantinetta Antinori dinner was another gross error of judgment. (84)"

LAW ON MEANING

23. In deciding what the words complained of mean for the purposes of a libel action against a newspaper publisher the court looks to the meaning which would be attributed to the words complained of by a reasonable person reading the whole

Article in the circumstances in which such a reader might be expected to read the defendant's newspaper. The words complained of may contain many different allegations, and so many different meanings. But the court is not concerned with what the writer or publisher intended, nor with what any actual reader may have understood, still less with what the claimant understood. The meaning (or each of the meanings where there are multiple allegations) must be a single meaning, that is a meaning which the court finds would be understood by the hypothetical reasonable reader (*Slim v Daily Telegraph* [1968] 2 QB 157).

24. In deciding what meaning that reader would attribute to the words complained of, the court must apply the well known test most recently set out by Sir Anthony Clarke MR in *Jeynes v News Magazines Limited* [2008] EWCA Civ 130 at paras 14 and 15. It is as follows:

"The legal principles relevant to meaning ... may be summarised in this way: (1) The governing principle is reasonableness. (2) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. (3) Over-elaborate analysis is best avoided. (4) The intention of the publisher is irrelevant. (5) The article must be read as a whole, and any "bane and antidote" taken together. (6) The hypothetical reader is taken to be representative of those who would read the publication in question. (7) ... the court should rule out any meaning which, "can only emerge as the produce of some strained, or forced, or utterly unreasonable interpretation..." (8) It follows that "it is not enough to say that by some person or another the words might be understood in a defamatory sense".

THE CONTENTIONS OF THE PARTIES ON MEANING

25. The Practice Direction to Part 53 of the Civil Procedure Rules requires that the claimant specify in the particulars of claim the defamatory meaning which he alleges that the words or matters complained of conveyed. Where (as here) the defendant alleges that the words complained of are true, the defendant is required to specify the defamatory meaning which he seeks to justify. It is for the court at trial to decide whether the words complained of are defamatory of the claimant, and if so what defamatory meaning they bear.
26. The court is not bound by the meanings pleaded by either party. But the court will not attribute to the words complained of a meaning more serious than the meaning attributed to them by the claimant. And it is in any event helpful to the court to have regard to the meanings which each party attributes to the words complained of.
27. In the present case the meaning attributed to the Article by Mr Rothschild is:

“(1) That, for the purpose of ingratiating himself with Russian oligarch Oleg Deripaska [Mr Rothschild] took extraordinary steps to ensure the attendance of his friend, EU Trade Commissioner Lord Mandelson at a meeting between Oleg Deripaska and American aluminium executives which he must have known Lord Mandelson had no official reason for attending and which he must or ought to have foreseen would and did bring his friend’s public offices and personal integrity into disrepute and exposed him to accusations of conflict of interest.

(2) That there were strong grounds to suspect that [Mr Rothschild] had facilitated the attendance of EU Trade Commissioner Lord Mandelson at meeting between Russian oligarch Oleg Deripaska and American aluminium executives so that Oleg Deripaska could close a £500 million deal by securing corrupt and improper disclosures and commitments concerning EU aluminium tariffs from Lord Mandelson”

28. In December 2011 ANL recognised that it could not prove the truth of the meaning which it had originally sought to justify. On 15 December 2011 I gave leave to ANL to amend its Defence to plead an amended meaning, which it then claimed that it would seek to justify. The procedural history of this case is relevant to the issues I have to decide. In order to show both the meaning which ANL originally sought to justify (but which it admitted in December 2011 that it could not justify), and the meaning which it now seeks to justify, I set out the words deleted by amendment crossed out, and the words inserted by amendment underlined :

“(1) [Mr Rothschild] facilitated the attendance of Lord Mandelson on a trip to Russia in 2005, which he had no official reason for taking, at a dinner held at a Moscow restaurant for the purpose of closing a multimillion pound aluminium deal (‘the Aleoa deal’) in circumstances in which foreseeably he must or ought to have foreseen that he was exposing Lord Mandelson to accusations of conflict of interest between his relationship with the Claimant and Mr Deripaska (and Mr Deripaska’s business interests, including Rusal) on the one hand and his duties as EU Trade Commissioner on the other in circumstances which were liable to bring Lord Mandelson and his office into disrepute but which were likely to further the Claimant’s relationship with and impress Mr Deripaska;

(2) There are reasonable grounds for believing that Lord Mandelson, when EU Trade Commissioner, discussed aluminium tariffs with Mr Deripaska, on the trip referred to in (1) in terms which would be open to criticism as inappropriate, before the closure of the Aleoa deal and that the Claimant facilitated and encouraged an inappropriate relationship between Lord Mandelson and Mr Deripaska in which that contact could occur.”

FINDING ON MEANING

29. The meaning which I find the Article to bear, which both refers to Mr Rothschild and is defamatory of him, is as follows:

(a) Mr Rothschild flew Lord Mandelson (at that time the EU Trade Commissioner) in his private jet to Moscow in January 2005 when he had no official reason to go there, and where, unknown to EU officials, he and Mr Rothschild were to attend a business dinner held for the purpose of closing a multimillion pound deal (“the Alcoa deal”) attended by representatives of Rusal and the American aluminium producer Alcoa, and by a gold magnate Mr Munk (another member of the advisory board of Rusal) (“the Alcoa dinner”), in circumstances in which he (Mr Rothschild) must or ought to have foreseen that this would (as in fact it did):

(1) bring Lord Mandelson’s public offices and personal integrity into disrepute, and expose him to accusations of conflict between his duties as EU Trade Commissioner and his private interest in the enjoyment of private jets and other luxuries, and thus in pleasing those from whom he accepted such generous hospitality: and

(2) give rise to reasonable grounds for suspecting that Mr Rothschild had done this so that Lord Mandelson would engage, and that Lord Mandelson had engaged, in improper discussion with the representatives of Rusal and Alcoa about tariffs on aluminium imports from Russia into the EU, and thereby shown to Rusal and Alcoa that he was well disposed towards, and thus assisted in the closure of, a deal between them for the sale of two of Mr Deripaska’s Russian based Rusal factories to Alcoa.

(b) This incident is an example of how Mr Rothschild sought to impress and keep close to him Mr Deripaska, the billionaire businessman who controlled the Russian aluminium producer Rusal, of whose advisory board Mr Rothschild is a member.

30. In reaching my conclusion on meaning, I have upheld a submission of Mr Caldecott that the words complained of include a general allegation, that is, an allegation that the alleged conduct of Mr Rothschild in relation to the Alcoa dinner is an example of how Mr Rothschild acted to impress Mr Deripaska: see para 29(b) above. The Article expressly states at para (57) that “The Cantinetta Antinori dinner which followed threw a fascinating light on the dynamics in the relationship between Deripaska, Rothschild and Mandelson” and at para (59) it included a quote from a person who said that “Mandelson's sudden arrival was one of the games Rothschild played to impress Deripaska and keep him close”. I did not accept that these were merely incidental background to the words complained of, in so far as they refer to Mr Rothschild.

31. I have accepted that the Article does suggest that there were reasonable grounds for suspecting that Mr Rothschild had done what he did so that Lord Mandelson would engage, and that Lord Mandelson had engaged, in improper discussion with the

representatives of Rusal and Alcoa about tariffs on aluminium imports from Russia into the EU. But I have not accepted Mr Tomlinson's submission that the Article alleges strong (or any) grounds to suspect that Lord Mandelson had acted corruptly in making disclosures, or in any other way. That would be to read too much into the Article, and be the product of undue suspicion and desire for scandal. The last four paragraphs of the Article, paras (80) to (84) make clear in my view that what is alleged is an error of judgment, and grounds to suspect a conflict of interest, but not corruption.

THE DEFENCE OF JUSTIFICATION OR TRUTH

32. For the following summary of the relevant law I am indebted to the editors of Duncan & Neill on Defamation 3rd edn, ch 12, where the relevant authorities are cited.
33. The general principle is that it is a complete defence to an action for libel that the words complained of are true. The defence of truth is subject to a number of rules which are relevant to the present case. As I have already found, the Article contains more than one allegation against Mr Rothschild (in addition to a number of different allegations which are irrelevant because they are against other persons, or are not defamatory). And ANL is able to prove only part of the defamatory allegations it has made against Mr Rothschild. In a case where a defendant is not able to prove the whole of the defamatory allegation he has made, the law is that he may nevertheless succeed if he can prove, on the balance of probabilities, that what he has alleged is substantially true. See *Sutherland v Stopes* [1925] AC 47 at 79 and *Maisel v Financial Times Ltd* [(1915) 84 LJKB 2145].
34. A useful explanation of that rule of law is given by Eady J in *Turcu v News Group Newspapers Ltd* [2005] EWHC 799 (QB) at [109] and [111] as follows:

“109. ... English law is generally able to accommodate the policy factors underlying the Article 10 [the right to freedom of expression] jurisprudence by means of established common law principles; for example that a defamatory allegation need only be proved, on a balance of probabilities, to be substantially true. The court should not be too literal in its approach or insist upon proof of every detail where it is not essential to the sting of the article... So too the demands of a defence of justification are sometimes mitigated by the terms of section 5 of the Defamation Act 1952 (although not of relevance here).

110. Each case obviously depends on its own unique circumstances and the application of these considerations of public policy will to a large extent be a matter of impression.

...

111. In deciding whether any given libel is substantially true, the court will have well in mind the requirement to allow for exaggeration, at the margins, and have regard in that context also to proportionality. In other words, one needs to consider whether the sting of a libel has been established having regard to its overall gravity and the relative significance of any

elements of inaccuracy or exaggeration. Provided these criteria are applied, and the defence would otherwise succeed, it is no part of the court's function to penalise a defendant for sloppy journalism ... I must set all that to one side, ... and focus only on substance.”

35. Because ANL accepts that it cannot prove the truth of the allegations relating to the participation of Lord Mandelson at the Alcoa dinner, Mr Tomlinson submits that ANL cannot succeed at all on its defence of justification or truth. He puts that point in two ways.
36. First, Mr Tomlinson submits that the Article contains a single specific allegation about the Alcoa dinner, and not an allegation about the trip to Siberia, or any general allegation. It follows, he submits, that whatever may be the truth about events on the Siberian trip, they cannot be relevant to the truth or falsity of allegations about the Alcoa dinner.
37. Secondly, Mr Tomlinson submits that the allegations about the Alcoa dinner are also more serious than what ANL alleged in relation to the Siberian trip, so that even if ANL could rely upon matters relating to the Siberian trip, that would not help ANL: *Berezovsky v Forbes Inc* [2001] EWCA Civ 1251; [2001] EMLR 45 para [12].
38. Mr Tomlinson submits that proof of those allegations would not amount to proof that the words complained of are substantially true: the gravity and the relative significance of the elements of inaccuracy are too great in this case. He submits that the allegation in relation to the Alcoa dinner is that Mr Rothschild facilitated Lord Mandelson's attendance at a business dinner held for the purpose of closing the Alcoa deal. And he submits that that is a more serious allegation than can be justified by what Mr Rothschild did in relation to the Siberian trip, on which Mr Rothschild is not said to have facilitated Lord Mandelson's attendance for any comparable business advantage to Mr Deripaska.
39. However, Mr Tomlinson accepts that even if ANL cannot prove the truth of the words complained of, ANL could in principle rely on matters relating to the Siberian trip in mitigation of damage. This is because “The law will not permit a man to recover damages in respect of an injury to a character which he does not or ought not to possess” (*M'Pherson v Daniels* (1829) 10 B & C 263, 272, Littledale J). True facts that go only half way to meet the sting of a libel may mitigate damage: *Berezovsky v Forbes Inc* [2001] EWCA Civ 1251; [2001] EMLR 45 para [15].
40. Mr Caldecott submits that this is a case where the words complained of are not confined to a single specific allegation about the Alcoa dinner, but that they also contain a general allegation about Mr Rothschild's conduct in relation to Mr Deripaska. It follows, he submits, that ANL can, while admitting the inaccuracy of the specific allegations in the Article, nevertheless prove that the allegations are substantially true by proving similar matters, notably the matters relating to the Siberian trip.
41. Mr Caldecott cites *Carlton Communications v News Group Newspapers Ltd* [2002] EMLR 16, [2001] EWCA Civ 1644. In that case the defendant published articles alleging that specified television programmes by an investigative reporter had been

faked. The words complained of referred in a side article to another programme, unrelated to the series of programmes which were the subject of the claimant's specific complaint. The defendant submitted that the words in their context were capable of meaning that the respondents were not only responsible for faking the programmes about which specific complaint was made, but also the other programme. The court upheld that submission and allowed the defendant to rely on the other programme (Latham LJ at para [19]). Latham LJ summarised the defendant's submission in his judgment at para [1] as follows:

“The [defendant]s wish to place before the court the material relating to [the other programme] ..., on the basis that ... the sting of the libel was therefore that the [claimant]s had been responsible for more than one fake programme or series of programmes.”

42. So too in the present case, Mr Caldecott submitted that the amended particulars relating to the Siberian trip are on all fours with the fundamental sting of the libel as it relates to Mr Rothschild: what he describes about the Siberian trip is similar to what was alleged about the Alcoa dinner. It follows that by proving its case on the Siberian trip ANL can in principle succeed in its defence of justification, provided that the facts proved about the Siberian trip also satisfy the requirement that the words complained of must be substantially true.
43. Mr Caldecott further submits that the inaccuracies in the account of the Alcoa dinner do not preclude ANL from proving that the words complained of are substantially true.

AN OUTLINE OF WHAT FACTS ARE ADMITTED AND DENIED

44. The meaning which I have found the Article to bear includes parts the truth of which are not disputed, and parts which are disputed. There are also other facts which are agreed between the parties. The main points which are disputed, or agreed, can be summarised as follows.
45. Mr Rothschild flew Lord Mandelson (at that time the EU Trade Commissioner) in his private jet from Switzerland to Moscow on Sunday 30 January 2005 when Lord Mandelson had no official reason to go there:
 - i) this is agreed.
46. There was a dinner (the Alcoa dinner) in a Moscow restaurant (“Cantinetta Antinori”) on Sunday 30 January attended by Mr Rothschild, by representatives of Rusal and the American aluminium producer Alcoa, and by a gold magnate Mr Munk (another member of the advisory board of Rusal):
 - i) this is agreed.
47. The Alcoa dinner was held for the purpose of closing a multimillion pound deal (“the Alcoa deal”):

- i) ANL accepts that this is inaccurate, because the deal had already been effectively closed before the dinner.
48. Lord Mandelson attended that dinner, unknown to EU officials:
- i) It is agreed that before the Alcoa dinner Lord Mandelson greeted the people at that dinner, and that this was unknown to EU officials.
 - ii) It is also agreed that he did not attend that dinner, but that on the same evening he had a dinner (also unknown to EU officials), elsewhere in the same restaurant, with a Russian Minister, and that this dinner with the Minister had been arranged by Mr Rothschild with the assistance of Mr Deripaska or his office.
49. In the circumstances Mr Rothschild must or ought to have foreseen that Lord Mandelson's presence at the Alcoa dinner would, and it did: (1) bring Lord Mandelson's public offices and personal integrity into disrepute, and expose him to accusations of conflict between his duties as EU Trade Commissioner and his private interest in the enjoyment of private jets and other luxuries, and thus in pleasing those from whom he accepted such generous hospitality:
- i) this is in dispute. See paras 78 to 103 below.
50. In the circumstances Mr Rothschild must or ought to have foreseen that Lord Mandelson's presence at the Alcoa dinner would (2) give rise to reasonable grounds for suspecting that Mr Rothschild had done this so that Lord Mandelson would engage, and that he had engaged, in improper discussion with the representatives of Rusal and Alcoa about tariffs on aluminium imports from Russia into the EU, and thereby showed to Rusal and Alcoa that he was well disposed towards, and thus assisted in the closure of, a deal between them for the sale of two of Mr Deripaska's Russian based Rusal factories to Alcoa:
- i) It is agreed that Lord Mandelson did not discuss tariffs on aluminium at the Alcoa dinner, and that he did not assist in the closure of the Alcoa deal.
 - ii) But it is also agreed that during the night the immediately after the Alcoa dinner Mr Deripaska, Mr Rothschild, Mr Munk, Lord Mandelson and Mr Taylor all flew to Siberia in Mr Deripaska's plane, where they were housed and entertained by Mr Deripaska and accompanied him on a visit to an aluminium plant (which, unknown to Mr Rothschild, happened to be one of the plants which was currently the subject of a review by Lord Mandelson's officials). Lord Mandelson returned to Brussels early on the Tuesday morning on Mr Rothschild's plane, while the others went on to Tajikistan and Kyrgyzstan to discuss projects for joint ventures between them, including one to acquire gold or silver mining rights in those two countries and to take over a Russian gold mining company.
 - iii) ANL contend, but Mr Rothschild disputes, that it is to be inferred that Lord Mandelson and Mr Deripaska probably talked about aluminium during the visit to the aluminium plant in Siberia, or that there are reasonable grounds to suspect that they did. See para 105 below.

51. Mr Deripaska is a billionaire businessman who controlled the Russian aluminium producer Rusal, of whose advisory board Mr Rothschild is a member:
 - i) this is agreed
52. Mr Rothschild “played games” (ie facilitated Lord Mandelson’s journey to Moscow) to impress Mr Deripaska and keep Mr Deripaska close to him:
 - i) this is disputed. See para 104 below.
53. A number of other material facts are agreed.
54. In relation to Lord Mandelson a number of facts are pleaded. In para 6.9 of the original Defence (served in September 2010) ANL had pleaded that:

“On 23 November 2004, the Commission announced its intention to conduct an interim review of Council Regulation (EC) 950/2001 by which an anti-dumping duty of 14.9% was imposed on imports of aluminium household foil from Russia. – At the time Regulation 950/2001 was adopted, the Commission accepted a number of concurrent undertakings from the principal Russian exporter US Siberian Aluminium pursuant to which it agreed that an aluminium foil manufacturing subsidiary, Sayan Foil, would only to export a certain volume of foil at or above specified price levels... In or around July 2004, notice was given to the Commission that Sayan Foil had been renamed as Rusal Sayanal. Sayanal formed part of the Rusal Group at all material times. The review announced by the Commission on 23 November 2004 was undertaken as a result of a request submitted by Sayanal itself... On 20 December 2005, Lord Mandelson signed a Commission Decision repealing the decision to require undertakings from Sayanal on the ground that those undertakings were no longer necessary”.
55. The Defence para 6.9 was admitted in the original Reply served on 20 December 2010, with the added plea that it was “specifically denied that Rusal Sayanal ever in fact paid tariffs under Regulation 950/2001”. There was no suggestion by ANL that either Lord Mandelson or Mr Rothschild were aware in January 2005 that the smelter that they visited was the subject of a review by the Commission.
56. In his Reply (para 4.6) Mr Rothschild admitted that Lord Mandelson was liable to face greater media scrutiny in his role as Commissioner due to a number of matters pleaded in the Defence (para 6.15). One of these was the fact and circumstances of Lord Mandelson’s resignation on 23 December 1998 from the office of Secretary of State for Trade and Industry. This had followed revelations about an interest free loan he had received from Mr Geoffrey Robinson MP, but which he had not declared in the Register of Members’ Interests. In a BBC interview on the day of his resignation Lord Mandelson had acknowledged that this was a misjudgement on his part, in particular because his department was conducting an investigation into the affairs of Mr Robinson. He recognised that there was the appearance of a conflict of interest.

Another fact pleaded in the Defence was that on 24 January 2001 Lord Mandelson had resigned as Secretary of State for Northern Ireland following accusations that he had improperly exploited his position as a Minister by making representations to the Home Office in relation to the application by an Indian businessman for a British passport.

57. It was not in dispute that Lord Mandelson had been subjected to accusations of conflict of interest and his integrity had been called into question in relation to his dealings with Mr Deripaska, while in post as EU Trade Commissioner, and that questions had been publicly raised as to whether he had discussed aluminium with Mr Deripaska.
58. ANL pleaded a much publicised incident in 2008 when Lord Mandelson had been a guest of Mr Deripaska on Mr Deripaska's yacht moored off Corfu. On 5 October 2008 an official statement had been issued on behalf of Lord Mandelson to the effect that Lord Mandelson had met Mr Deripaska at a few social gatherings in 2006 and 2007, and that he had never had a conversation with Lord Mandelson about aluminium.
59. On 12 October 2008 the Sunday Times had published an article under the title "Peter Mandelson joins richest Russian on his superyacht". It included the sentence:
- "In a document signed off by Mandelson in December 2005, it was agreed the European Commission would scrap measures against Deripaska's company, Rusal Sayanal, controlled by Rusal, to prevent it dumping cheap aluminium foil in Europe. A year long investigation had cleared the company of this practice".
60. On 16 October 2008 a question had been raised in the House of Commons on this topic. On the same day the Director General of the Commission's Directorate General for Trade, Mr O'Sullivan, wrote a letter to the Times. He confirmed that Lord Mandelson had not personally intervened in favour of Rusal in relation to either of two matters in which that had been suggested. One was in relation to a cut that had been made to raw aluminium tariffs following the arrival of new Member States in 2004. The other was in relation to anti-dumping duties on imports of aluminium foil from Russia which had been the subject of an investigation concluded in 2006. He also stated that there was another anti-dumping investigation being conducted in 2008 in relation to aluminium foil imports from Armenia where the main exporter was another Rusal company. ANL does not challenge the accuracy of Mr O'Sullivan's letter.
61. On 25 October 2008 Lord Mandelson had written a letter to The Times in which he explained that the statement had been issued when, for reasons of health, he was not available to deal with the matter. He wrote that:
- "Some people have formed the reasonable view... that my first meeting with [Mr Deripaska] was in 2006. This is not the case: to the best of my recollection we first met in 2004 and I met him several times subsequently... in managing my department's business as Secretary of State I will, of course, in

line with the Ministerial code, ensure that no conflict of interest, or perception of such, arises from any of my past or indeed future contacts”.

62. On 29 October 2008 Lord Mandelson was interviewed by the BBC and repeatedly asked whether he had discussed aluminium tariffs with Mr Deripaska, but he had declined to answer.
63. There is no dispute that when Lord Mandelson left Switzerland for Moscow on 30 January 2005 he did not have a visa to enter Russia.

CHANGES IN THE EVIDENCE OF MR ROTHSCHILD

64. The Article was published in the issue of the Daily Mail dated 22 May 2010. On 7 July 2010, after correspondence conducted in the light of the Pre-Action Protocol, Mr Rothschild issued his claim form and particulars of claim. On 17 September 2010 ANL served a defence covering some 26 pages. As will be apparent from the original meaning it pleaded, ANL sought to justify a meaning which was very close to that attributed to the Article by Mr Rothschild. In particular, it sought to prove that Mr Rothschild had facilitated the attendance of Lord Mandelson at the Alcoa dinner in Moscow for the purpose of closing the Alcoa deal, and that there were reasonable grounds for believing that he discussed aluminium tariffs with Mr Deripaska in inappropriate terms at the dinner before the closure of the Alcoa deal.
65. On 20 December 2010 Mr Rothschild served his Reply, verified by his statement of truth. In the Reply Mr Rothschild admitted much of what ANL had pleaded, but disputed other matters, some of which are unimportant, and some of which are very important to this action. These are set out in the judgment I gave after the hearing on 15 December at paras 35 to 39. It is not necessary to repeat them here.
66. Amongst the most significant matters he pleaded in his Reply was para 4.34, in which he pleaded that:

“Lord Mandelson travelled with [Mr Rothschild] to Moscow because on 29 January, while at Davos [attending the World Economic Forum], [Mr Rothschild] had informed him that he was planning to travel with Peter Munk of Barrick Gold Corporation to Moscow on 30 January 2005 and that they were then heading on to Siberia to view some facilities with Mr Deripaska as part of discussions in relation to a potential joint venture. [Mr Rothschild] was aware that Lord Mandelson had not been to Siberia and was keen to visit it, and accordingly had invited him along. Lord Mandelson agreed to go and in addition asked [Mr Rothschild] to arrange for him to meet a Russian Government Minister...”

67. It was by this pleading that ANL first learnt that the dinner that Lord Mandelson had had in Moscow was not the Alcoa dinner, but a dinner with a Russian Minister arranged by Mr Rothschild, and that after the dinners Mr Rothschild, Lord Mandelson and PM all flew to Siberia to visit some facilities with Mr Deripaska which were said to be “part of discussions in relation to a potential joint venture”. But Mr Rothschild

did not, at that stage, identify the facilities they had viewed or the nature of the potential joint venture.

68. The witness statements for Mr Rothschild were made by himself, Mr Munk and Mr Taylor (amongst others). The first witness statement by each of these had been made in June 2011 and was served on 7 October 2011. When these were served ANL learnt further details about the visit to Moscow and Siberia. Words in quotation marks below are from the first witness statement of Mr Rothschild. Similar statements were included in the first witness statement of each of PM and Mr Taylor.
- i) The nature of the joint venture: “For some time leading up to the WEF in January 2005 I had been in discussion with Mr Munk and Mr Deripaska about a potential gold joint venture in Russia and the former Soviet States” (para 13); “we stayed in Dushanbe [Tajikistan] for most of the morning [of Tuesday 1 February 2005] in meetings regarding the proposed joint venture and then we travelled on to Bishtek, Kyrgyzstan for more meetings relating to the proposed joint venture... Ultimately Messrs Munk, Deripaska and I agreed the joint and Barrick Gold, Basic Element and JNR made a joint bid for Polymetal, a leading Russian gold producer” (paras 40 and 41).
 - ii) The timing of the decision to travel to Russia: it was arranged at “short notice”. The joint venture was discussed on 29 January 2005 at a dinner in Davos hosted by PM and attended by Mr Deripaska and Lord Mandelson (as well as Mr Belda of Alcoa) and that at the suggestion of Mr Deripaska the parties agreed to continue those discussions in Russia the following day (see paras 13-14 and 18)
 - iii) The stated reason for the joint venture parties’ decision to travel to Russia: “During Mr Munk’s event at the WEF the three of us had a conversation about the potential joint venture. We agreed to continue the discussions the following day. Mr Deripaska was returning to Moscow on 30 January 2005 and consequently he suggested that Mr Munk and I should travel to Russia the same day to continue our discussions and to view some relevant industrial plants in Siberia. As I was already planning on travelling to South East Asia from Davos, Moscow was a convenient stop to make en route” (para 14).
 - iv) The timing of Lord Mandelson’s invitation to Russia: on the evening of 29 January 2005 after PM’s dinner Mr Rothschild invited Lord Mandelson to join them on that trip to Abakan in Siberia (para 15).
 - v) The meeting with the Russian Minister: at Lord Mandelson’s suggestion Mr Rothschild “was able to liaise with Mr Deripaska – who has close relationships with the Russian Government – and arrange for Lord Mandelson to have an informal dinner with the relevant Russian Minister on the evening of 30 January” (para 18).
 - vi) The Moscow evening: When Mr Rothschild reached his hotel in Moscow, Mr Deripaska called to invite him and Mr Munk for dinner at the same restaurant as that where Lord Mandelson was scheduled to meet the Russian Minister. Mr Rothschild suggested to Lord Mandelson that, while Lord Mandelson was at the restaurant waiting for the Minister, he should join Mr Deripaska and say

hello to him. Mr Rothschild had not known in advance that Mr Deripaska's dinner would be attended by representatives of Alcoa, and he had no involvement in, and little knowledge of, the Alcoa deal. Lord Mandelson was only at the Alcoa dinner for about 10 minutes, while he was awaiting the arrival of the Russian Minister. Later in the evening Mr Deripaska and Mr Rothschild went to the room where Lord Mandelson was dining to greet the Russian Minister, which lasted no longer than 10 or 15 minutes. See paras 23-31.

- vii) The timing of the decision to travel to Siberia overnight: "During the dinner Mr Deripaska, Mr Munk and [Mr Rothschild] had agreed that [they] would travel to Siberia later that evening and [Mr Rothschild] therefore advised Lord Mandelson of this" (para 32).
 - viii) The nature of the Siberian trip: The account given in the original Reply is set out in para 66 above. In his first witness statement Mr Rothschild said that in Siberia they visited "a couple of industrial plants which Mr Deripaska wanted to show to Mr Munk in relation to the proposed joint venture that we had been discussing" (this is in para 35 of the first witness statement). They all spent the night in Mr Deripaska's house. On the Tuesday all of them except Lord Mandelson went on to meetings in Tajikistan and Kyrgyzstan to discuss the proposed joint venture. It was ultimately agreed that BGC, Basic Element and JNR would make a joint bid for Polymetal "a leading Russian gold producer".
 - ix) Hospitality: They agreed to travel together on Mr Deripaska's plane because it made most sense to fly together. But Mr Rothschild had to have his own plane follow them so that it would be available the next day, due to the uncertainty as to Mr Deripaska's plans, and it was in fact available the next day to take Lord Mandelson back to Brussels (para 34).
69. It was in the light of this evidence from Mr Rothschild that ANL decided to amend its Defence to delete from the meaning that they sought to justify, and from the particulars of justification, the allegations relating to the Alcoa deal and Lord Mandelson's presence at the Alcoa dinner.
70. But it was also in the light of this evidence from Mr Rothschild that ANL applied for, and I gave, permission to amend its Defence to plead the allegations relating to the dinner with the Russian Minister (unknown to EU officials) arranged by Mr Rothschild with the assistance of Mr Deripaska, the trip to Siberia on Mr Deripaska's plane, and the hospitality in Siberia at Mr Deripaska's chalet. ANL pleaded that these represented the grant of substantial benefits by Mr Deripaska to Lord Mandelson which were likely to have the effects pleaded in the amended meaning. ANL also amended its allegation that there were reasonable grounds for believing that Lord Mandelson did discuss aluminium tariffs with Mr Deripaska in terms which are open to criticism as inappropriate. In the amended version, this referred to discussions on the Russian trip instead of to discussions at the Alcoa dinner.
71. ANL thus admitted that the Article was substantially inaccurate in so far as it made allegations about Lord Mandelson's, and so Mr Rothschild's attending a dinner for the closing of the Alcoa deal. But it alleged that on the version of events that Mr Rothschild put forward to demonstrate that inaccuracy, Mr Rothschild's conduct was

just as likely to lower him in the estimation of right thinking members of society as the conduct that ANL had originally alleged.

72. After I had given permission to ANL to amend its Defence, ANL expected that the trial would be on facts which were largely common ground on almost all the important points. There was only one distinct issue arising out of the witness statement of Mr Rothschild, and that related to events in Corfu and afterwards in 2008. This was the only issue on which ANL ultimately adduced evidence from Lord Feldman.
73. However, on 7 January 2012 Mr Rothschild made a second witness statement, as did Mr Munk, and as Mr Taylor had done on 4 January. These second witness statements gave a version of events on each of the points listed in para 68 above, and on certain other matters, which was either different or contradictory. And by amendment to the Reply Mr Rothschild deleted the whole of para 4.34, set out in para 66 above.
74. Accordingly, at the start of the trial ANL applied for permission to re-amend its Defence. Mr Rothschild consented to most of these re-amendments. He initially opposed the re-amendments in para 6.53 (which were pleas that Mr Rothschild's change of account in his second witness was wholly implausible), but later Mr Tomlinson stated that he would not oppose them, and I granted permission as asked. At the trial Mr Caldecott's cross-examination of Mr Rothschild was largely directed to the changes in his account.
75. In his second witness statement Mr Rothschild gave evidence as follows:
 - i) The nature of the joint venture: the parties made a joint bid of about \$900 million for Polymetal "a Russian gold and silver producer in 2005. The joint venture also focussed on Central Asia and the parties were considering acquiring a company called Jerooy which was located in Kyrgyzstan. It was for this end that Mr Deripaska, Mr Munk and I arranged to visit Central Asia in early 2005" (para 7).
 - ii) The timing of the decision to travel to Russia: Mr Deripaska was not present at Mr Munk's dinner on 29 January 2005. The trip was not made at short notice. It was before the WEF that Mr Rothschild, Mr Deripaska and Mr Munk had arranged to travel to Siberia and then on to Tajikistan and Kyrgyzstan. The stopover in Moscow was a change in plan, but Mr Rothschild could not remember when that was arranged. "Therefore paragraph 14 of my first witness statement is not correct" (para 10). "... there was already an arrangement to go to Siberia and Central Asia with Mr Munk, and ... my previous recollection [about a visit to South East Asia] cannot have been right" (para 11).
 - iii) The stated reason for the joint venture parties' decision to travel to Russia: "the only visit to industrial plants we made on this occasion would have been to the smelter facility and museum in the Sayana-Shusanks power station... Mr Deripaska was extremely proud of the facility and ... wanted to show it to Mr Munk as a fellow industrialist and as he was going to be Mr Munk's business partner, via the prestigious new venture he was entering into with Barrick. Paragraph 35 of my first witness statement needs to be corrected

accordingly, as neither of these visits related to the proposed gold venture” (para 28). Further, the fact that Abakan was only 2 hours flying time to Dushanbe in Tajikistan made the whole trip easier for Mr Munk, who was aged over 70.

- iv) The timing of Lord Mandelson’s invitation to Russia: It was shortly before the WEF began that Mr Rothschild invited Lord Mandelson to visit Siberia with him. At the time the invitation was extended the plan was to go straight from Switzerland to Siberia. Mr Rothschild recalled Lord Mandelson told him that he would need to liaise with his Chef de Cabinet to confirm it was permissible to join the party on the trip to Siberia and that it fitted with his diary, and later advised Mr Rothschild that the trip was okay. The plan was changed to include a stop in Moscow. See paras 14-15.
 - v) The meeting with the Russian Minister: When Mr Rothschild told Lord Mandelson that the party would be stopping in Moscow, Lord Mandelson mentioned that it would be useful for him to meet a Russian Minister. Mr Rothschild knew the Russian Minister, and arranged the meeting himself through Mr Deripaska’s office, and not with Mr Deripaska personally. See para 17
 - vi) The Moscow evening: Before leaving Switzerland Mr Rothschild and Mr Deripaska had arranged to have dinner in Moscow, but the details were not confirmed until after Mr Rothschild arrived in Moscow.
 - vii) The nature of the Siberian trip: “The decision to make this visit was not in any way influenced by the presence of Lord Mandelson or Mr Taylor... The only component of the trip that was even remotely about business was Mr Deripaska’s desire to display his and Basic Element’s industrial credentials to Barrick Gold and the fact that Abakan was close to Dushanbe (around two hours flight time) and this made the whole trip a lot easier for Mr Munk...” (para 31).
 - viii) Hospitality: Mr Rothschild said: “I simply did not apply my mind to what accommodation we would be staying in during our visit to Moscow or Siberia or who would pay for that accommodation. I was happy that my friends Lord Mandelson and Mr Taylor were coming on the trip as I knew that I would have a great time with them... the decision to fly on Mr Deripaska’s plane was simply one of convenience... It therefore did not occur to me that the flight from Moscow to Abakan could be viewed as any sort of favour bestowed by Mr Deripaska on Lord Mandelson... Nor did occur to me that staying overnight at Mr Deripaska’s chalet would be considered as a favour either. ... [after visits and other entertainment we] played a friendly game of five a side football and a game of ice hockey under the floodlights (with some of the locals who worked for Mr Deripaska ...), had dinner and were entertained by a Cossack band, had another banya, played some games of Russian billiards... As far as I was concerned this was a trip made with a group of friends, not an official business trip”.
76. The explanation given by Mr Rothschild for the change in his evidence is that when he prepared his first witness statement in June 2011 the Siberian trip was not an issue

in the action. There was no mention of it in the Article. So he did not give to the account of the Siberian trip the attention to detail that he should have given to it. He was very apologetic about this. He pointed out that there was a (to him) obvious error, in that his first witness statement referred to his having a plan to go on to visit South East Asia (where he does in fact have business interests) whereas the plan for the day after the Siberian trip with Lord Mandelson was only ever a visit to Central Asia, that is Tajikistan and Kyrgyzstan.

77. Mr Caldecott on the other hand suggested to Mr Rothschild, and later submitted that I should find, that Mr Rothschild had been less than frank in his first witness statement, because he realised that it did not reflect well upon him. In particular, he cannot have forgotten the visit to the aluminium smelter with Lord Mandelson, and by the time he came to make his first witness statement he had seen the Defence, which (for quite different reasons) actually included a reference to the very smelter plant that Mr Deripaska had taken Lord Mandelson to visit.

FINDINGS OF FACT

78. Although in his letter to The Times Lord Mandelson did not expressly mention the trip to Moscow and Siberia commenced on 30 January 2005, that was one of the occasions on which he had met Mr Deripaska since 2004, to which Lord Mandelson had referred in that letter. I infer it was one of the matters which gave rise to the repeated questions in the BBC interview of 29 October 2008. To that extent it is effectively not in dispute (or, if it is, I find) that the trip to Moscow and Siberia was at least one of the matters that had in fact brought Lord Mandelson's office and his personal integrity into question and exposed Lord Mandelson to accusations of conflict of interest in 2008.
79. The precise time when the arrangement was made by Mr Rothschild with Mr Deripaska and Mr Munk that they should meet in Moscow and in Siberia before going on to Central Asia does not seem to me to be material. But I find that that arrangement was probably made before 29 January, and some days before. The official banquets with the Presidents of Tajikistan and Kyrgyzstan had to be arranged, as did the flights and the stopover in Abakan, which suggest to me the likelihood of some pre-planning.
80. The date on which Lord Mandelson was invited to join the trip is not a point on which I can make any precise finding. The fact that Lord Mandelson left Switzerland without a visa to enter Russia tends to suggest that he was invited to join the party at a very late stage. But Mr Rothschild gave evidence that when he extended the invitation Lord Mandelson said that he had to check his diary and whether it was the right thing to do. And Mr Rothschild understood that Lord Mandelson had checked with his Chef de Cabinet.
81. Mr Simon Fraser CMG made a witness statement at the request of Mr Rothschild. He is now Permanent Under Secretary at the Foreign and Commonwealth Office, but was in January 2005 Chef de Cabinet to Lord Mandelson whilst he was European Trade Commissioner. He had recently been contacted by solicitors for Mr Rothschild and asked to recall events seven years previously. He has not had access to any relevant files, and naturally he said he did not have any detailed recollection of the events of that time. Mr Fraser explained that his responsibility for the Commissioner's diary was in the sense of strategically planning it, making sure that he was having the right

meetings with the right people, and that he was fulfilling his responsibilities as Commissioner.

82. Mr Fraser did recall that Lord Mandelson had contacted him shortly before he was due to attend the WEF. Lord Mandelson advised Mr Fraser that he wanted to go on a one day trip to Siberia with Mr Rothschild “for purely recreational purposes”. He asked Mr Fraser whether the diary would permit it and also whether there was any issue of propriety relating to transport arrangements in respect of travelling with Mr Rothschild. Mr Fraser was aware that Lord Mandelson and Mr Rothschild were good friends.
83. Mr Fraser stated in evidence that, as the trip was on Lord Mandelson’s own time, his attendance on the trip was agreed on the basis that it was a recreational trip for pleasure only. Mr Fraser took the view that if the trip was a private and recreational activity, involved travelling with Mr Rothschild, was carried out in his own time, and was not related to official business, it was acceptable for Lord Mandelson to make his own arrangements. It was on this basis that Mr Fraser agreed. Mr Fraser’s primary concern was the management of Lord Mandelson’s diary and that the visit to Siberia was recreational. He did not recall mention of a visit to Moscow on the trip. He had no idea who else was going to be on the trip.
84. On his return Lord Mandelson showed Mr Fraser photographs of the trip to Siberia depicting Lord Mandelson and others sitting in the snow.
85. Mr Fraser added that if he had thought that the trip had anything to do with official duties of the Commissioner he certainly would have explored it further. And if he had known that there was to be anything such as a political meeting taking place on the trip he would have had to look at the arrangement in the light of that knowledge.
86. Lord Mandelson disclosed his official diary pursuant to a production order made by the court before the trial. But as already mentioned, Lord Mandelson has not given evidence. The official diary does not assist on the date upon which Lord Mandelson was invited to join the trip.
87. I find that Lord Mandelson spoke to Mr Fraser about the trip at some time shortly before he went to the WEF, and so that he had been invited before 29 January. Absent any evidence to the contrary, I infer from Mr Fraser’s evidence that, at the time that Lord Mandelson spoke to Mr Fraser, Lord Mandelson had not understood that there would be a stop in Moscow, nor had he been told of any of the details of who was to go to Siberia with himself and Mr Rothschild, nor that he would received hospitality from anyone other than Mr Rothschild. The meeting with the Russian Minister had not yet been thought of. All of these matters were arranged or communicated to him after he had spoken to Mr Fraser.
88. Mr Rothschild was asked about what he had told Lord Mandelson about the proposed trip, and his evidence does not contradict what I infer.
89. In his first witness statement he had said that Mr Deripaska did attend the dinner with Mr Munk on 29 January at (or after) which he had invited Lord Mandelson to join himself and Mr Munk on the trip to Moscow the next day. In his second witness statement he corrected this, saying that Mr Deripaska was not at that dinner, and he

remembered this because he recalled a conversation that he had had with Mr Deripaska where the change of plan to include (ie to include in the trip to Central Asia) a stop in Moscow was discussed.

90. Mr Rothschild's evidence in cross examination included the following exchanges (pages 35 to 40), during which Mr Rothschild was clearly not comfortable:

“15 Q. ... Did you tell [Lord Mandelson], when you issued
16 him with the invitation, that he would be staying with
17 Mr Deripaska?
18 A. Yes, I'm sure I did. Yes.
19 Q. Did you tell him that you would be visiting an aluminium
20 plant in all likelihood with Mr Deripaska?
21 A. I don't recall.
22 Q. Did you tell that you would be flying in Mr Deripaska's
23 jet, or might well be?
24 A. I don't recall....
17 Q. What I want to explore with you is it's perfectly
18 possible that at this stage you didn't actually tell him
19 that he would be staying with Mr Deripaska.
20 A. I don't recall.
21 Q. I just want to ask you this. My learned friend has
22 produced a skeleton for this trial in which he says that
23 Lord Mandelson and others were a guest of the claimant
24 and not Mr Deripaska. That is a case that is made in my
25 learned friend's trial skeleton.
1 Is that the view that you then took, that
2 Lord Mandelson was your guest and not Mr Deripaska's
3 guest?
4 A. I think we were -- we were all friends, and we were
5 going on a fascinating trip. You know, I don't think
6 there's anything particularly profound about whose guest
7 he was or he wasn't.
8 Q. That's not quite an answer to my question. Did you
9 then, at the time, see him as being your guest rather
10 than Mr Deripaska's guest?
11 A. I was responsible for him, just like I was responsible
12 for Mr Munk....
16 A. ...
17 The whole point of the Siberia trip
18 was that we went there, we arrived, we spent
19 a nanosecond at this smelter. We then went, had the
20 most delightful banya, where we were beaten by a 25
21 year-old Russian banya keeper, man. You know, who
22 spends his entire life perfecting the art of the banya,
23 and then we got out and we jumped into ice cold water.
24 Even Mr Munk, I might say. Then we got into the banya.
25 We got out, we got back in, and it was just -- it's the
1 best way in the world to cure jetlag and everything
2 else, and it was -- you know, we had a wonderful time,

3 and it was incredibly enjoyable, and everyone, you know,
4 woke up the next day to go to Tajikistan feeling
5 revitalised and over the moon, and completely excited by
6 the fascinating day that we had spent in this wonderful
7 wilderness in the middle of nowhere....”

91. Similarly in relation to the organisation of Lord Mandelson’s dinner in Moscow, when asked whether he had told Lord Mandelson that he was enlisting Mr Deripaska’s help to secure the meeting, Mr Rothschild replied that he did not remember.
92. Mr Rothschild did not claim that he had paid for Lord Mandelson’s dinner in Moscow, or for any part of the trip in Mr Deripaska’s plane or while they were together at Abakan. He admitted in his amended Reply that the trip was substantially organised and paid for by Mr Deripaska.
93. Earlier in his cross-examination Mr Rothschild had said that he had visited Siberia many times, almost always with Mr Deripaska, and that they always visited the dam and the aluminium smelter, and the foil plant next to the smelter. He said that those visits were “a sort of ritual almost”. Mr Deripaska had been manager there as a young man, and he wanted to show that he was a good executive of the company. But on this occasion the reason for visiting the plant was to show Mr Munk that Mr Deripaska was a credible partner for the new joint venture they were planning. Mr Deripaska would have taken Mr Munk to visit any other plant in Mr Deripaska’s many businesses if they had been more convenient, but the smelter was convenient because it was conveniently close to Central Asia.
94. Mr Caldecott did not accept that explanation for the visit to the smelter and the dam. He submitted that the visits had no relationship with the proposed joint ventures, and that the suggestion that they did was to cover up the fact that they had visited a plant which he later learnt was at the time the subject of a review by the Commission.
95. Mr Munk accepted that the words he had used in his statement may not have been the right ones to convey what he meant (“because Mr Deripaska wished to show Mr Rothschild and me some industrial plants in relation to the potential joint venture”). However, he was insistent that the visit to the smelter did have a purpose connected with the joint venture, at least so far as he was concerned. I accept what he says. He explained that Polymetal was a significant Russian gold producer. One significant contribution that Mr Deripaska could make to the joint venture project to bid for Polymetal would be to make it politically more acceptable in Russia for foreign investors to acquire such a company. If he formed a joint venture with someone, he liked to be sure of their credentials as a businessman. So he looked at Mr Deripaska’s other activities, and to him that was a very relevant factor in overall judging Mr Deripaska as a suitable partner. He said:
- “The fact that he operated and owned, or owned and virtually operated, or vice versa, a major facility of such high efficiency and reputation, had a major part in the joint venture”.
96. However, I do not consider that it makes a difference to the nature of the trip whether the visit to the smelter was directly connected to the joint venture or not. It is clear

from this and from other evidence given by Mr Rothschild that the trip to Siberia had always been a business trip so far as he was concerned, just as it was so far as Mr Deripaska and Mr Munk were concerned. The stops at Moscow and Abakan were each arranged for the purposes of the proposed joint venture, both to discuss it, and to provide a rest near Central Asia, which would enable them all, and in particular Mr Munk, to arrive refreshed in Central Asia ready for the high level meetings which they were to attend there. Abakan is four hours ahead of Moscow in time, and the flight takes about four hours. The temperatures were very low, in the range of minus 28 to 34 degrees centigrade. And as the landscape photos show, the scenery is spectacular.

97. For Mr Taylor the trip to Siberia was a recreational trip. I assume that Lord Mandelson originally planned it as a purely recreational trip, at least until the dinner with the Russian Minister was introduced. That dinner was not recreational. Nor was it private in the sense of being part of his private life. It was a dinner for talks between an EU Commissioner and a Russian Minister. And that dinner was arranged very late, after Lord Mandelson had spoken to Mr Fraser, and took place unknown to Lord Mandelson's officials. If he had contemplated it earlier, he would have arranged it through his office, and not through Mr Rothschild.
98. Mr Rothschild states that he took Lord Mandelson on the trip as a friend and not for any business reason. I cannot accept that the position was as simple as that. I accept that Lord Mandelson had no role in the joint venture, which is what the trip was arranged to promote. But I do not accept that there is a clear line between the business and the personal sides of Mr Rothschild's relationship with Mr Deripaska. They have very extensive business relationships.
99. When asked about this Mr Rothschild gave what I regard as quite unrealistic answers:
- “5 Q. Mr Rothschild, we can all agree that the position of
- 6 Trade Commissioner is a very senior political position
- 7 within the EU. Wasn't it obvious to you -- it must have
- 8 been obvious to you -- that Mr Deripaska would have
- 9 obvious reasons for developing a relationship with
- 10 Mr Mandelson?
- 11 A. Look, Deripaska was my friend and Mandelson was my
- 12 friend, and this was a recreational trip, and Munk was
- 13 there, and you know, I think that Deripaska's desire to
- 14 develop a relationship with Mandelson was because
- 15 Mandelson was an interesting and highly intelligent and,
- 16 you know, fantastic guy. That's the way I look at it.

17 Q. Mr Deripaska has developed relations with many
18 politicians in the Russian Government. We know he has
19 considerable political influence. I'm not disputing
20 that Lord Mandelson can be very good company, and that
21 may have been one of the reasons. But an obvious reason
22 for Mr Deripaska to develop relations with
23 Lord Mandelson is because he has trade and business
24 responsibilities.

25 A. That was nothing to do with the relationship between
1 Deripaska and Mandelson.

2 Q. How do you know that?

3 A. Because I watched, you know, with great happiness as
4 they got to know each other, and that was -- they had
5 a relationship based on friendship.”

100. In my judgment there is at the very least reasonable grounds to believe that Mr Deripaska's interest in providing to Lord Mandelson such luxurious and generous hospitality was as Mr Caldecott suggested. And I cannot accept that Mr Rothschild was unable to foresee this at the time he invited Lord Mandelson on the trip. In my judgment Mr Rothschild did appreciate this at the time. A holder of public office such as a Commissioner is required to make a clear distinction between his public life and his private life. Mr Rothschild did not know about the Code cited in para 8 above. But he accepted in cross-examination that a flight from Moscow to Abakan in a private jet is a great luxury and is expensive. He accepted that he understood there is a general principle that people in government have to be very careful about taking substantial benefits from businessmen with interests that may come into their orbit of responsibility.

101. The giving and receiving of gifts and hospitality are always a reflection of a relationship which already exists, or it is intended to develop, between the donor and the receiver. The receipt of hospitality from someone who is not already a friend always gives rise, or ought to give rise, to some sense on the part of the receiver that he is in some way under an obligation to the donor (unless the gift or hospitality is in recognition of a benefit that the receiver has previously bestowed on the donor, or is small enough to be considered a courtesy, neither of which is the case here). Mr Rothschild was well able to understand this. That is why he put so much stress on the fact that he and Lord Mandelson were friends as the explanation of why he was willing to entertain Lord Mandelson by flying him to Moscow, and then back to Brussels, on his own private plane.

102. I infer that that is why he was reluctant to accept in cross-examination that Lord Mandelson was in fact Mr Deripaska's guest on the trip from Moscow to Abakan, and not his (Mr Rothschild's) guest.
103. In my judgment the fact that this had occurred would have been likely to give to Mr Deripaska (and to the public, if they had known about it) the impression that Lord Mandelson would be more favourably disposed to Mr Deripaska than would otherwise have been the case, if and when any question arose in the course of Lord Mandelson's performance of his official duties which related to any of Mr Deripaska's businesses.
104. Further, by facilitating the development of a relationship between Mr Deripaska and Lord Mandelson, Mr Rothschild was, in my judgment, conferring a benefit on, and seeking to please, both Mr Deripaska and Lord Mandelson. So far as Lord Mandelson was concerned the benefit was the trip and the hospitality itself. So far as Mr Deripaska was concerned it was a relationship with the EU Trade Commissioner. A businessman with such extensive and global interests as Mr Deripaska would be likely to welcome an opportunity to get know a person in Lord Mandelson's position. Of course I accept, as Mr Tomlinson submits, that to a limited extent Mr Deripaska had already got to know Lord Mandelson at the WEF. But it is one thing to meet a person on neutral ground, where neither is giving a benefit to the other, and another thing to welcome a person into your private plane and your home.
105. Further, I infer from the fact that Lord Mandelson accompanied Mr Deripaska, Mr Munk and Mr Rothschild on a visit to the aluminium smelter, and I find, that they probably talked about aluminium. There are photos of their party wearing Rusal's jackets and safety helmets on their visit to the smelter, and standing with a guide, to whom they appear to be listening. It is probable that on a visit to an aluminium smelter and foil plant they talked about aluminium. It does not follow that it is probable that they talked about tariffs on aluminium, and I do not find that they did talk about tariffs. Nor do I find that there are reasonable grounds to suspect that Lord Mandelson talked about aluminium tariffs.
106. I also find, on the balance of probabilities, that on the trip to Siberia the three joint venturers had some discussion about the joint venture. This is in spite of evidence from Mr Rothschild the contrary. Mr Munk's evidence was unclear on the point, but seemed to me on balance to be to the effect that there were some discussions about the joint venture. Further, I have accepted Mr Rothschild's case that there was a link between the joint venture and the visit to the smelter and foil plant. If that is so, there must, in my view, have been some discussion which was at least as closely linked to the joint venture projects. Lord Mandelson did not participate in those discussions, but he was invited by Mr Rothschild to be present at them, or on the trip during which they took place.
107. Mr Rothschild's different and developing accounts of the purpose of the visit to the plants in Siberia are confusing. Once it had become clear (after service of the second witness statements) what the joint venture projects included, and that the only visit to a facility connected with Mr Deripaska was the visit to the smelter and foil plant, the use of language in Mr Rothschild's first statement appeared particularly confusing: "to view some relevant industrial plants in Siberia". Without an explanation, it is

difficult to see the relevance of an aluminium smelter and foil plant to any of the joint venture projects relating to gold or gold and silver.

108. I formed the impression that on this point Mr Rothschild had not been entirely candid throughout the different stages of the case, or in evidence. That reflected his appreciation that it was foreseeable that this part of the visit, in particular, would expose Lord Mandelson to accusations of conflict of interest, and give rise to reasonable grounds for suspecting that Lord Mandelson had engaged in improper discussions with Mr Deripaska about aluminium. It was clear from his evidence that the visit to the smelter was one of the few things that can be done on a visit to that part of the world. He had done it a number of times before, he had expected to do it again at the time when he invited Lord Mandelson to join him on the trip, and the visit was itself highly memorable.
109. Further, I cannot accept that he can advance at the same time (as he seeks to do) both the case that the visit to the smelter was related to the joint venture, and the case that there was no discussion about the joint venture on the trip with Lord Mandelson.
110. There were a number of issues explored in evidence which I have not found it necessary to making findings about. One of these issues arose out of the much publicised events in Corfu in 2008. The issue was which account was correct about conversations between Lord Feldman on the one hand and Mr Rothschild and Mr Deripaska on the other about political donations. Mr Rothschild gave one account and Lord Feldman gave another. The two accounts had first been given in the press in October 2008. The relevance of this issue is, Mr Caldecott submitted, that it showed the lengths that Mr Rothschild was prepared to go to please Mr Deripaska.

FINDING ON JUSTIFICATION OR TRUTH

111. Mr Caldecott submits that on his own version of events, or on the facts that I have found, Mr Rothschild's conduct was inappropriate in a number of respects. I accept that submission. In my judgment that conduct foreseeably brought Lord Mandelson's public office and personal integrity into disrepute and exposed him to accusations of conflict of interest, and it gave rise to the reasonable grounds to suspect that Lord Mandelson had engaged in improper discussions with Mr Deripaska about aluminium.
112. The conduct in question included the part Mr Rothschild played in arranging the following:
 - i) Lord Mandelson's dinner with the Russian Minister in Moscow, which he arranged either through Mr Deripaska (as he said in his first witness statement) or through Mr Deripaska's office (as he said in his second witness statement);
 - ii) the hospitality provided to Lord Mandelson by Mr Deripaska, including the flight in his luxurious private jet from Moscow to Abakan, and the entertaining at his chalet near Abakan;
 - iii) Lord Mandelson's presence on a trip which, for the main participants Mr Rothschild, Mr Munk and Mr Deripaska, was a business trip to advance one or more of their proposed joint ventures, even if (as is accepted) Lord Mandelson did not take part in business discussions;

- iv) Lord Mandelson's taking part in the visit, which he had expected to take place, to the aluminium smelter and Sayanal foil plant.
113. In my judgment, for the reasons given above, ANL has established that the words complained of were substantially true (in the meaning which I have found them to bear), notwithstanding the admitted inaccuracies.
114. In case I am wrong about that, I must consider what damages I would have awarded if I had found that what ANL has established does not amount to proof that the words complained of are substantially true.
115. Because of the matters that I have found, it would seem wrong to me that Mr Rothschild should recover substantial damages. If I had had made an award of damages it would have been a modest sum, of the order of £3,000. This reflects Mr Tomlinson's submission (which I have not accepted) that the allegations that the purpose of the visit to Moscow was for Lord Mandelson to assist in the closing of the Alcoa deal by discussing tariffs, is so serious that it precludes the finding that I have made, namely that the facts surrounding the trip to Siberia for the joint venture prove that the meaning I have found the Article to bear is substantially true.

CONCLUSION

116. For the reasons given above, there will be judgment for ANL.